THE

QUESTION OF COPYRIGHT

COMPRISING THE TEXT OF THE COPYRIGHT LAW OF THE UNITED STATES, A SUMMARY OF THE COPYRIGHT LAWS AT PRESENT IN FORCE IN THE CHIEF COUNTRIES OF THE WORLD

TOGETHER WITH

A REPORT OF THE LEGISLATION NOW PENDING IN GREAT BRITAIN, A SKETCH OF THE CONTEST IN THE UNITED STATES, 1837–1891, IN BEHALF OF INTERNATIONAL COPYRIGHT, AND CERTAIN PAPERS ON THE DEVELOPMENT OF THE CONCEPTION OF LITERARY PROPERTY, AND ON THE RESULTS OF THE AMERICAN ACT OF 1891

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PREFACE TO SECOND EDITION.

THE original edition of this volume was prepared for the press very hurriedly, immediately after the passage of the Act of 1891, for the purpose of putting into shape, for convenient reference, the text of the new law, with an analysis of its provisions, and of presenting with this a brief record of the international copyright movement in this country, and a sketch of the development throughout the world of the conception of literary property. Five years have passed since the United States, through this law of 1891, adopted the policy which had for a number of years been accepted by nearly all the other literature-producing states of the world, a policy which assumed that the producers of intellectual property were entitled to the protection given by law to all other producers, and to the enjoyment of the fruits of their labors, irrespective of political boundaries. The American recognition of this principle was coupled with certain conditions which, while they had no logical connection with authors' rights, were believed, by the political party that in 1891 controlled the national policy, to be called for by the exceptional industrial conditions of our country.

It was, on the other hand, the opinion of those who, in 1891, were carrying on the contest (begun nearly half a century before) in behalf of the rights of authors, American as well as foreign, and of what they held to be the honor of the nation, that these hampering conditions and restrictions would doubtless be removed in a few years' time. There is as yet, it must be admitted, no progress to be recorded in this direction, and it is evident that the date when the United States is to come into full literary fellowship with other civilized states by accepting the unrestricted copyright of the Convention of Berne, is to be postponed beyond the original expectation. Such an advance to a logical and civilized policy in regard to literary property must, however, certainly be secured in the not very remote future, and in any case the most difficult step forward was taken when we expressed our willingness to acknowledge, even with illogical conditions, the property rights of aliens, and in so doing, were able to secure recognition on the other side of the Atlantic (and on much more favorable terms) for the similar rights of Americans.

I have presented in a later chapter my impressions concerning the general results of the legislation of 1891, and in regard to its effects upon the interests of both the readers and the producers of books. It is in order to admit that the Act has on the whole worked with less friction and with less considerable difficulty than had been anticipated by those who were responsible for its provisions as first drafted, and who were in a position to realize how seriously

the purpose and the consistency of character of the measure had been imperilled by certain hastily considered "amendments" crowded into the bill, during the last days of the contest, by both the friends and opponents of copyright.

A summary of the copyright cases which have been brought before the courts since July, 1891, and the issues of which have turned upon the international provisions of the law that went into effect, is given in one of the following chapters. The list is not a considerable one, and the Act has thus far not only withstood the various attacks made upon its general purpose, but has received, in the details thus far tested, the substantial support of the courts. Certain suits which are at this date (January, 1896) still pending, will probably be more important than those already decided, in determining the purport of its several provisions.

I have given the record of the Covert amendment, which was adopted in 1895, and which is the only change that has been made in the law since March, 1891. This amendment secured a correction that was very justly called for by the newspaper publishers, who, under the original Act, had been exposed to oppressive penalties (amounting sometimes to blackmail) in connection with the reproduction of photographs and of popular art designs. I have also noted the attempt made under the Hicks bill, of the same year, which was very properly defeated, to undermine the protection given by the Act to European artists.

The most serious and most legitimate criticisms of the law have come from the authors of France, Ger-

many, and Italy, who have found that, under the requirements of American manufacture and of simultaneous publication, the difficulties were almost insuperable in the way of securing American copyright for books which required to be translated before they were available for American readers. In Germany, the disappointment and annoyance at what are held to be the inequitable restrictions of the American statute have been so considerable that steps have been taken, on the part of the authors and publishers, to secure the abrogation of the convention entered into in 1893 between Germany and the United States. The defenders of the convention have thus far succeeded in preventing it from being set aside, but they do not feel at all assured that they will be able to maintain it for an indefinite period unless some indications may come from this side of the Atlantic that we look forward to removing the special difficulties complained of. The disappointment and the criticism on the part of the authors of France are hardly less bitter, and I understand that it is only the fact that certain substantial advantages are secured under the law to foreign artists and designers, and the expectation that our people can not long remain satisfied, while granting literary copyright in form to refuse it in fact, that prevent organized attacks, not only in Paris, but in Rome, upon the present international arrangement. These complaints impress me as well founded, and they give ground for a feeling of mortification on the part of Americans who have at heart the reputation of their country for good faith and for fair dealing.

The several points to be kept in view in connection with future modifications of our copyright Act are in my judgment as follows:

First. The extension of the term of copyright, with a view to securing for the producers of intellectual property the control of their productions during their own lifetime and of preserving for their heirs the enjoyment of the results from these productions during a reasonable term after the death of the producer. Under the present conditions, it is quite possible for an author to be exposed, during his own lifetime, to the competition of unauthorized editions of his earlier works. In connection with such unauthorized editions, he has not only the annoyance of the interference with the sales of the editions issued by his own publishers, but (what may often constitute a more serious grievance) the mortification of seeing reproduced crude youthful productions which he had intended to cancel, or unrevised and incomplete versions of compositions to which in later years he had given a final literary form.

Such an extension of term is required to secure for an author the privilege that is under our laws conceded to all other workers or producers, of being able to labor for the advantage of his children and grandchildren. The justice of such larger measure of protection for literary property and of encouragement for literary workers has been fully recognized by every country in Europe excepting Great Britain, and the British law is much more liberal to the rights of authors than is our own. The British Act will itself also doubtless in the near future be modified

in accordance with the bill now pending, so that the term of copyright will be extended to correspond with that of Germany, which covers the life of the author and thirty years thereafter.

Second. Steps should be taken as promptly as practicable to remove the special grievance now existing on the part of European authors whose works require to be translated. France, Germany, Italy, and Spain have extended to American authors the privileges possessed by their native writers, while the United States has given to the authors of these countries no privileges which are really equivalent. It may not be practicable for a number of years, in connection with the continued approval given by the majority of our citizens to the so-called protective system, to remove from our copyright Act the condition of manufacturing within the United States. It will also probably be necessary to retain in the Act, in connection with the manufacturing provision, the condition of simultaneous publication. The Act should, however, provide that an exception to this requirement for simultaneous publication should be made in the case of a work originally issued in a foreign language. Such a work could be registered for copyright in regular course, with a title-page in English, and with two copies of the original text submitted for purposes of identification as preliminary deposits; with the provision that, within a specific term (say twelve months) after the date of such registration, publication be made of an English version, an edition of which should be printed, according to the manufacturing condition, from "type set

within the United States." If, within that date, no edition should be produced, the producers of which had complied with the conditions of the American Act, the right to reproduce the work in English might then fall into the public domain. A provision to such effect, while by no means sufficient to do full justice to European authors, would secure to such of those authors as really had an American reading public awaiting their books, the substantial advantages of American copyright. I do not see any other way in which foreign authors can obtain the benefits intended by the Act as long as the manufacturing condition and the provision for simultaneous publication are retained. Such a provision would be in line with the arrangements now in force between the European states (under the Berne convention) covering the similar requirements for translated works.

Third. A substantial improvement is called for, in connection with the system for the entry of copyrights and the registration of titles, and for the preservation for use later in the courts if required, of authoritative evidence that the requirements of the law have been complied with.

The Acts of 1870 and 1891 make adequate provision for the registration of articles entered for copyright, the most important of which articles, in connection with the possible necessity of future reference to the registry, being undoubtedly books. It has, however, been found impracticable, with the facilities existing in the office of the Librarian of Congress, as that office is now organized, to give

adequate and prompt attention to the business connected with copyrights. The library business of the Librarian has during the last ten years increased enormously, and the work of supervising effectively the entry of copyrights calls for the establishment of a registry of copyrights which shall not be a division of the Library of Congress, but shall constitute an independent Bureau. The producers of books, works of art, music, designs and other articles entitled to copyright, contribute each year in the form of copyright fees a very considerable sum, estimated at from $35,000 to $40,000. In addition to this money payment, they are called upon to deposit copies of the articles copyrighted. In the case of books, two copies of which must be deposited for the National Library, the value of the volumes (aggregating for 1895 over 10,000) thus delivered by the publishers, constitutes in itself a large annual tax. This tax is paid for the support of an effective system of copyright entry and for the maintenance of a registry for titles which shall always be available for ready reference.

At the present time the producers and owners of literary property are not securing for this payment adequate consideration. It is therefore a ground for satisfaction that the steps have now been taken to institute such a Bureau of copyrights as is required. In December, 1895, a bill was introduced in the House by Mr. Bankhead, and a second bill with nearly identical provisions was introduced in the Senate by Senator Morrill, under the provisions of which the office of Register of Copyrights is insti-

tuted. With this register are to be appointed an assistant register and a clerk. An appropriation of $7500 is to be made to cover the salaries of the three. The register is to be appointed by the President, subject to the approval of the Senate, and the assistant register, under one bill, by the Secretary of the Treasury, and under the other, by the President. The general purpose of these two bills is to be commended. It is my opinion, however, that a larger appropriation should be made for the salaries and also that the register should have placed in his own hands the appointment of the assistant and the clerk.

Fourth. A further consideration will be required for the provisions of the Act having to do with property in the right of productions. The case of Werckmeister *vs.* Pierce and Bushnell, referred to in another chapter, and one or two other similar issues that have arisen, indicate that the wording of the sections providing regulations for the entry of the copyright of works of art is not sufficiently explicit, and that Transatlantic artists may occasionally fail to secure for their productions the protection which it was the purpose of the Act to provide.

I venture to repeat a suggestion which I have more than once had occasion to put into print, that the framing of a satisfactory copyright Act which shall have for its purpose an equitable and adequate protection for the producers of intellectual property, and which shall be so worded as to carry out that purpose effectively, should be entrusted to a commission of experts. Such a commission should

comprise representatives of the several interests to be considered, producers of works of literature, producers of works of art, publishers of books, and publishers of art works. The commission should also include at least one skilled copyright lawyer, and it may be in order to add some representative of the general public who would have no direct property interest in the results of such a bill as may be framed. All existing copyright systems of the world excepting that of the United States have been the work of such commissions of experts. The members of these commissions have had authority to summon witnesses and to take testimony, and after having devoted sufficient time to the mastery of the details of a subject which is of necessity complex and which certainly calls for expert training and expert experience, they have presented their conclusions in the form of a report containing the specifications of the legislation recommended. The copyright laws of the States of Europe have, without an exception, been based upon such recommendations. The Government of the United States stands alone in having relied for its copyright legislation solely upon the conclusions that could be arrived at by Congressional committees. However intelligent the members of such committees might be, and however conscientious the interest given by these Congressmen, or by some among them, to the subject, experience has shown that it is not practicable to secure wise and trustworthy copyright legislation in this manner. Whenever we may be able to overcome that prejudice which declines to take advantage of

the experience and the example of the States of Europe in connection with the solution of problems and questions similar to our own, we shall doubtless decide to try the experiment of instituting a commission of experts for the reforming of our copyright law.

G. H. P.

NEW YORK, *February*, 1896.

PREFACE TO THE FIRST EDITION.

IN connection with the recent enactment by Congress of a Copyright Law securing American Copyright for aliens, the subject of the status of literary property and of the rights of the producers of literature in the United States and throughout the world is attracting at this time special attention. I have judged, therefore, that a volume presenting, in convenient form for reference, a summary of the more important of the Copyright Laws and International Conventions now in force, and indicating the bearing of these laws on the interests of writers and their readers, might prove of some service to the public. With the summary of existing legislation, I have included a brief abstract of certain measures now under consideration in England, some one of which is likely, before long, to replace the present British law.

The compilation lays no claim to completeness, but is planned simply as a selection of the more important and pertinent of the recent enactments and of some of the comments upon them.

I am indebted to the courtesy of Mr. Brander Matthews for the permission to include in the volume his valuable papers on "The Evolution of Copyright," and "Copyright and Prices"—papers which were prepared for use in the copyright cam-

paign and which proved of very practical service. Mr. Bowker, who is an old-time worker in the copyright cause, has also kindly permitted the use of three pertinent articles from his pen, which were first printed in the valuable work on *The Law and Literature of Copyright*, prepared by himself and Mr. Solberg, a volume which contains the most comprehensive bibliography of the subject with which I am acquainted.

I have thought it worth while, also, to reprint several papers of my own, which appeared to have some bearing on the history or on the status of copyright, and which also were, for the most part, written for "campaign" purposes.

The report submitted by Mr. Simonds on behalf of the House Committee on Patents presents a very comprehensive and succinct summary of the grounds on which the demand for an International Copyright Bill was based, and it is probably the most complete and forcible of the many reports presented to Congress on the subject. This report appeared, therefore, to belong very properly in the collection.

In bringing together statements and records from a number of sources, it was impracticable to avoid a few repetitions; but in a volume which lays no claim to literary form, but has been planned simply as a compilation of facts and information, a certain amount of repetition will, I trust, not be considered a very grave defect.

An examination of the copyright legislation of Europe makes clear that the United States, notwithstanding the important step in advance it has,

after such long delays, just taken, is still, in its recognition of the claims of literary workers, very much behind the other nations of the civilized world.

The conditional measure for securing American copyright for aliens (and, under recip ocity, foreign copyright for Americans), a measure which is the result of fifty-three years of effort on the part of individual workers and of successive Copyright Committees and Leagues, brings this country to the point reached by France in 1810, and by Great Britain and the states of Germany in 1836–1837.

Under the International Copyright arrangements which went into effect in Europe in the earlier years of the century, copyright was conceded to works by foreign authors only when such works had been manufactured within the territory of the country granting the copyright. As late as 1831, for instance, Lord St. Leonards stated, in the case of Jeffreys *vs.* Boosey, that it had never been the intention of the English law to extend a copyright protection over works not manufactured within British territory.

The new American act, which makes American manufacture a first condition of American copyright for aliens, brings us, therefore, to what has usually, in other countries, been the first stage in the development of International Copyright—a stage which was reached in Europe more than half a century ago.

What is probably the final stage was attained in Europe in 1887, when the provisions of the Berne Convention went into effect. Under this conven-

tion, by fulfilling the requirements of their domestic copyright laws, authors can now at once secure, without further conditions or formalities, copyright for their productions in all the states belonging to the International Union.

The states which, in accepting this convention (the report of which will be found printed in this volume), organized themselves into the International Copyright Union, comprised, in addition to nearly all the countries of Europe, Tunis and Liberia as representatives of Africa, together with a single representative of the literary civilization of the western hemisphere, the little republic of Hayti.

It is not probable that another half century of effort will be required to bring public opinion in the American republic up to the standard of international justice already attained by Tunis, Liberia, and Hayti.

Under this standard, it is recognized that literary producers are entitled to the full control of their productions, irrespective of political boundaries and without the limitations of irrelevant conditions.

The annual production of American literature should certainly be not a little furthered, both as to its quantity and its importance, by the stimulus of the new Copyright Act. During the past few years American writers have been securing growing circles of readers in England and on the Continent, and a material increase can now be looked for in the European demand for American books—a demand which, in the absence of restrictions, will be met by the export of plates as well as of editions. The

improvement and the cheapening of American methods of typesetting and electrotyping, and, in fact, of all the processes of book manufacture, will, I anticipate, at no distant date, remove from the minds of the men engaged in this manufacture the fear that they are not in a position to compete to advantage with the book-making trades of Europe, and that an International Copyright, without manufacturing conditions, might bring about a transfer to England and to Germany of a large part of the business of American book-making. It was this apprehension on the part of the American printers, and the trades associated with them, that caused the restrictions in the present act to be inserted. It is my belief, however, that the trades in question will before long recognize that there is no adequate ground for such an apprehension, and that, admitting the importance of preventing any obstacles from being placed in the way of the exporting of American books and American plates, they will themselves take action to secure the elimination of these restrictions.

When this has been brought about, there should be nothing further to prevent the United States from entering the International Copyright Union, and thus completing, so far as the literature-producing and literature-consuming nations of the world are concerned, the abolition of political boundaries for literary property.

While the recognition by our country of the claims of foreign authors has been so tardy, its legislation for domestic copyright has also been based

upon a narrower conception of the property rights of authors than that accepted by the legislators of Europe. The law of 1870 (given in full in this volume), which is in this respect unchanged by the Act of 1891, gives to a literary production a first term of copyright of twenty-eight years, and an extension of such term for fourteen years further only if at the expiration of the first term the author or the author's widow or children be living. If the author, dying before the expiration of the first term, leave neither widow nor children, the copyright of his work is limited to twenty-eight years. It was for this reason that Washington Irving was unable to insure for his nieces (his adopted children) the provision which they needed, and which a continued copyright in their uncle's works would have secured for them.

In England, the present law gives a copyright term of forty-two years, or for the life of the author and for seven years thereafter, whichever term may be the longer; and the amended law now proposed extends the term for thirty years after the death of the author.

This latter is the term provided in the law of the German Empire, while in Russia and in France the copyright endures for the life of the author and for fifty years thereafter.

The steady tendency of legislation has been towards an increase of the term of copyright and a recognition of the right of a literary producer to work for his grandchildren as well as for his children; and the desirability of bringing the American term into accord with that in force in Germany and pro-

posed in England, namely, the life of the author and thirty years thereafter, is now a fair subject for consideration.

Since the framing of the American Act of 1870, not a few questions have arisen in connection with new processes of reproduction of works of art, etc., which are not adequately provided for in that act; and the criticism is often heard from American artists that the copyright protection for their designs is inadequate.

The American act of the present year, providing copyright for aliens, can hardly be accepted as final legislation, and some of its provisions will, doubtless, at no distant date, after they have had the practical test of experience, call for further consideration.

It seems to me that in order to secure consistent, enduring, and satisfactory legislation, that will fairly meet all the requirements and will not bring about needless business perplexities necessitating for their solution frequent appeals to the courts, it will be wise to follow the precedent of Germany, France, and England, and to arrange for the appointment of a commission of experts to make a thorough investigation of the whole subject of copyright, literary, musical, and artistic, domestic and international. The report of such a commission should form a much more satisfactory basis for trustworthy legislation than could be secured in any other way. A subject like copyright is evidently not one which can safely be intrusted to the average congressional committees especially if the bills framed in such committees are to have injected into them after-

wards the "amendments" of eleventh-hour experts of the Senate or the House, men who, having looked into the matter over night, feel assured that they know all about it.

The action of the Senate in February, 1891, on the Platt-Simonds Bill, is a fair example of the kind of amateur and haphazard legislation referred to.

Under the lead of the principal republican and democratic opponents of the Copyright Bill, an amendment was offered and was actually passed by the Senate, which had the effect of abolishing domestic copyright; and it was not until several days later, when this unlooked-for result of senatorial wisdom had been pointed out by outside critics, that the amendment was rescinded.[1]

If this volume may serve to direct public attention to the advisability of the appointment of a copyright commission through whose labors the risks of such haphazard copyright legislation may at least be minimized, an important purpose of its publication will have been accomplished.

G. H. P.

NEW YORK, *March* 28, 1891.

[1] The Sherman amendment, as originally framed, authorized the importation, irrespective of the permission of the author, of foreign editions of works, whether by foreign or American authors, which had secured American copyright.

The amendment was passed February 14, 1891, by a vote of 25 to 24, and was rescinded February 17, by a vote of 31 to 29. Its mover was Senator Sherman of Ohio, and he was actively supported by Senators Daniels of Virginia, Hale of Maine, Gorman of Maryland, and other experienced legislators.

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The papers for which the name of the author is not specified, are the work of the compiler.

THE QUESTION OF COPYRIGHT

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I.

THE COPYRIGHT LAW OF THE UNITED STATES.

In force January, 1904.[1]

SECTION 4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress. [. . .]

[The Appropriation Act approved February 19, 1897, provides for the appointment of a "Register of Copyrights, who shall, on and after July first, eighteen hundred and ninety-seven, under the direction and supervision of the Librarian of Congress, perform all the duties relating

Register of copyrights.

[1] Being the Revised Statutes of the United States, Title 60, Chapter 3 (1874), as amended by the acts approved June 18, 1874; August 1, 1882; March 3, 1891; March 3, 1893; March 2, 1895; January 6, 1897; February 19, 1897; and March 3, 1897.

to copyrights, and shall make weekly deposits with the Secretary of the Treasury, and make monthly reports to the Secretary of the Treasury and to the Librarian of Congress, and shall, on and after July first, eighteen hundred and ninety-seven, give bond to the Librarian of Congress, in the sum of twenty thousand dollars, with approved sureties, for the faithful discharge of his duties."]

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

SEC. 4950. [. . .] The Appropriation Act approved February 19, 1897, provides: "The Librarian of Congress shall on and after July first, eighteen hundred and ninety-seven, give bond, payable to the United States, in the sum of twenty thousand dollars, with sureties approved by the Secretary of the Treasury, for the faithful discharge of his duties according to law."

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

SEC. 4952. [. . .] The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying

with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors or their assigns shall have exclusive right to dramatize or translate any of their works, for which copyright shall have been obtained under the laws of the United States. [. . .]

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

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

SEC. 4954. The author, inventor, or designer, if he be still living [. . .], or his widow or

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

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

SEC. 4956. No person shall be entitled to a copyright unless he shall, on or before the day of publication, in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail, within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design, for a work of the fine arts, for which he desires a copyright; nor unless he shall also, not later than the day of the publication thereof, in this or any foreign country, deliver

at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail, within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same: Provided, That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above, shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and is hereby prohibited, except in the cases specified in paragraphs 512 to 516, inclusive, in section two of the act entitled,[1] An act to reduce the revenue and equalize the duties on imports and for other pur-

[1] These paragraphs of the Tariff act permit free importation of books, etc., more than twenty years old, books in foreign languages, publications imported by the Government, or for societies, colleges, etc., and libraries which have been in use one or more years, brought from abroad by persons or families and not for sale.

poses, approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time; and, except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation:

Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted. [. . .]

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

SEC. 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered, the following fees: 1. For recording the title or description of any copyright book or other article, fifty cents. 2. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents. 3. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar. 4. For every copy of an assignment, one dollar. All fees so received shall be paid into the Treasury of the United States: Provided, That the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or a resident of the United States, shall be one dollar, to be paid as above into the Treasury of the United States, to defray the expenses of lists of copyrighted articles as hereinafter provided for.

And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright had been completed by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this act, and by the deposit of two copies of such other article made or produced in the United States; and the Secretary of the Treasury is hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title-entries for distribution to the collectors of customs of the United States and to the postmasters of all post offices receiving

foreign mails, and such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding five dollars per annum; and the Secretary and the Postmaster General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this act.

SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia, a copy of every subsequent edition wherein any substantial changes shall be made: Provided, however, That the alterations, revisions, and additions made to books by foreign authors, heretofore published, of which new editions shall appear subsequently to the taking effect of this act, shall be held and deemed capable of being copyrighted as above provided for in this act, unless they form a part of the series in course of publication at the time this act shall take effect.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver, or deposit in the mail, either of the published copies, or description, or photograph, required by Sections 4956 and 4959, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the Librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United

States within the jurisdiction of which the delinquent may reside or be found.

The following act in relation to the deposit of copies was approved March 3, 1893: "That any author, inventor, designer, or proprietor of any book, or other article entitled to copyright, who has heretofore failed to deliver in the office of the Librarian of Congress, or in the mail addressed to the Librarian of Congress, two complete copies of such book, or description or photograph of such article, within the time limited by title sixty, chapter three, of the Revised Statutes relating to copyrights, and the acts in amendment thereof, and has complied with all other provisions thereof, who has, before the first day of March, anno Domini eighteen hundred and ninety-three, delivered at the office of the Librarian of Congress, or deposited in the mail addressed to the Librarian of Congress, two complete printed copies of such book, or description or photograph of such article, shall be entitled to all the rights and privileges of said title sixty, chapter three, of the Revised Statutes and the acts in amendment thereof."

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

SEC. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page, or the page immediately following, if it be a book; or if a

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

That manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright may put the copyright mark prescribed by section forty-nine hundred and sixty-two of the Revised Statutes, and acts additional thereto, upon the back or bottom of such articles, or in such other place upon them as it has heretofore been usual for manufacturers of such articles to employ for the placing of manufacturers'-, merchants'-, and trade-marks thereon.

SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or other article, whether such article be subject to copyright or otherwise, for which he has not obtained a copyright, or shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this coun-

try; or shall import any book, photograph, chromo, or lithograph, or other article bearing such notice of copyright or words of the same purport, which is not copyrighted in this country, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty and one-half to the use of the United States; and the importation into the United States of any book, chromo, lithograph, or photograph, or other article bearing such notice of copyright, when there is no existing copyright thereon in the United States, is prohibited; and the circuit courts of the United States sitting in equity are hereby authorized to enjoin the issuing, publishing, or selling of any article marked or imported in violation of the United States copyright laws; at the suit of any person complaining of such violation: Provided, That this act shall not apply to any importation of or sale of such goods or articles brought into the United States prior to the passage hereof.

SEC. 4964. Every person who, after the recording of the title of any book and the depositing of two copies of such book as provided by this act, shall, contrary to the provisions of this act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatize, translate, or import, or, knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose for sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also for-

feit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

SEC. 4965. If any person, after the recording of the title of any map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this act, shall, within the term limited, contrary to the provisions of this act, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatize, translate, or import, either in whole or in part, or by varying the main design, with intent to evade the law, or knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose for sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale: Provided, however, That in case of any such infringement of the copyright of a photograph made from any object not a work of the fine arts, the sum to be recovered in

any action brought through the provisions of this section shall be not less than one hundred dollars, nor more than five thousand dollars, and, Provided further, That in case of any such infringement of the copyright of a painting, drawing, statue, engraving, etching, print, or model or design for a work of the fine arts, or of a photograph of a work of the fine arts, the sum to be recovered in any action brought through the provisions of this section shall be not less than two hundred and fifty dollars, and not more than ten thousand dollars. One-half of all the foregoing penalties shall go to the proprietors of the copyright and the other half to the use of the United States.

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

If the unlawful performance and representation be wilful and for profit, such person or persons shall be guilty of a misdemeanor and upon conviction be imprisoned for a period not exceeding one year. Any injunction that may be granted upon hearing after notice to the defendant by any circuit court of the United States, or by a judge thereof, restraining and enjoining the performance or representation of

any such dramatic or musical composition, may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative and may be enforced by proceedings to punish for contempt or otherwise by any other circuit court or judge in the United States; but the defendants in said action, or any or either of them, may make a motion, in any other circuit in which he or they may be engaged in performing or representing said dramatic or musical composition, to dissolve or set aside the said injunction upon such reasonable notice to the plaintiff as the circuit court or the judge before whom said motion shall be made shall deem proper; service of said motion to be made on the plaintiff in person or on his attorneys in the action. The circuit courts or judges thereof shall have jurisdiction to enforce said injunction and to hear and determine a motion to dissolve the same, as herein provided, as fully as if the action were pending or brought in the circuit in which said motion is made.

The clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to dissolve or enforce said injunction, transmit without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office.

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained [. . .], shall be liable to the author or proprietor for all damages occasioned by such injury.

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

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

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

SEC. 4971. [. . .]

[Revised Statutes, title 13, THE JUDICIARY, provides as follows. Chap. 7 (sec. 629). The circuit courts shall have original jurisdiction as follows: . . . Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States. (Rev. Stat., 1878, pp. 110, 111.) Chap. 11 (sec. 699). A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, without regard to the sum or value in dispute: First. Any final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, or of the supreme court of the District of Columbia, or of any Territory, in any case touching patent-rights or copyrights. (Rev. Stat., 1878, p. 130.) Chap. 12

(sec. 711). The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States: . . . Fifth. Of all cases arising under the patent-right or copyright laws of the United States. (Rev. Stat., 1878, pp. 134, 135.) Chap. 18 (sec. 972). In all recoveries under the copyright laws, either for damages, forfeiture, or penalties, full costs shall be allowed thereon. (Rev. Stat., 1878, p. 183.)]

The act approved March 3, 1891 (51st Congress, 1st session, chap. 565: 26 Statutes at Large, pp. 1106–1110), in addition to the amendments, noted above, of sections 4952, 4954, 4956, 4958, 4959, 4963, 4964, 4965, and 4967, provides further as follows:

"That for the purpose of this act each volume of a book in two or more volumes, when such volumes are published separately, and the first one shall not have been issued before this act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above." (Sec. 11.)

"That this act shall go into effect on the first day of July, anno Domini eighteen hundred and ninety-one." (Sec. 12.)

"That this act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an inter-

national agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may at its pleasure become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time as the purposes of this act may require." (Sec. 13.)

[An Act providing for the public printing and binding and the distribution of public documents, (January 12, 1895, 53d Congress, 3d session, chap. 23, sec. 52: 28 Statutes at Large, p. 608,) provides as follows: The Public Printer shall sell, under such regulations as the Joint Committee on Printing may prescribe, to any person or persons who may apply, additional or duplicate stereotype or electrotype plates from which any Government publication is printed, at a price not to exceed the cost of composition, the metal and making to the Government and ten per centum added: Provided, That the full amount of the price shall be paid when the order is filed: And provided, further, That no publication reprinted from such stereotype or electrotype plates and no other Government publication shall be copyrighted.]

Foreign States with which the United States is in Copyright Relations.

THE provisions of the Act of 1891 having to do with International Copyright, are (January, 1904) in force with the following States:

Belgium,
France,
Great Britain,
Switzerland,
} By Proclamation of the President, July 4, 1891.

Germany, by Treaty, March 8, 1892.
Italy, by Proclamation, Oct. 31, 1892.
Denmark, by Proclamation, May 8, 1893.
Portugal, by Proclamation, July 20, 1895.
Spain, by Proclamation, July 15, 1895.
Mexico, by Proclamation, Feb. 27, 1896.
Chile, by Proclamation, May 25, 1896.
Costa Rica, by Proclamation, Oct. 19, 1899.
Netherlands (Holland) and possessions, by Proclamation, Nov. 20, 1899.
Cuba, by Proclamation, Nov., 1903.
China, by Treaty, Jan., 1904.

Amendments to the Copyright Act Proposed Since July, 1891.

1. *The Hicks Bill.*— In September, 1894, an amendment to the Copyright Act was introduced by Representative Hicks, of Pennsylvania, which had for its purpose the application of the manufacturing requirement to engravings and etchings; under the Hicks provision, art productions of this class were to be "printed from plates engraved or etched within the limits of the United States." A second division of the Hicks Bill excepted from the works the contents of which were to be protected by copyright "daily or weekly newspapers devoted in whole or in part to the news of the day."

The purpose of the first provision was stated to be the protection of newspapers against disproportioned damages in connection with the reproduction of photographs or of popular works of art, which were the work of alien designers. Its results would have been the undermining of copyright in foreign works of art, the protection of which constituted practically the only advantage secured by the states of Europe (other than England) under the American Act of 1891. The alleged purpose of the second provision (which was presented at the instance of

the smaller papers) was to prevent what they called "a monopoly of news." The result would have been to destroy the copyright property in any literary or art productions published not only in the daily papers, but in such journals as *Harper's Weekly* or *Frank Leslie's*, which are in part devoted to "news of the day." Strong protests were made against the bill by European artists and art publishers, and by the publishers of literary illustrated weeklies and their contributors. Concerted action was taken, on behalf of all the copyright interests assailed by the Authors' and Publishers' Copyright Leagues, and the bill was killed in Committee.

2. *The Covert Amendment.*—In January, 1895, Representative Covert of New York, introduced a bill which had for its purpose the relief of the newspapers from excessive penalties in connection with the infringement of art designs, photographs, etc. This bill as first worded would have constituted a serious impairment of the protection of copyright property.

After consultation between the representatives of the Authors' and Publishers' Copyright Leagues and those of the newspaper publishers, the Covert amendment was modified. The original draft provided that the total sum to be "recovered for any one infringement should not exceed double the value of the printing, drawing, object or thing infringed upon, copied, issued, or edited in violation of law." As finally worded the amendment read:

"Provided, however, that in the case of any such

infringement of the copyright of a photograph made from an object not a work of the fine arts, the sum to be recovered in any action brought under the provisions of this section shall be not less than $100, nor more than $5000, and Provided further, In case of any such infringement of the copyright of a printing, drawing, statue, engraving, etching, print, or model, or design not a work of the fine arts, the sum to be recovered in any action brought through the provisions of this section shall not be less than $250 and not more than $10,000."

The act was passed in March, 1895, becoming part of the copyright law, and constituting the first amendment to the international copyright provisions.

3. *The Cummings' Amendment, in re Stage-right.*—In February, 1896, Mr. Amos Cummings, of New York, introduced in the House of Representatives a bill which had for its purpose the more thorough protection of the rights of dramatic authors. These authors and their assigns, the managers who are interested with them in the copyright protection of plays, had for some years found occasion to complain of the inadequacy of the protection accorded to their property under the existing methods of the Federal Courts. Under the existing law, an injunction granted by one Federal Court is preventive only within the judicial circuit of that Court. There are within the territory of the United States nine of these Judicial Circuits. If an injunction be granted, for instance, by the United States Court in the City of New York, restraining the piratical performance

of a play, such injunction has force only within the judicial circuit of New York City. The pirate may produce the play in Philadelphia, Boston, or anywhere else outside of that circuit, and the only way to reach him is to secure another injunction from the court of the circuit within which the latter injunction is accorded. Even then, the offender is still at liberty to repeat his operations in a third circuit, and so on for the entire series of nine. The text of the Cummings' Bill, which will probably become law by the time the printing of this volume is completed, is as follows :

A Bill to Amend Title Sixty, Chapter Three, of the Revised Statutes, relating to copyrights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-nine hundred and sixty-six of the Revised Statutes be, and the same is hereby, amended so as to read as follows :

SEC. 4966. Any person publicly performing or representing any dramatic or operatic composition for which a copyright has been obtained, without the consent of the proprietor of said dramatic or operatic composition or of his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first and fifty dollars for every subsequent performance, as to the court shall appear to be just ; and if it be determined that such unlawful performing and representation was wilful and for profit, in addition thereto, such person or persons shall be guilty of a misdemeanor and liable to imprisonment for a period not exceeding one year. Any injunction that may be granted by any circuit court of the United States, or by any judge thereof, restraining and enjoining the performance or representation of any such dramatic or operatic composition may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative and may be enforced by proceedings to punish for contempt or otherwise by any other circuit

court or judge in the United States: but the defendants in said action, or any or either of them, may make a motion in any other circuit in which he or they may be engaged in performing or representing said dramatic or operatic composition to dissolve or set aside the said injunction upon such reasonable notice to the plaintiff as the circuit court or the judge before whom said motion shall be made shall deem proper; service of said motion to be made on the plaintiff in person or on his attorneys in the action. The circuit courts or judges thereof shall have jurisdiction to enforce said injunction and to hear and determine a motion to dissolve the same, as herein provided, as fully as if the action were pending or brought in the circuit in which said motion is made.

The clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to dissolve or enforce said injunction, transmit without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office.

4. *The Treloar Bill.*—In February, 1896, Mr. Treloar of Missouri introduced in the House of Representatives a Bill the general purpose of which was specified as the "revision of the copyright law."

Mr. Treloar had incorporated in his measure (with some changes) the plan for the organization of a Bureau of Copyrights which should be distinct from the Library of Congress. He had also included the substance of The Cummings' Bill then pending in the House, the purpose of which was to secure a more adequate protection for the rights of dramatic authors. The original features of his Bill can be summarized as follows:

1. The extension of the first term of copyright from twenty-eight to forty years and of the second term (to be secured by the author if living and otherwise by his widow or children) from fourteen

to twenty years, making the total term sixty years instead of forty-two; 2. The restriction to citizens of the United States of the privilege of securing copyright, (which privilege, under all acts prior to that of 1891, had been conceded to residents without regard to citizenship, and which, under the Act of 1891, had been extended to citizens of other countries whose government extended similar copyright privileges to American citizens); 3. The addition to the list of articles which, in order to secure the privileges of copyright in the United States, must be wholly manufactured within the limits of the United States, of musical compositions and of reproductions of works of art in the form of engravings, cuts, or prints; 4. The limitation to $5000 of the total penalty to be collected for the infringement of the copyright of a literary production.

The clause in regard to the instituting of a Bureau of Copyrights, provided for a chief of such Bureau to be entitled a commissioner (in the Bankhead and Morrill Bills he was to be styled register) and for a staff of no less than thirty-eight assistants. (The Bankhead and Morrill Bills made provision for but three assistants.) The total expense of the Bureau on the scheme proposed would amount to not less than $50,000, while the Bankhead and Morrill Bills estimated that the annual cost of such Bureau need not exceed $7500. The Treloar estimate was doubtless very much in excess of the actual business requirements of such a Bureau, while the Bankhead provision was decidedly inadequate. The annual receipts from the copyright fees amounted (in

1895) to something over $35,000. It was the calculation of good judges that the work of the copyright Bureau ought to be performed efficiently for a sum not exceeding $20,000, with provision for such gradual increase of the clerical force as the normal development of the business would necessitate.

The Bill was referred in due course to the House Committee on Patents. The Authors' and Publishers' American Leagues promptly expressed their entire disapproval of its chief provisions. In the resolutions adopted in these Leagues, it was pointed out that the Bill would, if it became law, bring about the revocation of the copyright granted to foreign producers of works of art, and would add very materially to the difficulties in the way of securing copyright for foreign works of literature, if it did not entirely nullify the copyright privileges of foreign authors. It was further contended that the limitation to $5000 of the damages to be secured for the infringement of literary property, a penalty which had heretofore been left proportionate to the actual extent of the damage caused, was inequitable and was contrary to all precedents of existing copyright law.

The unnecessary outlay planned for the maintenance of the Bureau of Copyright constituted a distinctive though less important objection to the Bill. The extention of the term of copyright, while desirable in itself, was not to be considered as an offset to the serious defects above specified. It was, further, a subject which was not to be passed upon hastily, but which called for mature consideration in connec-

tion with the experience of foreign States and with the conclusions arrived at in these States.

At the time this chapter is going through the press, the Treloar Bill is still under consideration in Committee, but there is supposed to be no possible prospect of its securing a majority in either the House or the Senate, while in the event of the measure being passed by Congress, it is assumed that it will certainly meet with the disapproval of the Executive.

II.

SUMMARY OF COPYRIGHT LEGISLATION IN THE UNITED STATES.

By R. R. Bowker.

THE Constitution of the United States authorized 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." Previous to its adoption, in 1787, the nation had no power to act, but on Madison's motion, Congress, in May, 1783, recommended the States to pass acts securing copyright for fourteen years. Connecticut, in January, 1783, and Massachusetts, in March, 1783, had already provided copyright for certain terms, and before May, 1786, all of the other original States, except Delaware, also passed copyright acts — thanks to the vigorous copyright crusade of Noah Webster, who travelled from capital to capital — when the United States Statute of 1790 made them unnecessary. This act followed the precedent of the English act of 1710, and gave to authors who were citizens or residents, their heirs and assigns, copyrights in books, maps, and charts for fourteen years, with renewal for fourteen years more, if the authors were living at expi-

ration of the first term. A printed title must be deposited before publication in the clerk's office of the local United States District Court; notice must be printed four times in a newspaper within two months after publication; a copy must be deposited with the United States Secretary of State within six months after publication; the penalties were forfeiture and a fine of fifty cents for each sheet found, half to go to the copyright owner, half to the United States; a remedy was provided against unauthorized publication of manuscripts.

This original and fundamental act was followed by others—in 1802, requiring copyright record to be printed on or next the title-page, and including designs, engravings, and etchings; in 1819, giving United States Circuit Courts original jurisdiction in copyright cases; in 1831 (a consolidation of previous acts), including musical compositions, extending the term to twenty-eight years, with renewal for fourteen years to author, widow, or children, doing away with the newspaper notice except for renewals, and providing for the deposit of a copy with the district clerk (for transmission to the Secretary of State) within three months after publication; in 1834, requiring record of assignment in the court of original entry; in 1846 (the act establishing the Smithsonian Institution), requiring one copy to be delivered to that, and one to the Library of Congress; in 1856, securing to dramatists the right of performance; in 1859, repealing the provision of 1846 for the deposit of copies, and making the Interior Department instead of the State De-

partment the copyright custodian; in 1861, providing for appeal in all copyright cases to the Supreme Court; in 1865, one act again requiring deposit with the Library of Congress, within one month from publication, another including photographs and negatives; in 1867, providing $25 penalty for failure to deposit. This makes twelve acts bearing on copyright up to 1870, when a general act took the place of all, including "paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of the fine arts." This did away with the local District Court system of registry, and made the Librarian of Congress the copyright officer, with whom printed title must be filed before, and two copies deposited within ten days after, publication. In 1873-74 the copyright act was included in the Revised Statutes as Sections 4948 to 4971 (also see §§ 629 and 699), and in 1874 an amendatory act made legal a short form of record, "Copyright, 18—, by A. B.," and relegated labels to the Patent Office.

The act of 1790 received an interpretation, in 1834, in the case of Wheaton *vs.* Peters (rival law reports), at the bar of the United States Supreme Court, which placed copyright in the United States exactly in the *status* it held in England after the decision of the House of Lords in 1774. The court referred directly to that decision as the ruling precedent, and declared that by the statute of 1790 Congress did not affirm an existing right, but created a right. It stated also that there was no common law of the United States, and that (English) common law as to copyright had not been adopted in

Pennsylvania, where the case arose. So late as 1880, in Putnam *vs.* Pollard, claim was made that this ruling decision did not apply in New York, which, in its statute of 1786, expressly "*provided*, that nothing in this act shall extend to, affect, prejudice, or confirm the rights which any person may have to the printing or publishing of any books or pamphlets at common law, in cases not mentioned in this act." But the New York Supreme Court decided that the precedent of Wheaton *vs.* Peters nevertheless held.

As in the English case of Donaldsons *vs.* Beckett, the decision in the American ruling case came from a divided court. The opinion was handed down by Justice McLean, three other judges agreeing, Justices Thompson and Baldwin dissenting, a seventh judge being absent. The opinions of the dissenting judges (see Drone, p. 43 *et seq.*) constitute one of the strongest statements ever made of natural rights in literary property, in opposition to the ruling that the right is solely the creature of the statute. "An author's right," says Justice Thompson, "ought to be esteemed an inviolable right established in sound reason and abstract morality."

The application of copyright law, unlike that regarding patents, is solely a question of the courts. The Librarian of Congress is simply an officer of record, and makes no decisions, as is well stated in his general circular in reply to queries:

"I have to advise you that no question concerning the validity of a copyright can be determined under our laws by any other authority than a United States Court. This office has no discretion or author-

ity to refuse any application for a copyright coming within the provisions of the law, and all questions as to priority or infringement are purely judicial questions, with which the undersigned has nothing to do.

"A certificate of copyright is *prima facie* evidence of an exclusive title, and is highly valuable as the foundation of a legal claim to the property involved in the publication. As no claim to exclusive property in the contents of a printed book or other article can be enforced under the common law, Congress has very properly provided the guarantees of such property which are embodied in the 'Act to revise, consolidate, and amend the statutes relating to patents and copyrights,' approved July 8, 1870. If you obtain a copyright under the provisions of this act, you can claim damages from any person infringing your rights by printing or selling the same article; but upon all questions as to what constitutes an infringement, or what measure of damages can be recovered, all parties are left to their proper remedy in the courts of the United States."

The many perplexities that arise under our complicated and unsatisfactory law, as it stands at present, suggest the need here, as in England, of a thorough remodeling of our copyright system.

December, 1885.

III.

HENRY CLAY'S REPORT IN FAVOR OF INTERNATIONAL COPYRIGHT.

DURING the second session of the Twenty-fourth Congress, on February 16, 1837, Henry Clay in the Senate made the following report, submitted with Senate bill No. 223:

The select committee to which was referred the address of certain British, and the petition of certain American, authors, has, according to order, had the same under consideration, and begs leave now to report: . . .

1. That, by the act of Congress of 1831, being the law now in force regulating copyrights, the benefits of the act are restricted to citizens or residents of the United States; so that no foreigner, residing abroad, can secure a copyright in the United States for any work of which he is the author, however important or valuable it may be. The object of the address and petition, therefore, is to remove this restriction as to British authors, and to allow them to enjoy the benefits of our law.

2. That authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius is incontestable; and that this property should be protected

as effectually as any other property is, by law, follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. They are often dependent, exclusively, upon their own mental labors for the means of subsistence; and are frequently, from the nature of their pursuits, or the constitutions of their minds, incapable of applying that provident care to worldly affairs which other classes of society are in the habit of bestowing. These considerations give additional strength to their just title to the protection of the law.

3. It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated. A British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws, they throw around it effectual security. But if the work of a British author is brought to the United States, it may be appropriated by any resident here, and republished without any compensation whatever being made to the author. We should be all shocked if the law tolerated the least invasion of the rights of property in the case of the merchandise, whilst those which justly belong to the works of authors are exposed to daily violation, without the possibility of their invoking the aid of the laws.

4. The committee thinks that this distinction in the condition of the two descriptions of property is not just, and that it ought to be remedied by some

safe and cautious amendment of the law. Already the principle has been adopted, in the patent laws, of extending their benefits to foreign inventions or improvements. It is but carrying out the same principle to extend the benefits of our copyright laws to foreign authors. In relation to the subjects of Great Britain and France, it will be but a measure of reciprocal justice; for, in both of those countries, our authors may enjoy that protection of their laws for literary property which is denied to their subjects here.

5. Entertaining these views, the committee has been anxious to devise some measure which, without too great a disturbance of interests, or affecting too seriously arrangements which have grown out of the present state of things, may, without hazard, be subjected to the test of practical experience. Of the works which have heretofore issued from the foreign press, many have been already republished in the United States; others are in a process of republication, and some probably have been stereotyped. A copyright law which should embrace any of these works might injuriously affect American publishers, and lead to collision and litigation between them and foreign authors.

6. Acting, then, on the principles of prudence and caution, by which the committee has thought it best to be governed, the bill which the committee intends proposing provides that the protection which it secures shall extend to those works only which shall be published after its passage. It is also limited to the subjects of Great Britain and France;

among other reasons, because the committee has information that, by their laws, American authors can obtain there protection for their productions, but they have no information that such is the case in any other foreign country. But, in principle, the committee perceives no objection to considering the republic of letters as one great community, and adopting a system of protection for literary property which should be common to all parts of it. The bill also provides that an American edition of the foreign work, for which an American copyright has been obtained, shall be published within reasonable time.

7. If the bill should pass, its operation in this country would be to leave the public, without any charge for copyright, in the undisturbed possession of all scientific and literary works published prior to its passage—in other words, the great mass of the science and literature of the world; and to entitle the British and French author only to the benefit of copyright in respect to works which may be published subsequent to the passage of the law.

8. The committee cannot anticipate any reasonable or just objection to a measure thus guarded and restricted. It may, indeed, be contended and it is possible that the new work, when charged with the expense incident to the copyright, may come into the hands of the purchaser at a small advance beyond what would be its price if there were no such charge; but this is by no means certain. It is, on the contrary, highly probable that, when the American publisher has adequate time to issue carefully an edition of the foreign work, without

incurring the extraordinary expense which he now has to sustain to make a hurried publication of it, and to guard himself against dangerous competition, he will be able to bring it into the market as cheaply as if the bill were not to pass. But, if that should not prove to be the case, and if the American reader should have to pay a few cents to compensate the author for composing a work by which he is instructed and profited, would it not be just in itself? Has any reader a right to the use, without remuneration, of intellectual productions which have not yet been brought into existence, but lie buried in the mind of genius? The committee thinks not; and its members believe that no American citizen would not feel it quite as unjust to appropriate to himself their future publications, without any consideration being paid to their foreign proprietors, as he would to take the bale of merchandise, in the case stated, without paying for it; and he would the more readily make this trifling contribution, when it secured to him, instead of the imperfect and slovenly book now often issued, a neat and valuable work, worthy of preservation.

9. With respect to the constitutional power to pass the proposed bill, the committee entertains no doubt, and Congress, as before stated, has acted on it. The Constitution authorizes 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." There is no limitation of the power to natives or residents of this country. Such

a limitation would have been hostile to the object of the power granted. That object was to *promote* the progress of science and useful arts. They belong to no particular country, but to mankind generally. And it cannot be doubted that the stimulus which it was intended to give to mind and genius—in other words, the promotion of the progress of science and the arts—will be increased by the motives which the bill offers to the inhabitants of Great Britain and France.

10. The committee concludes by asking leave to introduce the bill which accompanies this report.

The following bill accompanied the report:

A BILL to amend the act entitled "An Act to amend the several acts respecting copyright."

Be it enacted, etc., That the provisions of the act to amend the several acts respecting copyrights, which was passed on the third day of February, eighteen hundred and thirty-one, shall be extended to, and the benefits thereof may be enjoyed by, any subject or resident of the United Kingdom of Great Britain and Ireland, or of France, in the same manner as if they were citizens or residents of the United States, upon depositing a printed copy of the title of the book, or other work for which a copyright is desired, in the clerk's office of the district court of any district in the United States, and complying with the other requirements of the said act: *Provided*, That this act shall not apply to any of the works enumerated in the aforesaid act, which shall have been etched or engraved, or printed and published, prior to the passage of this

act: *And provided, also,* That, unless an edition of the work for which it is intended to secure the copyright shall be printed and published in the United States simultaneously with its issue in the foreign country, or within one month after depositing as aforesaid the title thereof in the clerk's office of the district court, the benefits of copyright hereby allowed shall not be enjoyed as to such work.

IV.

THE CONTEST FOR INTERNATIONAL COPYRIGHT.

By Geo. Haven Putnam.

The history of the movement in this country in behalf of International Copyright is still to be written. I can present here only a brief summary of the more noteworthy of the earlier events in this history, accompanied by a more detailed statement of the work done during the past three years by the Copyright Leagues.

In 1837, Henry Clay presented to Congress a petition of British authors asking for American copyright. The petition was referred to a select committee, which included, in addition to Clay, Webster, Buchanan, and Ewing. The report submitted by the committee, favoring the petition, was written by Clay, and is given in this volume.

Between 1837, the date of rendering his report, and 1842, the bill drafted by Clay on the lines of his report was presented in the Senate five times. But one vote upon it was, however, secured in 1840, when it was ordered to lie upon the table. This bill was in substantial accord with that just passed, in requiring American manufacture for the books securing copyright. Between 1837 and 1842 numer-

ous petitions favoring International Copyright were presented to Congress, which were noteworthy as containing the signatures of nearly all the leading authors of the country.

During those same five years, 1837–1842, the first International Copyright conventions were being framed between certain of the European states, the earliest being that between Prussia and Wurtemberg.

In nearly all these earlier interstate arrangements, it was made a condition that the work should be printed within the territory of the country granting the copyright protection to a foreign author.

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 1840, George P. Putnam issued in pamphlet form an argument in behalf of International Copyright, and in the same year a somewhat similar argument was printed by Cornelius Matthews.

In 1843, Mr. Putnam presented to Congress a memorial, drafted by himself, and signed by ninety-seven publishers and printers, in which it was stated 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."

In 1848, a memorial was presented to Congress, signed by W. C. Bryant, John Jay, George P. Putnam, and others, asking for a copyright measure very similar in principle to that which has just been enacted. The memorial was ordered printed, and

was referred to a select committee, from which no report was made.

In 1853, Charles Sumner, then Chairman of the Senate Committee on Foreign Affairs, interested himself in the subject, and reported to the Senate a treaty drafted by Mr. Everett, then Secretary of State, and himself, to secure copyright with Great Britain; but he was not able to obtain a vote upon it.

In 1853, certain publishing houses in New York including Charles Scribner, D. Appleton & Co., C. S. Francis, Mason Bros., and George P. Putnam, addressed a letter to Mr. Everett, Secretary of State, favoring a Copyright Convention with Great Britain, and suggesting a copyright arrangement substantially identical in its conditions with that secured under the present Act.

In 1858, Mr. Edward Jay Morris of Pennsylvania introduced an International Copyright Bill containing similar provisions, but the bill was never reported from committee.

In 1868, the American Copyright Association was formed, at a meeting held in response to a circular letter, headed "Justice to Authors and Artists." This letter was issued by a committee composed of George P. Putnam, Dr. S. Irenaeus Prime, Henry Ivison, and James Parton. Of this association W. C. Bryant was made President, George William Curtis, Vice-President, and E. C. Stedman, Secretary.

In 1867, Mr. Samuel M. Arnell of Tennessee secured the passage of a resolution in the House of

Representatives, ordering the joint Library Committee to inquire into the subject of International Copyright and to report. Such a report was presented in 1868 to the House by Mr. J. D. Baldwin of Massachusetts, together with a bill based upon a draft submitted from the Copyright Association of New York, by W. C. Bryant and George P. Putnam, securing copyright to foreign authors, with the condition that their books should be manufactured in this country. The bill was referred to the joint Committee on the Library, from which it never emerged.

In 1870, the so-called Clarendon Treaty was proposed through Mr. Thornton, the British Minister at Washington. The proposed treaty gave to the authors and artists of each country the privilege of copyright in the other by registering the work within three months of the original publication.

In 1871, Mr. Cox introduced a Copyright Bill practically identical in its provisions with the previous bill of Mr. Baldwin. This was the first bill that reached the stage of discussion in the Committee of the Whole.

In 1872, a bill was drafted by Mr. W. H. Appleton, which provided that the American edition of the foreign work securing American copyright should be manufactured in this country, and that the American registry of copyright should be made within one month of the date of the original publication. In the same year the draft of a bill was submitted by Mr. John P. Morton of Louisville, under which any American publisher was to be at liberty to reprint the work of a foreign author, on

the condition of making payment to such author of a ten per cent. royalty. Later in the year a similar measure was introduced by Mr. Beck and Mr. Sherman, providing that the royalty should be five per cent. Both these bills were referred to the Library Committee.

In 1873, Senator Lot M. Morrill of Maine reported, on behalf of the Library Committee, adversely to the consideration by Congress of any International Copyright Bill, on the ground that "there was no unanimity of opinion among those interested in the measure."

In 1874, Mr. Henry B. Banning of Ohio introduced in the House the sixth International Copyright Bill, which gave copyright to foreign authors on the simple condition of reciprocity. It was referred to the Committee on Patents, where it remained.

In 1878, the project for a Copyright Convention, or treaty, was submitted by Messrs. Harper & Brothers to Mr. Evarts, then Secretary of State; and in 1880 the draft of a Convention, substantially identical with the suggestions of Messrs. Harper, was submitted by Mr. Lowell to Lord Granville.

In 1883 the American Copyright League was organized, mainly on the lines of a plan drafted in 1882, by Edward Eggleston and R. W. Gilder. Mr. George Parsons Lathrop was made Secretary, and an active campaign was begun in arousing and educating public opinion on the subject.

In 1882, Mr. Robinson of New York presented a

bill giving consideration to the whole subject of copyright, domestic and international. It was referred to the Committee on Patents, where it was buried.

In 1883, the eighth Copyright Bill was introduced by Mr. Patrick A. Collins of Massachusetts. This also was buried in the Committee on Patents.

In 1884, the ninth International Copyright Bill was introduced into the House by Mr. Dorsheimer of New York. This provided simply for the extension to foreign authors of the privileges enjoyed by the citizens or residents of the United States.

This bill was approved by the Copyright League, and was favorably reported to the House from the Committee on the Judiciary, to which it had been referred. It reached the stage of being discussed in the House, but a resolution to fix a day for its final consideration was defeated.

In the same year a bill was introduced in the House by Mr. English, dealing with International Copyright in dramatic compositions. It was referred to the Judiciary Committee, which took no action.

In 1885, Mr. Lowell accepted the Presidency of the Copyright League, and Mr. Stedman was made its Vice-President. In the same year, at the instance of the League, Senator Hawley of Connecticut introduced his Copyright Bill (the text of which is given in this volume), which was substantially identical with that of Mr. Dorsheimer. The bill was referred to the Senate Committee on Pat-

ents. It was introduced in the House by Randolph Tucker of Virginia, and was, like its predecessors, referred to the Committee on the Judiciary.

In 1884 and in 1885 the annual messages of Presidents Arthur and Cleveland contained earnest recommendations for the enactment of some measure of International Copyright.

January 21, 1886, the twelfth International Copyright Bill was brought before the Senate by Jonathan Chace of Rhode Island, and was referred to the Committee on Patents.

As Mr. Solberg points out in his clearly presented record of the fight for copyright, the introduction of the Chace Bill marked a distinct epoch in the history of the struggle for International Copyright. The long work of education through the public press, the distribution of pamphlets and missionary addresses, was at last bearing fruit, and in 1886 it was not so much a question whether there should be or should not be an International Copyright, but simply what form the law should take.

The Senate Committee on Patents gave a careful consideration to the two measures then before them, the Hawley Bill and the Chace Bill, and took testimony concerning them in four public hearings. On May 21, 1886, the committee presented a report recommending the passage of the Chace Bill, but no further action was secured in the Forty-ninth Congress. Senator Chace was, however, a more persistent champion than the cause of copyright had previously been fortunate enough to secure, and on December 12, 1887, in the first session of the Fif-

tieth Congress, he reintroduced his bill, which was again referred to the Committee on Patents.

In November, 1887, the American Copyright League (which was composed, in the main, of the authors of the country) voted to its Executive Committee full discretion to secure the enactment of such measure of International Copyright as might, in the judgment of the committee, be found equitable and practicable. Armed with this authority, the Executive Committee decided to use its efforts to secure the passage of the Chace Bill, the only measure for which any adequate support in Congress could be depended upon. Of this committee Edward Eggleston was Chairman, George Walton Green, Secretary, and R. U. Johnson, Treasurer.

In December, 1887, the organization was effected of the American Publishers' Copyright League, with William H. Appleton as President, A. C. McClurg as Vice-President, Charles Scribner as Treasurer, and Geo. Haven Putnam as Secretary. The Executive Committee of this league was instructed to co-operate with the American authors in securing an International Copyright.

A Conference Committe, was at once formed of the executive committees of the two leagues, and every subsequent step in the campaign, until the passage of the bill in 1891, was taken by this Conference Committee. Mr. Putnam acted as Secretary of the Conference Committee until November, 1889, when he was obliged to give up the post on the ground of ill-health, and from that time until

the passage of the bill, in March, 1891, the secretary's work for the Conference Committee was most ably carried on by Mr. R. U. Johnson, who had become Secretary of the Authors' League.

He divided with Mr. Putnam the task of preparing the documents, but he took upon himself the chief burden of the correspondence and of the arduous work in Washington.

Various sojourns were made in Washington by Mr. Putnam, in connection particularly with the shaping of evidence for the committees. The most important service in the capital, however, was probably that rendered by Edward Eggleston, who devoted a number of weeks to bringing personal influence to bear upon doubtful Representatives and stubborn Senators. Dr. Eggleston's humorous castigation of Senator Beck of Kentucky (who was inclined to characterize copyright as a "pernicious monopoly") will be remembered as one of the refreshing incidents of the campaign. President Cleveland took a keen interest in the copyright measure, and was not a little disappointed that it did not become law in time to be classed with the things accomplished under his administration. I may, I trust, be pardoned for referring also to the valuable service rendered (in connection more particularly with the social opinion of the capital) by the graceful personal influence of Mrs. Cleveland, who was cordially and intelligently interested in the cause.

The Copyright Association of Boston had been formed in December, 1887, at the instance of Mr. Houghton, Mr. Estes, President Eliot, President

Walker, and other of the leading citizens of Boston having to do with literature.

Mr. Estes was made Secretary, and under his active direction the association promptly made its influence felt, and succeeded in arousing interest in the question with the public and among the Congressmen of New England. The Boston association was represented in the Conference Committee by Mr. Houghton and Mr. Estes, and in addition to its local work it took its full share of the responsibilities of the general campaign.

The Boston association was fortunate enough to secure the services, as Counsel, of Mr. Samuel J. Elder, one of the leaders of the Massachusetts Bar, who had given special attention to the law of copyright and was a recognized authority on the subject. Mr. Elder took an active part in the meetings of the General Committee in New York at the time when the preliminary drafts of the act were being worked over, and he also assisted at several of the consultations which were held in Washington with Senator Chace, and his legal experience and thorough knowledge of the requirements to be provided for rendered his co-operation particularly valuable. These services of the Counsel from New England were, like those of the secretaries and the other working members of the Leagues, rendered without compensation and as a personal contribution to the cause.

A Copyright League was also organized in Chicago, with General McClurg as President, the influence of which throughout the northwest proved very valuable. Auxiliary leagues were also formed in St. Louis, Cincinnati, Minneapolis, Denver, Buf-

falo, Colorado Springs, and other places, and a large amount of "missionary" work for copyright was done throughout the country. The Rev. Henry S. Van Dyke of New York took the lead in the work of interesting ministers in the moral phase of the question, and his own address on the "National Sin of Piracy" was widely circulated. Archdeacon A. Mackay Smith of New York did some effective writing in behalf of the bill in the *Churchman* and elsewhere, and by means as well of the pulpits as of the more intelligent of the journals, International Copyright was made a question of the day throughout the country.

A noteworthy feature in the authors' share of the campaign was the holding of "authors' readings" at meetings called for the purpose in New York, Brooklyn, Washington, Boston, Chicago, and elsewhere, at which the leading authors of the country read selections from their own writings. The "readings" were well attended and served as an effective advertisement of the copyright cause, while the admission fees helped to defray some of the missionary expenses of the campaign. Among the authors who co-operated in these readings were Lowell, Curtis, Eggleston, Stedman, Stoddard, Gilder, Stockton, Bunner, Cable, Page, Hawthorne, "Mark Twain," J. W. Riley, "Uncle Remus," Mrs. Elliott, and others.

Testimony before the Committees of the Senate and the House was given on behalf of the bill by a number of representatives of the two leagues, including, among the authors, E. C. Stedman, Edward Eggleston, R. U. Johnson, R. W. Gilder, "Mark

Twain," and R. R. Bowker, and among the publishers, W. W. Appleton, H. O. Houghton, Chas. Scribner, Dana Estes, and G. H. Putnam.

Mr. Kennedy, Mr. Welsh, and other representatives of the Typographical Unions of Boston, New York, and Philadelphia, were also heard. Arguments in opposition to the bill were presented by Mr. Gardiner Hubbard, a lawyer of Washington, who said that he spoke simply for himself, and by Messrs. Arnoux, Ritch & Woodford, a law firm of New York, representing certain clients whose names they were unwilling to disclose. After two years of service on behalf of these anonymous clients, they finally stated, under pressure from the Chairman of the House Committee on the Judiciary, that they were opposing the bill in the interest of Mr. Ignatius Kohler of Philadelphia, Mr. Kohler being a German publisher of modest business standing. The committee did not feel that it had been candidly dealt with by the counsel, and this feeling doubtless helped to secure their favorable report for the bill.

The first draft of the bill which was submitted to Senator Chace by the authors and the publishers provided that foreign books securing American copyright must be printed in the United States, but permitted the importation of *clichés* of the type or of duplicates of the plates used in printing the original editions.

It was contended that for certain classes of books the necessity of doing the type-setting twice instead of dividing its cost between an English and an American edition would involve a wasteful expense,

the burden of which would have to be shared between the readers, the authors, and the publishers. On the other hand, the Typographical Unions insisted that a provision for American type-setting was essential for their trade interests, and that unless such a provision were inserted they would be under the necessity of opposing the bill. It was the opinion of Senator Chace, and of other of the congressional friends of copyright, that the co-operation of the unions would be very important, while their influence against the bill in committee and through their friends in the House would probably be sufficiently powerful to prevent its passage, at least at any early date.

It was, therefore, decided by the authors and publishers of the two leagues to meet the views of the typographers on this point, and, in utilizing their co-operation to associate with the Conference Committee a representative of the National Typographical Union. Mr. Boselly was the first typographical representative; he was later succeeded by Mr. Dumars, who had also succeeded him as the President of the New York union. The most active and important work for the bill on behalf of the Typographical Unions was, however, done by Mr. Kennedy, of the Washington union, whose services in Washington proved most valuable.

The negotiations with the Unions were carried on in Philadelphia by Mr. C. Febiger, and in New York by Mr. Eggleston and Mr. Putnam.

The National Association of Typothetæ, or employing printers, was represented in the Conference

Committee by Mr. Theodore L. De Vinne, through whose influence and arguments, at two of the annual meetings of the Typothetæ, resolutions were secured in support of the bill.

The second bill introduced by Senator Chace contained the clause, drafted at the instance of the typographers, providing that the foreign book securing American copyright must be printed from type set within the United States. It also provided for the prohibition of the importation of all foreign editions of works copyrighted in this country.

For the wording of these provisions of the bill Henry C. Lea of Philadelphia was chiefly responsible. Mr. Lea, himself an author of distinction, had had long experience as a publisher. He was a strong believer in the principle of international copyright, but he was equally clear in his conviction that it would be contrary to the interests of the community to permit any injury to the business of the American book-making trades, or to transfer to English publishers any control of the American book-market. He contended, therefore, that the total American manufacture of the books copyrighted must be made an essential condition of the concession of American copyright to foreign authors. His contention, backed up by the printers, was finally accepted by the authors, and the "type-setting" and "non-importation" clauses were inserted in the bill.

The Chace bill, thus modified, was introduced in the House March 19, 1888, by W. C. P. Breckinridge of Kentucky, and referred to the Judiciary Com-

mittee, and by the committee favorably reported to the House April 21.

On April 23 the bill was called up for consideration in the Senate, and after a discussion which took portions of several days, it was passed May 9, 1888, by a vote of 34 to 10.

The leaders in its support were Senators Chace, Hawley, Hoar, Frye, and Platt, while its most active opponents were Senators Beck of Kentucky, Daniels of Virginia, George of Mississippi, and Reagan of Texas.

In the House the bill was not in as favorable a position on the calendar, while the long discussion of tariff questions in connection with the Mills Bill had seriously blocked the progress of business. Notwithstanding, therefore, the prestige of the success of the measure in the Senate, it did not prove practicable during the session to bring it to a vote in the House. The difficulty may, also, have been somewhat increased by the fact that the bill had originated in the Senate, which was strongly Republican, while the conduct of business in the House was in the hands of a Democratic majority.

The campaign for the Copyright Bill in the Fifty-first Congress was initiated at a breakfast given in New York on the 7th of December, 1889, by advocates of International Copyright, to the Comte de Kératry, in compliment to himself and to the French literary and artistic associations of which he was the representative.

In the Fifty-first Congress the bill was promptly introduced in the Senate December 4, 1889, by Sen-

ator O. H. Platt of Connecticut (Senator Chace having in the meantime resigned his seat), and was again referred to the Committee on Patents. A duplicate of the bill was, on January 6, 1890, introduced in the House by W. C. P. Breckinridge of Kentucky, its old-time supporter, and found its way in regular course to the Committee on the Judiciary, From this committee it was favorably reported on January 21, 1890. For the purpose of securing a double chance for the bill, Mr. Butterworth of Ohio, an earnest friend of copyright, also introduced the bill, and had it referred to the Committee on Patents, of which he was chairman. The result showed that if it had not been for this piece of foresight the bill could hardly have succeeded in the Fifty-first Congress. In this Congress the majority in the House, as well as in the Senate, was Republican, and it was, therefore, essential to place the bill under Republican leadership.

Fortunately, in connection with this necessity, two active friends had been found for the measure on the Republican side of the House—Mr. G. E. Adams of Chicago, and Mr. W. E. Simonds of New Haven.

The former presented to the House on the 15th of February, a forcible report in favor of the bill, together with a new printing of the bill itself, giving the full wording of the sections of the Revised Statutes, as they would appear when the new provisions had been inserted.

On February 18, Mr. Simonds submitted a favorable report from the Committee on Patents,

accompanied by a bill which was a duplicate of that of Mr. Adams, with the addition, however, of what is known as the Reciprocity clause. On February 21, Senator Platt obtained leave to substitute the text of the Adams bill for his Senate bill.

On the 1st of May, the Adams Judiciary Committee Bill was reached on the calendar of the House, and after a vigorous discussion, extending over two days, the third reading was refused by a vote of 126 to 98. The opposing vote was largely Democratic, but it was led by a Republican, Judge Lewis E. Payson of Illinois, while on the Democratic side Mr. Breckinridge of Kentucky was, as heretofore, active in support of the bill; and he was ably assisted on his side of the House by W. L. Wilson of West Virginia, Ashbel P. Fitch of New York, and others, and among the Republicans, by Mr. Lodge, Mr. Stewart of Vermont, Mr. Simonds, and others. Not discouraged by this adverse vote, Mr. Simonds, having added a reciprocity clause to his bill, again introduced it on the 16th of May, and had it referred to the Committee on Patents, and on June 10 it was again reported from that committee. The report, which was written by Mr. Simonds, was most comprehensive and forcible, and it has been included in this volume.

Early in the second session, Mr. Simonds succeeded in getting a day fixed for his bill, and on December 3 the bill was passed by a vote of 139 to 96.

The result was partly due to skilful parliamentary management, and to the personal influence brought

to bear upon more or less indifferent members and upon members who had previously misapprehended the subject, by Representatives who had made a careful study of it, like Mr. Lodge of Massachusetts, Mr. Simonds, and others.

A good share of the credit for the noteworthy change in the opinion of the House may, however, justly be claimed for the active "missionary" work which had been kept up by the league during the summer throughout the country, and especially in the constituencies of doubtful members, by means of the distribution of tracts and arguments, the preparation of material for the leaders of local newspapers, and also by reaching the personal correspondents of authors and the friends of authors.

The higher grade journals throughout the country gave a hearty support to the bill, and the aid of the *Times*, *Tribune*, and *Post*, of New York, the *Sun* of Baltimore, the *Times* and *Ledger* of Philadelphia, and the *Commercial* of Cincinnati, was especially valuable. The members of the book trade were kept thoroughly informed and educated on the subject by an able series of papers in the *Publishers' Weekly*.

The bill, as passed in the House, was considered in the Senate in a discussion extending over portions of six days.

A similar measure (the Chace Bill) having before received the approval of a majority of the Senators, it was at first thought that the success of this bill in the Senate was assured. On the strength of the record of the Chace Bill, the secretary of the Joint Committee obtained for the bill the second place on

the calendar of the prescribed business for the session, without which advantage it would probably not have been reached. New obstacles had, however, developed, including the political prejudices engendered by the preceding election, and the fight of two years before had to be fought over again on new lines, although with the great aid of the important work previously accomplished.

Certain of the senators who had previously voted for the bill and who had expressed themselves as friendly to its principles, found themselves now interested in proposing various amendments, some of which were inconsistent with the main purpose and with the existing provisions of the bill, and all of which were promptly taken advantage of by the opponents as affording opportunities for killing the bill by delays.

The amendment which brought out the largest amount of discussion was that offered by Senator Sherman, which has already been referred to in this volume (in the analysis immediately following the text of the Act).

This amendment authorized the importation of foreign editions of books by foreign authors securing American copyright. The supporters of the bill contended that such an authorization would be incompatible with the manufacturing provisions of the bill, which made American manufacture of all the editions issued in this country an essential condition of American copyright. It became apparent after the first conferences that the House would not recede from this view, and the amendment, after being twice passed by the Senate, was finally abandoned.

A modification was, however, finally made in the Conference Committee in the provision of the bill permitting the importation of copies of authorized foreign editions of works copyrighted in the United States, in quantities not to exceed two copies in any one invoice. This provision, as originally worded, made the written consent of the owner of the copyright a condition of the importation of these two copies. The Conference Committee eliminated the consent of the author. This concession undoubtedly helped to secure the final vote in the Senate, accepting the bill without the Sherman amendment, as it removed the objection that readers preferring European editions ought not to be prevented from securing these (in duly authorized issues) for their own libraries.

A fourth amendment, to the consideration of which a good deal of time was also given in the Senate, was presented by Senator Frye, in the interest of American lithographers and chromo-manufacturers.

As first worded, it provided that foreign artists and designers could secure American copyright for their art productions or designs only when the reproductions of these had been manufactured in the United States. This Frye amendment was vigorously opposed by the artists throughout the country and by all who were interested in having justice done to foreign artists, and petitions against it came in from New York, Boston, Philadelphia, Chicago, and elsewhere. The friends of the bill pointed out that it would in the larger number of cases be absolutely impracticable for foreign artists to arrange to have the reproductions of their works of art

manufactured in the United States, as this would necessitate the importation of the original—an importation entailing, in addition to other serious disadvantages, outlays for freight and duty.

The amendment would, therefore, have the result of nullifying the American copyright of foreign artists, which it had been the intention of the bill to secure. This Frye amendment passed the Senate on the 17th of February by a vote of 41 to 24. The secretary of the Joint Committee, who had spent six weeks of the session in Washington, in active canvass for the bill, took immediate steps to organize an opposition to this amendment, both in Congress and throughout the country.

As a result of the protests that came in to the Senate from art associations, artists, art students, from educational centres, and from many of the leading journals, the action of the Senate was on the 19th of February, reversed by a vote of 33 to 31. Among those who were active in bringing public opinion to bear upon Congress in this matter were R. W. Gilder, Dana Estes, and G. H. Putnam. In its final form the bill provided for the American manufacture only of such art reproductions as took the form of lithographs, photographs, and chromos; and left the foreign artist, therefore, in a position to secure, irrespective of place of manufacture, American copyright for reproductions in the form of engravings (on steel or on copper) and photogravures.

An amendment proposed by Senator Ingalls, and finally accepted, with some modifications, by the Conference Committee, permitted the importation

of foreign newspapers and magazines containing material that had been copyrighted in the United States, provided the publication in such periodicals had been authorized by the author.

The most active supporters of the bill in the Senate were Senator Platt, whose patience, parliamentary skill, and tact were unwearying, and Senator Hoar, Evarts, Hawley, Wolcott, Aldrich, and Dixon.

The most persistent and unwearying opponent was Senator Daniels of Virginia, who was supported in his opposition by Senators Sherman, Hale, Pasco, Vance, Reagan, and Plumb.

Mr. Daniels took up a considerable portion of the time allotted to the bill during the several days of the debate, and at one time it looked as if he would succeed, in connection with the crowded condition of the calendar, in killing it by "talking out the time." While criticising severely the protectionist provision of the bill, he voted for the Frye amendment, which constituted an important addition to these provisions, and he voted for every amendment which seemed likely to make delays. The bill, with the several Senate amendments, passed the Senate on the 19th of February, by the decisive vote of 36 to 14, 38 members being absent.

On the 1st of March the House decided, by a vote of 128 to 64, not to concur with the Senate amendments. The friends of the measure voted with the majority, having already assured themselves that it would not be practicable to pass the bill in the House with the amendments.

On the 3d of March Mr. Simonds reported to the

House that the Conference Report had agreed upon certain of the amendments, with some modifications, but had disagreed upon the Sherman amendment. He secured, by a vote of 139 to 90, authority for another conference. On the evening of the same day the Senate refused, by a vote of 33 to 28, to recede from the Sherman amendment, but also ordered another conference.

The result of this second conference, which took place after one o'clock on the night of the 3d, was a report to the Senate by a majority of its committee, in favor of receding from the Sherman amendment. The change in the opinion of the Senate Committee had been brought about by a change in the position of Senator Hiscock, who had become convinced that if an International Copyright Law was to be enacted by the Fifty-first Congress, the Sherman amendment must be abandoned. His associates on the committee were Senator Platt, who had from the outset opposed the amendment, and Senator Gray of Delaware, who favored it. The report of the second Conference Committee was accepted by the House, by a vote of 127 to 82, the House having accepted from the Senate the Frye amendment (as modified), the Ingalls amendment, and an amendment proposed by Senator Edmunds, giving to the President, in place of the Attorney-General, the responsibility of declaring when reciprocity had been arranged for with any foreign state, and the provisions of the act had, therefore, come into force with such state.

The successful steering of the bill through the House in the several votes required during the

night of the 3d of March was largely the work of Henry Cabot Lodge, and was not a little furthered by the friendly co-operation of Speaker Reed.

At half-past two in the morning of March 4 the Senate assented to the final report of its Conference Committee, by a vote of 27 to 19 (with 40 senators absent), and the bill was passed.

A motion to reconsider was, however, immediately made by Mr. Pasco of Florida, and, although the bill had in the meantime been signed by the Vice-President, it was not permitted to be sent to the President until a quorum could be secured to vote upon Mr. Pasco's motion. This was accomplished at half-past ten in the morning of March 4, within an hour of the close of the Fifty-first Congress, when the motion to reconsider was defeated by the vote of 29 to 21, with 36 absentees.

The greater number of the Senators had been up through a large part of the night, and the friends of the bill were rallied to resist this last assault only by means of an urgent "whip" delivered in person by Mr. Johnson, Mr. Appleton, and Mr. Scribner, who, acting on behalf of the Copyright Leagues, had, in company with Mr. Platt, Mr. Lodge, and other friends of the bill, kept a continuous vigil over its varying fortunes during the long hours of the night session.

The bill was promptly signed by the President, and thus, after a struggle extending over fifty-three years, the United States put itself on record as accepting the principle of International Copyright.

NEW YORK, *April* 2, 1891.

V.

THE HAWLEY BILL.

INTRODUCED into the Senate, January, 1885, by Senator J. R. Hawley of Connecticut, but never reported from the Committee on Patents to which it was referred.

Be it enacted, etc.

I. The citizens of foreign states and countries, of which the laws, treaties, or conventions confer or shall hereafter confer upon citizens of the United States rights of copyright equal to those accorded to their own citizens, shall have in the United States rights of copyright equal to those enjoyed by citizens of the United States.

II. This act shall not apply to any book or other subject of copyright published before the date hereof.

III. The laws now in force in regard to copyright shall be applicable to the copyright hereby created, except so far as the said laws are hereinafter amended or repealed.

IV. Section 4971 of the Revised Statutes of the United States is hereby repealed. Section 4954 is amended by striking out the words "and a citizen of the United States or resident therein." Section 4957 is amended by striking out the words "if such author or proprietor is a citizen of the United States or resident therein."

V. The proclamation of the President of the United States that such equality of rights exists in any country shall be conclusive proof of such equality.

VI.

AN ANALYSIS OF A SCHEME FOR INTERNATIONAL COPYRIGHT, SUGGESTED BY MR. R. PEARSALL-SMITH.

Reprinted, with some additions, from the *New York Evening Post.*

PUBLIC attention has recently been directed to a new scheme for international copyright which has been presented in the *Nineteenth Century* by Mr. R. Pearsall-Smith, of Philadelphia, under the title of "An Olive Branch from America." Mr. Smith proposes:

(1) That any American publisher shall be at liberty to print editions of the works of a foreign author under the condition of paying to such author a royalty of ten per cent. of the retail price.

(2) That this royalty shall be paid by the purchase from the author, in advance of the publication of the American edition, of stamps representing the above rate, as many stamps being bought as there are copies printed in the edition, and each copy of the book that is placed in the market by the publisher bearing one of these stamps conspicuously affixed.

The plan contains some further suggestions as to the penalties for the sale or purchase of an unstamped book, but the above are the essential provisions, and the only ones at present calling for consideration.

Mr. Smith does not speak as an author, and it is evident that he has no adequate knowledge of the conditions under which is carried on the business of publishing and distributing books. It seems desirable, however, to give present consideration to the practicability of his suggestions, as well because he has seen fit to present them to the British public with a certain assumption of speaking for the American community, and has secured for them the quasi approval of certain English authors, such as Tennyson, Gladstone, Matthew Arnold and others, as because at this time, when those who have for many years been working on behalf of international copyright are again hopeful of securing favorable attention from Congress, it is important that public and legislative opinion should not be confused with crude and visionary schemes.

The question of international or of domestic copyright is, it is claimed, and with justice, in the main a matter between the authors and the public, and in shaping legislation the rights of authors and the interests of the public are the essential things to be considered. It is in order, nevertheless, for publishers to claim a hearing in connection with the provisions of copyright legislation, not because the interests of their small group ought to be in any degree offset against those of the community, but because their experience gives them the knowledge (possessed by no other class) of the conditions under which the proposed laws must do their work, and legislation put into shape without the benefit of this technical knowledge may easily fail of its purpose as

well in protecting the authors as in serving the real interests of the community.

The measure of permitting a foreign book to be reprinted by all dealers who will contract to pay the author a specified royalty, is, of course, not original with Mr. Smith. It was suggested in 1872 by John P. Morton, John Elderkin, and others, in connection with the attempt then made to secure international copyright. In 1877, at the time the British Copyright Commission was engaged in revising the act for domestic copyright, the proposal was made by Mr. Farrer (now Sir Thomas Farrer) that a similar provision should apply to domestic publishing, and that for the purpose of securing cheap books for the people, all dealers should have the privilege of publishing editions of an author's works, who would agree to pay to the author a copyright, to be fixed by law, which would secure him "a fair profit for his labor." Herbert Spencer, in his testimony before the Commission, objected that:

(1) This would be a direct interference with the laws of trade under which the author, like any producer, had the right to select his own agents and 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 profit 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 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 publishing 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 to insure themselves 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 enterprises of the most lasting importance to the public, 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 through the long and unprofitable contests that would certainly be the first effect of such legislation.

Every one of these objections adduced against the plan of open publishing for domestic works, applies with equal force to the plan of legalizing such open republishing for foreign works, and there are some further considerations which Mr. Spencer did not mention.

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, threw open the use of his property to any dealers who might choose to scramble for it. The author could exercise no control over the style, shape, accuracy, or completeness of his American edition, the character of the illustrations contained in his books, or the appropriateness of the association that might be given to his writings (in series or in volumes) with the works of other writers If the author were tenacious as to the collection of the royalties to which he would become entitled, he would in many cases be able to enforce his claims (even under the proposed "stamp act") only through troublesome supervision and probably through vexatious lawsuits, the expenses of which might easily exceed his 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. Scientific works could, as Mr. Huxley points out, have their value materially impaired by presenting illustrations which were only travesties of the author's original designs, and such inadequate and misleading illustrations would assuredly find place in the competing editions of the more "enterprising" reprinters.

A certain class of British authors would have the further ground for objection that the provision requiring payment in advance of copyright on the first edition would not infrequently have the effect of preventing any American edition of their books from being undertaken. There is always considerable risk in reprinting a first book by a foreign author, and the writers of first books are as a rule sufficiently desirous to bring their productions to the attention of the American public to be very willing to permit the payment of compensation to the author to be left contingent upon there being any profits from the sales.

A great many ventures, 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 initiative, his literary judgment, and his advertising. For works of this class,

reprints of which were not ventured upon, American buyers would of course be obliged to depend upon the more costly foreign editions.

It is also the case that a certain class of publications, of which the "International Science Series" and the "Story of the Nations Series" are examples, are the undertakings of the publisher. They are in a sense the creation of the publisher, as they would not have come into existence at all except for the publisher's initiative and planning; and the volumes in them are usually written at the publisher's suggestion. The commercial value of such a series depends in part upon the value of the individual volumes, but largely, also, upon the planning and editorial management of the undertaking as a whole; and a considerable part of the sale of any one of these volumes is to be credited to its connection with the series. In any such series, certain of the volumes, which are necessary and important to give completeness to the general plan, are, from the nature of their special subjects, less likely than the others to secure remunerative sale; and any deficiencies accruing from the publication of these have to be made up from the sale of the more popular volumes.

Under any "open publishing" scheme, however, the competing "reprinters" would pick out for their competing editions the more salable books, securing on these the advantage of the initiative, the editorial skill, and the advertising of the original publisher, and, in part at least, also, of the prestige of the series. The curtailing or destroying altogether of

the profits on these more popular volumes would, of course, lessen to a corresponding extent the ability of the original publisher to carry to completeness the plan of his series by including in it subjects which, however important for certain readers or certain students, were not calculated to secure a remunerative sale. Upon this class of readers the plan of "open publishing" would therefore bring loss and deprivation as surely as upon the publishers.

Responsible publishers, who fulfill strictly their engagements with authors, and whose aim it is to present effectively to the public complete and decently printed books, must naturally object to a measure which would put the business of reprinting on the basis of a cut-throat competition, and which would give such material advantages to the more unscrupulous dealers who were oblivious of their obligations either to the authors or the public.

I take the position that there is an impertinence in the suggestion of the government's undertaking to decide either for the author at what rate he should be paid, or for the publisher by what machinery the payments should be made. It is also absurd to assume that it would be either proper or practicable to make the rate of payment the same for all grades of authors and for all classes of books; while there is no more propriety in having the government supervise the business of the publisher by such a "bell-punch" device, than there would be in instituting similar government supervision for any other classes of business in which trust interests are involved.

With reference to this plan for legalized open reprinting, the experienced publisher, W. H. Appleton, wrote in 1872:

"The first demand of property is for security, . . . and to publish a book in any real sense—that is, not merely to print it, but to make it well and widely known, requires much effort and larger expenditure, and these will not be invested in a property which is liable to be destroyed at any moment. Legal protection would put an end to evil practices, make property secure, business more legitimate, and give a new vigor to enterprise; nor can a policy which is unjust to the author, and works viciously in the book-trade be the best for the public. The publisher can neither afford to make the book so thoroughly known, nor can he put it at so low a price as if he could count upon a permanent and undisturbed control of its sales. Many valuable books are not reprinted at all, and therefore are to be had only at English prices, for the same reason, that publishers are cautious about risking their capital in unprotected property."

The arguments in favor of this plan of legalizing open reprinting of foreign works would apply of course with equal reasonableness to the legalizing of open reprinting of domestic books, and to the depriving of American, as well as foreign, writers of their rights of contract, and of the control of the property interests in their productions. Such a system would make of home copyright, and of any copyright, a farce and an absurdity.

None of the objections above presented could, of course, be obviated in any way by the only new suggestion in Mr. Smith's scheme, namely, the collection of the author's royalties by means of stamps, an idea which has possibly been suggested by the use of stamps at different times by the government to collect the taxes on beer sold in barrels, and on patent medicines sold in bottles.

The supervision of the manufacture and sale of these articles is, however, a simple matter compared with what would be necessary for the control of the manufacture and sale of books; but for the proper care of the government interests a large force of expensive inspectors has always been required. I doubt whether the probable return to foreign authors from their American sales would warrant them in the expenditure required to keep up a force of officials adequate to supervise bookselling throughout the continent.

In each large brewery, for instance, a revenue inspector is always stationed to keep a check on the numbers of barrels produced and on the proper use of the excise stamps for these. Under Mr. Smith's scheme, it would be in order for "literature inspectors" (paid by the foreign authors) to be stationed in the office of each American publisher to check off his reprints.

Responsible publishers would assuredly be averse to investing any considerable sums in the purchase from abroad of supplies of the proposed stamps which could so easily be counterfeited by irresponsible dealers as well in Canada as in the States. The publication or the reprinting of any book is more or less of a lottery (instead of being, as is so often delusively calculated, an undertaking in which the only problem is the division of the profits). Under this scheme the publisher would be obliged to add to the manufacturing outlay at risk, an investment in an advance purchase of as many stamps as he believed would be required for the first edition.

If he overestimated the sales it would often not be an easy matter to return the surplus stamps and get back the money paid for them, while if the immediate demand exceeded the estimate, it could easily happen that sales would be delayed and lost because of the necessity of waiting for the importation of a further supply of the stamps.

It is, of course, also the case that under the conditions of bookselling in this country, books are in many cases sent out to dealers with the privilege of returning, once or twice a year, unsold copies. The getting back of these copies from points between Oregon and Texas is a business that often requires months, and the adjustment of the credit for stamps on these returned copies, and on the copies given to the press, or the copies (of scientific and educational works) given to instructors, would constitute another complication for the bothered publishers.

American authors could justly object to this scheme of open reprinting, first, because if offset with a reciprocal measure of "protection" for American works abroad, it would expose them to all the disadvantages above set forth of lack of power to select their agents, lack of control of the printing and publishing of their books, expense and difficulty of enforcing their collections, and certainty of loss through the use of forged stamps; and, second, because the business of reprinting in this country would be left in the present condition of "scramble" and cut-throat competition, and the difficulty in the way of securing favorable consideration or remunerative sale for American books (particularly in light

literature), while the market is full of "cheap and nasty" reprints, more or less incomplete, of similar foreign works, would be practically as great as at present.

International copyright is demanded, as it seems almost a truism to say, by every consideration of national honor, and of the highest national advantage, and it is assuredly full time that the United States of America placed itself on as high a plane of international ethics as that now reached by the African States of Liberia and Tunis, which have recently united in the Copyright Convention formulated at Berne.

If, however, Congress will bring about the arrangement for the necessary recognition and protection of literary property, the authors and publishers can safely be left to adjust between themselves all business details, such as rates of compensation and methods of payment, which details are properly matters of private contract.

G. H. P.

NEW YORK, *Nov.* 21*st*, 1877.

VII.

INTERNATIONAL COPYRIGHT.

Report of the Hon. W. E. Simonds, of Connecticut, from the House Committee on Patents, June 10, 1890.

MR. SIMONDS, from the Committee on Patents, submitted the following report (to accompany H. R. 10881):

The Committee on Patents, to whom was referred the bill (H. R. 10254) "To amend title sixty, chapter three, of the Revised Statutes of the United States relating to copyright," respectfully report that they have had the same under consideration. They recommend that said bill be tabled and that the accompanying substitute bill be passed. In this connection they submit comments as follows:

THE PROPOSITION OF THE BILL.

The proposition of the bill is simply to permit foreigners to take American copyright on the same basis as American citizens, in three cases: first, when the nation of the foreigner permits copyright to American citizens on substantially the same basis as its own citizens; second, when the nation of the foreigner gives to American citizens copyright privileges similar to those provided for in this bill;

third, when the nation of the foreigner is a party to an international agreement providing for reciprocity in copyright, by the terms of which agreement the United States can become a party thereto at its pleasure.

A subsidiary but important proposition of the bill is that all books copyrighted under the proposed act shall be printed from type set within the United States, or from plates made therefrom. The following is from the testimony of J. L. Kennedy, given before the House Judiciary Committee, January 30, 1890, in behalf of the International Typographical Union:

Mr. OATES. Why do the printers favor this bill?

Mr. KENNEDY. For several reasons. The first and principal reason is the selfish one. How rare is the human action that has not selfishness for its motive force! Its effect as a law will be given to greatly stimulate book printing in the United States. A vast amount of printing that naturally belongs here (because it is executed principally for this market), and now done on the other side, will come home to us. Indeed, it has been conspicuously stated in the *London Times* that if this bill becomes a law the literary and book publishing centre of the English world will move westward from London and take up its abode in the city of New York. That would be a spectacle which every patriotic American might contemplate with complacency and pride.

The Englishman who writes books for the money he can get out of them, as well as the fame—and I think it fair to presume that the great majority of authors are actuated by both of those motives—will recognize that here is the richest market, and he will not think it a hardship to comply with the provisions of this proposed law in view of the substantial benefit it is to him, and the printers do not consider it a hardship to require of him that he shall leave upon our shores so much of his profits at least as will pay for his printing. The American author who goes abroad in search of a cheaper publishing market, sending his shell-plates over here to be mounted and

to have his presswork done, or else sending the printed sheets home to be bound here, thus evading the heavier duty on bound books, will also be compelled to patronize home industry for his mechanical work. In short, it is not difficult for printers to see that such a law will confer inestimable benefits upon their own and allied trades.

THE TERM OF COPYRIGHT.

Under the existing law of the United States copyright is granted for twenty-eight years, with the right of extension for fourteen more; in all, forty-two years. The bill proposes no change in that respect. The term of copyright in other countries is as follows:

Mexico, in perpetuity.
Guatemala, in perpetuity.
Venezuela, in perpetuity.
Colombia, author's life and eighty years after.
Spain, author's life and eighty years after.
Belgium, author's life and fifty years after.
Ecuador, author's life and fifty years after.
Norway, author's life and fifty years after.
Peru, author's life and fifty years after.
Russia, author's life and fifty years after.
Tunis, author's life and fifty years after.
Italy, author's life and forty years after; to be eighty years in any event. (See later chapter in this volume.)
France, author's life and fifty years after.
Germany, author's life and thirty years after.
Austria, author's life and thirty years after.
Switzerland, author's life and thirty years after.
Hayti, author's life, widow's life, children's lives, and twenty years after.
Brazil, author's life and ten years after.
Sweden, author's life and ten years after.
Roumania, author's life and ten years after.
Great Britain, author's life and seven years after; to be forty-two years in any event.

Japan, author's life and five years after.
South Africa, author's life; fifty years in any event.
Bolivia, author's life.
Denmark, fifty years.
Holland, fifty years.

The verdict of the world declares for a longer term of copyright than that granted by the United States of America. (*La Propriété Littéraire et Artistique*, Paris, 1889.)

LIBERALITY TO FOREIGNERS.

Without reference to international agreements, every one of the twenty-six countries above named permits foreigners to take copyright on the same basis as its own citizens except Great Britain. That country permits foreigners to take copyright on the same basis as its own citizens, provided the foreigner is at the time of publication anywhere within the British dominions, which expression includes British colonies and possessions of every sort.

An alien friend temporarily residing in the British dominions, and consequently owing a temporary allegiance, is entitled to copyright in any work which he publishes here whilst so residing, however short his period of residence may be. (Short's *Law of Copyright*, p. 12.)

By Acts of Parliament the queen is empowered to provide for copyright of an international character as to any nation which will reciprocate. From conditions herein pointed out it is clear that the queen is thus empowered solely with reference to hoped-for relations with the United States of America.

The United States alone refuses copyright to foreigners, and, alone among the nations of the earth,

refuses reciprocity in copyright. (*La Propriété Littéraire et Artistique*, before cited.)

INTERNATIONAL COPYRIGHT AGREEMENTS.

First and last there have been signed about a hundred international agreements providing for reciprocity in copyright, the general nature of which is illustrated by the following quotation of Article II. of the agreement made at the Berne International Copyright Convention of September 9, 1886:

> Authors within the jurisdiction of one of the countries of this Union, or their heirs, shall enjoy in the other countries for their works, whether they are or are not published in one of these countries, the rights which the respective laws of these countries now accord, or shall subsequently accord, to their own countrymen.

The international copyright agreements of France are: With Holland, July 25, 1840; Portugal, April 12, 1851; Great Britain, November 3, 1851; Belgium, August 22, 1852; Spain, November 15, 1853; Luxemburg, July 6, 1856; Russia, April 6, 1861; Italy, June 29, 1862; Prussia, August 2, 1862; Switzerland, June 30, 1864; Hanseatic Cities, March 4, 1865; Bavaria, March 24, 1865; Frankfort-on-the-Main, April 18, 1865; Wurtemburg, April 24, 1865; Baden, May 12, 1865; Saxony, May 26, 1865; Mecklenburg-Schwerin, June 9, 1865; Hesse, June 14, 1865; Hanover, July 19, 1865; Monaco, November 9, 1865; Luxemburg, December 16, 1865; Great Britain, August 11, 1865; Salvador, June 2, 1880; German Empire, April 19, 1883; Sweden and Norway, February 15, 1884; Italy, July 9, 1884; Portugal, July 11, 1886;

Mexico, November 27, 1886; Bolivia, September 8, 1887.

The following named countries have signed international copyright agreements in number as follows: German Empire, six (the German states had signed many prior to 1871, when the empire was created); Belgium, six; Bolivia, six; Ecuador, one; Spain, seven; Great Britain, nineteen; Italy, ten; Luxemburg, two; Mexico, one; Monaco, one; Holland, three; Portugal, four; Russia, two; Salvador, one; Sweden and Norway, two; Switzerland, five.

The agreement made at the Berne Convention of September 9, 1886, was signed by Great Britain, France, Germany, Spain, Holland, Italy, Switzerland, Hayti, Liberia, and Tunis. January 11, 1889, the following seven South American Governments signed the draft of the agreement made at the Montevideo International Copyright Convention: the Argentine Republic, Bolivia, Brazil, Chili, Paraguay, Peru, and Uruguay. The United States of America, standing substantially alone in that regard among the civilized nations of the earth, has never entered into an international agreement for the protection of copyright.

We were represented at the Berne Convention of 1886 by the Hon. Boyd Winchester, who reported strongly in favor of the United States giving its adhesion to the Berne agreement; but our Government has refrained from doing so, for the express reason that Congress is dealing with the subject from time to time. The transactions in this regard

are given in Executive Document No. 354 (Forty-ninth Congress, first session), and Executive Document No. 37 (Forty-ninth Congress, second session). The recent International American Congress, held in the city of Washington, reported the following resolution:

Whereas the International American Conference is of the opinion that the treaties on literary and artistic property, on patents and on trade-marks, celebrated by the South American Congress of Montevideo, fully guaranty and protect the rights of property which are the subject of the provisions therein contained:

Resolved, That the conference recommend, both to those Governments of America which accept the proposition of holding the Congress, but could not participate in its deliberations, and to those not invited thereto but who are represented in this conference, that they give their adhesion to the said treaties.

JOSÉ S. DECOUD,
Delegate from Paraguay.
ANDREW CARNEGIE,
Delegate from United States.
CLIMACO CALDERÓN,
Delegate from Colombia.

The United States of America must give in its adhesion to international copyright or stand as the literary Ishmael of the civilized world.

THE AUTHOR'S NATURAL RIGHT.

he passage of the proposed act is demanded by so-called practical reasons, referred to hereinafter, which do not deal specially with the right and wrong of the matter, but if no such "practical" reasons existed it is a sufficient reason for its passage that an author has a natural exclusive right to the thing having a value in exchange which he produces

by the labor of his brain and hand. No one denies and every one admits that all men have certain natural rights which exist independently of all written statutes.

The common law of England—inherited and adopted to a great extent by the several American States—is built upon and developed out of the natural rights of men. Our Declaration of Independence names some of these natural rights, calling them self-evident, as the basis and foundation of our right to national existence, to wit, life, liberty, and the pursuit of happiness.

An equally self-evident natural right is the right of property, the right to exclusively possess whatever in the nature of property a man rightfully acquires. Civilized and uncivilized people alike recognize this right. No form of society, no matter how rude, no matter how cultivated, is possible without the recognition of this right of property. Whatever has value in exchange is, when possessed, property. The visible expression of an author's mental conception, written or printed, has value in exchange, and is therefore property in the full sense of the word. No better title to an article of property can be imagined than that which is rooted in the creation of the article; creation gives the strongest possible title. The author holds his property by this first, best, and highest of all titles.

The principle is as old as the property itself, that what a man creates by his own labor, out of his own materials, is his own to enjoy to the exclusion of all others. (*Drone on Copyright*, p. 4.)

The monopoly of authors and inventors rests on the general senti-

ment underlying all civilized law, that a man should be protected in the enjoyment of the fruits of his own labor. (Copyright article, *Encyclopædia Britannica.*)

The right of an author to the production of his mind is acknowledged everywhere. It is a prevailing feeling, and none can doubt it, that a man's book is his book—his property. (Daniel Webster, 6 *Peters' Reports*, 653.)

The author cannot enjoy the value in exchange of his property if others reproduce the visible expression of his mental conception without his permission. To do so is to appropriate his valuable thing without giving value in exchange. The author's right is incorporeal, but it is not a small thing because incorporeal. Milton's *Paradise Lost*, Hawthorne's *Scarlet Letter*, and Shakespeare's *Hamlet* suffice for evidence on that point. It is not a unique kind of property because incorporeal. The major part of the wealth of the world is incorporeal. H. D. Macleod, in his article on copyright in the *Political Encyclopedia*, says: "it is probable that nineteen-twentieths of existing wealth is in this form;" the franchises of ferries, railways, telegraph and telephone companies, patents, trade-marks, good-will, shares in incorporated companies, and annuities of all sorts are familiar instances of incorporeal property.

The courts of the several States, as well as the United States Supreme Court, admit the author's natural exclusive right to his intellectual property, in that they are unanimous in holding that the author has a natural, exclusive, and perpetual right in the visible expression of his mental conception so long as it is expressed in written words.

Two principles are settled in English and American jurisprudence: At common law the owner of an unpublished literary composition has an absolute property therein. (*Drone on Copyright*, p. 101.)

When a man, before uninformed in the matter, comes to understand that the author has an admitted natural and exclusive right to the visible expression of his mental conception when that conception is expressed in *written* words, his common sense forbids him to entertain the notion that he loses such right by expressing the conception in *printed* words. The admission of the right as to *written* words settles the question.

It is sometimes attempted to stigmatize copyright as *monopoly*, and writers of loose and careless habit sometimes speak of copyright as monopoly. It is no more monopoly than is the ordinary ownership of a horse or a piece of land. Blackstone says that a monopoly is—

A license or privilege . . . whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before.

The law dictionaries define it in the same way. A monopoly takes away from the public the enjoyment of something which the public before possessed. Neither copyright nor patent does this, for neither can be applied to anything which is not *new*; neither can be applied to anything which the public before possessed. The author and inventor must produce something new in order to be entitled to copyright or patent. Notwithstanding this allusion to patents, the mistake should not be made of supposing that patents and copyrights stand on the

same basis as to natural exclusive right, for they do not; the difference between them, in this regard, is radical.

A patent covers the idea or principle of an invention; copyright does not cover the author's idea, but only the language in which he clothes the idea; hence arises a radical difference which it is not now necessary to discuss.

THE COMMON-LAW RIGHT.

As has been already remarked, the common law of England, inherited and adopted, to a great extent, by the several American States, is built upon and developed out of the natural rights of man.

The common law of England always recognized the natural, exclusive right of an author to the written and printed expression of his mental conception from the time when printing was introduced into England by Caxton, in 1474. From 1474 to 1710 the common-law right was more or less interfered with at times by Crown grants in the nature of genuine monopoly, including decrees of the Star Chamber.

April 10, 1710, the Statute of Anne, so-called, was passed. It gave authors of works then existing the sole right of printing the same for twenty-one years and no longer. It gave to authors of works not then printed, and to their assigns, the sole right for fourteen years, and if the author was then alive he had the right to a prolongation for fourteen years more. In the copyright article of the *Political Encyclopedia*, Macleod correctly says:

It is quite impossible to read this act without seeing that it distinctly recognizes copyright as existing already, and independently of the act. All they did was to enact certain statutory penalties for its infringement. But that, by a well-known rule of law, in no way affected proceedings at common law. We have seen that the courts of law never raised the slightest doubt as to the existence of copyright at common law. We shall now see how the court of chancery regarded it. As the act gave twenty-one years for old copies from April 10, 1710, no question on copyright at common law could arise before 1731. In 1735, Sir Joseph Jekyll granted an injunction in the case of Eyre *vs.* Walker, to restrain the defendant from printing *The Whole Duty of Man*, the first assignment of which had been made in December, 1657, being seventy-eight years before. In the same year, Lord Talbot, in the case of Matte *vs.* Falkner, granted an injunction restraining the defendant from printing Nelson's *Festivals and Fasts*, printed in 1703, during the life of the author, who died in 1714. In 1739 Lord Hardwicke, in the case of Tonson and another *vs.* Walker, otherwise Stanton, granted an injunction restraining the defendant from printing Milton's *Paradise Lost*, the copyright of which was assigned in 1667, or seventy-two years before. In 1752 Lord Hardwicke, in the case of Tonson *vs.* Walker and Merchant, granted an injunction, restraining the defendants from printing Milton's *Paradise* or *Life* or *Notes*. All this time there had never been any solemn decision by the King's Bench as to the existence of copyright at common law, or as to how it was affected by the statute of Anne. But the court of chancery never granted an injunction unless the legal right was clear and undisputed. If there had been any doubt about it they would have sent it to be argued in a court of common law.

In 1769 the question came before the Court of King's Bench (the court of last resort, the House of Lords excepted) in the case of Millar *vs.* Taylor (4 Burr., 2303). It was held—three judges in the affirmative to one in the negative—that the common-law right existed. In 1774 the question again came before the Court of King's Bench in the case of Beckett *vs.* Donaldson (4 Burr., 2408), and

it was again decreed that the common-law right existed. The case was immediately appealed to the House of Lords and there the eleven judges gave their opinions as follows on the following points:

(1) 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? On this question there were eight judges in the affirmative and three in the negative.

(2) 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? This question was answered in the affirmative by four judges and in the negative by seven.

(3) 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 of the conditions prescribed thereby? Six of the judges to five decided that the remedy must be under the statute.

(4) 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? Which question was decided in favor of the author by seven judges to four.

(5) Whether this right is any way impeached, restrained, or taken away by the statute of 8 Anne? Six to five judges decided that the right is taken away by the statute.

This decision is squarely to the effect that the common-law right was in full force up to the passage of the Statute of Anne, April 10, 1710. There was a clear preponderance of judges to this effect, but it was also decided—six judges to five—that the Statute of Anne took away the common-law right.

Lord Mansfield, as one of the judges of the Court of King's Bench, had decided that the Statute of Anne had not taken away the common-law right; as a peer, he refrained from voting through motives of delicacy; had he voted in the House of Lords the decision of the Court of King's Bench that the Statute of Anne had not taken away the common-law right would have stood unreversed. That the common law of England had always recognized the author's natural right was fully established by these decisions. To show that the common law gave copyright is to establish the natural right, for the common law is built upon and developed out of natural right.

COPYRIGHT IN THE CONSTITUTION.

The clause of the Constitution of the United States of America which authorizes the grant of copyright is to be found in Article I., section 8:

> The Congress shall have power . . . to promote the progress of science and the useful arts by securing, for limited times, to authors and inventors, the exclusive rights to their respective writings and discoveries; . . . also to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

The object stated in the grant is "to promote the progress of science and the useful arts." The statement of the object has nothing to do with the question whether the Constitution recognizes the author's natural rights. The use of the word *secure* instead of *give* or *grant* is some recognition of the natural right. This Constitution was formed in

1787, just thirteen years after the House of Lords had expressly recognized the natural right.

The well-informed men who framed the Constitution could not have been ignorant of that decision of the House of Lords, for that was a famous decision of widespread interest and notoriety. They were framing a grant of *delegated* powers to the General Government. They knew that such of the States as fully adopted the common law adopted with it the recognition of the author's natural right. It seemed to them expedient to give to the General Government the supreme power in the premises "for limited times." They did not intend to affirm or deny the natural right.

The natural inference from the language used, in the light of the surrounding facts, is that they knew of the natural right, the common-law right; that they did not choose to meddle with it, but did deem it expedient to give the General Government supreme power in the premises "for limited times."

Possibly they might have thought that a natural right necessarily means a perpetual right; and the United States Supreme Court in dealing with the question, as referred to hereinafter, may have been troubled by the same idea. Natural right does not necessarily mean perpetual right. In all forms of society, all kinds of property are held under such conditions and limitations as society deems reasonable.

Under the right of eminent domain, governments take private property for public use upon suitable remuneration, when public necessity and con-

venience demand it. In some cases private property is taken for public use without compensation, notably when a man's building is torn down to prevent the spread of a conflagration. The disposition of property by last will and testament is regulated by law. In England the lands cannot be alienated from the eldest son. In not to exceed a term of one hundred years the entire value of almost every specific piece of property is taken from the owner by the public in the form of taxes, in return for the protection and security which society gives.

It is entirely reasonable that the law should bring a copyright to an end at the expiration of a term of years—this, especially, in view of the fact that it is not usual to tax copyrights from year to year. It cannot be reasonably maintained that the premise of natural right necessarily leads to the conclusion of perpetuity.

COMMON-LAW RIGHT IN THE UNITED STATES.

It is universally conceded that wherever the common law exists in the several American States, it is derived from and is identical with the English common law. It has been shown, beyond question, that English common law recognizes the author's natural right. It follows as a necessary conclusion that the American common law, wherever it exists, gives copyright, and recognizes the author's natural right.

Connecticut passed a copyright law in January, 1783; Massachusetts, in March, 1783: Virginia, in 1785, and New York, in 1786. They all recognize

the pre-existing common-law right, the exclusive natural right. It has been supposed that the United States Supreme Court decided that the common law does not give copyright in the United States, in the case of Wheaton *vs.* Peters (8 *Peters' Reports*, 591), decided in A.D. 1834. Such is not the fact. The opinion in that case decided only two points connected with this question, to wit: (1) that the United States, as a nation, has no common law, and (2) that as to Pennsylvania, where the controversy in question arose, there was no proof that the common law had been adopted. This is what the United States Supreme Court said in that case:

> It is clear there can be no common law of the United States. The Federal Government is composed of twenty-four sovereign and independent States; each of which may have its local usages, customs, and common law. There is no principle which pervades the Union and has the authority of law that is not embodied in the Constitution or laws of the Union. The common law could be made a part of our Federal system only by legislative adoption.
>
> It is insisted that our ancestors, when they migrated to this country, brought with them the English common law as a part of their heritage.
>
> That this was the case to a limited extent is admitted. No one will contend that the common law, as it existed in England, has ever been in force in all its provisions in any State in this Union. It was adopted so far only as its principles were suited to the condition of the colonies; and from this circumstance we see what is common law in one State is not so considered in another. The judicial decisions, the usages and customs of the respective States, must determine how far the common law has been introduced and sanctioned in each.
>
> In the argument it was insisted that no presumption could be drawn against the existence of the common law as to copyrights in

Pennsylvania, from the fact of its never having been asserted until the commencement of this suit.

It may be true, in general, that the failure to assert any particular right may afford no evidence of the non-existence of such right. But the present case may well form an exception to this rule.

If the common law, in all its provisions, has not been introduced into Pennsylvania, to what extent has it been adopted? Must not this court have some evidence on this subject? If no right, such as is set up by the complainants, has heretofore been asserted, no custom or usage established, no judicial decision been given, can the conclusion be justified that, by the common law of Pennsylvania, an author has a perpetual property in the copyright of his works? (8 *Peters*, 658.)

Mr. Drone, in his book on copyright, says all that is necessary to be said about this remarkable decision wherein the dissenting opinion has easily the best of the argument:

The judgment of the court, as has been seen, was based on two grounds: (1) That the common law of England did not prevail in the United States. (2) That in England it had been decided that the common-law property in published works had been taken away by statute. The first position rested on a foundation of sand, which has since been swept away. "The whole structure of our present jurisdiction," said Mr. Justice Thompson in his dissenting opinion, "stands upon the original foundation of the common law." The doctrine is now well settled in this country that a complete property in unpublished works is secured by the common law. This was admitted by the Supreme Court in Wheaton *vs.* Peters. It has since been repeatedly affirmed by the same tribunal, by the circuit court of the United States, and by every State court in which the question has been raised. If the common law thus prevails in the United States with reference to unpublished productions, there is no principle, independently of the statute, by which it can be held not to prevail in the case of published works. (*Drone on Copyright*, 47.)

In right reason and sound logic the common law

does exist in the United States, and that existence is conclusive of the existence of the natural right.

THE WRONG TO AMERICAN AUTHORS.

The Constitution authorizes copyrights in order "to promote the progress of science and the useful arts," primarily within the United States. Our present procedure is a hinderance to the "progress of science and the useful arts" in the United States in more ways than one.

One way in which our present practice hinders the progress of science and the useful arts within our borders is by the repression of the development of American intellectual life, by the repression of the home production of literary works through subjecting native authors to a kind of competition to which no other class of American workers is subjected, a kind of competition which is ruinous and destructive.

American authors are subjected to untrammeled competition with English authors who do not receive a farthing for their labor. All stories compete with all other stories so far as the demand of the story-reading public is concerned; and the story-reading public of America comprises many millions of people. An American publisher can, within the pale of the law, appropriate and publish an English story without remuneration to the English writer. It is well and widely known that some American publishers do this on a large scale. Since such American publishers pay nothing to the English authors whose stories they appropriate and pub-

lish, other American publishers cannot afford to pay American authors for writing stories except in those comparatively rare cases where the American author has already acquired an established reputation.

The new American author has no chance worthy of the name for getting a start, and the sale of the works of American authors of established reputation is to a degree prevented by this competition, in which everything is against the American author. It is not to the point to refer to persons engaged in other kinds of business, the profession of law for instance, and to say that competition exists there as everywhere else, that the bright men succeed and the dullards fail. The parallel is wholly wanting. If American lawyers had to compete not only with each other, but also with a numerous class of lawyers receiving nothing for their labor, the parallel would be complete, and the American lawyer would need no extended argument to convince him of the unfairness of the arrangement. The American people in general have no adequate idea of the extent of this mischief. Mr. Henry Holt, a well-known New York city publisher, said upon this point before the Senate Committee on Patents in 1886:

> The effect of this state of affairs on the opportunities of American authors to get into print or stay in print is very disastrous. I have unused manuscripts in my safe and have lately sent back manuscripts which ought to have been published, but I was afraid to undertake the publication; the market will not support them. I lately published, I think, the most important American work of fiction with a single exception that I ever published. The critics received it with praise. I had to write the author the other day that it had been a financial failure. She is a poor girl of great talent.

Her old parents are living, and she has to support them and an old family servant.

At the same hearing Mr. Dana Estes, of the well-known Boston firm of Estes, Lauriat & Co., said:

It has been said by some gentlemen that the flood of British reprints has a discouraging effect upon American authorship. I will add my mite to that statement. For two years past, though I belong to a publishing house that emits nearly $1,000,000 worth of books per year, I have absolutely refused to entertain the idea of publishing an American manuscript. I have returned many scores, if not hundreds, of manuscripts of American authors, unopened even, simply from the fact that it is impossible to make the books of most American authors pay, unless they are first published and acquire recognition through the columns of the magazines. Were it not for that one saving opportunity of the great American magazines which are now the leading ones of the world and have an international reputation and circulation, American authorship would be at a still lower ebb than it is at present. Take, for instance, an author of eminent genius who has just arisen. I refer to Charles Egbert Craddock—Miss Murfree. Had her manuscript been offered to any one of half a dozen American publishers it is probable it would have been refused. She got an entering wedge by having her articles published in a magazine and sprang into a world-wide reputation at once. How many of these "mute inglorious Miltons" there are in the manuscripts, tons of manuscripts, scattered about the country, I do not know, but I venture to say there are a good many.

Sir Henry Maine said of the American people in his book on *Popular Government* that their "neglect to exercise their power for the advantage of foreign writers has condemned the whole American community to a literary servitude unparalleled in the history of thought."

The mischief that is being wrought upon American intellectual life of the literary sort, in this man-

ner, is very great. It is none the less real because it cannot be accurately stated in dollars and cents.

ENGLISH MARKET FOR AMERICAN AUTHORS.

American authors of established reputation would be largely benefited by any sort of international copyright with England. English publishers now appropriate the stories of American writers as American publishers appropriate the stories of English authors. Reciprocity in copyright would give the English market to American authors.

VITIATED EDUCATION OF AMERICANS.

The proposition that the story-reading public of America comprises many millions of people, and that the major part are youth, is easy of acceptance. That they are having offered to them an exhaustless stream of English stories written by authors of no special repute, is equally plain. That these stories deal with kings and queens, orders of nobility, an established church, a standing army, monarchical institutions generally, and with English manners, scenes, customs, and social usages is almost a matter of necessity. Probably a large portion of these stories deal with some tale of seduction.

The good stories of England were long since exhausted by the American reprinters, and as a consequence we are having poured out upon us an unstinted flood of printed stuff, often nasty, still oftener weak and silly, and always foreign in tone, sentiment, and description. In the aggregate these

stories constitute a powerful means of undesirable education, as well as of vitiation of American taste; and this force is exerted more largely than otherwise upon minds and morals which are in the plastic and formative stage. It is entirely true that many of the cheap American reprints are not stories and that many of the reprinted English stories are good stories, but these are an exception to the general rule, and such exceptions constitute a small percentage of the whole; the healthy part bears about the same ratio to the unhealthy that the nutritive element in a glass of strong beer bears to the baleful part. Mr. Henry Holt, the New York publisher already mentioned, said upon this point before the Senate committee in 1886:

> It is a vastly important subject, this subject of the prosperity of American authors. It is a subject that reaches to the foundation of our civilization. It is the question whether we are to continue to have an American literature—for, as you all know, American literature is languishing even now—the question whether outside of the daily and periodical press we are to derive our ways of thinking, our ideal of life and politics, from alien, unsympathetic sources. But this is not the whole question. It is rapidly becoming a question whether, with a few rare exceptions, we are going to have any serious books at all.

Thought, morals, and education are the secret springs of natural life. We are allowing them to be contaminated at their sources.

BARRING OUT GOOD LITERATURE.

Another of the ways in which our present practice hinders the "progress of science and the useful

arts" in the United States is by barring out the really useful literature of England, a thoroughly healthy mental and moral pabulum. As regards works on law, theology, medicine, governmental science, political economy, physical science, art, biography, history, travel, language, education, and the like, England is probably more prolific in eminently useful books, in proportion to her population, than any other country in the world. Unlike many of her stories, these have no special tone which is foreign to American institutions. It would be a great practical blessing for the American people if the great mass of these publications were promptly reproduced in America. They are, however, precisely the kind of books which will never be reprinted here, except to a very small extent, without the protection of copyright.

Almost every such work, separately considered, appeals to a limited class only. The republication of one of them involves, as a rule, a very considerable outlay. If reprinted at all, it must be in the shape of books well printed on good paper, well bound, and fit for preservation in a library. No publisher dare undertake the necessary outlay—the publication of a book always being an experiment, financially—unless he is sure he can have the whole limited field to himself. One effect which may confidently be expected from the passage of such a bill as is now proposed is the republication here of the great volume of English books of the class now under discussion which are now sealed books to the great mass of the American people.

CHEAPENING THE PRICE OF BOOKS.

Still another way in which our present practice hinders the "progress of science and the useful arts" in the United States is by preventing the cheapening of the prices of good and desirable books. By "good and desirable books" is meant all manner of books, except the very cheap paper covered or no-covered reprints of English stories.

International copyright between Great Britain and the United States will open the American book market to English authors and English publishers. This can mean nothing less than the addition of an enormous mass of competition to the existing competition in American book publishing. This added competition must, in the nature of things, cheapen the price of all books, those of American origin and those of English origin alike. It is the sure effect of competition to reduce prices. It will never be possible to take a backward step in international copyright after the American public once feels this effect of such a law as is now proposed.

The ordinary mode of attempting to show that we get books cheaper because of the absence of international copyright is to exhibit a list of English books published at a high price and a parallel list of cheap American reprints of the same. It is quite as easy to exhibit a list of English books published at a high price and a parallel list of cheap English reprints of the same. It is also quite as easy to exhibit a list of American books published at a

comparatively high price and a parallel list of cheap American reprints of the same.

Many English books are first published at a high price to be bought almost solely by the English circulating libraries, and when the freshness is worn off excellent shilling editions of the same appear at the English railway book-stalls. American books which prove to be a success are likewise reproduced subsequently in the cheapest form consistent with good paper and good print. The exhibition of a list of English books published at a high price and a parallel list of cheap American reprints of the same, for the purpose of showing that the absence of international copyright gives us cheap books, if done with full knowledge is an attempt at deceit.

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," is a trade maxim settled beyond dispute. A very desirable and certain result of international copyright is stated as follows, in the words of George Haven Putnam, the well-known American publisher:

> 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 among 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 wider circle, the lower the price at which it will be furnished. It would, perhaps, not be quite correct to say that

these international series would be cheaper than at present, for there are, as yet, but few 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 contemporary writers at far lower prices than can ever otherwise be practicable.

France and Germany are thoroughly under the operation of international copyright, and books are much cheaper there than in the United States; the fact is not accounted for by the difference in labor cost, for the one occupation of the printer is precisely the occupation wherein labor cost is most nearly the same here and abroad.

This one inevitable result of international copyright, the cheapening of the great mass of all real books, easily outweighs the sole objection which it is possible to maintain against international copyright, to wit, that it will increase by a few cents the prices of the cheapest reprints of English stories.

THE CHEAP REPRINTS.

It is admitted that the proposed act, or any other of a similar nature, will raise the price of the very cheap reprints of English stories *yet to be written* a few cents apiece. A pamphlet of that sort now costing twenty cents will then cost twenty-five cents. Of the additional price, two cents will go to the author, and three cents will go into better paper, better print, and better binding. For the five cents of increased cost, an American story will be furnished oftener than an English story; an American author will get pay for his labor, and the

reader will get a book that is one hundred per cent. better than the old one in paper, print, and binding.

E. P. Roe's *Barriers Burned Away*, Amelia E. Barr's *Bow of Orange Ribbon*, Miss Green's *The Leavenworth Case*, and Mrs. Prentice's *Stepping Heavenward*, all American copyrighted books, well printed on good paper, well bound in paper covers, and selling at twenty-five cents apiece, are fair samples of what will take place along the whole line of American fiction if this bill becomes a law. This law will have no effect on the literature of the past.

PATENT INSIDES.

It is sometimes urged that country newspapers will, if such a bill as this becomes a law, be cut off from culling from foreign newspapers and periodicals. Such an effect is not possible; it is not practically possible to copyright foreign newspapers and periodicals under the proposed law; it requires that the two copies to be deposited with the Librarian of Congress on or before the day of publication shall be printed from type set in this country, or from plates made therefrom; that provision practically cuts off foreign newspapers and periodicals from American copyright, and our newspapers will remain free to cull from them at pleasure.

ADVOCATES OF INTERNATIONAL COPYRIGHT.

In 1837 a Senate committee composed of Clay, Webster, Buchanan, Preston, and Ewing, of Ohio,

made a report upon international copyright containing the following language:

That authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius is incontestable, and that this property should be protected as effectually as any other property is by law, follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. They are often dependent exclusively upon their own mental labors for the means of subsistence, and are frequently from the nature of their pursuits, or the constitution of their minds, incapable of applying that provident care to worldly affairs which other classes of society are in the habit of bestowing. These considerations give additional strength to their just title to the protection of the law.

It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated. A British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws they throw around it effectual security. But if the work of a British author is brought to the United States it may be appropriated by any resident here and republished without any compensation whatever being made to the author. We should be all shocked if the law tolerated the least invasion of the rights of property in the case of the merchandise, whilst those which justly belong to the works of authors are exposed to daily violation without the possibility of their invoking the aid of the laws.

The committee think that this distinction in the condition of the two descriptions of property is not just, and that it ought to be remedied by some safe and cautious amendment of the law.

Now follows the expressions of some of the persons and organizations who are asking for international copyright to-day. The list includes: (1) President Harrison; (2) Ex-President Cleveland; (3) 144 leading American authors; (4) Western authors; (5) Southern authors; (6) American musical com-

posers; (7) 60 colleges; (8) Leading educators; (9) 200 leading librarians; (10) The American Publishers' Copyright League; (11) The American newspaper publishers; (12) The International Typographical Union; (13) American employing printers; (14) The Electric Club of New York; (15) The Chicago Copyright League; (16) The International Copyright Association, of New England; (17) Cardinal Gibbons; (18) Dr. Weir Mitchell; (19) George Ticknor Curtis; (20) Gladstone; (21) The American magazines unanimously; (22) 281 leading newspapers.

PRESIDENT HARRISON'S RECOMMENDATION.

President Benjamin Harrison, in his message to Congress, December 3, 1889, wrote as follows:

The subject of an international copyright has been frequently commended to the attention of Congress by my predecessors. The enactment of such a law would be eminently wise and just.

EX-PRESIDENT GROVER CLEVELAND FAVORS THE BILL.

NEW YORK, *December* 6, 1889.

MY DEAR MR. JOHNSON: I hope that I need not assure you how much I regret my inability to be with you and other friends and advocates of international copyright in this hour. It seems to me very strange that a movement having so much to recommend it to the favor of just and honest men should languish in the hands of our law-makers. It is not pleasant to have forced upon one the reflection that perhaps the fact that it is simply just and fair is to its present disadvantage. And yet I believe, and I know you and the others engaged in the cause believe, that ultimately and with continued effort, the friends of this reform will see their hopes realized.

Then it will be a great satisfaction to know and feel that success was achieved by force of fairness, justice, and morality.

GROVER CLEVELAND.

Mr. R. U. JOHNSON, *Secretary.*

PETITION OF AUTHORS.

The undersigned American citizens, who earn their living in whole or in part by their pen, and who are put at disadvantage in their own country by the publication of foreign books without payment to the author, so that American books are undersold in the American market, to the detriment of American literature, urge the passage by Congress of an International Copyright Law, which will protect the rights of authors, and will enable American writers to ask from foreign nations the justice we shall then no longer deny on our own part.

[Signed by 144 of the leading American authors, as follows:]

Henry Abbey.
Lyman Abbott.
Charles Kendall Adams.
Henry C. Adams.
Herbert B. Adams.
Oscar Fay Adams.
Louisa May Alcott.
Thomas Bailey Aldrich.
Edward Atkinson.
Leonard W. Bacon.
Hubert H. Bancroft.
Charles Barnard.
Amelia E. Barr.
Henry Ward Beecher.
Edward Bellamy.
William Henry Bishop.
Hjalmar H. Boyesen.
R. R. Bowker.
Francis F. Browne.
Oliver B. Bunce.
H. C. Bunner.
Frances Hodgson Burnett.
Edwin Lassetter Bynner.
G. W. Cable.
Lizzie W. Champney.
S. L. Clemens (Mark Twain).
Titus Munson Coan.
Robert Collyer.
Clarence Cook.
George Willis Cooke.
J. Esten Cooke.
A. Cleveland Coxe.

George William Curtis.
Charles De Kay.
Eugene L. Didier.
John Dimitry.
Nathan Haskell Dole.
Maurice Francis Egan.
Edward Eggleston.
George Cary Eggleston.
Richard T. Ely.
Edgar Fawcett.
Charles Gayarré.
Richard Watson Gilder.
Arthur Gilman.
James R. Gilmore (Edmund Kirke).
Washington Gladden.
Parke Godwin.
Robert Grant.
F. V. Greene.
Edward Greey.
William Elliot Griffis.
Hattie Tyng Griswold.
W. M. Griswold.
Louise Imogen Guiney.
John Habberton.
Edward E. Hale.
J. Hall.
William A. Hammond.
Marion Harland.
Joel Chandler Harris.
Miriam Coles Harris.
Wm. T. Harris.
James A. Harrison.
J. M. Hart.
Bret Harte.
Thos. Wentworth Higginson.
Edward S. Holden.
Oliver Wendell Holmes.
James K. Hosmer.
W. D. Howells.
Ernest Ingersoll.
Helen Jackson (H. H.).
Sara O. Jewett.
Rossiter Johnson.
Ellen Olney Kirk.
Thos. W. Knox.
Martha J. Lamb.
George Parsons Lathrop.
Henry Cabot Lodge.
Benson J. Lossing.
J. R. Lowell.
Hamilton W. Mabie.
James McCosh.
John Bach McMaster.
Albert Mathews.
Brander Matthews.
Edwin D. Mead.
Donald G. Mitchell.
T. T. Munger.
Anna Katharine Green.
George Walton Green.
Harry Harland (Sidney Luska).
John Hay.
Henry F. Keenan.
Simon Newcomb.
R. Heber Newton.
Charles Ledyard Norton.
Grace A. Oliver.
John Boyle O'Reilly.
Francis Parkman.
James Parton.
P. Y. Pember.
Thomas S. Perry.
Ben Perley Poore.
David L. Proudfit.
Isaac L. Rice.
Charles F. Richardson.
E. P. Roe.
J. T. Rothrock.
Philip Schaff.
James Schouler.

Horace E. Scudder.
Eugene Schuyler.
Isaac Sharpless.
Albert Shaw.
George William Sheldon.
E. V. Smalley.
Ainsworth R. Spofford.
Edmund C. Stedman.
Frederic J Stimson.
Frank R. Stockton.
R. H. Stoddard.
Maurice Thompson.
Moses Coit Tyler.
Francis H. Underwood.
William Hayes Ward.
Susan Hayes Ward.
Chas. Dudley Warner.
David A. Wells.
Horace White.
William D. Whitney.
John G. Whittier.
Constance Fenimore Woolson.
John Burroughs.
Rose Elizabeth Cleveland.
Mary Mapes Dodge.
Henry George.
W. Hamilton Gibson.
Mary N. Murfree (Charles Egbert Craddock).
Harriet Prescott Spofford.
Walt Whitman.
Adeline D. T. Whitney.
George Bancroft.

WESTERN AUTHORS FAVOR THE BILL.

The following resolution was adopted by the Western Association of Writers, in convention, June, 1886, and was re-adopted in 1889–90:

Resolved, That this convention earnestly presents to the consideration and urges the importance, justice, and feasibility of International Copyright upon our members of Congress and United States Senators; and that we hold the establishment of just and permanent relations with England and other friendly nations upon the subject of copyright to be a necessity to the best success of American authorship.

In addition to this resolution, the members of the association petitioned Congress for the passage of the bill.

In an address, dated February 28, 1890, the executive committee of the association says:

A good international copyright law, so long hoped for from Congress, will insure protection to foreign authors in our own land and

to American authors in foreign lands. It will do more. It will place the books of American writers on an equal footing financially with those of their foreign contemporaries, will tend to increase the sale of American books, and will encourage the greatest mental activity of American thinkers. From this may be expected the greatest benefit to our republican government. For American books embodying American ideas will then gain, probably, at least as wide a hearing as foreign books clothing foreign ideas.

PETITION OF SOUTHERN AUTHORS.

To the Honorable the Members of the House of Representatives from the Southern States:

The undersigned, writers connected with Southern literature or journalism, respectfully invoke your hearty aid in behalf of the Chace-Breckinridge International Copyright bill, now on the calendar of the House of Representatives. We believe this bill to be both just in principle and necessary to the normal development of American literature, and that, instead of increasing the price of books, as has been feared, it will tend to the opposite effect by reason of the larger editions which publishers, thus secured in their legitimate market, will be enabled to put forth. Since it cannot be retroactive, it will in no way affect the price of any volume which shall have been printed up to the date at which it will go into operation. In other words, the present literature of the world will be open to as cheap republication after the passage of the bill as before. We particularly desire to call your attention to the revival of literary activity in the South. No portion of the country is more interested in the fullest security of literary property, for in no portion will the development of literature be more greatly aided by this bill. Its passage will remove from our country the national disgrace of tolerating literary piracy.

Signed by Thomas Nelson Page, Amélie Rives Chanler, Joel Chandler Harris, Frances Hodgson Burnett, Mary N. Murfree, Charles H. Jones, George W. Cable. Rachael J. Philbrick, Col. Richard M. Johnston, Marion Harland, F. H. Richardson, Will Wallace Harney, Charles H. Smith, William H. Hayne, Augusta Evans Wilson. Elizabeth Bisland, R. T. W. Duke, Jr., James A. Harrison, M. G. McClelland, A. C. Gordon, Charles Washington Coleman, Jr., Frances Cour-

tenay Baylor, Constance Cary Harrison, M. Elliot Seawell, H. S. Edwards, Clifford Lanier, Marion A. Baker, Page M. Baker, Grace King, William Miller Owen, Robert Burns Wilson, James Lane Allen, George William Brown, B. L. Gildersleeve, and eighty other writers of note in the South.

AMERICAN COMPOSERS FAVOR THE BILL.

As may be seen from the following extracts from many expressions published in the *Century Magazine*, American musicians strongly favor an international copyright bill:

As to an international copyright law, I should hail it with joy. At this stage of the world's progress such a legal protection should be everywhere recognized as an author's inalienable right.

DUDLEY BUCK.

The absence of an international copyright law is working directly to the grave injury of our native composers.

JULIUS EICHBERG.

Justice and expediency alike demand an international copyright, and every educated person in the country should ask for it.

ARTHUR FOOTE.

It seems to me that there is no honorable defence for our present thievish attitude on the subject of international copyright.

B. J. LANG.

Let us have an international copyright law by all means, and the sooner the better.

LOUIS MAAS.

It seems to me that the arguments in favor of international copyright, as regards works of literature, apply with equal force to musical compositions.

WILLIAM MASON.

The present state of the law is an inducement to swindling, and is degrading to us as a nation. An international copyright law that

would compel American publishers to pay foreign composers for their works might also prove an encouragement to home talent by giving our own composers an equal chance with others.

THEODORE THOMAS.

I am most decidedly in favor of an international copyright law, by which musical composers and authors in other arts and sciences will be protected against the outrageous doings of many publishers in America and in Europe.

CARL ZERRAHN.

There must be an international copyright, and that without delay, or American music will sink into oblivion.

EUGENE THAYER.

THE VOICE OF THE COLLEGES.

The following colleges, through their representative officers, petitioned Congress in favor of the Chace-Breckinridge bill:

Adelbert, Cleveland, Ohio.
A. & M. College of Texas, College Station, Texas.
Amity College, College Springs, Iowa.
Beloit; Beloit, Wis.
Bethel, Russellville, Ky.
Bowdoin, Brunswick, Me.
Buchtel College, Akron, Ohio.
Carleton College, Northfield, Minn.
Central Tennessee College, Nashville, Tenn.
Central Wesleyan College, Warrington, Me.
Christian University, Canton, Wis.
Dartmouth, Hanover, N. H.
Davidson, Davidson, N. C.
Doane College, Crete, Nebr.
Duray College, Springfield, Miss.
Franklin & Marshall College, Lancaster, Pa.
Franklin College, Franklin, Ind.
Frederick College, Frederick, Md.
Haverford, Haverford, Pa.
Heidelberg, Tiffin, Ohio.

Hobart College, Geneva, N. Y.
Maryland Agricultural College, College Station, Md.
Indiana University, Bloomington, Ind.
Johns Hopkins, Baltimore, Md.
Kentucky State University, Lawrence, Ky.
King College, Bristol, Tenn.
Lawrence University, Appleton, Wis.
Lebanon Valley College, Lebanon, Pa.
Milton College, Wisconsin.
Mississippi College, Clinton, Miss.
Muskingum College, New Concord, Ohio.
Northwestern University, Naperville, Ill.
Northwestern University, Scranton, Ill.
Ohio University, Athens, Ohio.
Ohio State University, Columbus, Ohio.
Otterbein University, Westerville, Ohio.
Princeton College, Princeton, N. J.
Racine College, Racine, Wis.
Rensselaer Polytechnic Institute, Troy, N. Y.
Richmond College, Richmond, Va.
Ripon, Ripon, Wis.
Rochester University, Rochester, N. Y.
Rutgers College, New Brunswick, N. J.
South Carolina, Columbia, S. C.
State Normal School, Emporia, Kan.
State University, Iowa City, Iowa.
Trinity College, Trinity College, North Carolina.
Tulane University, New Orleans, La.
University of California, Berkeley, Cal.
University of Dakota, Grand Forks, Dak.
University of Denver, Denver, Col.
University of Georgia, Athens, Ga.
University of Mississippi, Oxford, Miss.
University of Missouri, Columbia, Mo.
Upper Iowa University, Fayette, Iowa.
Vanderbilt University, Nashville, Tenn.
Vassar, Poughkeepsie, N. Y.
Wells College, Aurora, N. Y.
Wesleyan University, Middletown, Conn.
Western University of Pennsylvania, Allegheny, Pa.

The faculties of many other colleges are known to favor the bill.

SUPPORT FROM LEADING EDUCATORS.

At the meeting of the superintendents of the National Educational Association, held in New York city February 19, 1890, the following resolution, on motion of William E. Sheldon, chairman of the committee on copyright, was unanimously adopted:

Resolved, That the members of the department of superintendence of the National Educational Association hereby record our sympathy with American authors in the effort they are now making to obtain from Congress an international copyright law; and we cannot too strongly express our sense of the necessity of such a measure, both as an obligation of justice and as a stimulus to American literature and to the spread of American ideas abroad.

In addition to this general resolution the following petition was signed:

The Honorable the Senators and Representatives of the Congress of the United States:

The undersigned, officers and members of the National Educational Association, respectfully petition you to support the international copyright bill now pending in both Houses of Congress, believing that the proposed law would stimulate American literature; would promote the sciences and useful arts; would raise the standard of reading and give it a better and more national character, and would be in the interest of the whole people.

W. T. Harris, Commissioner of Education, Washington, D. C.; John Eaton, ex-Commissioner of Education of the United States; L. W. Day, Superintendent of Instruction, Cleveland, O.; W. B. Powell, Superintendent of Schools, Washington, D. C.; James MacAlister, Superintendent of Public Schools, Philadelphia; Wm. M. Griffin, Cook County Normal

School, Chicago; L. H. Jones, Superintendent of Schools, Indianapolis, Ind.; Richard G. Boone, Professor of Pedagogics, Indiana University, Bloomington, Ind.; A. S. Draper, Superintendent of Public Instruction, State of New York; Edwin C. Hewett, President State Normal University, Normal, Ill.; E. E. White, ex-President Purdue University; Geo. Howland, Superintendent of Schools, Chicago, Ill.; J. M. Greenwood, Superintendent of Schools, Kansas City, Mo.; Aaron Gove, Superintendent of Schools, Denver, Col.; W. H. Bartholomew, State Board of Education of Kentucky; J. A. B. Lovett, editor *Teacher at Work*, Huntsville, Ala.; Edwin P. Seaver, Superintendent of Public Schools, Boston, Mass.; T. J. Morgan, Commissioner Indian Affairs, Washington, D. C.; Chas. R. Skinner, Deputy Superintendent of Public Instruction, State of New York; Henry A. Wise, Superintendent of Instruction, Baltimore, Md.; Alex. Forbes, Chicago, Ill.; J. A. Shawan, Superintendent of Schools, Columbus, O.; George P. Brown, editor *Public School Journal*, Bloomington, Ill.; John Hancock, State Commissioner of Common Schools, Ohio; M. A. Newell, State Superintendent of Public Instruction, Maryland; John MacDonald, *Western School Journal*, Topeka, Kan.; John M. Bloss, Superintendent of Schools, Topeka, Kan.; George B. Lane, State Superintendent of Public Instruction, Nebraska, and about sixty others.

In addition to the above lists, petitions in favor of the bill from 467 superintendents and teachers in Indiana, Missouri, Idaho, Wisconsin, Illinois, Iowa, Kansas, Nebraska, and Minnesota have been received and forwarded to Congress:

PETITION FROM LIBRARIANS.

The undersigned, librarians in public, college, and circulating libraries, etc., respectfully request the passage of the pending international copyright bill, believing, from our practical knowledge of the reading public, that the proposed law would stimulate American

literature, would promote the sciences and the useful arts, would raise the standard of reading and give it a better and a more national tone, and would be in the interest of the whole people.

Signed by Mr. A. R. Spofford and two hundred of the leading librarians of the country, representing thirty States—the custodians of the nation's literary treasures, and to a considerable extent the guides of the people's reading. Among these are librarians of public and circulating libraries of the cities of New York, Philadelphia, Brooklyn, Chicago, St. Louis, Boston, Indianapolis, Columbus, Detroit, San Francisco, Buffalo, Albany, St. Paul, Providence, Grand Rapids, Kalamazoo, Rockford, Ill.; Springfield, Ohio; Macon, Ga., and many other cities.

RESOLUTIONS OF THE AMERICAN PUBLISHERS' COPYRIGHT LEAGUE, ADOPTED JANUARY 21, 1888.

Resolved, That the Chace copyright bill, with the amendments now recommended by your executive committee, appears fairly to meet the several requirements of American writers, readers, manufacturers, and sellers of books, domestic and foreign, and has the approval of this league; and our executive committee is hereby instructed to take such action as it may find requisite to secure the passage of the bill with these amendments.

Resolved, That, recognizing from the history of previous attempts, and from the statement of the present obstacles, the difficulty of securing any legislation on international copyright (an undertaking in which such a variety of interests are involved, and in connection with which such diverse views are being pressed upon Congress), our executive committee is hereby authorized, in the event of its proving impracticable to secure the adoption of the bill in the precise form in which it is now recommended to them, to support on behalf of the league this bill, or a bill on the general lines of this bill, with such modifications as may prove requisite to secure the necessary Congressional support: *Provided, always*, That no modifications be accepted that fail to provide for the printing in this country of foreign books securing American copyright.

The league, which cordially indorses the pending bill, embraces the following publishing houses:

Amer. Publishing Co. (Frank E. Bliss, president), Hartford, Conn.
Armstrong, A. C., & Son, 714 Broadway, New York.
Alden, John B., 393 Pearl street, New York.
Appleton, D., & Co., 1 and 3 Bond street, New York.
Barnes, A. S., & Co., 111 William street, New York.
Baker & Taylor Co., The, 9 Bond street, New York.
Bowker, R. R., 330 Pearl street, New York.
Bugbee, David & Co., Bangor, Me.
Carter & Bros., Robert, 530 Broadway, New York.
Cushings & Bailey, Baltimore, Md.
Century Company, 33 East 17th street, New York.
Clarke & Co., Robert, Cincinnati, Ohio.
Crowell, T. Y., & Co., 13 Astor Place, New York.
Clark & Maynard, 771 Broadway, New York.
Dutton & Co., E. P., 21 West 23d street, New York.
Ditson, Oliver & Co., Boston, Mass.
Dodd, Mead & Co., 755 Broadway, New York.
Dillingham, G. W., 31 West 23d street, New York.
Estes & Lauriat, Boston, Mass.
Fords, Howard & Hulbert, 30 Lafayette Place, New York.
Flexner & Staadeker, Louisville, Ky.
Gebbie & Co., Philadelphia, Pa.
Ginn & Co., 743 Broadway, New York.
Harper & Bros., Franklin Square, New York.
Hubbard Bros., Philadelphia, Pa.
Holbrook, M. L., 25 Bond street, New York.
Holt, Henry, & Co., 27 West 23d street, New York.
Houghton, Mifflin & Co., Boston, Mass.
International Copyright Association, Boston.
Ivison, Blakeman & Co., 753 Broadway, New York.
Kirchner & Co., Geo., 17 Union Square, New York.
Lovell Co., John W., 14 Vesey street, New York.
Lothrop & Co., D., Boston, Mass.
Lippincott Co., The J. B., Philadelphia, Pa.
Little, Brown & Co., Boston, Mass.
Lee & Shepard, Boston, Mass.
Lockwood, Geo. R., & Son, 812 Broadway, New York.
Little, J. J., & Co., 10 Astor Place, New York.
Munro, Geo., 17 Vandewater street, New York.
McClurg & Co., A. C., Chicago, Ill.

Nims & Knight, Troy, N. Y.
Pomeroy, Mark M., 234 Broadway, New York.
Putnam's Sons, G. P., 27 and 29 West 23d street, New York.
Phillips & Hunt, Fifth ave. and 20th street, New York.
Pott & Co., Jas., 14 Astor Place, New York.
Putnam, Davis & Co., Worcester, Mass.
Roberts Bros., Boston, Mass.
Randolph, A. D. F., & Co., 38 West 23d street, New York.
Rand, McNally & Co., Chicago, Ill.
Stokes & Bros., F. A., 182 Fifth ave., New York.
Scribner's Sons, Chas., 743 Broadway, New York.
Street & Smith, 31 Rose street, New York.
Sheldon & Co., 724 Broadway, New York.
St. Paul Book & Stationery Co., St. Paul, Minn.
Ticknor & Co., Boston, Mass.
Taintor Bros. & Co., 18 Astor Place, New York.
Trow Printing & Bookbinding Co., New York.
Van Antwerp, Bragg & Co., Cincinnati, Ohio.
Van Nostrand, D., estate of, 23 Murray street, New York.
Webster, Chas. L., & Co., 3 East 14th street, New York.
Whittaker, Thos., 2 Bible House, New York.
Wood & Co., Wm., 56 Lafayette Place, New York.
Wiley, John, & Sons, 15 Astor Place, New York.
White & Allen, 94 Wall street, New York.
Young, E. & J. B., & Co., 6 Cooper Union, New York.

AMERICAN NEWSPAPER PUBLISHERS.

The American Newspaper Publishers' Association, in convention February 13, 1890, adopted the following resolution:

Resolved, That the American Newspaper Publishers' Association is in hearty sympathy with the efforts now being made by American authors to obtain from Congress a fuller security for literary property, and we believe the proposed International Copyright Bill to be in the interest of the national honor and welfare.

THE PRINTERS' UNIONS.

At the Denver session of the International Typo-

graphical Union, in June, 1889, the following preambles and resolution were adopted:

Whereas the measure known as the "Chace International Copyright Bill" failed to become a law through lack of consideration in the House of Representatives of the Fiftieth Congress; and

Whereas said bill will be reintroduced in both houses of the Fifty-first Congress and put upon its passage at an early date; and

Whereas said bill contains a clause which guarantees absolutely that all books copyrighted in this country shall be printed from type set within the limits of the United States: Therefore,

Resolved, That the International Typographical Union heartily indorses the "Chace International Copyright Bill," and urges it as a duty upon subordinate unions and union printers everywhere to use all honorable means to further the passage of said bill.

In accordance with this resolution, over two hundred local unions, representing all sections of the country and comprising 40,000 members, have strongly indorsed the pending bill, and have urged its passage upon members of Congress, through a committee consisting of John L. Kennedy, De Witt C. Chadwick, and H. S. Sutton.

THE EMPLOYING PRINTERS OF THE UNITED STATES.

At the third annual meeting of the United Typothetæ of America, held at St. Louis, Mo., October 8, 9, and 10, 1889, the following resolution was presented to the convention from the committee on copyright, consisting of Messrs. Theodore L. De Vinne, W. J. Gilbert, and P. F. Pettibone, and was adopted:

Resolved, That the association appoint a delegate to the next meeting of the American Copyright League, to be held in New York city, and that we here record our approval of the general principle

of international copyright, and especially of the provision that all books copyrighted shall be printed in the United States.

THE STRONGEST PATENT CLUB IN THE COUNTRY.

NEW YORK, *February* 20, 1890.

Resolved, That the Electric Club of New York is in hearty sympathy with the present efforts of American authors, publishers, employing printers, and workmen in the printing trades to obtain from Congress a just recognition of the rights of intellectual property, and it hails with satisfaction the prospect of an early passage of the International Copyright Bill.

ACTION OF THE CHICAGO COPYRIGHT LEAGUE.

CHICAGO, *February* 25, 1890.

Resolved, That this meeting unanimously indorses the efforts of Congressman George E. Adams of Chicago toward securing the enactment of the Chace-Breckinridge international copyright bill in the United States House of Representatives, and urges upon Congress the necessity for the immediate passage of said bill.

Among the supporters of this resolution were A. C. McClurg, Franklin McVeagh, Joseph Kirkland, David Swing, C. L. Hutchinson, Hobart C. Taylor, Franklin H. Head, William F. Poole, Marshall Field, Edward G. Mason, Slason Thompson, and many others.

THE INTERNATIONAL COPYRIGHT ASSOCIATION OF NEW ENGLAND.

The bill was indorsed as follows at the last annual meeting of this association, composed of authors, publishers, paper-makers, printers, book-binders, educators, jurists, professional men, merchants, bankers, and others, including Charles Francis Adams,

Nathan Appleton, Edward Atkinson, George Bancroft, Edwin Booth, Samuel Bowles, Jonathan Chace, James Freeman Clarke, Richard H. Dana, Bancroft C. Davis, Samuel Adams Drake, Charles W. Eliot, William Endicott, Jr., O. B. Frothingham, Joseph R. Hawley, George F. Hoar, Oliver Wendell Holmes, John D. Long, Henry Cabot Lodge, Frederick Law Olmsted, Henry L. Pierce, Noah Porter, Frederick O. Prince, Alexander H. Rice, John C. Ropes, Francis A. Walker, and hundreds of others.

Resolved, That this association approves the bill granting copyright to foreign authors and artists now before Congress, and warmly urges its prompt passage, in the interest of the principles of equity and justice and to the end that our own authors and artists may receive a proper recognition and reward for their works.

The Washington, D. C., association and leading citizens of St. Louis have indorsed the bill in similar terms.

CARDINAL GIBBONS ON COPYRIGHT.

Cardinal Gibbons has written the following letter:

MY DEAR SIR: I desire to say that I am in entire sympathy with those distinguished authors in the earnest efforts they are making to secure from Congress an international copyright law.

Intellectual labor is the highest and noblest occupation of man, and there is no work to the fruit of which a man has a higher claim than to the fruit of mental labor. Many authors have reason to complain in almost the words of the Gospel: "We have labored and others have entered into our labors."

It seems to me eminently just that adequate protection should be

afforded to authors, so as to secure them against what is conceived to be a manifest violation of their rights.

I am, my dear sir, yours faithfully,

JAMES, CARD. GIBBONS.

February 15, 1890.

ROBERT U. JOHNSON, Esq.,
Secretary American Copyright League.

AN AUTHORITATIVE VOICE FROM THE MEDICAL PROFESSION.

January 20, 1890.

DEAR SIR: Perhaps few persons, certainly none in the medical profession of this country, could show a record which would better prove the need of an international copyright than could I. I once pointed out to a member of Congress in my library, a copy of one of my books translated into French, two translations of the same in German, one in Russian, and another work of mine translated into French. For none of these had I ever received a cent. It is true that two of these translations were authorized by me when my consent was asked, but, of course, it would not have been given without some financial return to me if the law had been otherwise than it is, since any one could at will take the book and translate it without the slightest references to the wishes of the author. A great many American medical books have been translated into the European languages with or without the assent of the authors, but I have never heard that for any of these did our authors ever receive a penny. My own case is, I fancy, the strongest, and I have no objection to your printing this statement if it will further the purposes of the League.

Yours, very truly,

WEIR MITCHELL.

Secretary of Copyright League,
New York City.

THE OPINION OF A DISTINGUISHED CONSTITUTIONAL LAWYER.

Hon. George Ticknor Curtis, one of the earliest and ablest advocates of an international copyright

law, has written the following letter in support of the pending bill:

114 EAST THIRTIETH STREET,
New York, April 18, 1890.

DEAR SIR: . . . It seems to me, as an American author and a citizen of the United States, in common with many other American authors and citizens, that our wishes ought to receive careful attention at the hands of Congress. It is no longer possible to deny the justice and expediency of an international copyright law, such as is proposed in the pending bill. While it will benefit foreign, and especially English, authors, to American authors it is certain to operate as a measure that will secure to them fruits of their labors which they are entitled to enjoy. I have myself failed to receive revenue from publications that ought to have yielded me revenue in England as well as in this country; publications of which English publishers have availed themselves without making me the slightest remuneration. This wrong can be corrected by Congress for American authors in regard to future publication without the slightest disadvantage to readers, publishers, bookmakers, or printers, by passing the pending bill.

I may not have personal influence with those who are to decide this great measure of right and justice, but I feel that I have reason to do everything I can in its favor.

Very truly, your obedient servant,

GEORGE TICKNOR CURTIS.

ROBERT U. JOHNSON, Esq.,
Secretary American Copyright League.

MR. GLADSTONE'S ATTITUDE.

Mr. Gladstone having been quoted by the opponents of the international copyright bill, not only as a partisan of the royalty or stamp copyright scheme, which the friends of the bill strongly oppose, but also as an opponent of the bill itself, the secretary of the American Copyright League recently addressed him a letter of inquiry on the subject, to which the subjoined reply has been received:

HOUSE OF COMMONS LIBRARY, *March* 25, 1890.

MY DEAR SIR: I set so high a value upon the recognition by the United States of the principle of international copyright, a principle which has been now almost universally adopted in Europe, that although I regret some of the provisions of the bill now before Congress, I cannot refuse to express my sympathy with the efforts which American authors have so perseveringly made to procure legal protection for the rights of foreign authors, and my hope that these efforts may be speedily crowned with success. Imperfect as the present bill is, it will, if I rightly read its provisions, place both American and non-American authors in a more equitable position than they have hitherto occupied.

It is quite erroneous to suppose that I have formed any opinion in favor of the royalty scheme as against this bill.

I remain, my dear sir, faithfully yours,

W. E. GLADSTONE.

R. U. JOHNSON, Esq.,
Secretary American Copyright League.

THE MAGAZINES UNANIMOUS.

In response to a circular inquiry addressed to forty leading monthly periodicals, the following authorized the use of their names as strongly in favor of the pending bill. Not one unfavorable reply was received:

Atlantic Monthly.
Andover Review.
Art Amateur.
American Journal of Education.
Arena.
Book-Buyer.
Belford's Magazine.
Book Chat.
Century Magazine.
Cosmopolitan.
Current Literature.
"Dixie."
Dial.
Forum.
Magazine of American History.
Godey's Lady's Book.
Home-Maker.
Hall's Journal of Health.
Hamilton Review.
Harper's Magazine.
Lippincott's Magazine.
Lend a Hand.
Lookout and New England Magazine.
Northwest Magazine.
New England Magazine.

New Englander and Yale Review.
No Name Magazine.
North American Review.
Our Country Home.
Outing.
Political Science Quarterly.
Frank Leslie's Weekly.
Popular Science Monthly.
St. Louis Magazine.
Scribner's Magazine.
St. Nicholas.
Statesman.
Writer.

THE VOICE OF THE PRESS.

Following is a partial list of the American newspapers and weekly periodicals which have given the proposed copyright legislation cordial support. Very many others are also known to favor it:

Boston Beacon.
Boston Congregationalist.
Boston Advertiser.
Boston Journal.
Boston Journal of Education.
Boston Herald.
Boston National Journalist.
Boston Pilot.
Boston Post.
Boston Transcript.
Boston Traveller.
Zion's Herald (Boston).
New Haven (Conn.) News.
American Bookseller (New York).
American Economist (New York).
American Hebrew (New York).
Bradstreet's (New York).
Christian Union (New York).
Critic (New York).
Current Literature (New York).
Electrical World (New York).
Dramatic Mirror (New York).
Epoch (New York).
Evangelist (New York).
Examiner (New York).
Financier (New York).
Harper's Weekly (New York).
Home Journal (New York).
Independent (New York).
Life (New York).
Nation (New York).
Observer (New York).
Publishers' Weekly (New York).
Puck (New York).
Judge (New York).
Voice (New York).
Witness (New York).
New York Commercial Advertiser.
New York Courrier des Etats-Unis.
New York Evening Post.
New York Evening Telegram.
New York Herald.
New York Morning Journal.
New York Mail and Express.
New York Press.
New York Star.
New York Times.

New York Tribune.
New York World.
Scranton (Pa.) Times.
Pottsville (Pa.) Evening Chronicle.
Bridgeport (Conn.) Standard.
Jersey City (N. J.) Evening Journal.
Newburyport (Mass.) Herald.
Springfield (Mass.) Republican.
Peoria (Ill.) Journal.
Newark (N. J.) Morning Press.
Dayton (Ohio) Herald.
Chattanooga (Tenn.) Republican.
Columbus (Ohio) Sunday Morning News.
Springfield (Mo.) Dailyand Weekly Herald.
New York Financial Times.
Watkins (N. Y.) Herald.
Chicago National Journalist.
Brookville (Ind.) American.
Leoti (Kansas) Western Farmer.
Buffalo Courier.
Albany (N. Y.) Times.
Cincinnati (Ohio) Post.
Springfield (Ill.) Journal.
Milwaukee (Wis.) Evening Wisconsin.
Burlington (Iowa) Hawk-Eye.
Lakewood (N. J.) Times and Journal.
Memphis (Tenn.) Commercial.
Washington (D. C) National View.
Boston Courier.
Portland (Me.) Transcript.
Boston Commonwealth.
Buffalo Mercantile Review.
Dayton (Ohio) Journal.
New York Electrical Review.
Cambridge (Mass.) Press.
Greenfield (Mass.) Gazette and Courier.
Buffalo Milling World.
Buffalo Lumber World.
Buffalo Iron Industry Gazette.
New York Family Story Paper.
New York Golden Hours.
New Hampshire (Keene, N. H.) Sentinel.
Binghamton (N. Y.) Republican.
Jamestown (N. Y.) Journal.
Greensburg (Pa.) Press.
Des Moines (Iowa) Iowa State Register.
Cambridge (Mass.) Tribune.
Cambridge (Mass.) Chronicle.
Columbus (Ga.) Inquirer.
Boston Youths' Companion.
Rochester (N. Y.) Union and Advertiser.
Newark (N. J.) Sunday Call.
Memphis (Tenn.) Sunday Times.
Brooklyn Standard Union.
Kingston (N. Y.) Freeman.
Little Falls (N. Y.) Times.
Rochester Post-Express.
American Rural Home (Rochester.)
Erie (Pa.) Herald.
Erie (Pa.) Morning Dispatch.
Friends' Intelligencer and Journal (Philadelphia).
Golden Days (Philadelphia).
National Baptist (Philadelphia).
Telephone (Philadelphia).
Philadelphia Inquirer.
Philadelphia North American.
Philadelphia Press.
Philadelphia Public Ledger.
Watertown (N. Y.) Times.
Williamsport (Pa.) Sun.

Pittsburgh (Pa.) Commercial Gazette.
New Bedford (Mass.) Daily Mercury.
New London (Conn.) Morning Telegraph.
Newark (N. J) Daily Advertiser.
Lowell (Mass.) Daily Courier.
Baltimore (Md.) Sun.
Paterson (N. J.) Press.
Wilmington (Del.) Every Evening.
Haverhill (Mass.) Gazette.
Bridgeport (Conn.) Farmer.
Harrisburg (Pa.) Morning Call.
Pittsfield (Mass.) Evening Journal.
Waterbury (Conn.) American.
Utica (N Y.) Daily Press.
Philadelphia Record.
Omaha (Nebr.) Republican.
Buffalo Tidings.
Baltimore Telegram.
Winona (Minn) Daily Republican.
Davenport (Iowa) Democrat.
Mandan (N. Dak.) Pioneer.
Hartford (Conn) Courant.
Willimantic (Conn.) Journal.
New Haven (Conn.) Register.
Our Youth (New York).
New Orleans (La) Daily City Item.
St. Joseph (Mo.) Daily News.
Redfield (S. Dak.) Observer.
Belfast (Me.) Republican Journal.
Portsmouth (N. H.) Daily Progress.
Portland (Me) Sunday Times.
Providence (R. I.) Telegram.
Hudson (N. Y) Daily Register.
Omaha (Nebr.) Bee.
Pittsburgh (Pa.) Dispatch.
Wilkesbarre (Pa.) Record.

Public Opinion (Washington, D.C.).
Kate Field's Washington.
Washington (D. C.) Critic.
Washington (D. C.) Evening Star.
Richmond Times.
West Point (Va.) Virginian.
Danville (Va.) Times.
Wheeling (W. Va.) Letter.
Charleston (S. C.) News and Courier.
Charleston (S. C.) World.
Columbia (S. C.) Register.
Atlanta (Ga.) Constitution.
Augusta (Ga.) Chronicle.
Macon (Ga.) Telegraph.
New Orleans Times-Democrat.
Dallas (Tex.) Christian Advocate.
Fort Worth (Tex.) Gazette.
Houston (Tex.) Post.
Louisville Courier-Journal.
National Publisher and Printer (Louisville).
Memphis (Tenn.) Avalanche.
Cumberland Presbyterian (Nashville).
Gospel Advocate (Nashville).
Western Christian Advocate (St. Louis).
St. Louis Republican.
Cleveland Leader.
Baptist Journal and Register (Cincinnati).
Cincinnati Commercial Gazette.
Jackson (Ohio) Herald.
Indianapolis Journal.
Indianapolis Sentinel.
America (Chicago).
Christian Worker (Chicago).
Chicago Journal.
Chicago Journal of Commerce.

Chicago News
Chicago Standard.
Chicago Times.
Chicago Indicator.
Chicago Evening Mail.
Chicago Occident.
Galena (Ill.) Press.
Harvard (Ill.) Independent.
Clearwater (Minn.) Sun-Wave.
Duluth (Minn.) Tribune.
Minneapolis Journal.
Minneapolis Tribune.
St. Paul Pioneer Press.
Cedar Rapids (Iowa) Republican.
Des Moines (Iowa) Leader.
Burlington (Kansas) Republican.
Wichita Eagle.
Denver (Colo.) Republican.
Denver (Colo.) Times.
Banning (Cal.) Herald.
Oakland (Cal) Tribune.
Sacramento (Cal.) Record-Union.
San Francisco News Letter.
Seattle (Wash.) Journal.
Seattle (Wash.) Post Intelligencer.
Troy (N. Y.) Observer.
Philadelphia (Pa) Taggarts' Times.
Detroit (Mich.) Journal.
Chelsea (Mass.) Gazette.
Springfield (Mass.) New England Homestead.
Springfield (Mass.) Farm and Home.
Springfield (Mass.) Springfield Homestead.
New York American Agriculturist.
Newton (Mass.) Journal.
The Banner Weekly (New York).
Syracuse (N. Y.) Standard.
Norwalk (Conn.) Hour.
Red Wing (Minn.) Republican.
Wilmington (Del.) Sunday Star.
Bradford (Pa.) Era.
Pittsburgh (Pa.) Post.
Wall Street (N. Y.) Daily News.
Hartford (Conn.) Evening Post.
Cape Cod (Yarmouthport, Mass.) Item.
Birmingham (Ala.) Age-Herald.
Deadwood (S. Dak) Pioneer.
Syracuse (N. Y.) Herald.
Vicksburg (Miss.) Post.
Duluth (Minn.) Herald.
Mt. Joy (Pa.) Herald.
Merchants and Manufacturers' Journal (Baltimore).
Salt Lake Herald.
Sioux Falls (S. Dak.) Argus-Leader.
Munsey's Weekly (New York).
Portland (Me.) Press.
Portland (Me) Express.
Staunton (Va.) Spectator.
Tarboro (N. C.) Southerner.
Bloomington (Ill.) Leader.
New Albany (Ind.) Ledger.
Kentucky State Journal (Newport, Ky.).
Bismarck (N. Dak.) Tribune.
Chicago Citizen.
Lafayette (Ind.) Sunday Times.
Wilson (N. C.) Advance.
Arkansaw Traveler (Chicago).
Spirit of the Valley (Harrisonburgh, Va.).
Paris (Texas) News.
St. Louis (Mo.) Age of Steel.
St. Louis (Mo.) Critic.
Anniston (Ala.) Hot Blast.
Henderson (Ky.) Gleaner.

Colorado Springs Gazette.
Leadville (Colo.) Evening Chronicle.
Leadville (Colo.) Herald-Democrat.
Buffalo Christian Advocate.
Topeka (Kans.) Lance.
Spokane Falls (Wash.) Review.
Rhode Island Democrat (Providence, R. I.).
Christian Intelligencer (New York).
Weekly Union and Catholic Times (New York).
Woman's Journal (Boston).
Northern Christian Advocate (Syracuse, N. Y.).
The Churchman (New York).
Cincinnati Journal and Messenger.
Troy (N. Y.) Catholic Weekly.
Racine (Wis.) Slavic.
Winston (N. C.) Western Sentinel.
Boston Morning Star.
Notre Dame (Ind.) Ave Maria.
Virginia City (Nev.) Evening Chronicle.
New London (Conn.) Day.
St. Louis (Mo.) Spectator.
Prescott (Arizona) Journal-Miner.

RECAPITULATION.

The intelligent voice of the whole country asks for the passage of a measure substantially the same as this; authors, publishers, printers, musical composers, colleges, educators, librarians, newspapers, and magazines join in the prayer. Clay and Webster favored such a thing in the past; Gladstone, Harrison, Cleveland, and Cardinal Gibbons favor it to-day. Our term of copyright is shorter than that sanctioned by the verdict of the civilized world.

Substantially all the world, except Great Britain and the United States, treat foreigner and citizens alike in the matter of copyright; Great Britain permits copyright to foreigners on the same basis as citizens, if the foreigner be at the time of publication on British soil; the Queen is empowered by law to establish reciprocity with us if we will permit it, and we stand alone in rejecting and refusing overtures. A hundred international copyright agree-

ments have been signed; the name of the United States is in no one of them.

It is shown that an author has a natural exclusive right to his intellectual productions: that the common law of England always recognized that right, and that the common law of America necessarily recognizes that right; that our present procedure represses authorship by putting the products of the labor of American authors into untrammeled competition with the products of English labor, for which nothing is paid; that our present procedure deprives American authors of the advantages of the British market; that our present procedure vitiates the education and tastes of American youth; that our present procedure bars our people from the benefits of the good literature of England, and that our present procedure prevents the cheapening of good and desirable books in the United States. It cannot be possible that the American Congress will, with full knowledge, permit the present procedure to continue.

VIII.

THE PLATT-SIMONDS COPYRIGHT ACT, OF MARCH, 1891.

An Act to amend Title Sixty, Chapter Three, of the Revised Statutes of the United States, Relating to Copyrights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-nine hundred and fifty-two of the Revised Statutes be, and the same is hereby, amended so as to read as follows :

"SEC. 4952. [1] The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same ; and, in case of dramatic composition, of publicly performing or representing it or causing it to be performed or represented by others ; and authors or their assigns shall have exclusive right to dramatize *and* translate *any of* their works *for which copyright shall have been obtained under the laws of the United States*."

SEC. 2. That section forty-nine hundred and fifty-four of the Revised Statutes be, and the same is hereby, amended so as to read as follows :

"SEC. 4954. The author, inventor, or designer, if he be still living,[2] or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years,

[1] *Omits :* "Any citizen of the United States or resident therein, who shall be"

[2] *Omits :* "And a citizen of the United States or resident therein,"

upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term; and such persons shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers printed in the United States for the space of four weeks."

SEC. 3. That section forty-nine hundred and fifty-six of the Revised Statutes of the United States be, and the same is hereby, amended so that it shall read as follows:

"SEC. 4956. No person shall be entitled to a copyright unless he shall, *on or* before *the day of* publication *in this or any foreign country*, deliver at the office of the Librarian of Congress, or deposit in the mail *within the United States*, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright, nor unless he shall also, *not later than the day of the publication thereof in this or any foreign country*, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail *within the United States*, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, *map, chart, dramatic or musical composition, engraving, chromo, cut, print or photograph,*[1] or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same: *Provided, That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and it is hereby, prohibited, except in the cases specified in paragraphs* 512 *to* 516 *inclusive, in section* 2 *of the act entitled*

[1] These words replace the words "or other article,"

'An act to reduce the revenue and equalize the duties on imports and for other purposes,' approved Oct. 1, 1890; and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such book at any one time; and except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation: Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted."

SEC. 4. That section forty-nine hundred and fifty-eight of the Revised Statutes be, and the same is hereby, amended so that it will read as follows.

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

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

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

"Third. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar.

"Fourth. For every copy of an assignment, one dollar.

"All fees so received shall be paid into the Treasury of the United States: *Provided, That the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or resident of the United States, shall be one dollar, to be paid as above into the Treasury of the United States, to defray the expenses of lists of copyrighted articles as hereinafter provided for.*

"*And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright has been completed by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this act and by the deposit of two copies of such other article made or produced in the United States; and the Secretary of the Treasury is hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title-entries for distribution to*

the collectors of customs of the United States and to the postmasters of all post-offices receiving foreign mails, and such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding five dollars per annum; and the Secretary and the Postmaster-General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this act."

SEC. 5. That section forty-nine hundred and fifty-nine of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia,[1] a copy of every subsequent edition wherein any substantial changes shall be made: *Provided, however, That the alterations, revisions, and additions made to books by foreign authors, heretofore published, of which new editions shall appear subsequently to the taking effect of this act, shall be held and deemed capable of being copyrighted as above provided for in this act, unless they form a part of the series in course of publication at the time this act shall take effect.*"

SEC. 6. That section forty-nine hundred and sixty-three of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

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

SEC. 7. That section forty-nine hundred and sixty-four of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4964. Every person, who after the recording of the title

[1] *Omits:* "within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and"

of any book and the depositing of two copies of such book, as provided by this act, shall, *contrary to the provisions of this act*, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, *dramatize*, *translate*, or import, or knowing the same to be so printed, published, *dramatized*, *translated*, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

SEC. 8. That section forty-nine hundred and sixty-five of the Revised Statutes be, and the same is hereby, so amended as to read as follows:

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

SEC. 9. That section forty-nine hundred and sixty-seven of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4967. Every person who shall print or publish any manuscript whatever without the consent of the author or proprietor first

obtained,[1] shall be liable to the author or proprietor for all damages occasioned by such injury."

SEC. 10. That section forty-nine hundred and seventy-one of the Revised Statutes be, and the same is hereby, repealed.[2]

SEC. 11. *That for the purpose of this act each volume of a book in two or more volumes, when such volumes are published separately and the first one shall not have been issued before this act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above.*

SEC. 12. *That this act shall go into effect on the first day of July, anno Domini eighteen hundred and ninety-one.*

SEC. 13. *That this act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purposes of this act may require.*

The following are the sections of the Tariff act bearing on the bill;

512. Books, engravings, photographs, bound or unbound, etchings, maps, and charts, which shall have been printed and bound or manufactured more than twenty years at the date of the importation.

513. Books and pamphlets printed exclusively in languages other than English; also books and music in raised print, used exclusively by the blind.

514. Books, engravings, photographs, etchings, bound or un-

[1] *Omits:* "if such author or proprietor is a citizen of the United States, or resident therein,"

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

bound, maps and charts imported by authority or for the use of the United States, or for the use of the Library of Congress.

515. Books, maps, lithographic prints and charts especially imported, not more than two copies in any one invoice in good faith, for the use of any society incorporated for educational, philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, or seminary of learning in the United States, subject to such regulations as the Secretary of the Treasury shall prescribe.

516. Books, or libraries, or parts of libraries and other household effects of persons or families from foreign countries, if actually used by them not less than one year, and not intended for any other person or persons, nor for sale.

(In the text as above given, the changes from the existing law are printed in italics, and the omissions are specified in the foot-notes.)

NOTE.—Section 4953 of the Revised Statutes, which prescribes twenty-eight years as the first term of copyright, being left unchanged, is not given in the present act. For its wording, see text of the Act of 1870, p. 108.

IX.

ANALYSIS OF THE PROVISIONS OF THE COPYRIGHT LAW OF 1891.

THE purport of the Chace-Breckinridge-Adams-Simonds-Platt Copyright Act may be briefly summarized as follows:

A.—Works of Literature.

1. Copyright is granted to authors, whether resident or non-resident, for a term of twenty-eight years. A further term of fourteen years (making forty-two years in all) is granted to the author if at the expiration of the first term he is still living, or to his widow or children if he be dead. Unless the author survive the first term or leave widow or children, the copyright is limited to twenty-eight years.

2. It is made a condition of such copyright for all authors, whether resident or non-resident, that all the editions of the works so copyrighted must be entirely manufactured within the United States; the term including the setting of the type, as well as the printing and binding of the books.

This provision was instituted in the new act at the instance of the Typographical Unions, and was insisted upon by them as essential. The Unions were

under the apprehension that if international copyright should be established without such condition of American manufacture, a large portion of the book manufacturing now done in this country would be transferred across the Atlantic, to the injury of American type-setters and printers, and of the other trades employed in the making of books.

3. For a non-resident author, the further condition is attached to his American copyright that the country of which he is a citizen shall concede to American authors copyright privileges substantially equal to those conceded by such foreign state to its own authors.

4. It is also made a condition (applying to both resident and non-resident authors) that the book securing American copyright shall be published in the United States not later than the date of its publication in any other country. Under the British act now in force, the works of British authors must, in order to preserve their British copyright, be published in Great Britain not later than the date of their publication in any other country. It will, therefore, be necessary for English authors to make arrangements with their English and American publishers for a simultaneous date of publication for both sides of the Atlantic.

With the present facilities for the manifolding and typewriting of manuscripts, for the transmitting across the Atlantic in a week's time advance proofs or advance sheets, and for making final arrangements by cable, there need be, for the great majority of books likely to be reprinted, no material

difficulties in the way of securing this simultaneous publication.

The provision was believed by many to be an essential part of the condition that all editions of books securing an American copyright must be manufactured in this country. It was argued that, if a term of twelve months or of six months were to be allowed to a foreign author within which to complete arrangements for his American editions, the importation of the foreign editions during such term must be either prohibited or permitted. In the former case, American readers might, for an indefinite period, be prevented from securing any copies at all of new English books, a delay which would certainly bring about popular indignation. In the second case, the American market could be to some extent supplied with English editions before any American editions were in readiness, and by the time the English author was ready to sell his American copyright, he would find that such copyright possessed very little market value.

The status of the foreign book during such interregnum must in any case be an anomalous one, and would be likely to cause complications.

The assertion has been made that the provision for simultaneous publication was inserted by the publishers with the malicious purpose of preventing the less known British authors, who might not be in a position to make advance arrangements for their American editions, from securing under the act any American copyright.

It is evident, however, that the publishers who were interested in framing the bill were not actuated by any such Machiavellian intentions. It had been made clear that international copyright was expected to prove a business advantage to all the legitimate publishers engaged in reprinting English books, for the simple reason that larger profits could be secured by controlling the market for authorized editions (even when these were sold at the lowest popular prices) than by dividing the market with a number of unauthorized editions. This being the case, it was of course to the interest of the publishers to secure the protection of American copyright for as many foreign works as possible, and the throwing over of any books to the unauthorized reprinters would entail loss upon publishers as well as upon authors.

It was, however, the belief of the publishers, in accepting this provision with the other typographical conditions, that there need be no difficulty in arranging to protect the works of new authors as well as those of the well-known writers.

It seems probable, also, taking into account all the considerations, that the provision for simultaneous publication is unavoidable as long as the other restrictions in the act are retained. When these can be spared, the International Copyright Law of the United States can properly be brought under the provisions of the Berne Convention.

5. The regulations previously in force for making the entries of copyright are continued, and two copies of the book, together with one copy of its

printed title-page, are to be delivered, on or before the day of publication, at the office of the Librarian of Congress, together with a fee for the entry of the title, such fee being, in the case of an American author, fifty cents, and in the case of a foreign author one dollar.

6. While the importation, during the existence of the American copyright, of *editions* of the books so copyrighted, whether the authors of the same be American or foreign, is prohibited, the importation of such books is permitted to the extent of not to exceed two copies in any one invoice, said copies being certified to be "for use and not for sale." Buyers of foreign books which have secured an American copyright, who may prefer for their libraries the foreign editions of such books, are, under this provision, enabled to import, either direct or through an importer, not to exceed two copies of such editions. This provision apparently permits the importation (not exceeding two copies in any one shipment) of unauthorized as well as of authorized foreign editions of books which have been copyrighted in the United States.

7. Foreign periodicals of which there are no American editions "printed from type set in the United States," cannot secure for their contents an American copyright. The importation of such periodicals is left unrestricted, except for such numbers as may contain unauthorized reprints of material which has already in some other form secured an American copyright.

An English author who copyrights and publishes

in the United States a volume, some chapters of which have previously been printed in an English magazine, will probably not be in a position to prevent the reprinting in the United States of an unauthorized issue of the material contained in such chapters. For this portion of his volume no American copyright can, under the present act, be secured. In case all the chapters in the volume have already appeared in a foreign periodical, its American copyright has probably been forfeited.

8. For the purpose of enforcing the prohibition of the importation of editions of books securing American copyright, weekly lists of the books of which the copyright has been completed are to be furnished by the Librarian of Congress to the Secretary of the Treasury, and by the Secretary to the various customs officers concerned.

The non-importation provision makes the status of books by foreign authors, which have secured an American copyright, practically identical with that heretofore in force for copyrighted American works, the importation of foreign editions of which has of necessity always been prohibited. The whole theory of copyright rests on the exclusive control by the author of a specific territory. An author to whom, under domestic or international law, such a control has been conceded, has something to sell for which he can convey a clear title, and for which, therefore, he is in a position to secure a price representing the full market value of his production. An author who can convey to his publisher, in place of an exclusive territory, only the right to compete

with an indefinite number of other publishers of the same work, has no real "copyright" to sell, and the compensation that he can secure will be of necessity comparatively inconsiderable.

The so-called Sherman amendment, which was discussed at some length during the consideration of the present act, authorized the importation of foreign editions of works by foreign authors securing American copyright. It was finally rejected on the several grounds: that it was incompatible with the other sections of the act, which provided for the American manufacture of all books securing American copyright; that it was inconsistent with the purpose of the act to place on a uniform status all books copyrighted here, whether of American or foreign origin; and that it was inconsistent with the essential condition of "copyright," which stands for an exclusive right to the "copy" for a specific territory and for a specific term. The opponents of the amendment cited, as an instance of territorial copyright, the case of the authorized Tauchnitz and Asher editions of the books of British authors, which, while copyright on the continent, would, if imported into Great Britain, be infringements, and the importations of which into Great Britain had, therefore, always been prohibited.

The Sherman amendment, in its original form, authorized the importation of foreign editions of books by American as well as by foreign authors, and did not even stipulate for the permission of the authors; and in this form it would of necessity have rendered null and void domestic as well as inter-

national copyright. While such a result was doubtless not the intention of the mover, Senator Sherman of Ohio, or of Senators Hale, Plumb, Carlisle, Daniels and the others who supported him, this original amendment was actually carried in the Senate by a vote of 25 to 24. It was rescinded three days later, after its actual purport had been made clear by outside criticism. In its corrected shape, in which it authorized the importation of foreign editions of books by foreign authors only, it was finally defeated by the vote of 21 to 28. The whole episode was a noteworthy instance of slovenly and hap-hazard legislation.

9. The foreign author possesses under the act the same control over translations of his books as has previously been possessed by the American author, and such translations can hereafter be issued only under his authorization. This provision gives, namely, to German and French authors the control of the issue in this country of English versions of their books, and to English authors a similar control, not only over a reprint in English, but over one made, for instance, in German. There is, however, no prohibition of the importation of an edition of a book printed in a language other than that in which it has secured its American copyright.

B.—Works of Art.

Foreign artists and designers are accorded the same term or terms of copyright as those given to foreign authors (and to domestic artists).

The condition of American manufacture is attached to the copyright of reproductions in the

form of chromos, lithographs, or photographs. American manufacture was, however, not made a condition of the more artistic forms of reproductions, and foreign artists are, therefore, now in a position to control the American copyright of engravings or photogravures of their productions, whether these engravings, etc., are "manufactured" in Europe or in the United States. This provision is held by the artists and art publishers of France, who have in the past years suffered severely from American "appropriations" of their productions, to be of special importance.

C.—Music.

Musical compositions by foreign composers are accorded the same terms of American copyright as those given to American compositions, and for productions of this class American manufacture is not made a condition of the copyright.

The condition of reciprocity applies to the copyright of both music and art.

The act goes into effect July 1st, 1891, but its provisions become actually operative between the United States and any foreign state only when the president has made announcement, by proclamation, that the necessary conditions of reciprocity have been fulfilled by such state.

The above suggestions concerning the purpose and probable operation of the provisions of the new act are submitted with all deference to the opinions of better authorities, and will very probably be subject to correction in one respect or another after

the act has come into effect. It is very probable that some questions will arise which cannot be definitely settled without the interpretation of the courts.

G. H. P.

March 25, 1891.

X.

EXTRACTS FROM THE SPEECHES OF SENATORS PLATT AND EVARTS, IN THE COPYRIGHT DEBATE IN THE SENATE.

February 10, 1891.—MR. PLATT, in calling up the Copyright Bill, said: "Mr. President, I do not wish to take the time of the Senate in any lengthy explanation of this bill. We have now waited fifty-three years for this moment, when an international copyright law could be enacted. Fifty-three years ago, Henry Clay made a report which, in the estimation of thoughtful men, thoroughly demonstrated not only the expediency, but the duty of extending the right of copyright to foreigners by the passage of an international copyright law.

"I will simply say that the bill proceeds upon one broad fundamental principle, and that is that what a man fashions by his brain, his genius, his imagination, or his ingenuity is property, just as much as what he fashions by his hands, or acquires by manual or other labor; and that, being property, it should be property the world over, and should be recognized as such. If an American writes a book, the right to publish that book should be recognized as property not only in this country, as it now is under the Constitution, but as property everywhere. If a citizen of another country writes a book, the

right to publish that book should be as much property in this country as in his own country.

"That is the broad principle on which this bill rests—the protection of property, for which governments are instituted. The principle has been recognized in the case of patents, and not a little of the growth and prosperity of the country is due to the fact of the recognition by this government, that a foreigner who invents a new machine or discovers a new process shall be entitled to secure a patent for the same in this country.

"The Constitution puts authors first, in saying that Congress may secure to them exclusive rights; it puts them before inventors; but the legislation of the country has extended the provisions of the Constitution in the matter of inventions very much further than it has in the matter of authorship, and those who come in under the generic term of authors.

"I believe myself no measure before this Congress is so calculated to enhance not only the intellectual, but the material growth of this country, as this copyright bill, and I trust it will pass without amendment.

"As I said, we have waited fifty-three years for this opportunity, and this opportunity may be wholly lost if at this time amendments should be pressed in the Senate.

"I do not know that I should call this a perfect bill, but it is a bill which has had long consideration by committees of the Senate and of the House of Representatives. It comes to us from the House,

and now is our opportunity to obtain the passage of such a law. If there is anything in it which needs further examination, which would call for further legislation, the way for the people who desire international copyright to obtain it is to pass this bill while we have the opportunity to pass it, and to establish the principle of copyright in this country for aliens, and copyright in Europe for Americans. Then, if the provisions of the act may be found to need modification, you can trust to the future that justice will be done." . . .

February 14.—Mr. Platt said (replying to Mr. Allison and Mr. Sherman):

. . . "The fundamental idea of a copyright is the exclusive right to vend, and the prohibition against importation from a foreign nation is necessary to the enjoyment of that right. It is the right to vend within the country where the copyright is granted that gives value to the work of the author. . . .

"I was saying that the very essence of copyright is the privilege of controlling the market. That is the only way in which it can be reached; it is the only way in which the right can be vindicated; it is the only way in which a man's property in the work of his brain, or his imagination, or his genius, can be assured. I am sorry to say that I apprehend a good deal of this contention arises from the lack of a desire to protect a man in that species of property; and I am afraid the idea, so prevalent, and so increasing in the country in these days, that property rights generally are not so very sacred, has to

some extent affected the consideration of this subject.

"Of course the right is exclusive. It is exclusive in this country under our laws, and it is exclusive in every country which has copyright of any kind, national or international. The man who has a copyright in England, and also in Germany, cannot import his books from Germany into England, or his engravings from Germany into England, unless he be the proprietor in England of the copyright; nor can the English proprietor of the copyright export his books, his engravings, or whatever be the subject of his copyright into Germany unless he is the proprietor of the copyright in both countries.

"There, of course, the consent of the proprietor is not required; but without the consent of the proprietor of the copyright, whether he be the publisher himself, or whether the person to whom the author has transferred his right is the publisher, exportation and importation are prohibited. The right is exclusive, and it must be. It is in the essential nature and characteristic of the property that it should be thus protected. Why should not a man's property in his work be protected? Why should anybody want to import from a foreign country a work when the United States has given to the person of this country its sole market for the work?

"Mr. President, I insist that geographical divisions ought not in any way to affect the question of copyright. Having once laid the foundation, that it rests upon the essential and inherent right of a

man to be protected in his property, it does not make any difference whether the owner of it be an American or a foreigner. If the author or the artist in this country, being an American citizen, is entitled to be protected in the reproduction of his work in this country, there is nothing in the fact that a sea divides us from another country which would warrant us in saying that our country should have a right to appropriate the work of the foreign author or of the foreign artist. It is appropriation that people are after when they seek to limit copyright to a single country, and to the citizens of a single country." . . .

February 10.—Mr. Evarts said, referring more particularly to the Sherman amendment: "Mr. President, I rise for the purpose of speaking to the amendments proposed, but I will submit a few observations brought out by the treatment given to this subject by the Senator from Ohio (Mr. Sherman).

"The Senator seems to misconceive the nature of copyright or patent protection.

"We perfectly understand it in our application under our Constitution and our laws to the copyrights and the patent rights which we grant here to our citizens. It has nothing to do with the question whether there should or should not be any profit or tax of importation or otherwise, or any excise upon printing books which may fall under this or that interest of Congress in its revenue system. So it is in regard to any foreign patent or any foreign author.

"The sole question for us is what we shall do concerning something which is the essential nature

of copyright and patent protection, namely, monopoly. It does not touch the question whether there shall be taxation here or there on the general property of the country, or on general importations into the country. It is this one direct proposition, as correctly expressed in the Constitution as the most careful phrase that could be adopted. It is to encourage these advantages to the world, that is, this world of ours, in this country, so that we can draw into the service of the community what is, as originated, the private possession of inventors and writers.

"It is a monopoly with them before they make their composition or invention open, and it is simply a contract which has been thought wise for the public welfare that we shall say to the author or inventor, 'for a limited period you shall have a monopoly under certain conditions of public use while your monopoly exists, and afterwards it shall be free.'

"So no confusion of ideas should be introduced into this debate, based on the fact that we are now proposing to make the same treaty of monopoly with a foreign author that we make habitually with our own authors. We have led the way, in regard to patent rights, by which we have drawn into the advantage of this country patent inventions upon the principle of monopoly equivalent to our own; and the question then as to whether we should be at liberty to import also the manufactured inventions on a duty or because one would like to have an article that was made by a Sheffield manufacturer

instead of by a Lowell manufacturer is wholly outside of the question of monopoly.

"It has no proper application to the case. It is an invasion of the principle. If you do not wish to give a monopoly then do not give it, but do not say with one word, 'we give you a monopoly, provided, however, that such monopoly can be evaded by the importation of manufactures produced abroad.'"

PUBLISHERS AND THE COPYRIGHT BILL.

The passage on the last day of Congress of the International Copyright Bill was preceded by an interesting debate in the Senate over the report of the Conference Committee. Apropos of the charges that the bill contained undue restrictions by reason of "the greed of the publishers," it is interesting to read the remarks on this point of Senator Platt and of Senator Hiscock, who were both members of the Senate Conference Committee.

According to the report of the debate in the *Congressional Record*, Senator Platt said:

"I think the Senator from Delaware hardly does the publishers of this country justice in the statement which he has just made. I think, so far as the publishers are concerned, they would be willing, and have been willing, to accept a good many modifications of the bill; but the people who do the work, the printers, have insisted, and I think with a great deal of justice, that if we are going to allow to a foreigner the exclusive market for his work we ought at least to couple with it a provision that the

work shall be done in this country, inasmuch as, practically, if an American goes abroad to obtain a copyright in a foreign country the work on his book will be done in that country."

Senator Hiscock said (also in reply to Senator Gray):

"The Senator certainly should not insinuate in any way, or charge that as against the proposition we have been pressed by the publishers, or that they have thronged the lobby in opposition to it. I say to him that in my opinion that the proposition (*i. e.*, the Sherman amendment) will be entirely acceptable to the publishers. But there is an interest that is entitled to be heard upon this great question, the printers; and they have been heard. In their judgment a bill ought not to pass here, the effect of which might be to transfer the publication of books, either of this country or of foreign authors to be sold here, to England, Germany, France, or the islands of the sea. The arguments which they have urged against it, the necessities which they have urged, were controlling upon the House conferees, and I do not hesitate to say that they have controlled my action in this matter. Do not lay it, therefore, to the publishers; they may be eliminated; and place the blame, the fault, if there is any, precisely where it belongs. I do not believe it to be a fault, or that they are to blame for it."

This evidence from the two men who were best acquainted with the facts shows clearly the real attitude of the publishers in relation to the bill.

THE VOTE IN THE HOUSE OF REPRESENTATIVES, DECEMBER 3, 1890, BY WHICH THE COPYRIGHT BILL WAS PASSED.

Yeas.	*Nays.*
Adams.	Abbott.
Allen, Mich.	Atkinson, Pa.
Andrew.	Barnes.
Arnold.	Bergen.
Atkinson, W. Va.	Bland.
Baker.	Blount.
Banks.	Breckinridge, Ark.
Bartine.	Brewer.
Bayne.	Brickner.
Beckwith.	Brookshire.
Belden.	Brown, Ind.
Belknap.	Buchanan, Va.
Bingham.	Candler, Ga.
Boothman.	Cannon.
Boutelle.	Clements.
Breckinridge, Kv.	Cobb.
Brosius.	Cooper, Ind.
Brunner.	Crisp.
Buchanan, N. J.	De Lano.
Burrows.	Dibble.
Burton.	Dockery.
Butterworth.	Dolliver.
Bynum.	Edmunds.
Caldwell.	Enloe.
Campbell.	Finley.
Carter.	Flick.
Caswell.	Forman.
Cheadle.	Forney.

Yeas.	*Nays.*
Cheatham.	Fowler.
Chipman.	Gest.
Clancy.	Goodnight.
Clark, Wyo.	Hare.
Cogswell.	Hatch.
Coleman.	Haugen.
Comstock.	Hays, Iowa.
Cooper, Ohio.	Haynes.
Covert.	Heard.
Craig.	Henderson, Ill.
Culbertson, Pa.	Henderson, Iowa.
Cummings.	Henderson, N. C.
Cutcheon.	Herbert.
Dalzell.	Holman.
Dargan.	Hooker.
Darlington.	Kelley.
Dingley.	Kerr, Iowa
Dorsey.	Kilgore.
Dunnell.	Lacey.
Dunphy.	Lane.
Evans.	Lanham.
Farquhar.	Lester, Va.
Fitch.	Mansur.
Flower.	Martin, Ind.
Geissenhainer.	Martin, Texas.
Gibson.	McClellan.
Greenhalge.	McCreary.
Grout.	McMillan.
Hansbrough.	McRae.
Harmer.	Mills.
Hemphill.	Montgomery.
Hermann.	Moore, Texas.
Houk.	Morrill.
Ketcham.	Norton.
Kinsey.	Oates.
La Follette.	O'Ferrall.
Laidlaw.	O'Neill, Ind.
Langston.	Owens, Ohio.
Lansing.	Paynter.

Yeas.	*Nays.*
Lawler.	Payson.
Laws.	Peel.
Lee.	Perkins.
Lester, Ga.	Perry.
Lodge.	Peters.
Magner.	Pierce.
Maish.	Ray.
McAdoo.	Reed, Iowa.
McCarthy.	Richardson.
McComas.	Rockwell.
McDuffie.	Rogers.
McKenna.	Sayers.
McKinley.	Skinner.
Miles.	Smith, Ill.
Miller.	Smith, W. Va.
Moffitt.	Springer.
Moore, N. H.	Stewart, Texas.
Morey.	Stone, Ky.
Morrow.	Sweney.
Morse.	Taylor, Ohio.
Mudd.	Thomas.
Mutchler.	Turner, Ga.
O'Donnell.	Wheeler, Ala.
O'Neil, Mass.	Whitelaw.
O'Neil, Pa.	Whiting.
Osborne.	Wike.
Owen, Ind.	Williams, Ill.
Payne.	Wilson, Mo.
Penington.	Republicans 25, Democrats 70,
Post.	in all 95.
Price.	
Quackenbush.	
Quinn.	
Randall.	
Reilly.	
Reyburn.	
Rusk.	
Russell.	
Sawyer.	

Yeas.
Scull.
Sherman.
Shively.
Simonds.
Smyser.
Snider.
Spinola.
Spooner.
Stephenson.
Stewart, Vt.
Stivers.
Stone, Pa.
Sweet.
Tarsney.
Taylor, Tenn.
Taylor, Ohio.
Townsend, Colo.
Townsend, Pa.
Tracey.
Tucker.
Vandever.
Van Schaick.
Vaux.
Waddill.
Wade.
Walker.
Wallace, N. Y.
Wiley.
Willcox.
Williams, Ohio.
Wilson, Wash.
Wilson, W. Va.
Yoder.

Republicans 96, Democrats 43,
in all 139.

VOTE IN THE SENATE MARCH 4, 1891, BY WHICH THE COPYRIGHT BILL WAS PASSED.

(AT 2 O'CLOCK IN THE MORNING.)

Yeas.	*Nays.*
Aldrich.	Bate.
Allen.	Berry.
Chandler.	Call.
Dawes.	Carlisle.
Dixon.	Casey.
Dolph.	Coke.
Edmunds.	Cullom.
Farwell.	Daniel.
Frye.	Faulkner.
Hawley.	Gorman.
Hiscock.	Gray.
Hoar.	Ingalls.
Jones of Nevada.	Kenna.
McMillan.	Morgan.
Morrill.	Pettigrew.
Pasco.[1]	Plumb.
Pierce.	Ransom.
Platt.	Sherman.
Sawyer.	Walthall.
Shoup.	Republicans 6, Democrats 13,
Spooner.	in all 19.
Stanford.	
Stewart.	

[1] Voted first with the opponents: then changed his vote for the purpose of moving reconsideration.

Yeas.

Warren.
Washburn.
Wilson of Iowa.
Wolcott.

Republicans 26, Democrats 1,
in all 27.

XI.

RESULTS OF THE COPYRIGHT LAW.

Reprinted from the *Forum* for January, 1894.

THE Copyright Act which became law March 4, 1891, and the provisions of which went into effect July 1st of the same year, did not constitute a new statute, but comprised simply amendments to certain sections of the statute relating to copyright, which had been in force since July, 1870.[1]

It is not practicable to state with precision what the effects of the law have been during the three years of its operation, as there is a lack of trustworthy statistics concerning literary or publishing conditions either for the period prior to the act or for the present time. In arriving at any approximate estimate of these effects, it is in order, I judge, to consider: first, the results secured by authors,

[1] The most important changes in the law (omitting from present consideration a few matters of technical detail) were as follows. First: Its provisions, previously limited to the works of authors (under which term I include for convenience artists and composers) who were "residents of the United States," were extended to cover the productions of non-residents on condition that such non-resident author was a resident of a country which should concede to American authors similar privileges. Second: All editions of the works copy-

American or foreign; second, the results for American readers; and, third, the effect on American publishing conditions.

The most important results of the new copyright policy are naturally to be looked for in the literary relations between the United States and Great Britain, relations which the supporters of international copyright naturally had particularly in view.

Before the Copyright Act, the more reputable of the English publishers who were not willing to "appropriate" American books were deterred from arranging for authorized editions by the certainty that, if the books found favor with the English public, "piracy" editions would promptly appear. The appearance of many American titles in the lists of the leading English publishers, and the increased importance of the publishing done by American firms through their branch houses in London, are evidence that satisfactory arrangements with American authors are now being made, and that there must be a substantial increase in the returns from their English editions. It is probable, nevertheless, that these English returns are less considerable than were hoped for. Certain authors who have assumed

righted must be entirely manufactured in the United States. This provision imposed a new restriction upon American authors, who had previously been at liberty to have their books manufactured on either side of the Atlantic. Third: The book, to secure American copyright, must be published in the United States not later than the date of its publication in any other country. The provisions of the act became operative between the United States and any foreign state only when the President had made announcement, by proclamation, that the necessary conditions of reciprocity had been fulfilled by such State.

that the lack of international copyright was the only obstacle that prevented a transatlantic success have learned that there are other difficulties in the way. The English public is conservative. Scholarly readers are not easily convinced of the scholarly trustworthiness or importance of works "from the States," while in light literature, and particularly in fiction, the supply from English pens is more than sufficient to meet the demand. It is further the case that for the last two years, and particularly during the year 1893, there has been a continual depression in the book-trade of Great Britain, and the English booksellers have been less willing and less able to invest in "new and experimental lines of literature," to which class, in their opinion, books by transatlantic writers would necessarily belong. The sales in England of authorized editions of "average" American books have therefore increased less rapidly than was hoped. There has, however, been a steady growth in these sales, and it may be confidently predicted that the near future will witness a more rapid development. The gains, on the other hand, in the case of authors who can command a public, have doubtless been very substantial. American authors whose names have become known in England are beginning also to secure some receipts from Paris, Leipsic, Berlin, and Stuttgart, but for some time to come such Continental receipts can hardly be considerable.

American publishers are now in a position to give to American fiction a larger measure of favorable attention than was possible when such volumes had

to compete with English stories that had not been paid for; and the removal of this disturbing factor must have proved a definite advantage to American novelists, and especially to the newer writers. This advantage has, however, been lessened or delayed by the fact that during the last year large stocks of "remainders" of the novels issued by the "reprinting" firms that have become bankrupt have been crowded upon the book-stands and offered at nominal prices.[1] The disappointment of English authors with the results of the copyright law has been keener than that of their American brethren, because their expectations were so much larger. During the half-century in which international copyright has been talked about, many statements had been put into print and talked over in English literary circles, setting forth the enormous circulation secured in "the States" for unauthorized editions of English books, and particularly of English fiction; and large estimates were arrived at as to the great fortunes that were being made out of these editions by the piratical publishers. The writers whose names were known on this side of the Atlantic, and who, after arranging for authorized American editions, had received the honor of being pirated, convinced themselves—not unnaturally—that, when this piratical competition was removed, the payments from their authorized publishers could be very greatly increased. The authors who had secured neither the

[1] Since the writing of this article, the competition of the increasing group of ten cent and five cent magazines is exerting a serious influence on the circulation of fiction in book form. March, 1896.

tangible advantage of an authorized edition nor the empty compliment of a piratical one, felt in many cases equally assured that it was only the lack of copyright protection which prevented American publishers from paying large sums for the privilege of introducing their books to the American public. With both groups of authors the phrase "the millions of American readers" was likely to be used. I have myself heard the phrase "the sixty-five millions of American readers." It was inevitable that the results should bring disappointment to such glowing expectations. As Mrs. Todgers plaintively remarked of her trials in keeping a London boarding-house: "A joint won't yield—a whole animal would n't yield—the amount of gravy the young gentlemen expect each day at dinner."

There has been, nevertheless, a substantial advance. The authors of the first rank (using the term simply for commercial importance) have certainly very largely increased the receipts from their American sales, while for authors of the second grade there has doubtless also been a satisfactory gain. I think it probable—though on such a point exact statistics are unobtainable—that in one division of literature, that of third-class or lower grade fiction, there has been a decrease in the supply taken from England for American readers. There never had been any natural demand in America for English fiction of this class, and it had been purveyed or "appropriated" chiefly in order to supply material for the weekly issues of the cheap "libraries." The lessening of the supply of this class of literary provender

may be classed as one of the direct gains from international copyright.

English authors have to-day the satisfaction that they are able to place their books before their American readers with a correct and complete text. Before the amended Copyright Law, English books had to be reprinted on what might be called a "scramble system." It was often not practicable to give to the printing of the authorized editions sufficent time and supervision to ensure a correct typography, while the unauthorized issues were not infrequently—either through carelessness or for the sake of reducing the amount and the cost of the material—seriously garbled. The transatlantic author, who was then helpless to protect himself, can now, of course, arrange to give at his leisure an "author's reading" to his proofs.

The copyright law has, in my opinion, secured substantial advantages for American book-buyers. In one class of literature only have the prices increased. The cheapest issues of current new fiction sell at forty cents or fifty cents, in place of fifteen cents or twenty-five cents. It is to be borne in mind, however, that these prices do not stand for the same amount or for the same quality of material. The fifteen-cent "quarto" of the "libraries," hastily and often carelessly printed, was an offence to the eye and probably not infrequently an injury to the sight. It was not, in the proper sense of the term, a book, and could not be preserved as one. It was usually bought for railroad reading, notwithstanding the unsuitableness of its typography for such a pur-

pose, and was often thrown away at the end of the journey. The decently printed half-dollar novel of to-day gives much better value for its cost, and may be preserved to be of service to many readers.

It is the case also that the fifteen-cent and twenty-five cent "libraries" were not crushed out by the copyright law, but for some time before the passage of the law were rapidly coming to an end, as, even with the aid of pirated material, they could not be published at a profit. A large number of new concerns, impressed with the belief that money was to be made in the publishing of pirated fiction, had gone into the "reprint" business shortly before the passage of the Copyright Act. Their cut-throat competition speedily destroyed the very inconsiderable possibility of profit in the business. Books available for reprinting became exhausted, so that it was difficult to secure enough of material to keep up the weekly issues required to secure periodical postage rates, and, as one result, the stuff used for the weekly issues became more and more "rubbishy." Even before the act, there had been not a few failures among these "reprint" publishers. There have been more important failures since, and the "bargain" departments in the dry-goods shops are still working off the remainders of the bankrupt stock, much of it, like many other "bargains," dear at any price.

Except in this class of cheap fiction, there has been with copyrighted foreign books a steady tendency to lower prices. Before, it was the frequent practice of the publisher of a higher-grade book (knowing that if it secured for itself a preliminary

success, he would have to contend later with piratical competition) to secure for his first edition the highest price that the market would bear. In the cases in which there was no second edition, this high price remained the only price to the readers who had to have the book. Now, the American edition of such a work is planned at once for the widest possible market, and to this end is issued at a popular price. The publisher knows that, when he can control the market, a wide sale at the low price demanded by the requirements of American readers secures in the end the most remunerative results. The prices, therefore, of literature other than fiction—that is, of history, biography, science, and the like—are lower than before. On this point I will cite the testimony of Mr. Spofford, the Librarian of Congress, who is in a position to know:

"The first great benefit of international copyright has been the gradual decline in the price of standard foreign works. Before the passage of the act,—when, for instance, an English publishing house could not be protected in its editions of important medical and scientific works by foreign authors,—the only course to pursue was to charge a very high selling-price for a limited market, which rarely extended beyond Great Britain. Works of this class are now, however, planned to secure a market on both sides of the Atlantic, and the result is much larger sales at popular prices. This brings a substantial advantage to the more scholarly readers of the community, who are able to secure, at lower prices than heretofore, editions of scientific works which have been carefully printed to meet their own special requirements. The dread that the bill would create publishing monopolies proves to have been entirely unfounded. One of the most noteworthy results of the law, from the American standpoint, has been the cleansing effect upon the character of reprinted fiction. By far the larger proportion of the cheap novels of an undesirable character with which the market has been flooded during the past

fifteen years were the work of English or French authors. A group of publishing houses in the United States, which made a specialty of cheap books, vied with each other in the business of appropriating English and Continental trash, and printed this under villainous covers, in type ugly enough to risk a serious increase of ophthalmia among American readers."

There is a noteworthy increase in the number of international undertakings, works, or series, the contributions to which are written by the best authorities on special subjects, the writers for which are secured from this country, from England, or from the Continent, wherever the best men happen to be. Such international publications existed before the copyright, but were then carried on at a special disadvantage. Now, the editorial work can be done with proper deliberation, and the publishers can afford to pay the best writers for the best work. The cost of the authorship (and of the illustrations, if any are required) being divided between two or more markets, publishers are able to give to the readers, at a moderate price, the best material in a satisfactory and attractive form. Publications of this class often require several years for their preparation, and two years is not a long enough period to enable this phase of the results of copyright to be fairly tested. With an adequate protection of property in literary productions, irrespective of political boundaries, we can confidently expect in the near future a large development of such international undertakings,—a development which will prove of direct service to both writers and readers and to the work of higher education.

While the artists of the Continent, whose creations, reproduced in the form of engravings or photogravures, are available for sale in the United States, are deriving from the law, if not as large returns as were at first hoped for, yet substantial advantage, the Continental authors have been very seriously disappointed, and seem to have legitimate grounds for their disappointment and for their criticism. These authors complain that they have been invited to a "barmecide feast," and that they have "thanked us for nothing." The condition that the work, to be protected by American copyright, must be manufactured in this country and that the American edition must be published not later than the edition in the country of origin, causes inconvenience and difficulty to the authors of England; but it is practically prohibitory in the cases of works originally issued in a foreign language. It is almost impossible for a French or German author to arrange to issue his book in this country (either in the original or in a translation) simultaneously with its publication abroad. The resetting in the original language, for such limited sales as could be looked for here, would be unduly expensive, while time is required for the preparation of a satisfactory translation. As a result of this restriction, but few French or German authors have been able to secure the protection of the act, and the French Society of Authors, to whose initiative and efforts were chiefly due the international copyright system now in force throughout Europe, has found occasion to criticise very sharply the procedure of the Ameri-

cans in granting literary copyright in form while withholding it in fact.

While the Copyright Act is defective as well in its bearing upon the interests of Continental authors as in sundry other respects, and ought in my judgment certainly to be amended, I am of opinion that it would be unwise at this time to make any effort to secure such amendments. The public opinion which creates and directs legislative opinion is not yet sufficiently assured in its recognition of the rights of literary producers, to be trusted to take an active or intelligent interest in securing more satisfactory protection for such producers. There would be grave risk that, if the copyright question were reopened in the present Congress, we might, in place of developing or improving the copyright system, take a step backward, and lose the partial measure of international copyright that it has taken the efforts of half a century to secure.

The provision establishing international copyright is only a clause in the general Copyright Act, and the whole act ought before many years to be carefully revised. Work of this kind, instead of being referred at the outset to a Congressional committee whose interest in the subject or ability to consider it intelligently could not with certainty be depended upon, ought to be entrusted to a Commission of experts selected for the purpose, which should be instructed to take evidence and to submit a report to serve as a basis for legislation. This is the system that has been pursued with the copyright legislation of England, France, Germany, and Italy, and is what

might be termed the scientific method of arriving at satisfactory legislation on subjects of intricacy or complexity.

Among the recommendations that would be placed before such a Commission would be one for the lengthening of the term of copyright. The present term (twenty-eight years, with a right of renewal to an author, to his widow, or to his children, for fourteen years) is shorter than that of any civilized country. The British term is forty-two years, or the life of the author and seven years, whichever term be the longer; the German, the life of the author and thirty years; the French, the life of the author and fifty years. The amended British law now pending in Parliament (the Monkswell bill) accepts the German term, the life of the author and thirty years. Under the American law, an author may see his earlier productions pirated during his own lifetime, as happened to Longfellow, and, more recently, to Donald G. Mitchell.

By the time an amended copyright bill is in shape for consideration, it is probable that the typographical unions will have convinced themselves that they do not require the aid of the "manufacturing" provision forbidding the importation of foreign type or plates for copyrighted books. Such a provision has no logical connection with copyright, but belongs rather with the prohibitory division of a tariff act, such as that which now forbids, as equally dangerous and undesirable, the importation of obscene literature and of ships. When, with a developed public opinion and a more robust condition of mind on the

part of the typographers, the conclusion has been reached that the manufacturing condition can be spared from the Copyright Act, the United States will be free to unite with the other civilized nations of the world in accepting the world-wide copyright of the Berne Convention.

G. H. P.

XII.

CASES AND DECISIONS SINCE THE ACT OF 1891, THE ISSUES OF WHICH HAVE INVOLVED QUESTIONS OF INTERNATIONAL COPYRIGHT.[1]

Fraudulent Reproduction of Works of Art.

U. S. Circuit Court, New York City. Townsend, Judge.

Fishel, Adler & Schwarz vs. *Lueckel, Unger & Co.*

In *re* reproduction, by photogravure, of certain works of art, which had been duly copyrighted in Washington. The reproductions omitted the tint, title, and platemark. They were stamped "made in Germany," and were exported for sale in Europe.

Judgment for plaintiffs for $750, amount of alleged profits. Photographic negatives to be delivered to plaintiffs. Perpetual injunction granted. (Dec., 1892).

Copyright Requirements for a Work of Art Originating Abroad.

U. S. Circuit Court, of Mass. in Boston. Putnam, Judge.

Werckmeister (on behalf of the Photographische Gesellschaft of Berlin) vs. *Pierce and Bushnell of New Bedford.*

The plaintiffs were the owners of the exclusive rights of reproduction of the design of a painting by G. Naujok, a resident of Ger-

[1] For information concerning the cases here cited, I desire to express my acknowledgments to the following counsel, who are regarded as authorities in questions of copyright law: Samuel J. Elder of Boston, and Rowland Cox, D. G. Thompson, Roger Foster, A. T. Gurlitz, Everett P. Wheeler, and Arthur von Briesen, of New York.

many, entitled "Die Heilige Cecilia." They entered for copyright in Washington the design of this painting, filing with the entry a reproduction in photograph. The defendants were offering for sale unauthorized reproductions (taken by a photographic process) of the same work. Judgment in favor of plaintiffs. Injunction granted August, 1893. In September, 1894, this decision was, on appeal, affirmed.

January, 1896, the above decision was reversed by the U. S. Circuit Court of Appeals for the first circuit of Mass., opinion of Judges Colt and Nelson, Judge Webb dissenting. The injunction against original defendants was under this decision dissolved, the copyright claimed by them being adjudged invalid.

The conclusion presented in the dissenting opinion of Judge Webb is worded as follows: "I cannot concur with either the reasoning or the conclusions of the majority of the Court, but am of the opinion that the judgment of the Circuit Court (Judge Putnam's) should be affirmed."

The case turned, 1st, upon the requirement of the Act for the inscription upon the original design (in this case an oil painting) of the notice required by law, and 2d, upon the question whether the plaintiff ought not to have based his claim for copyright upon the photograph produced by him, which he could properly have entered for copyright, and have limited his claim to the control of such photographs, in place of setting up a claim to control the design of the painting, concerning which the copyright requirements had not been fulfilled: and 3d. Whether the public exhibition of the painting constituted a publication in the sense of the law.

The court held that the failure to place on the painting the notice of copyright constituted a fatal defect to the American copyright, even though said painting had not been brought to the country, the painting itself being the original design for which copyright was claimed; and held, further, that the public exhibition of the painting constituted a publication.

The affirmative points decided under the several decisions above presented are stated by the plaintiff to be as follows:

1. That the right to reproduce photographic copies from paintings painted abroad by foreigners could be assigned to the "Photographische Gesellschaft," of Berlin,

2. That it was proper and legal for the photographic reproductions of such paintings to be marked "Copyright, 1892, by Photographische Gesellschaft,"

3. That the "Photographische Gesellschaft," as the owner of the copyright upon such painting, is protected against all unauthorized reproductions of the same in any form,

4. That it was not necessary for the "Photographische Gesellschaft" photographs to be printed from negatives or transfers made within the limits of the United States.

The case will be appealed to the Supreme Court. If this highest authority should confirm the decision arrived at by the majority of the Massachusetts Circuit Court, it will put very serious difficulties in the way of securing American copyright for works of art originating abroad,—and will give ground for fresh attacks upon the Act of 1891, on the part of Germany, France, and Italy.

The Britannica Cases.

The Britannica Cases, 1879–1893.

The first of the series of cases which had to do with the unauthorized issues of the ninth edition of the "Encyclopædia Britannica" was initiated twelve years before the enactment of the International Copyright Act, and the latest of the series, while decided in 1893, was not based in any way upon the provisions of that Act. These cases involved, however, certain issues that could be described as international, and as the final decision was arrived at within the term specified for this chapter, I think it in order to present a summary of the series.

The first case, that of *Black et al.* vs. *Stoddart*, had been initiated in 1879, in the U. S. Circuit Court for the Eastern Dist. of Penna. The plaintiffs, A. and C. Black, of Edinburgh, were the publishers of the "Encyclopædia Britannica," the ninth edition of which was at that time in course of publication.

This edition was imported into the United States by Little, Brown & Co., of Boston, who acted as agents for the publishers. The defendants, J. M. Stoddart & Co., of Philadelphia, had undertaken the production of an unauthorized reprint, and of this reprint they had issued the first seven or eight volumes. There was no ground under which the owners of the work or their American agents

could claim American copyright in the material contained in these earlier volumes. Before the publication of the set had progressed beyond the seventh volume, the Blacks arranged with Charles Scribner's Sons, of New York, to publish a cheaper edition of the "Encyclopædia" from duplicate sets of plates which were sent from Edinburgh for the purpose. It was the intention, in planning this popular edition, to render unprofitable the competition of such unauthorized reprints as that of the Stoddarts, and also to secure a wider sale for the work than could be looked for for the higher-priced imported volumes. With the view to making certain divisions of the material more valuable for the requirements of American readers, articles from American contributors were secured for the tenth volume and for certain succeeding volumes. For the purpose of testing the practicability of protecting the volume as an entirety, that is to say, of preventing a literal reprint, two or three of the American contributions to the tenth volume were issued in pamphlet form as separate publications, which were duly entered for copyright.

Plaintiffs sought an injunction to restrain the defendants from including these copyrighted articles in their reprint of the tenth volume. Judge Butler, in denying the injunction, rather went out of his way (as if for the purpose of foreshadowing the opinion of the court on the main issue, and thus of discouraging the further prosecution of the suit) to characterize the proceedings as an attempt on the part of aliens to interfere with a legitimate American industry. The plaintiffs were discouraged at this attitude of the court and were unwilling to authorize their American representatives to continue the suit. The Stoddart edition of the "Encyclopædia" was completed, but it was itself interfered with by the competition of one or two still cheaper reprints, for one of which the plates were reproduced by the new photographic process. The Stoddart undertaking proved in the end unremunerative, and the publishers failed.

In 1889, two suits were brought in the U. S. Circuit Court for the Southern District of New York, by Black *et al.* against the Henry G. Allen Co.

One of these suits was brought upon an article by Francis A. Walker, entitled "United States, Part III, Political Geography and Statistics," which had been duly copyrighted; and the other upon an article by Alexander Johnston, entitled "United States, Part I, History and Constitution," which also had been duly copyrighted and had been published in separate form. These articles were later included

in the twenty-third volume of the "Cyclopedia." The defendants interposed demurrers to these bills of complaint. The demurrers came on for argument before Judge Shipman, who decided that the copyright of these two articles was valid and that the defendants' demurrers should be overruled and the defendants compelled to answer the bills. On the issues raised by such demurrers, the Judge says: "There is no vital difference in regard to the infringement of an author's copyright whether it be printed in a separate volume or in connection with authorized material. If the author has a valid copyright, it is valid against any unpermitted reprint of his books; and the fact that his book is bound up in a volume with fifty other books, each of which is open to the public, is immaterial."

Judge Shipman further held that while a non-resident foreigner was not (in 1889) within our copyright law, he could take and hold by assignment a copyright granted to one of our citizens.

2. That a copyright can be assigned not only as a whole, but in sub-divisions, and that the copyright may become the individual property of joint owners.

3. That there is no vital difference in regard to the infringement of an author's copyright whether it be printed in a separate volume or in connection with material which belongs to the public domain.

4. That the fact that these American articles had been prepared for the volume for the purpose of securing for the work some measure of protection against appropriation, could not constitute any ground for refusing to the plaintiffs the benefit of such remedies as they are entitled to under the law.

Another suit by *Black et al.* vs. *Isaac K. Funk et al.* was brought in June, 1890, in the U. S. Circuit Court for the Southern District of New York, upon the Walker article.

This suit, and the two suits against the Henry G. Allen Co., were argued together at final hearing, upon full proofs, before Judge Townsend, who rendered his decision in April, 1893, in favor of the plaintiffs.

The cases turned upon the appropriation on the part of the defendants, for use in their unauthorized edition of the "Encyclopædia," of certain material of which Walker and Johnston were the authors. This material had been duly copyrighted, and the Johnston article had been issued in book form, and had, later, been included by Black, under assignment from the authors, in the twenty-third volume of the ninth edition of the "Encyclopædia." This volume

contained other copyrighted American material which had in like manner been appropriated by the defendants, but these two articles were selected as a convenient test of the question of the practicability of protecting the volume through the including of American articles. The main issues in the cases were as follows:

The right of the authors to assign their copyright to an alien.

The precise fulfilment of the provisions of the law in regard to the depositing, within ten days of publication, two copies of the volume containing the articles.

The difference between the titles of the articles as originally entered for copyright, and the titles as printed in the "Encyclopædia."

The legality of a copyright remaining vested in one party while another party holds under contract or assignment a beneficial interest in it.

The validity of the copyright of a single article, bound up in a volume the bulk of which is *publici juris*, against any authorized reprint of the entire work.

These several points were decided by the court in favor of the plaintiffs, and an injunction was granted. The decision followed closely upon the lines of the previous decision, rendered by Judge Shipman (in 1890), overruling the demurrers of the defendants in the Allen cases.

In 1890, suit was brought by *Black et al.* vs. *Samuel W. Ehrich et al.* in the U. S. Circuit Court for the southern district of N. Y. Defendants, constituting the firm of Ehrich Brothers, of New York, were, in conjunction with R. S. Peale and Co., of Chicago, circulating a reprint of the "Britannica," which had been prepared from plates produced in *fac-simile* by a photographic process. The Peale reproduction omitted the copyrighted American articles. The contention of the plaintiffs rested therefore not on an infringement of copyright, but on an infringement of trade-mark. The defendants called their work the "Encyclopædia Britannica," "an exact reproduction of the Edinburgh edition of 1890." Their book was advertised at $1.50 per volume, the price of the authorized work being $5.00 per volume. The court held that the plaintiffs' contention was not well founded and an injunction was accordingly denied.

I have omitted from the above summary a number of the points and decided which were more or less technical or which, on other grounds, were less important. The decisions on the main issues and on the essential points, and the attitude and utterances of the judges

before whom these later cases were brought, give ground for the conclusion that during the fourteen years between 1879 and 1893, there had been a development of public opinion and of the opinion of the courts in the direction of a more assured and more extended recognition of the property rights of literary producers and their assigns. The passage of the Act of 1891 and the discussions in regard to copyright which preceded that Act are undoubtedly to be credited with a large share in this education of the opinion of the public and of the courts.

The Protection of Lectures.

U. S. Circuit Court, Phila. Dallas, Judge.

Drummond, Henry, vs. *Altemus & Co.*

In *re* Lectures of plaintiff entitled "The Ascent of Man." Lectures delivered in Boston; announcement made in due course that lecturer "reserved all publication rights." Lecturer was under contract with his authorized publishers, Jas. Pott & Son, of New York, to issue the material (when revised) in book form. Defendant published an unauthorized edition of a book under the same title, made up from incomplete and fragmentary newspaper reports of the lectures. Plaintiff, a British subject, temporarily resident in the United States, claimed protection under the provisions of copyright protecting lecturers, and also under the common law protecting unpublished material.

Injunction granted (January, 1894):—The Court took the ground that "the subject of copyright" was "not directly involved." The volume printed by the defendant did not present the lectures correctly, but with omissions and additions which materially altered their purport. This constituted a personal wrong to the author, and incidentally a fraud upon the purchasers. If the defendant had confined his action to reprinting only that portion of the lectures which had appeared in the British Weekly, and his volume had correctly described its contents, the plaintiff would have been without remedy. The complainant's right to restrain the present publication has, however been fully made out.

Does the Requirement of the U. S. Law Concerning the Printing of the Notice of Copyright Apply to the Foreign as Well as to the American Editions?

U. S. Circuit Court of New Jersey.

Haggard (Rider), of London, and Longmans, Green & Co., of London, & New York, vs. *The Waverly Publishing Company.*

In regard to Haggard's "Nada the Lily." Plaintiffs were the author and the authorized publishers of said book, which had been duly copyrighted under the Act of 1891. The action was brought (in April, 1894), to restrain the publication of an unauthorized edition issued by the defendants. The defence was based in substance on two contentions:

1st. That the Act of 1891 was unconstitutional, because it gave to the President a discretionary or judicial power, not within the constitutional functions of an Executive, to determine the status of copyright law in foreign states, and to concede (or to withhold) copyright relations with such states.

2nd. That the U. S. Act of 1870 (which in this respect was not modified by that of 1891), required the printing of the United States copyright notice in all editions and in all copies issued of a work claiming U. S. copyright:—that the plaintiffs had not ventured to contend that such notice had been printed in all the editions issued of "Nada the Lily," and had submitted with their complaint and as evidence of this copyright entry, only copies of certain editions printed in the United States: that, as a matter of fact, editions had been printed in Melbourne and elsewhere which did not contain this entry of U. S. copyright, and that a copy of one of these editions had been utilized for the printing of the American edition issued by the defendant.

The Court sustained on this point, in substance, the contention of the plaintiffs, overruling the demurrer of the defendants. Leave was given to the plaintiffs to amend their bill of complaint so as to plead that while in the foreign editions of "Nada" the United States copyright notice had been omitted, the fact of such omission, in editions issued outside of the territory of the United States, and by parties not amenable to the authority of the United States, could not

invalidate the protection of American copyright for editions issued within the United States, and for which the requirement of the law had been complied with. The judge admitted that he regarded the question as "a close one," which could be decided finally only upon a full hearing of the case on its merits. The preliminary injunction was denied, for the purpose apparently of securing a decision on the main question at issue. It is understood that the case will be carried to the Supreme Court. The defendant's contention in regard to the unconstitutionality of the Act will, I understand, probably be dropped. The issue raised in regard to the requirement of the printing of the United States copyright entry in all the editions issued of a book claiming American copyright, is evidently one of far-reaching importance. If the failure to secure such entry in all editions, whether authorized or unauthorized, issued in countries which may not even be in copyright relations with the United States, is to invalidate American copyright, there is of course no copyright protection under the Act of 1891, either for foreign authors or for Americans, and there has in fact been no defensible copyright for American authors under the Act of 1870.

The decision of the Supreme Court in the "Nada" case will therefore be awaited with interest.

The Control of a Copyrighted Title.

U. S. Circuit Court.

Harper vs. *Ranous.*

67 Fed. Rep. 904.

In *re* title of "Trilby."

Plaintiffs are the owners, under assignment from the author, Du Maurier, of the copyright, for the United States, of the book "Trilby." Defendants utilize this title for a dramatic performance which does not present scenes from the story nor borrow its material. Plaintiffs attempt to prevent this use of their title. The Court held that the copyright protects the name only in conjunction with the book, and not the name alone, and refused to enjoin the performance. (May, 1894.)

Musical Compositions and the Manufacturing Requirement.

U. S. Circuit Court, Dist. of Mass., Boston. Colt, Judge.

Littleton, on behalf of Novello, Ewer & Co. of London,
vs. *The Oliver Ditson Company of Boston.*

In regard to the music composed for "Lead Kindly Light," and to certain other musical compositions. Music printed in London and published simultaneously in London and New York; entered for copyright in Washington. Case decided in June, 1894, by Judge Colt, who granted an injunction in favor of plaintiff. The chief question at issue in the suit was whether music compositions originating in Europe, must, in order to secure copyright in the United States, be printed from type set up or from plates engraved in the States. This involved the question whether the definition of a "book" within the meaning of the manufacturing clause included a musical composition in sheet form. Both of these questions were decided by Judge Colt in the negative.

It was admitted that the music was published in book form, and had been printed from lithographic stones not produced in the United States; but the contention was upheld that musical publications were not included in the list of articles specified in Sect. 3 of the Act ("book, photograph, chromo, or lithograph") required to be manufactured in this country.

62 Fed. Rep. 597, Oct., 1894.

Affirmed in Court of Appeals, April, 1895. 67 Fed. Rep. 905.

Copyright of a Musical Composition.—What Constitutes Publication?

Carte vs. *Duff.*

25 Fed. 183.

Carte, an alien, purchased from Gilbert & Sullivan, British subjects, their right of public representation in the United States of the comic opera "The Mikado, or The Town of Titipu," of which Gilbert

was the author of the literary parts, and Sullivan the author of the musical parts. They employed one Tracy, a citizen of the United States, to come to London and prepare a piano-forte arrangement from the original orchestral score, with a view to copying the same in the United States. After Tracy made the piano arrangement, proceedings were taken to copyright it as a new and original composition in the United States; and Carte purchased of Gilbert, Sullivan, and Tracy the title to such copyright. After the recording in the Library of Congress of the title of this arrangement, the libretto and vocal score of the opera and piano-forte arrangement of Tracy were published and sold in England, with the consent of Gilbert & Sullivan. The orchestral score was never published, but was kept by Gilbert and Sullivan for their own use and for that of licencees to perform the opera. Duff purchased in England a copy of the libretto, vocal score, and piano-forte arrangement, and procured a skilful musician to make an independent orchestration from the vocal and the piano score, and was about to produce the opera in New York City, with the words and voice parts substantially the same as those of the original and with scenery, costumes, and stage business in imitation of the original, and with the orchestration which he had procured to be made, and without claiming that he employed the orchestration of the original opera. Carte sought to enjoin the public representations proposed by Duff.

Held, that the publication of the libretto and vocal score of the opera in England with the consent of the authors was a dedication of their playright, or of the entire dramatic property in the opera to the public, notwithstanding their retention of the orchestral score in the manuscript, and that the public representation in the United States could, therefore, not be enjoined.

Carte vs. *Evans*.

27 Fed. 861.

The title as filed was: "Piano-forte arrangement of the comic opera, "The Mikado, or the Town of Titipu," by W. S. Gilbert and Sir Arthur Sullivan, by George L. Tracy."

The title as published was: "Vocal Score of the Mikado, or the Town of Titipu." An arrangement for the piano-forte, by George L. Tracy (Boston, U. S. A.) of the above-named opera by W. S. Gilbert and Arthur Sullivan.

Held, that the variance did not prejudice the title.

Burden of Proof concerning American Manufacture.

U. S. Circuit Court, Eastern Div. Eastern Judicial District. Adams, Judge.

Osgood vs. *A. S. Aloe Instrument Co.*

69 Fed. Rep. 291.

This case decided merely a question of pleading, viz.: that the fact that the copyright is invalid because the books were not printed from plates made in this country is a matter of affirmative defence, and should be set up and proved by the alleged infringing party. Incidentally, the case decided that the two copies of the copyrighted work deposited in Washington need not contain the copyright notice, but that this notice must contain the name of the copyrighting party (June, 1895).

The Control of a Title as Trade Mark connected with Copyrighted Material.

U. S. Circuit Court, Southern District of New York.

Mac Laren Cases.

Dodd, Mead & Co. of New York have instituted suits against the publishers and the distributors of unauthorized editions of volumes of sketches by the author John Watson, who writes under the name of Ian Mac Laren. These suits have at this time of writing (February, 1896) not been sufficiently advanced to be matters of record. It is understood, however, that the contention of the plaintiffs will be based on copyright and also on trade-mark. The volumes complained of contain certain sketches, which were collected, arranged, revised, and completed by the author to constitute a continuous and integral book, and for this copyright is claimed. The author had, moreover, selected for his American volumes distinctive titles, ("Beside the Bonnie Brier Bush" "A Doctor of the Old School") and he also claims protection for the body of material associated with these titles, that is, for the volume as put together by him and for the titles as of trade-marks placed upon the material.

It is the further contention of the plaintiffs that the volumes printed

by the defendants contain incomplete and incorrect material which being sold under the titles associated by the public with the authorized and complete book, is calculated (and intended) to deceive or mislead the public.

Later. (March 1896). Since the above paragraph was put into type, a decree has been secured in the U. S. District Court for the Southern District of New York (Judge Lacombe), against the defendants in one of the above suits, sustaining in substance the contention of the complainants.

XIII.

ABSTRACT OF THE COPYRIGHT LAW OF GREAT BRITAIN.

THE following are the dates and titles of the laws constituting the existing copyright law of Great Britain:

DOMESTIC COPYRIGHT.

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.

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.

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.

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.

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.

3 Will. 4. c. 15. An Act to amend the laws relating to dramatic literary property.

5 & 6 Will. 4. c. 65. An Act for preventing the publication of lectures without consent.

6 & 7 Will. 4. c. 59. An Act to extend the protection of copyright in prints and engravings to Ireland.

5 & 6 Vict. c. 45. An Act to amend the law of copyright.

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.

38 & 39 Vict. c. 53, *in part*. An Act to give effect to an Act of the Parliament of the Dominion of Canada respecting copyright. Section 4 only repealed.

INTERNATIONAL COPYRIGHT.

7 & 8 Vict. c. 12. An Act to amend the law relating to international copyright.

15 & 16 Vict. c. 12, *in part*. 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. *Repeal not to extend to section* 14.

38 Vict. c. 12. An Act to amend the law relating to international copyright.

The following is the Digest of these laws, prepared by Sir James Stephen, Q.C., and presented in the Report of the Royal Copyright Commission, 1878, as the most authoritative statement of British copyright law:

ARTICLE 1.

Copyright in Private Documents.

The author or owner of any literary composition or work of art has a right, so long as it remains unpublished, to prevent the publication of any copy of it by any other person.

Article 2.

Effects of Limited Publication of Private Documents.

The publication of any such thing as is mentioned in the last article for a special and limited purpose, under any contract, or upon any trust express or implied, does not authorize the person to whom such thing is published to copy or reproduce it, except to the extent and for the purposes for which it has been lent or intrusted to him.

Article 3.

Letters.

A person who writes and sends a letter to another retains his copyright in such letter, except in so far as the particular circumstances of the case may give a right to publish such letter to the person addressed, or to his representatives, but the property in the material on which the letter is written passes to the person to whom it is sent, so as to entitle him to destroy or transfer it.

Article 4.

No other Copyright except by Statute.

There is (probably) no copyright after publication in any of the things mentioned in Article 1, except such copyright as is given by the express words of the statutes hereinafter referred to.

Publication in this article means in reference to books (as defined in the next article) publication for sale. It is doubtful whether in relation to works of art it has any other meaning. There is (it seems) no copyright in dramatic performances except by statute.

Article 5.

Book defined—Law of Copyright in Books.

In this chapter the word "book" means and includes every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan, separately published.

The word "copyright" means the sole and exclusive liberty of printing, or otherwise multiplying copies of any subject to which the word is applied.

When a book is published in the lifetime of its author, the copyright therein is the personal property of the author and his assigns

from the date of such publication, for whichever may be the longer of the two following terms, that is to say:

(1) A term of 42 years from publication.

(2) The life of the author, and a term of 7 years, beginning from his death.

If the publication takes place after the author's death, the proprietor of the author's manuscript and his assigns have copyright in his book for a term of 42 years from its first publication.

If one person employs and pays another to write a book on the terms that the copyright therein shall belong to the employer, the employer has the same copyright therein as if he had been the author.

If the publisher or proprietor of any encyclopædia, review, magazine, or periodical work, or work published in parts or series, employs and pays persons to compose any volume, part, essay, article, or portion thereof, on the terms that the copyright therein shall belong to such publisher or proprietor, such publisher or proprietor has upon publication the same rights as if he were the author of the whole work (with the following exceptions):

1. After 28 years from the first publication of any essay, article, or portion in any review, magazine, or other periodical work of a like nature [not being an encyclopædia], the right of publishing the same in a separate form reverts to the author for the remainder of the term for which his copyright would have endured if the same had been originally published by him elsewhere.
2. During the said term of 28 years the publisher or proprietor may not publish any such essay, article, or portion, separately or singly, without the consent of the author or his assigns.

The author of any such magazine as aforesaid may, by contract with any such publisher or proprietor, reserve the right of publishing any work, his composition, in a separate form, and if he does so he is entitled to copyright in such composition when so published for the same term as if such publication were the first publication, but without prejudice to the right of the publisher or proprietor to publish the same as part of such periodical work.

In order to provide against the suppression of books of importance to the public, the Judicial Committee of the Privy Council are empowered, on complaint that the proprietor of the copyright in any book after the death of its author has refused to republish or allow

the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner and subject to such conditions as they think fit, and the complainant may publish such book accordingly.

The whole of this article is subject to the limitations contained in the subsequent articles of this chapter.

It applies—

(*a*) To all books published after 1st July, 1842.

(*b*) To all books published before that day in which copyright was then subsisting, unless such copyright was vested in any publisher or other person who acquired it for any consideration other than that of natural love or affection, in which case such copyright endures for the term then provided for by law, unless the author, if living on that day, or if he were then dead his personal representative, and (in either case) the proprietor of the copyright, registered before the expiration of the term of copyright to which they were then entitled, consent to accept the benefits of the Act 5 & 6 Vict. c. 45 in a form provided in a schedule therein.

ARTICLE 6.

Who may obtain Copyright in Books.

In order that copyright in a published book may be obtained under the provisions of Article 5, the book must in all cases be published in the United Kingdom. The author or other person seeking to entitle himself to copyright may be either—

(*a*) A natural born or naturalized subject of the Queen, in which case his place of residence at the time of the publication of the book is immaterial; or

(*b*) A person who at the time of the publication of the book in which copyright is to be obtained owes local and temporary allegiance to Her Majesty by residing at that time in some part of Her Majesty's dominions.

It is probable, but not certain, that an alien friend who publishes a book in the United Kingdom while resident out of Her Majesty's dominions, acquires copyright throughout Her Majesty's dominions by such publication.

ARTICLE 7.

Previous and Contemporary Publication out of the United Kingdom.

No copyright in a book published in the United Kingdom can be obtained under Article 5, if the book has been previously published by the author in any foreign country, but the contemporaneous publication of a book in a foreign country and in the United Kingdom does not prevent the author from obtaining copyright in the United Kingdom.

It is uncertain whether an author obtains copyright by publishing a book in the United Kingdom, after a previous publication thereof in parts of Her Majesty's dominions out of the United Kingdom.

It is uncertain whether an author acquires copyright under Article 5 in any part of Her Majesty's dominions out of the United Kingdom (apart from any local law as to copyright which may be in force there) by the publication of a book in such part of Her Majesty's dominions.

ARTICLE 8.

No Copyright in immoral Publications.

No copyright can exist in anything in which copyright would otherwise exist if it is immoral, irreligious, seditious, or libelous, or if it professes to be what it is not, in such a manner as to be a fraud upon the purchasers thereof.

ARTICLE 9.

What is Infringement of Copyright in a Book, and what not—Fair Use of Books.

The owner of the copyright in a book is not entitled to prevent other persons from publishing the matter contained in it if they invent or collect it independently, nor to prevent them from making a fair use of its contents in the composition of other books.

The question, what is a fair use of a book, depends upon the circumstances of each particular case, but the following ways of using a book have been decided to be fair :

(*a*) Using the information or the ideas contained in it without copying its words or imitating them so as to produce what is substantially a copy.

(*b*) Making extracts (even if they are not acknowledged as such)

appearing, under all the circumstances of the case, reasonable in quality, number, and length, regard being had to the object with which the extracts are made and to the subjects to which they relate.

(*c*) Using one book on a given subject as a guide to authorities afterward independently consulted by the author of another book on the same subject.

(*d*) Using one book on a given subject for the purpose of checking the results independently arrived at by the author of another book on the same subject.

An abridgment may be an original work if it is produced by a fair use of the original or originals from which it is abridged, but the republication of a considerable part of a book is an infringement of the copyright existing in it, although it may be called an abridgment, and although the order in which the republished parts are arranged may be altered.

ARTICLE 10.

Crown Copyright.

It is said that Her Majesty and her successors have the right of granting by patent from time to time to their printers an exclusive right to print the text of the authorized version of the Bible, of the Book of Common Prayer, and possibly the text of Acts of Parliament.

ARTICLE 11.

University Copyright.

The Universities of Oxford, Cambridge, Edinburgh, Glasgow, St. Andrew's, and Aberdeen, each college or house of learning at the universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester, have forever the sole liberty of printing and reprinting all such books as have been or hereafter may be bequeathed or given to them, or in trust for them by the authors thereof, or by their representatives, unless they were given or bequeathed for any limited term.

ARTICLE 12.

How such Right forfeited.

The exclusive right mentioned in the last article lasts so long only as the books or copies belonging to the said universities or colleges

are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage.

If any university or college delegates, grants, leases, or sells its copyright or exclusive right of printing books granted by 15 Geo. 3. c. 53, or any part thereof, or allows or authorizes any person to print or reprint the same, the privilege granted by the said Act becomes void and of no effect, but the universities or colleges may sell the copyrights bequeathed to them as for the terms secured to authors by the 8 Anne c. 19.

ARTICLE 13.

Term of Copyright in Dramatic Pieces.

The author, or the assignee of the author, of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, or musical composition not printed and published by such author or assignee, has, as his own property, the sole liberty of representing or causing to be represented or performed, any such dramatic piece or musical composition at any place of dramatic entertainment whatever in Her Majesty's dominions (possibly in perpetuity, but more probably for) whichever is the longer of the two following terms, viz.—

(1) Forty-two years from the first public representation of such dramatic piece or musical composition.

(2) The life of the author and a further term of seven years beginning from his death.

The singing of a single song of a dramatic character in a dramatic manner may amount to a dramatic entertainment within the meaning of this article.

Any place at which a dramatic entertainment is given [? for profit] on any particular occasion is a place of dramatic entertainment within the meaning of this article.

ARTICLE 14.

Condition of Copyright in Dramatic Pieces.

The exclusive right of representing or performing a dramatic piece or musical composition cannot be gained if such dramatic piece or musical composition has been printed and published as a book before the first representation thereof.

Or, if it has been publicly represented or caused to be represented by the author or his assigns in any place out of Her Majesty's dominions before it was publicly represented in them, except under the International Copyright Act.

ARTICLE 15.

Copyright in and Representation of Dramas.

Copyright in a book containing or consisting of a dramatic piece or musical composition is a right distinct from the right to represent such dramatic piece or musical composition on the stage, and no assignment of the copyright of any such book conveys to the assignee the right of representing or performing such dramatic piece or musical composition unless an entry of such assignment is made in the registry book mentioned in Article 23, expressing the intention of the parties that such right should pass.

ARTICLE 16.

Representation of a Drama no Infringement of Copyright.

A dramatic piece or musical composition published as a book may (it seems probable) be publicly represented without the consent of the author or his assigns.

ARTICLE 17.

Dramatization of Novels.

The public representation of a dramatic piece constructed out of a novel is not an infringement of the copyright of the author of the novel or his assigns, but the printing and publication as a book of such dramatic piece so represented may be such an infringement.

If two persons independently of each other convert a novel into a dramatic piece, each has an exclusive right of representing his own dramatic piece, though one of them may be the author of the novel so dealt with and though the two pieces may have parts in common.

ARTICLE 18.

Infringement of Copyright in a Musical Composition.

Copyright in a musical composition is infringed when a substantial portion of the music in which copyright exists is reproduced either without any alteration or with such alterations as are required to

adapt it to a different purpose or instrument, the alterations being of such a character that the substantial identity between the original and the altered version can be recognized by the ear.

ARTICLE 19.

Copyright in Lectures.

The author of any lecture, or his assign, has by statute the sole right of publishing any lecture, of the delivery of which notice in writing has been given to two justices living within five miles from the place where such lecture is delivered two days at least before it is delivered, unless such lecture is delivered in any university, public school, or college, or on any public foundation, or by any person in virtue of or according to any gift, endowment, or foundation.

The author of any lecture has [probably] at common law the same right as by statute, without giving such notice as is required by statute, but he cannot recover the penalties provided by the Act and specified in Article 35, for an infringement of his copyright.

ARTICLE 20.

Copyright in Sculpture.

Every person who makes or causes to be made any new and original sculpture, or model, or copy, or cast, . . . [1] has the sole right therein for the term of 14 years from first putting forth or publishing the same, provided that the proprietor causes his name, with the date, to be put on every such thing before it is published. If the proprietor be living at the end of the term of 14 years, his right returns to him for a further term of 14 years, unless he has divested himself thereof.

ARTICLE 21.

Copyright in Paintings and Photographs.

The author, being a British subject or resident within the dominions of Her Majesty, of any original painting, drawing or photograph, not having been sold before the 29th July, 1862, has the sole

[1] Here is a reference to a note, scheduling the usual subjects of sculpture, but explaining that the section of the law here concerned "is a miracle of intricacy and verbosity" and involves much doubt.

and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph and the negative thereof, by any means or of any size, whether made in the Queen's dominions or not, for the term of his life and seven years after his death, but this right does not affect the right of any other person to represent any scene or object represented by any such painting.

If any painting or drawing, or the negative of any photograph, hereinbefore mentioned, is made by the author for or on behalf of any other person for a good or valuable consideration, such person is entitled to copyright therein.

If any such thing is, after the 29th July, 1862, for any such consideration transferred for the first time by the owner to any other person, the owner may, by an agreement in writing signed at or before the time of such transfer by the transferee, reserve the copyright to himself, or he may, by an agreement in writing signed by himself or by his agent duly authorized, transfer the copyright to such transferee. (If no such agreement in writing is made, the copyright in such painting ceases to exist.)

ARTICLE 22.

Copyright in Engravings.

Every one has for 28 years from the first publishing thereof the sole right and liberty of multiplying, by any means whatever, copies of any print of whatever subject which he has—

(*a*) Invented or designed, graved, etched, or worked in mezzotinto or chiaro-oscuro ; or which he has—

(*b*) From his own work, design, or invention, caused or procured to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro ; or which he has—

(*c*) Engraved, etched, or worked in mezzotinto or chiaro-oscuro, or caused to be engraved, etched, or worked from any picture, drawing, model, or sculpture, either ancient or modern :

Provided that such prints are truly engraved with the name of the proprietor on each plate and printed on every print.

Prints taken by lithography and other mechanical processes are now upon the same footing as engravings.

Article 23.

The Registration of Books.

A book of registry must be kept at Stationers' Hall, in which the proprietor of copyright in any book, or of the right of representation of any dramatic piece or musical composition, whether in manuscript or otherwise, may upon the payment of a fee of 5*s*. enter in the register the particulars stated in the form given in the foot-note.[1]

The proprietor of the copyright in any encyclopædia, review, magazine, or periodical work, or other work published in a series, is entitled to all the benefit of registration on entering in the book of registry the title of such work, the time of publishing the first volume or part, and the name and place of abode of the proprietor and publisher when the publisher is not also the proprietor.

Every such registered proprietor may assign his interest or any portion of his interest by making an entry in the said book of such assignment in the form given in the foot-note.[2]

Licenses affecting any such copyright may also be registered in the said register.

Any person aggrieved by any such entry may apply to the High Court, or any judge thereof, to have such entry expunged or varied, and the court may make such order for that purpose as it thinks just.

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[1] (*a*) Original Entry of Proprietorship of Copyright of a Book.

Time of making the Entries.	Title of the Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.

[2] (*b*) Form of Entry of Assignment of Copyright in any Book previously registered.

Date of Entry.	Title of Book. Set out the Title and refer to the Page of the Registry Book in which the Original Entry of the Copyright thereof is made.	Assignor of Copyright.	Assignee of Copyright.

It is a misdemeanor to make or cause to be made any false entry in such book wilfully.

The officer in charge of the book is bound to give sealed and certified copies of the entries contained therein on payment of a fee of 5*s*., and such copies are *primâ facie* proof of the matters alleged therein.

The fee for the registration of university copyrights and for copies of them is 6*d*., and they may be inspected without fee.

Article 24

Effect of Registration in case of Books.

No proprietor of copyright in any book can take any proceedings in respect of any infringement of his copyright unless he has, before commencing such proceedings, caused an entry to be made in the said register under the last article.

The omission to make such entry does not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof.

Article 25.

Registration in respect of Dramatic Copyright.

The remedies which the proprietor of the sole liberty of representing any dramatic piece has under Article 32 are not prejudiced by an omission to make any entry respecting such exclusive right in the said register.

Article 26.

Registration of Copyright in Paintings, etc.

A book entitled the Register of Proprietors of Copyright in Paintings, Drawings, and Photographs, must be kept at the Hall of the Stationers' Company.

A memorandum of every copyright to which any person is entitled under Article 21, and of every subsequent assignment of any such copyright, must be entered therein ; such memorandum must contain a statement of :

(*a*) The date of such agreement or assignment ;
(*b*) The names of the parties thereto ;
(*c*) The name and place of abode of the person in whom such

copyright is vested by virtue thereof, and of the author of the work ;

(*d*) A short description of the nature and subject of such work, and, if the person registering so desires, a sketch, outline, or photograph of the work in addition thereto.

No proprietor of any such copyright is entitled to the benefit of 25 & 26 Vict. c. 68 until such registration, and no action can be maintained, nor any penalty be recovered, in respect of anything done before registration ; but it is not essential to the validity of a registered assignment that previous assignments should be registered.

The three paragraphs of Article 23, relating to the correction of errors in the register, the making of false entries, and the giving of certificates, apply also to the book in this article mentioned.

ARTICLE 27.

Penalties for infringing Copyright in Books.

Every one is liable to an action who, in any part of the British dominions—

(*a*) Prints or causes to be printed, either for sale or exportation, any book in which there is subsisting copyright, without the consent in writing of the proprietor ;

(*b*) Imports for sale or hire any such book so having been unlawfully printed from parts beyond the sea ;

(*c*) Knowingly sells, publishes, or exposes to sale or hire, or causes to be sold, published, or exposed to sale or hire, or has in his possession for sale or hire any book so unlawfully printed or imported.

The action must be brought in a Court of Record and within twelve months after the offence.

ARTICLE 28.

Special Penalty for unlawfully importing Copyright Books.

The following consequences are incurred by every one, except the proprietor of the copyright of any book, or some person authorized by him, who imports or brings, or causes to be imported or brought [for sale or hire], into the United Kingdom, or into any other part of the British dominions, any printed book in which there is copyright,

first composed, written, or printed [and published] in any part of the United Kingdom, and reprinted in any country or place out of the British dominions ;

Or, who knowingly sells, publishes, or exposes to sale, or lets to hire, or has in his possession for sale or hire any such book, that is to say :

(*a*) Every such book is forfeited, and must be seized by every officer of Customs or Excise, and in that case must be destroyed by such officer.

(*b*) The person so offending must, upon conviction before two justices, be fined 10*l.* for every such offence, and double the value of every copy of any such book in respect of which he commits any such offence.

Provided that if the Legislature or proper legislative authorities in any British possession pass an Act or make an Ordinance, which, in the opinion of Her Majesty, is sufficient for the purpose of securing to British authors reasonable protection within such possessions, Her Majesty may approve of such Act, and issue an Order in Council declaring that so long as the provisions of such Act remain in force, the prohibition hereinbefore contained shall be suspended so far as regards such colony.

ARTICLE 29.

Pirated Copies forfeited to Registered Owner.

All copies of any book in which there is a duly registered copyright unlawfully printed or imported without the consent in writing under his hand of the registered proprietor of the copyright are 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.

ARTICLE 30.

Copies of Books to be delivered for Public Libraries, and Penalties for Non-delivery.

A copy of the first edition and of every subsequent edition containing additions and alterations of every book published in any part of the British dominions must be delivered at the British Museum

between 10 A. M. and 4 P. M. on some week-day, other than Ash Wednesday, Good Friday, or Christmas Day, within a month after its publication, if it is published in London, within three months if it is published in the United Kingdom elsewhere than in London, and within twelve months if it is published in any other part of the British dominions.

It may be delivered to any person authorized by the Trustees of the British Museum to receive it, and such person must give a receipt in writing therefor.

Copies of every edition of every book published must, if demanded, be delivered to an officer of the Stationers' Company for each of the following libraries: the Bodleian Library, the Cambridge University Library, the Advocates Library at Edinburgh, and the Library of Trinity College, Dublin.

The demand, in writing, must be left at the place of abode of the publisher, within twelve months after the publication of the book, and the copies must be delivered within one month after such demand, either to the Stationers' Company or to the said libraries, or to any one authorized to receive the copies on their behalf.

The copy for the British Museum must be bound, stitched, or sewed together, and upon the best paper on which the book is printed.

The copies for the other libraries mentioned must be upon the paper of which the largest number of copies of the book or edition are printed for sale, in the like condition as the copies prepared for sale by the publisher.

The copies must in each case include all maps and prints belonging thereto.

Any publisher making default in such delivery as is hereinbefore mentioned, is liable to a maximum penalty of 5*l.* and the value of the copy not delivered. This penalty may be recovered upon summary proceeding before two justices of the peace, or a stipendiary magistrate, at the suit of the librarian, or other officer properly authorized, of the library concerned.

ARTICLE 31.

Penalty for Offences against University Copyright.

Every one incurs the penalties hereinafter mentioned who does any of the following things with any book of which the copyright is

vested in any university or college under Article 11; (that is to say,)

(*a*) Who prints, reprints, or imports, or causes to be printed, reprinted, or imported any such book.

(*b*) Knowing the same to be so printed or reprinted, sells, publishes, or exposes to sale, or causes to be sold, published, or exposed to sale, any such book.

The penalties for the said offences are:

(*a*) The forfeiture of every sheet being part of such book to the university or college to which the copyright of such book belongs, which university or college must forthwith cancel and make waste paper of them.

(*b*) One penny for every sheet found in the custody of such person printing or printed, published or exposed to sale, half to go to the Queen, and half to the informer.

None of the penalties aforesaid can be incurred—

Unless the title to the copyright of the book in respect of which the offence was committed was registered either before 24th June, 1775, or within two months after the time when the bequest or gift of the copyright of any book came to the knowledge of the vice-chancellor of any university or the head of any college or house of learning;

Or unless the clerk of the Stationers' Company, being duly required to make the entry, refuses to do so, and the university advertises such refusal in the *Gazette*, in which case the clerk incurs a penalty of 20*l.* to the proprietors of the copyright.

The penalty must be sued for in the High Court.

ARTICLE 32.

Penalty for performing Dramatic Pieces.

Every person who, without the consent in writing of the author or other proprietor first obtained, represents or causes to be represented at any place of dramatic entertainment in the British dominions any dramatic piece or musical composition is liable to pay to the author or proprietor for every such representation an amount not less than 40*s.*, or the full amount of the benefit or advantage arising from

such representation, or the injury or loss sustained by the plaintiff therefrom, whichever may be the greater damages.

The penalty may be recovered in any court having jurisdiction in such cases.

Article 33.

Penalty for Infringement of Copyright in Works of Art.

Every one (including the author, when he is not the proprietor) commits an offence who, without the consent of the proprietor of the copyright therein, does any of the following things with regard to any painting, drawing, or photograph in which copyright exists; (that is to say,)

(*a*) Repeats, copies, colorably imitates, or otherwise multiplies, for sale, hire, exhibition, or distribution, any such work; or the design thereof;

(*b*) Causes or procures to be done anything mentioned in (*a*);

(*c*) Sells, publishes, lets to hire, exhibits, or distributes, offers for any such purposes, imports into the United Kingdom any such repetition, copy, or other imitation of any such work or of the design thereof, knowing that it has been unlawfully made;

(*d*) Causes or procures to be done, any of the things mentioned in (*c*);

(*e*) Fraudulently signs or otherwise affixes or fraudulently causes to be signed or otherwise affixed to or upon any painting, drawing, or photograph or the negative thereof, any name, initials, or monogram.

(*f*) Fraudulently sells, publishes, exhibits, or disposes of, or offers for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work;

(*g*) Fraudulently utters, disposes of, or puts off, or causes to be uttered or disposed of, any copy or colorable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there is subsisting copyright therein or not, as having been made or executed by the author or makers of the original work from which such copy or imitation has been taken;

(*h*) Makes or knowingly sells, publishes, or offers for sale, any painting, drawing, or photograph which after being sold or parted with by the author or maker thereof, has been altered by any other person by addition or otherwise, or any copy of such work so altered, or of any part thereof, as the unaltered work of such author or maker during his life and without his consent.

Every one who commits any of the offences (*a*), (*b*), (*c*), or (*d*), forfeits to the proprietor of the copyright for the time being a sum not exceeding 10*l*., and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies.

Every one who commits any of the offences (*e*), (*f*), (*g*), or (*h*) forfeits to the person aggrieved a sum not exceeding 10*l*., or double the price, if any, at which all such copies, engravings, imitations, or altered works were held or offered for sale, and all such copies, engravings, imitations, and altered works are forfeited to the person whose name, initials, or monogram is fraudulently signed or affixed, or to whom such spurious or altered work is fraudulently or falsely ascribed; provided that none of the last-mentioned penalties are incurred unless the person to whom such spurious or altered work is so fraudulently ascribed, or whose initials, name, or monogram is so fraudulently or falsely ascribed, was living at or within 20 years next before the time when the offence was committed.

The penalties hereinbefore specified are cumulative, and the person aggrieved by any of the acts before mentioned may recover damages in addition to such penalties, and may in any case recover and enforce the delivery to him of the things specified, and recover damages for their retention or conversion.

The penalties may be recovered either by action or before two justices or a stipendiary magistrate.

ARTICLE 34.

Importation of pirated Works of Art prohibited.

The importation into the United Kingdom of repetitions, copies, or imitations of paintings, drawings, or photographs wherein, or in the design whereof, there is an existing copyright under 25 & 26 Vict. c. 68, or of the design thereof, or of the negatives of photo-

graphs, is absolutely prohibited, except by the consent of the proprietor of the copyright or his agent authorized in writing.

ARTICLE 35.

Penalty for pirating Lectures.

Every person commits an offence who, having obtained or made a copy of any lecture, prints or otherwise copies and publishes the same, or causes it to be so dealt with without the leave of the author or his assigns ;

Or, who, knowing it to have been printed or copied or published without such consent, sells, publishes, or exposes it to sale or causes it to be so dealt with ;

Every person who commits such offence forfeits such printed or copied lectures, together with one penny for every sheet thereof found in his custody, half to the Queen and half to the informer.

The printing and publishing of any lecture in any newspaper without leave is an offence within the meaning of this article.

This section does not apply to the publication of lectures which have been printed and published as books at the time of such publication.

The penalty must be sued for in the High Court.

ARTICLE 36.

Penalty for pirating Sculptures.

Every person is liable to an action for damages who makes or imports, or causes to be made or imported, or exposed to sale, or otherwise disposed, anything of which the copyright is protected by the 54 Geo. c. 56.

This article does not apply to any person who purchases the right or property of anything protected by the said Act of the proprietor by a deed in writing, signed by him with his own hand in the presence of and attested by two credible witnesses.

ARTICLE 37.

Penalty for pirating Prints and Engravings.

Every person commits an offence who, without the consent of the proprietor in writing, signed by him and attested by two witnesses—

(*a*) In any manner copies and sells, or causes or procures to be copied and sold, in whole or in part, any copyright print; or

(*b*) Prints, reprints, or imports for sale any such print, or causes or procures any such print to be so dealt with; or

(*c*) Knowing the same to be so printed or reprinted without the consent of the proprietors publishes, sells, exposes to sale, or otherwise disposes of any such print, or causes or procures it to be so dealt with.

Every person committing any such offence is liable to an action for damages in respect thereof, and forfeits to the proprietor, who must forthwith cancel and destroy the same, the plate on which any such print is copied, and every sheet being part of such print, or whereon such print is copied, and also five shillings for every sheet found in his custody in respect of which any such offence is committed, half to the Queen and half to the informer.

The penalty must be sued for in the High Court within six months after the offence.

Article 38.

International Copyright may be granted in certain Cases.

Copyright in books, dramatic pieces and musical compositions, paintings, drawings, and photographs, sculptures, engravings, and prints, first published in foreign countries, may be granted to the authors of such works, in the manner, to the extent, and on the terms hereinafter mentioned, if what Her Majesty regards as due protection has been secured by the foreign country in which such works are first published for the benefit of persons interested in similar works first published in Her Majesty's dominions.

Article 39.

Orders in Council as to International Copyright.

Her Majesty may by Order in Council (stating as the ground for issuing the same that such protection as aforesaid has been secured as aforesaid) direct that the authors of all or any of the things mentioned in the last Article, being first published in any such foreign country as is mentioned in that Article, shall have copyright therein in Her Majesty's dominions for a term, to be specified in the Order,

not exceeding the term of copyright which authors of things of the same kind first published in the United Kingdom are entitled to by law at the date of the Order.

The terms so to be specified and the terms for registration and delivery of copies of books as hereinafter mentioned may be different for works first published in different foreign countries, and for different classes of such works.

ARTICLE 40.

Term of International Copyright.

The authors of the works specified in the Order are entitled to copyright therein as follows—

Under 5 & 6 Vict. c. 45, and the other Acts relating to copyright in books, except the sections relating to the deposit of copies in certain libraries, if the works specified in the Order are books;

Under the Engraving Copyright Acts, the Sculpture Copyright Acts, or the Paintings Copyright Act respectively, if the works specified in the Order are prints, engravings, articles of sculpture, pictures, drawings, or photographs;

Under the Dramatic Copyright Acts, provided that such copyright does not extend to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country, if the works specified in the Order are dramatic pieces or musical compositions, unless the Order directs that it shall extend to them.

Subject in each case to such limitations as to the duration of the right as may be specified in the Order, and subject also to the provisions hereinafter contained.

ARTICLE 41.

No Work Copyright without Registration.

No author of any such work as is referred to in this chapter is entitled to any benefit under the provisions contained in it, unless such work is registered, and a copy of the first edition and of every subsequent edition containing additions or alterations, but of no other editions of it, is delivered at the Hall of the Stationers' Company,

within a time to be specified in the Order of Council, and in the manner prescribed in the schedule in the footnote hereto.[1]

The three paragraphs preceding the last paragraph of Article 23 apply to such entries.

The copy so delivered must within one month of its delivery be deposited in the British Museum by the officer of the Stationers' Company.

Article 42.

No International Copyright in Newspaper Articles.

Articles of political discussion published in any newspaper, or

[1] Schedule.

The register must show, if the work is—				
A book.....	The title.....	Name and place of abode of author (unless the book is anonymous, 7 & 8 Vict. c. 12. s. 7).	Name and place of abode of proprietor of copyright.	Time and place of first publication.
Dramatic piece or musical composition printed.	Do.....	Do.....	Do.....	Do. and time and place of first representation or performance.
Dramatic piece or musical composition in MS.	Do.....	Do,.....	Do.....	Do.
Print.....	Do.....	Do. of inventor, designer, or engraver.	Do.....	Do. First publication in foreign country.
Sculpture.....	Descriptive title	Do, of maker.....	Do.....	Do.
Painting, Drawing, or photograph.	Short description of nature and subject of work, and a sketch outline or photograph thereof, if the person registering pleases.	Name and abode of author.	Do.	

periodical, in any foreign country may, if the source from which the same are taken is acknowledged, be republished or translated in any newspaper or periodical in this country, notwithstanding anything hereinbefore or hereinafter contained.

Articles on other subjects so published may be dealt with in the same manner on the same condition, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case such publication is to be regarded as a book within the meaning of Article 5.

ARTICLE 43.

Translations of Foreign Books.

Her Majesty may, by Order in Council, direct that the authors of books published, and of dramatic pieces first publicly represented, in the foreign countries referred to in Article 38, may, for a period not exceeding five years from the publication of an authorized translation thereof, prevent the publication in the British dominions of any unauthorized translation thereof, and, in the case of dramatic pieces, the public representation of any such translation.

Upon the publication of such Order the law in force for the time being for preventing the infringement of copyright, and the sole right of representing dramatic pieces, in the British dominions applies to the prevention of the publication of such unauthorized translation.

Provided that no such Order prevents fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

But Her Majesty may by Order in Council direct that this proviso shall not apply to the dramatic pieces protected under the original Order in Council.

If a book is published in parts, each part is regarded, for the purposes of this article, as a separate book.

ARTICLE 44.

Conditions of International Copyright in Translations.

No author, and no personal representative of any author, is entitled to the benefit of the provisions of the last preceding article unless he complies with the following requisitions :

(*a.*) The original work from which the translation is to be made must be registered, and a copy thereof deposited in the United Kingdom, in the manner required for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country :

(*b.*) The author must notify on the title-page of the original work, or, if it is published in parts, on the title-page of the first part, or, if there is no title-page, on some conspicuous part of the work, that it is his intention to reserve the right of translating it :

(*c.*) The translation sanctioned by the author, or a part thereof, must be published either in the country mentioned in the Order in Council by virtue of which it is to be protected, or in the British dominions, not later than one year after the registration and deposit in the United Kingdom of the original work, and the whole of such translation must be published within three years of such registration and deposit :

(*d.*) Such translation must be registered, and a copy thereof deposited in the United Kingdom, within a time to be mentioned in that behalf in the Order by which it is protected, and in the manner provided by the said International Copyright Act for the registration and deposit of original works :

(*e.*) In the case of books published in parts, each part of the original work must be registered and deposited in this country, in the manner required by the said International Copyright Act, within three months after the first publication thereof in the foreign country :

(*f.*) In the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work :

(*g.*) The above requisitions apply to articles originally published in newspapers or periodicals, if the same be afterward published in a separate form, but not to such articles as originally published.

ARTICLE 45.

Importation of Pirated Works.

The importation into any part of the British dominions of copies of any work of literature or art, the copyright in which is protected

by the provisions of this chapter, and of unauthorized translations thereof, is absolutely prohibited, unless the registered proprietor of the copyright therein, or his agent authorized in writing, consents, and the provisions of Article 28 apply to the importation of such copies into any part of the British dominions.[1]

[1] Since the preparation by Sir James Stephen of this digest, the provisions in the above articles referring to International Copyright have been modified by the acceptance on the part of Great Britain of the provisions of the Convention of Berne. This Convention was declared to be in force between Great Britain and the other States which were parties to it, by an order in Council dated December 5th, 1887.

The text of the Convention is given later in this volume.

EDITOR.

XIV.

EXTRACT FROM THE REPORT OF THE BRITISH COMMISSION APPOINTED IN 1878 BY THE QUEEN, FOR THE INVESTIGATION OF THE SUBJECT OF COPYRIGHT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners, appointed to make inquiry with regard to the laws and regulations relating to Home, Colonial, and International Copyright, humbly submit to Your Majesty this our Report—

1. We deem it expedient to consider the Home, Colonial, and International divisions of the subject, in the order in which they are mentioned in Your Majesty's Commission, and thus first to notice

HOME COPYRIGHT.

2. The first object to which we directed our attention in relation to Home Copyright, was to obtain a clear and systematic view of the law in force upon the subject in this country.

3. We find that it relates to copyright in seven distinct classes of works, namely,—

(1.) Books;
(2.) Musical compositions;
(3.) Dramatic pieces;
(4.) Lectures;
(5.) Engravings and other works of the same kind;
(6.) Paintings, drawings, and photographs; and
(7.) Sculpture.

4. The law as to copyright in designs did not appear to us to fall within the terms of Your Majesty's Commission. It differs in many important particulars from the other matters which we have mentioned, and it has been recently made the subject of legislation.

5. The law of England, as to copyright in the matters above enumerated, 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.

6. Our colleague, Sir James Stephen, has reduced this matter to the form of a Digest, which we have annexed to our Report, and which we believe to be a correct statement of the law as it stands.[1]

7. The first observation which a study of the existing law suggests is that its form, as distinguished from its substance, seems to us bad. The law is wholly destitute of any sort of arrangement, incomplete, often obscure, and even when it is intelligible upon long study, it is in many parts so ill-expressed that no one who does not give such study to it can expect to understand it.

8. The common law principles which lie at the root of the law have never been settled. The well-known cases of Millar *vs.* Taylor, Donaldson *vs.* Becket, and Jeffries *vs.* Boosey, ended in a difference of opinion amongst many of the most eminent judges who have ever sat upon the Bench.

9. The fourteen Acts of Parliament which deal with the subject were passed at different times between 1735 and 1875. They are drawn in different styles, and some are so drawn as to be hardly intelligible. Obscurity of style, however, is only one of the defects of these Acts. Their arrangement is often worse than their style. Of this the Copyright Act of 1842 is a conspicuous instance.

10. The piecemeal way in which the subject has been dealt with affords the only possible explanation of a number of apparently arbitrary distinctions between the provisions made upon matters which would seem to be of the same nature. Thus—

(*a*.) The term of copyright in books, and in printed and published dramatic pieces and music, is the life of the author and seven years after his death, or 42 years from the date of publication, whichever is the longer.

[1] See preceding chapter.

(*b.*) The term of copyright in music not printed and published but publicly performed is doubtful, and may perhaps be perpetual.

(*c.*) The term of copyright in a lecture not printed and published but publicly delivered is wholly uncertain. The term of copyright in a lecture printed and published is the longer of the two periods of 28 years and the life of the author. It may perhaps be doubted whether the term of copyright in a book consisting of a collection of lectures would differ from the term of copyright in other books.

(*d.*) The term of copyright in engravings, etc., is 28 years from publication; in paintings, etc., the artist's life and seven years; in sculpture, 14 years from the first "putting forth or publishing" of the work (an indefinite phrase), 14 years more being given to the sculptor if he is living at the end of the first term.

11. Other singular distinctions exist as to the law relating to registration of copyrights. No system of registration is provided for dramatic copyright, or for copyright in lectures or engravings. Such a system is provided for copyright in books and paintings, but its effect varies. Registration must in either case precede the taking of legal proceedings for an infringement of copyright, but after registration the owner of copyright in a book may, while the owner of copyright in a painting may not, sue the persons who infringed his copyright before registration.

12. The law is not only arbitrary in some points, but is incomplete and obscure in others. The question whether there is such a thing as copyright at common law, apart from statute, has never been decided, and has several times led to litigation. Some sort of copyright has been recognized in newspapers, but it is impossible to say what it is. It has been decided on the one hand that a newspaper is not a "book," within the meaning of the Copyright Act of 1842, and on the other hand that there is some sort of copyright in newspapers, yet the courts have always leaned to the opinion that there is no copyright independent of statute;—at all events they have never positively decided that there is.

13. Upon all these grounds we recommend that the law on this subject should be reduced to an intelligible and systematic form. This may be effected by codifying the law, either in the shape in

which it appears in Sir James Stephen's Digest, or in any other which may be preferred; and our first, and, we think, one of our most important, recommendations is that this should be done. Such a process would, amongst other things, afford an opportunity for making such amendments in the substance of the law as may be required.

14. We now proceed to discuss the subject in detail, following the order of the Digest, and with reference to it. In the margin of the Digest we have, wherever it was practicable, noted the alterations which we recommend, so that it shows both what the law in our opinion is, and what in our opinion it ought to be.

Unpublished Works.

15. With respect to unpublished documents or works of art, we do not suggest any alteration in the law.

Necessity for Copyright.—The Royalty System.

16. With reference to copyright generally, we do not propose to enter upon the history of the Copyright Laws, nor to discuss the various questions that have from time to time been raised in connection with the principle involved in those laws. It is sufficient for the present purpose to refer to the above-mentioned cases of Millar *vs.* Taylor, Donaldson *vs.* Becket, and Jeffries *vs.* Boosey, and to the debates that have taken place in Parliament, in which the arguments on one side and the other are fully set forth. Taking the law as it stands, we entertain no doubt that the interest of authors and of the public alike requires that some specific protection should be afforded by legislation to owners of copyright; and we have arrived at the conclusion that copyright should continue to be treated by law as a proprietary right, and that it is not expedient to substitute a right to a royalty defined by statute, or any other right of a similar kind.

17. We make special reference to a system of royalty, because, in the course of our inquiry, it has been suggested that it would be expedient in the interest of the public, and possibly not disadvantageous to authors, to adopt such a system in lieu of the existing law of copyright; and although the change has hardly been seriously urged upon us as a practical measure, except by one witness, it is of so important a character that we desire to offer a few observations upon it.

18. The royalty system may be briefly described as a system under which the author of a work of literature or art, or his assignee, would not have the exclusive right of publication, but any person would be entitled to copy or republish the work on paying or securing to the

owner a remuneration, taking the form of a royalty or definite sum prescribed by law, payable to the owner for each copy published.

19. The principal reason urged for the adoption of this system is the benefit that it is supposed would arise to the public from the early publication of cheap editions. It is now the usual practice of publishers of the best class of literary works to publish first an expensive edition, then, after a period of greater or less duration, according to the sale of the work, an edition at a medium price, and finally, but often a good many years later, what are called popular editions, at low prices. The advocates of the royalty system say that, if it were adopted, the competition that would arise would compel the original publishers to publish at cheap prices;—that thus the public would be able to procure books at once which, under the present system, are kept beyond their reach by high prices;—and that the advantage to authors would be as great or greater than it now is, since an extended sale might be expected to follow publication at lower prices, and the royalty would be paid them even though their works proved failures in a commercial point of view.

20. The opponents of the system say that it is notorious that where one book pays the publisher for his outlay and risk, many are complete failures and never pay even the cost of publishing;—that, if the royalty system were established, no publisher would take the risk of the first publication, knowing that, if the work proved successful, he would immediately have his reward snatched from his grasp by the numerous publishers who would republish and undersell him;—that it would be impossible for publishers to remunerate authors at the rate they do now;—that authors would lose the fair remuneration they now obtain, and would often be deterred from writing;—and that many works, especially those involving long preparation and large cost to the author or publisher, which would be published under the present system, could never be brought out, on account of the increased risk that would ensue from the royalty system.

21. To meet these objections it has been suggested that there should be a limited period from first publication, and that during such period republication by any person, other than the author and publisher, should not be allowed.

22. We have thus briefly noted some of the arguments for and against the royalty system, but we think it unnecessary to discuss the subject in greater detail, or to point out the practical difficulties which

the introduction of such a scheme would necessarily involve, or how those difficulties might possibly be more or less obviated, because we are unable, after carefully considering the subject, to recommend for adoption this change in the existing law. We venture to add, in confirmation of our view, that while the principle of copyright has been recognized in almost every foreign State, in no one country has the system of royalty been adopted, except in a modified form in Italy, as pointed out in paragraph 39.

The Term of Copyright.—Books.

23. The term of copyright is the next subject to which our attention has been called. We have already used this as an illustration of the anomalies and distinctions which have grown up in the law of copyright. The term of copyright in books is for the life of the author and 7 years after his death, or for 42 years from the date of publication, whichever period may happen to expire last.

24. We purpose for the present to confine our remarks to copyright in books and other literary works comprehended under that term—that is to say, "every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan, separately published."

25. It has been urged against the present regulations for the term of copyright in books—1st. That the period is not long enough :—2dly. That copyrights in works by the same author generally expire at different dates :—3dly. That, owing to the difficulty of verifying the date of publication, it is scarcely possible to ascertain the termination of the copyright. In addition to these objections, others have been stated which it is needless for us to specify in this place.

26. We have already stated that we consider some kind of protection in the nature of copyright desirable ; and it appears to us that the existing terms are not more than sufficient, if indeed they are sufficient, to secure that adequate encouragement and protection to authors which the interests of literature, and therefore of the public, alike demand from the State. We proceed, therefore, to call attention to the three objections above mentioned, to the present duration of copyright.

27. First, the period is said not to be long enough. The chief reasons for this assertion are that many works, and particularly those of permanent value, are frequently but little known or appreciated

for many years after they are published, and that they do not command a sale sufficient to remunerate the authors until a considerable part of the term of copyright has expired. Some works, as, for instance, novels by popular authors, command an extensive sale and bring to the authors a large remuneration at once, but the case is altogether different with others, such as works of history, books of a philosophical or classical character, and volumes of poems. In some instances works of these kinds have been known to produce scarcely any remuneration, until the authors have died and the copyrights have nearly expired. It is also urged that in the case of many authors who make their living by their pens, their families are left without provision shortly after their deaths, unless their works become profitable very soon after they are written.

28. These arguments and others of a like kind, which will be found not only in the evidence we have taken, but in the debates in Parliament, are in our opinion of great weight, but on the other hand we do not lose sight of the public interest, which, it has been urged upon us, would be prejudiced by prolongation of copyright. Greater freedom of trade and competition are said to be desirable, that books may be more abundant in supply and cheaper in price.

29. The second objection to the present duration of copyright is, that copyrights belonging to the same author generally expire at different dates. That it is well founded is manifest, for if an author writes several works, or one work in several volumes, which are published at different times, as is frequently the case, the copyrights will expire forty-two years from the respective dates of publication, unless the author happens to live so long that the period of seven years after his death is beyond forty-two years from the publication of his latest work or volume.

30. Under the present system, moreover, copyright in an earlier edition expires before copyright in the amendments in a later edition of the same work. We have had evidence that in one case the first and uncorrected edition of an important work was republished before the expiration of the copyright in the later and improved editions. But if the alteration in the existing term of copyright, which we suggest hereafter, were adopted, namely, that it should be for the life of the author and a fixed number of years after his death, all the copyrights of the same author would expire at the same date, and it would then be open to any publisher to put out a complete edition of all the author's works, with all the improvements and emendations

which have appeared in the last edition, in a uniform shape and at a uniform price.

31. The third objection to the present duration of copyright is that it is frequently difficult, if not impossible, to ascertain its termination, owing to the fact that the expiration of the period depends upon the time of publication. It is in most cases easy to ascertain the date of a man's death, but frequently impossible to fix with any certainty the date of the publication of a book. Under the present law it is uncertain what constitutes publication; but whatever may be a publication sufficient in law to set the period of copyright running, it generally takes place in such a manner that the precise date is not noted even if known. It is sometimes said that the date printed in the title-page of a book should be considered the date of publication, but books are frequently post-dated, and in many cases bear no date at all. This objection is one which, in our opinion, should be removed.

32. The remedy which suggests itself to us as the most likely to effect all the desired objects is, that instead of the period of copyright being, as at present, a certain number of years from publication, it should last for the life of the author and a fixed number of years after his death.

33. We have been influenced in advising this change in the law by the consideration that it will have the effect of assimilating the term of copyright in books to that of copyright in works of fine art, the duration of which, for reasons to be hereafter stated, is for the life of the author and a certain number of years after his death. And further, as this mode of computing the duration of copyright has been adopted by the great majority of foreign countries, the change in our law may facilitate the making of international copyright arrangements with other States.

34. Before proceeding further on this point we think it right to notice a suggestion that has been made to us, on the assumption that the duration of copyright would continue to be for a fixed period of years. It has been proposed that, instead of the present term of 42 years from publication, the original right should last for 28 years only, but that it should be renewable for a further period of 14 or 28 years by registration by the author or his personal representatives; and this is, we learn, the law in the United States and Canada. The reasons advanced for this proposal are, that if copyrights are sold, publishers, as a rule, will not give more for the whole of the present

term of 42 years than they would if there were only 28 years that they could purchase; that authors could thus, without any pecuniary loss, sell their copyrights for the first period only, and, if their works proved of great and lasting value, would not have finally parted with all their interest, but would be entitled to the second term of 14 years, by which they or their families would receive a due reward for their labors.

35. There is, no doubt, considerable force in the argument, but we would observe that the advantages held out by the change of law would not be secured unless, first, the copyright is sold, and secondly, the author is debarred by law, not only from selling, in the first instance, more than the copyright in the term of 28 years, but even from giving any binding undertaking to secure to the purchaser, either by registration or otherwise, the advantages of the subsequent term of 14 years.

36. Now, whatever may be the practice in the United States and Canada, we are satisfied from the evidence that in this country many authors do not sell their copyrights, and in such cases no advantage would arise from the proposed change. And, with respect to the second point, we are not satisfied that the advantages expected from the scheme counterbalance the disadvantage of interfering by law with freedom of contract.

37. Should our suggestion, that copyright in future should endure for the life of the author and a fixed number of years after his death, be adopted, the proposal to divide the present, or any other fixed term is of course inapplicable.

38. Assuming, therefore, that the duration of copyright is to be for the life of the author and a certain number of years after his death, we have next to consider what the number of years should be. According to the existing law, the period in the case of books is life and 7 years, or 42 years from publication, if that period is the last to expire; and the period for copyright in paintings, drawings, and photographs has been fixed at life and seven years.

39. We find considerable variety in the terms fixed in other countries, but, putting aside the United States, which seem to have adopted our existing term with modifications, we find that the more important nations have adopted terms longer than our own. Thus, the term in France is the life of the author and 50 years; in Belgium, life and 20 years; in Germany, life and 30 years; in Italy, life and 40 years, with a second term of 40 years, during which other persons

than the proprietor may publish a work on payment of a royalty to him; in Russia, life and 50 years; in Spain, life and 50 years; in Portugal, life and 50 years; and in Holland, life and 20 years. These terms are subject to sundry modifications and conditions which it is unnecessary for us to enter into, but while we consider it expedient that the existing term of copyright should be altered, we think that the terms fixed by the nations we have referred to are in some cases excessive and unnecessary.

40. Upon the whole we suggest the term adopted by Germany, viz., life and 30 years, as most suitable for Your Majesty's dominions. We are, however, of opinion that, in the event of an international agreement being concluded, by which a common term is fixed for copyright in all countries, power should be given to Your Majesty to adopt, by Order in Council, in lieu of the above term of life and 30 years, the term fixed by such international arrangement.

41. We further suggest that in the case of posthumous and anonymous works and of encyclopædias, the period should be 30 years from the date of deposit for the use of the British Museum. In the case of anonymous works the author should be allowed, during the period of 30 years, by printing an edition with his name attached, to secure the full term of life and 30 years.

42. Should these suggestions be adopted, we think that it would be desirable that copyrights in existence at the time of the passing of the Act should be extended, subject to a proviso like the one contained in section 4 of the Copyright Act of 1842, guarding against the alteration of existing contracts between authors and publishers. In no case should the duration of existing copyrights be abbreviated.

43. One other point relating to the term of copyright remains, to which we wish to call attention. It has been provided that in the case of encyclopædias, reviews, magazines, periodical works, and works published in a series of books, or parts, for which various persons are employed by the proprietor to write articles,—if the articles are written and paid for on the terms that the copyright therein shall belong to the proprietor of the work, the same rights shall belong to him as to the author of a book, except in one particular, in which particular a difference is made between essays, articles, or portions of reviews, magazines, or other periodical works of a like nature and articles in encyclopædias. In the case of the former (but not of encyclopædias) a right of separate publication of the articles reverts to the author after 28 years for the remainder of the period of copy-

right, and during the 28 years the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns. Authors can, however, by contract reserve to themselves during the 28 years a right of separate publication of the articles they write, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical. We think some modification in this provision is required as regards the time when the right of separate publication should revert to the authors of the articles, and that three years should be substituted for twenty-eight. As we have reason to believe that proprietors of periodicals have not, as a rule, insisted on the right given them by the existing law, we think there would be no objection to making this provision retroactive.

44. It has been pointed out to us that, under the existing law, the author of an article in a magazine or periodical cannot, until the right of separate publication reverts to him, take proceedings to prevent piracy of his work; so that, unless the proprietor of the magazine or periodical be willing to take such proceedings (which may very likely not be the case when the right of the author is about to revive), the result would practically be to deprive the author of the benefit of the right reserved to him. We recommend, therefore, that during the period before the right of separate publication reverts to the author, he should be entitled, as well as the proprietor of the magazine or periodical, to prevent an unauthorized separate publication.

University Copyright.

45. In connection with the subject of the term of copyright we have to notice the perpetual copyrights possessed by certain universities and schools, which form exceptions to the general law by which copyright is limited to a definite number of years.

46. We find that the Universities of Oxford, Cambridge, Edinburgh, Glasgow, St. Andrews, and Aberdeen, each college or house of learning at the Universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester have forever the sole liberty of printing and reprinting all such books as have been, or hereafter may be bequeathed or given to them, or in trust for them by the authors thereof, or by their representatives, unless they were given or bequeathed for a limited term.

47. To ascertain the value of this exceptional right to the institu-

tions interested, we communicated with the authorities at the Universities of Oxford and Cambridge, and asked the number of copyrights possessed by them in perpetuity under this provision of the law. We found that the University of Oxford possesses six copyrights and that the University of Cambridge has none.

48. This fact shows that the privilege, which is by no means of recent origin, is of very little real value, and as it is undesirable to continue any special and unusual kinds of copyright, we are of opinion that this exceptional privilege should be omitted from the future law. We do not, however, think it would be right to deprive the institutions above named of the copyrights they already possess, without their consent, but should they be retained, we suggest that the universities and other institutions should be placed upon the same footing as regards the protection of their copyrights as other copyright owners, and that the exceptional penalties and remedies given by the Act which was passed in the 15th year of the reign of his late Majesty King George III. should be repealed.

Place of Publication.

49. We now desire to call attention to the place of publication, as it affects the obtaining of copyright in the United Kingdom.

50. And first we have to notice publication in the colonies, as to which it appears the present state of the law is anomalous and unsatisfactory.

51. Copyright in the United Kingdom extends to every part of the British dominions, but if a book be published first in any part of the British dominions other than the United Kingdom, the author cannot obtain copyright, either in the United Kingdom or in any of the colonies, unless there is some local law in the colony of publication under which he can obtain it within the limits of that colony.

52. It is obvious that if by Imperial Law copyright is to be enforced in the colonies, while at the same time first publication in the United Kingdom is a condition of obtaining it, the colonies are not treated on fair and equal terms, and that there is just ground of complaint on the part of colonial authors and publishers.

53. In truth a colonial author is placed even in a worse position than a foreign author who is the subject of a country with which we have an international copyright convention. For example, a French author can publish in France, and subsequently, upon the performance of certain conditions, such as registration, secure himself

against piracy of his work throughout the British Empire, while the colonial author can neither secure his property in the United Kingdom nor France, unless he first publishes in the United Kingdom.

54. Three ways of remedying this inequality present themselves: either, (1) the Imperial Act, and the rights under it, may be limited to the United Kingdom; or, (2) the same rights throughout Your Majesty's dominions may be given to British subjects, whether the work is first published in the United Kingdom or in any colony; or, (3) the benefits of Imperial copyright may be freely thrown open to all authors, without regard to nationality or prior publication elsewhere, who publish within the British dominions.

55. Upon consideration we are not disposed to recommend the first alternative. If the subject had now to be approached for the first time, it might be thought desirable, looking to the existing relations between the greater colonies and the mother country, to confine the right of property in a work to the country where it is first published, leaving the different colonies to legislate on the subject, and the copyright proprietor to secure, should he think fit, copyright in any other part of Your Majesty's dominions, by complying with the requirements of the law of such place.

56. It has been suggested further, that if copyright were thus limited, conventions might be made with the colonies similar to those made with foreign nations, providing in effect that publication in a colony should secure the same right to the proprietor of copyright as publication in the mother country. This would not, however, give a colonial author copyright elsewhere than in the United Kingdom, and in such other colonies as might agree to be bound by such conventions; and it may be questioned whether some of the colonies would not decline to enter into such conventions. The temptation to publish cheap copies of English copyright works without payment to the author would be very great, as it has proved to be in the United States. Upon this point we need only refer to Mr. Morrill's Official Report to the Senate of the United States, which will be found at page 10 of the Parliamentary Paper of July, 1874, upon Colonial Copyright.

57. But we conceive that the existing anomalies may be removed, and the interests of the colonists preserved, without restricting the existing rights of British authors; and we submit further that the subject is one of such importance that it may fairly continue to be treated, in some of its aspects, from an imperial, rather than from a

local point of view, and that the colonies should be dealt with as integral parts of the empire, rather than placed on the footing of foreign nations. It may be added that foreign nations with whom we have made conventions might possibly have ground of complaint, if this limitation of the Imperial Act were made without their assent.

58. We recommend, therefore, generally, that where a work has been first published in any one of Your Majesty's possessions, the proprietor of such work shall be entitled to the same copyright, and to the same benefits, remedies, and privileges in respect of such work, as he would have been entitled to under the existing Imperial Act, if the work had been first published in the United Kingdom.

59. With regard to publication in foreign states the law now is that, except under treaty, no copyright can be obtained if a book has been published in any foreign country before being published in the United Kingdom, but it is doubtful whether contemporaneous publication in this and a foreign country would prevent the acquisition of copyright here.

60. It is a grave question whether it is desirable that the condition requiring first publication in this country should continue, and whether the reason advanced for this condition, namely, that it is advantageous to this country that works should be first published here, outweighs the hardships that may be inflicted upon British authors by preventing them from availing themselves of arrangements which they might otherwise make with foreign or colonial publishers.

61. We have come to the conclusion that a British author, who publishes a work out of the British dominions, should not be prevented thereby from obtaining copyright within them by a subsequent publication therein. Yet we think that such republication ought to take place within three years of the first publication. And we may add, that we think the law should be the same with reference to dramatic pieces and musical compositions first performed out of Your Majesty's dominions, even though they are not printed and published;—in other words, that first performance in a foreign country should not injure the dramatic right in this country. It has been decided under the 19th section of the International Copyright Act, that the writer of a drama loses his exclusive right to the performance of his drama here in England, if it has been first performed

abroad; that is to say, representation has been held to be a publication. We see no reason why the rule which may be finally determined upon with reference to first publication of books should not apply to first representation of dramatic pieces. The evidence shows how hardly the present law presses upon British dramatic authors.

62. As to aliens, although we would give them the same rights as British subjects if they first publish their works in the British dominions, it is obvious that the same reason does not exist for giving them copyright if they do not bring their books first to our market; and we therefore recommend that aliens, unless domiciled in Your Majesty's dominions, should only be entitled to copyright for works first published in those dominions. It is to be borne in mind that, even though aliens may be deprived of British copyright by first publication abroad, they may still obtain it in many cases by means of treaties.

Persons capable of obtaining Copyright.

63. With regard to the persons who are capable of obtaining imperial copyright in Your Majesty's dominions, as distinguished from international copyright under treaty, we find that, according to the existing law, the author in order to obtain copyright must be either—

(*a.*) A natural-born or naturalized subject of Your Majesty, in which case the place of residence at the time of the publication of the book is immaterial; or

(*b.*) A person who, at the time of the publication of the book in which copyright is to be obtained, owes local or temporary allegiance to Your Majesty, by residing at that time in some part of Your Majesty's dominions.

64. Besides these it is probable, but not certain, that an alien friend who first publishes a book in the United Kingdom, even though resident out of Your Majesty's dominions, acquires copyright therein. We think this doubt should be set at rest, and that, subject to our previous recommendation as to place of publication by aliens not domiciled in Your Majesty's dominions, the benefit of the copyright laws should extend to all British subjects and aliens alike.

Immoral, Irreligious, Seditious, and Libelous Works.

65. Our attention has, during the course of our inquiry, been

called to the case of books which are of an immoral, irreligious, seditious, or libelous character. The present law is that no copyright exists in such works, or in any book which professes to be what it is not, in such a manner as to be a fraud upon the purchasers thereof.

66. The difficulty that arises in such cases is, that as the author is deprived of copyright, he cannot stop republication by other persons; and thus, unless there be a prosecution upon public grounds the evil is allowed to extend, instead of being checked by the only person who has any private interest in stopping its extension by others. To grant copyright, however, in such works is out of the question, as this would be to sanction and protect immorality, irreligion, libels, and other matters which it is against the policy of the law to encourage. The subject, however, really belongs more properly to the criminal law than to the law relating to copyright: and we therefore do not make any suggestion with regard to it.

Abridgments of Books.

67. Questions frequently arise, with regard to literary works, as to what is a fair use of the works of other authors in the compilation of books. In the majority of cases these are questions that can only be decided, when they arise, by the proper legal tribunals, and no principle which we can lay down, or which could be defined by the Legislature, could govern all cases that occur. There is one form of use of the works of others, however, to which we wish specially to draw attention, as being capable of some legislative control in a direction we think desirable. We refer to abridgments.

68. At present an abridgment may or may not be an infringement of copyright, according to the use made of the original work and the extent to which the latter is merely copied into the abridgment; but even though an abridgment may be so framed as to escape being a piracy, still it is capable of doing great harm to the author of the original work by interfering with his market; and it is the more likely to interfere with that market and injure the sale of the original work if, as is frequently the case, it bears in its title the name of the original author.

69. We think this should be prevented, and, upon the whole we recommend, that no abridgments of copyright works should be allowed during the term of copyright, without the consent of the owner of the copyright.

Dramatic Pieces and Musical Compositions.

70. Dramatic pieces and musical compositions, though in some respects differing, are yet so similar that we may couple them together for the purposes of this Report.

71. We have carefully considered the statute law now in force with reference to music and the drama; but from the way in which certain Acts of Parliament have been framed and incorporated by reference, considerable doubt arises in our minds on various important points connected with these subjects.

72. It may be convenient, however, before referring to them more particularly, to notice a difference that exists between books and musical and dramatic works. While in books there is only one copyright, in musical and dramatic works there are two, namely, the right of printed publication and the right of public performance.

73. These rights are essentially different and distinct, and we find that many plays and musical pieces are publicly performed without being published in the form of books, and thus the acting or dramatic copyright is in force, while as to literary copyright such plays and pieces retain the character of unpublished manuscripts. Music printed and published becomes a book for the purpose of the literary copyright, and so, we presume, does a play; but it is a question what becomes of the performing copyright on the publication of the work as a book; and there is a further question, whether the performing copyright can be gained at all, if the piece is printed and published as a book before being publicly performed.

74. With regard to the duration of copyright in dramatic pieces, and musical compositions, we recommend that both the performing right and the literary right should be the same as for books.

75. We further propose, in order to avoid the disunion between the literary and the performing rights in musical compositions and dramatic pieces, that the printed publication of such works should give dramatic or performing rights, and that public performance should give literary copyright. For a similar reason it would be desirable that the author of the words of songs, as distinguished from the music, should have no copyright in representation or publication with the music, except by special agreement.

Dramatization of Novels.

76. With reference to the drama, our attention has been directed to a practice, now very common, of taking a novel and turning its

contents into a play for stage purposes, without the consent of the author or owner of the copyright. The same thing may be done with works of other kinds if adapted for the purpose, but inasmuch as novels are more suitable for this practice than other works, the practice has acquired the designation of dramatization of novels. The extent to which novels may be used for this purpose varies. Stories have been written in a form adapted to stage representation almost without change; sometimes certain parts and passages of novels are put bodily into the play, while the bulk of the play is original matter; and at other times the plot of the novel is taken as the basis of a play, the dialogue being altogether original.

77. Whatever may be the precise form of the dramatization, the practice has given rise to much complaint, and considerable loss, both in money and reputation, is alleged to have been inflicted upon novelists. The author's pecuniary injury consists in his failing to obtain the profit he might receive if dramatization could not take place without his consent. He may be injured in reputation if an erroneous impression is given of his book.

78. In addition to these complaints it has been pressed upon us that it is only just that an author should be entitled to the full amount of profit which he can derive from his own creation;—that the product of a man's brain ought to be his own for all purposes;—and that it is unjust, when he has expended his invention and labor in the composition of a story, that another man should be able to reap part of the harvest.

79. On the other hand, it has been argued that the principle of copyright does not prevent the free use of the ideas contained in the original work, though it protects the special form in which those ideas are embodied;—that a change in the existing law would lead to endless litigation;—and that it would work to the disadvantage both of the author and the public. Upon these grounds, or some of them, a bill, introduced by Lord Lyttleton in 1866 and supported by Lord Stanhope, was defeated.

80. We have fully considered all these points, and have come to the conclusion that the right of dramatizing a novel or other work should be reserved to the author. This change would assimilate our law to that of France and the United States, where the author's right in this respect is fully protected.

81. Were this recommendation adopted, a further question would arise, as to the time during which this right should be vested in the

author, and, in the event of his not choosing to dramatize his novel, whether other persons should be debarred from making use of the story he has given to the world. We are disposed to think that the right of dramatization should be co-extensive with the copyright. It has been suggested, in the interest of the public, that a term, say of three or five years, or even more, should be allowed to the author within which he should have the sole right to dramatize his novel, and that it should be then open to any one to dramatize it. The benefit, however, to the public in having a story represented on the stage does not appear to us to be sufficient to outweigh the convenience of making the right of dramatizing uniform in its incidents with other copyright.

Lectures.

82. Lectures are peculiar in their character, and differ from books, inasmuch as, though they are made public by delivery, they have not necessarily a visible form capable of being copied. Nevertheless it has been thought right by the legislature in recent years to afford them the protection of copyright, and, considering the valuable character of many lectures, it is our opinion that such protection should not only be continued, subject to certain changes in the law, but extended. Although lectures are not always capable of being copied, because not reduced to writing, many lectures written for the purpose of delivery are not published, and many are written that the matter of them may be preserved, or that they may be capable of delivery in the same form on other occasions. Moreover, lectures, though not put in writing by the author, may be taken down in shorthand, and thus published or re-delivered by other persons. The present Act of Parliament, which gives copyright in lectures, seems only to contemplate one kind of copyright, namely, that of printed publication, whereas it is obvious that for their entire protection lectures require copyright of two kinds, the one to protect them from printed publication by unauthorized persons, the other to protect them from re-delivery.

83. The present law is that the author of any lecture, or his assignee, may reserve to himself the sole right of publishing it, by giving two days' notice of the intended delivery to two justices of the peace living within five miles from the place where the lecture is to be delivered, unless the lecture is delivered in any university, public school, or college, or on any public foundation, or by any person in virtue of or according to any gift, endowment, or foundation, in

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 merely 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.