§ 139. Rights of the author. (II.) Copyright.

further limitation that the performance, to be an infringement of the right of another must be such as to affect the commercial value of that right.

(2.) He has the sole right of publishing such compositions in print for the same period (*p*), dating from first publication in print.

To obtain such a right, the work must be first published or performed in this country, and, (probably,) the author must be temporarily residing in the British dominions at the time of publication (*q*). This, of course, does not apply to International Copyright.

§ 140. Registration.

The work must be registered; but it will be sufficient to register—

(1.) The title thereof.

(2.) The name and place of abode of the author or composer.

In the case of a pianoforte arrangement of an opera, the name of the arranger, and not of the composer of the opera must be entered (*Wood* v. *Boosey* (*r*)).

(3.) Name and place of abode of proprietor. The place of business of the proprietor may be registered as his "place of abode" (*s*).

(4.) Time and place of first performance.

It may possibly be argued that as under clause 24 of the Act (*t*) registration is not necessary to give the proprietor of playright in a dramatic piece the remedies he has under the Act of Will. IV., and that as "dramatic piece" is defined by the preamble to cover "musical

(*p*) Forty-two years, or life of author + seven years.

(*q*) *Jefferies* v. *Boosey*, 4 H. L. C. 815; *Routledge* v. *Low*, L. R. 3 H. L. 100.

(*r*) L. R. 3 Q. B. 223.

(*s*) *Nottage* v. *Jackson* (not yet fully reported).

(*t*) 5 & 6 Vict. c. 45.

§ 140. Registration.

entertainment," therefore registration is not necessary to enable the proprietor of the performing right in a musical composition to sue for infringements. The judgment of Brett, M.R., in *Wall* v. *Taylor* (*u*), however, by defining "musical entertainment" as "the whole concert or performance, and not detached portions of it," *i.e.* not individual musical compositions in the programme of a concert, seems fatal to this argument.

§ 141. Subject of copyright.

The subject of copyright is any original musical composition. Copyright may also be had in a piece of music, where the claimant has adapted words of his own to an old air, adding thereto a prelude and accompaniment (*v*). So where (*w*) a non-copyright air was furnished with words and a preface by B., who also procured a friend to compose an accompaniment, the result, under the name of 'Pestal,' was held copyright.

There can be copyright in a pianoforte arrangement from a non-copyright opera (*x*).

§ 142. Infringements of copyright.

Copyright will be infringed by any public performance or publication of a whole or part of the musical composition, or of a composition substantially the same as the original, *i.e.*, which, though adapted to a different purpose, can still be recognised by the ear (*y*). Such performance or publication must tend to damage the commercial value of the property.

Thus IT IS PIRACY—

To perform songs out of a copyright opera (*Planché* v. *Braham* (*z*)).

To distribute gratuitously copies of a musical com-

(*u*) L. R. 11 Q. B. D. 102.

(*v*) *Lover* v. *Davidson*, 1 C. B. N.S. 182.

(*w*) *Chappell* v. *Sheard*, 2 K. & J. 117; *Leader* v. *Purday*, 7 C. B. 4.

(*x*) *Wood* v. *Boosey*, L. R. 3 Q. B. 223.

(*y*) *D'Almaine* v. *Boosey*, 1 Younge & Collyer, 289.

(*z*) 4 Bing. N. C. 17.

position, as by distributing lithographed copies to a musical society (*Novello* v. *Sudlow* (*a*)). § 142. Infringements of copyright.

To make a pianoforte arrangement from a copyright opera (*Wood* v. *Boosey* (*b*)).

To found quadrilles and waltzes on a copyright opera, though only parts of the melodies be taken (*D'Almaine* v. *Boosey* (*c*)).

To construct a full score from the non-copyright pianoforte arrangement of a copyright opera (*Boosey* v. *Fairlie* (*d*)).

§ 143. Assignments.

Any assignment must be in writing; and therefore a registered written assignment overrides a previous parol assignment (*Leyland* v. *Stewart* (*e*)).

§ 144. Remedies for infringements.

The owner of the performing right in music can recover 40s., or the full value either of the benefit resulting to the infringer, or of the loss to the plaintiff, whichever shall be the greater (*f*), from each person infringing his performing right in public (*Wall* v. *Taylor* (*g*)).

The owner of the copyright has an action for damages after registration as provided in the case of books.

Injunctions can also be obtained to prevent piratical performance or printing.

§ 145. Laws of other countries.

The laws of other countries generally place the right of printing musical works on the same footing as literary compositions, but occasionally make variations in dealing with the right of performance, which is usually vested in the author and his assigns for a lengthy term. Such is the law in France, Austria, Spain, Portugal, and

(*a*) 12 C. B. 177.
(*b*) L. R. 3 Q. B. 223.
(*c*) 1 Y. & C. 289.
(*d*) L. R. 7 Ch. D. 301.
(*e*) L. R. 4 Ch. D. 419.
(*f*) 3 Will. IV. c. 15, s. 2.
(*g*) L. R. 11 Q. B. D. 102.

§ 145. Laws of other countries.

Italy. The United States (*h*) do not give any sole right of performance in musical compositions which are not dramatic; Germany requires a note of reservation of the right to be printed on the title-page of each piece of music, in order to secure such right, and the Scandinavian States appear to allow performances of any music without scenery or dramatic accompaniments (*i*).

§ 146. Recommendations of Copyright Commission.

The only special recommendations of the Copyright Commission with regard to musical works, other than those already set out with reference to dramatic compositions, are—

1. (*k*) That the author of the words of songs, as distinguished from the music, should have no copyright in their representation or publication with the music, except by special agreement.

2. (*l*) That to prevent abuse of the 40*s.* penalty for infringement of musical copyright, every musical composition should have printed on it a note of the reservation of the right of public performance, and the name and address of the person who may grant permission for such performance.

3. That unless such note was printed, the owner should not be able to recover any penalty or damages for infringement.

4. That the Court should have power to award compensation for damage suffered, instead of the minimum 40*s.* penalty, in case of infringement.

The second and third recommendations have been dealt with by the Musical Copyright Act of 1882 (*m*); how inadequately, owing to the omission of the third recommendation, has been seen.

(*h*) S. 4952, Rev. Stat.
(*i*) Copinger, pp. 500–600.
(*k*) C. C. Rep. § 75.
(*l*) C. C. Rep. § 171.
(*m*) 45 & 46 Vict. c. 40.

CHAPTER VII.

ENGLISH LAW OF LITERARY COPYRIGHT.

PART II.—BOOKS.

§ 147. Definitions.—§ 148. Newspapers.—§ 149. Maps.—§ 150. Crown copyright.—§ 151. Qualities required in copyright work.—§ 152. Literary value.—§ 153. Titles of books.—§ 154. Originality.—§ 155. New editions.—§ 156. Duration and extent of right.—§ 157. Persons who may acquire the right.—§ 158. Infringements of copyright.—§ 159. Literary piracy.—§ 160. Abridgments.—§ 161. Translations.—§ 162. Literary larceny.—§ 163. Rights of author.—§ 164. Duties of author.—§ 165. Investitive facts.—§ 166. Transvestitive facts.—§ 167. Divestitive facts.—§ 168. Remedies against infringements.—§ 169. Remedies against author.—§ 170. Recommendations of Commission.

§ 147. Definitions.

THE English Act of 1842 defines "*Copyright*" as:—"The sole and exclusive liberty of printing or otherwise multiplying copies of any 'book,'" and the term "*book*" is defined as, "every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published." In *White* v. *Geroch* (*a*), Abbot, C.J., laid down that any literary composition, whether large or small, was a book within the Act.

§ 148. Newspapers.

Newspapers.—In *Cox* v. *Land and Water Company* (*b*), where the proprietor of the *Field*, a newspaper whose first number was not registered under s. 18 of the Act of 1842, brought an action against the defendants

(*a*) 2 B. & Ald. 298.
(*b*) L. R. 9 Eq. 324.

§ 148. Newspapers.

for piracy, they pleaded that the newspaper was not registered, and consequently that the plaintiff could not sue. Malins, V.C., held that a newspaper was not a "book" under Clause 2; was not mentioned in s. 19; did however come under s. 18, but did not require registration, and that its right to protection rested either on s. 18, or on the "general rules of property," presumably the common law right. In support of his position he quoted the cases of *Mayhew* v. *Maxwell* (*c*) and *Strahan* v. *Graham* (*d*), in neither of which was there registration. But in both these cases the question was not as to general copyright, but of restraint from publication contrary to the terms of a special contract, and it was therefore held that registration was not necessary (*e*).

A similar question recently came before Jessel, M.R., in *Walter* v. *Howe* (*f*), where the *Times*, an unregistered newspaper, published an article, and the defendant reprinted it. The question of copyright in the particular article was the material point, but the Master of the Rolls also held that a newspaper, being a "sheet of letterpress," was a "book" under s. 2 of the Act, and also a "periodical work" under s. 19, and that therefore under s. 19 its non-registration prevented the plaintiff from suing. He refused to follow the case of *Cox* v. *Land and Water Company* (*g*), saying that it practically repealed the Act of Parliament.

(*c*) 1 J. & H. 312.

(*d*) 16 L. T. N.S. 87.

(*e*) With reference to *Sweet* v. *Benning*, 16 C. B. 459, the V.-C. says, "I suppose the *Jurist* was not registered at all;" whereas the first page of the report of the case states that the *Jurist* was registered before action brought.

(*f*) L. R. 17 Ch. D. 708.

(*g*) L. R. 9 Eq. 324.

In *Stannard* v. *Lee* (*h*) the Court of Appeal held, reversing the decision of Bacon, V.C., that *maps* were books under the Act of 1842, and not engravings under the Engravings Acts, and that they must therefore be registered. § 149. Maps.

It is probable that the *Crown* (*i*) has still special copyright in perpetuity in the authorized version of the Bible, the Book of Common Prayer, and possibly in Acts of Parliament. The origin of this has been dealt with elsewhere. § 150. Crown copyright.

For an intellectual work to be capable of protection as copyright it must be— § 151. Qualities required in copyright work.

I. *Innocent*, that is—

1. *Not seditious or libellous* (*k*) (the libel being against the State).
2. *Not immoral* (*l*); a work bearing on the love adventures of a courtesan was not protected.
3. *Not blasphemous* (*m*); thus Lord Eldon refused protection to Laurence's 'Lectures on Physiology,' as "hostile to revealed religion, and the doctrine of the immortality of the soul." The same Chancellor (*n*) refused protection to Lord Byron's 'Cain,' and in 1823 Sir J. Leach took a similar course with regard to 'Don Juan.' In the Scotch case of *Hopps* v. *Long* (1874) (*o*), a Unitarian discussion of the life of Jesus was considered copyright, as a decent discussion not endangering the public peace, safety, or morality.

(*h*) L. R. 6 Ch. 346.

(*i*) *Baskett* v. *Univ. of Cambridge*, 1 W. Blackstone, 105; *Stationers' Coe* v. *Carnan*, 2 W. Blackstone, 1002.

(*k*) *Hime* v. *Dale*, 2 Camp. 27; *Southey* v. *Sherwood*, 2 Mer. 435.

(*l*) *Stockdale* v. *Onwhyn*, 5 B. & C. 173.

(*m*) *Laurence* v. *Smith*, 1 Jacob, 471.

(*n*) *Murray* v. *Benbow*, 1 Jacob, 474.

(*o*) Cited in Copinger, p. 91, 2nd edit.

§ 151. Qualities required in copyright work.

If the law as to blasphemy is correctly laid down by the Lord Chief Justice in his summing-up in the recent case of *R.* v. *Foote and Ramsay*, a fair, honest, and moderate discussion of the truth of Christianity or of religion, resulting in a denial of their authority, will not be "blasphemous," so as, among other consequences, to deprive it of copyright. If, on the other hand, the view advocated by Stephen, J., and by North, J., in the recent case at the Old Bailey, is correct, it would be blasphemous, and therefore not the subject of copyright.

With reference to these three heads, it has already been pointed out (*p*) that the present state of the law is unsatisfactory, in destroying a check on the free circulation of these works which might be valuable, namely, the author's interest in preventing unauthorized reproductions.

4. *Not fraudulent*, or professing to be what it is not with intent to deceive. Thus a work of devotion professing falsely to be translated from the work of a celebrated German writer (*q*), was not protected.

§ 152. Literary value.

II. *The work must have literary value.* This limitation is not required in the case of unpublished MSS. The purpose of the Act is to protect "useful books," and very little "usefulness" or material value will suffice to obtain protection. But in the recent case of *Cable* v. *Marks* (*r*) in which an attempt was made to obtain copyright for a perforated card, with some verses on it, which, throwing the "Shadow of the Cross" on the wall,

(*p*) Above, § 26; C. C. Rep. §§ 65–66.
(*q*) *Wright* v. *Tallis*, 1 C. B. 893.
(*r*) 47 L. T. N. S. 432; 52 L. J. Ch. 107.

went by the name of the Christograph, Bacon, V.C., held it "not a literary production in any sense of the word." *Catalogues* will be protected unless they are "merely a dry list of names." Where the catalogue infringed partook of the nature of a bibliography (*s*), the Court said "they could not protect a mere dry list of names like a postal directory, court guide, etc., which must be substantially the same, by whatever numbers of persons issued, and however independently compiled"; and again, the work there protected was "not a mere dry list of books, but such a sketch of their history and contents as would be calculated to be of intrinsic value."

§ 152. Literary value. Catalogues.

In *Cobbett* v. *Woodward* (*t*), an injunction to restrain publication of an illustrated catalogue of furniture was refused as to the illustrations, but granted as to certain parts of the letterpress. In *Grace* v. *Newman* (*u*) however the piracy of a stonemason's illustrated catalogue was restrained, and this case was followed, *Cobbett* v. *Woodward* being disapproved, in *Maple* v. *Junior Army and Navy Stores* (*x*), a recent case before the Court of Appeal, where an illustrated catalogue of furniture was protected as to the illustrations, though it was held there was no copyright in the letterpress, which was a simple announcement of the sale of goods which everyone might sell and announce for sale.

As a general rule there is no copyright in *Advertisements* or labels. In the American case of *Coffeen* v. *Brunton* (*y*), where the plaintiff's label on a medicine

Advertisements.

(*s*) *Hotten* v. *Arthur*, 1 H. & M. 603.
(*t*) L. R. 14 Eq. 407.
(*u*) L. R. 19 Eq. 623.
(*x*) 21 Ch. D. 369. See also *Bogue* v. *Houlston*, 5 De G. & Sm. 267.
(*y*) 4 McLean, 516.

§ 152. Literary value. Advertisements.

had been pirated, it was held that, not having complied with the patent laws, he had not property in the medicine; that he had no copyright in the label, as it was not a "book" within the provisions of the American statute; but that he had an equitable ground for protection if the defendant had represented his medicine to be the same as the plaintiff's to the injury of the plaintiff. In the American case of *Drury* v. *Ewing* (*z*) copyright was recognised in a large printed sheet of dressmaking patterns; but in the English case of *Page* v. *Wisden* (*a*) it was refused in a cricket scoring sheet where the only novelty introduced by the plaintiff appeared to be a line for recording the runs at the fall of each wicket.

§ 153. Titles of books.

With respect to *Titles*, the recent case of *Dicks* v. *Yates* (*b*), in the Court of Appeal, must be taken as finally deciding that, except in very rare cases, there cannot be any copyright in the title of a book; and the remedy for its use, if any exists, will be that for common law fraud. In that case the title claimed was 'Splendid Misery'; the plaintiff's novel was published in *Every Week*; the defendant's, an entirely different novel, written by Miss Braddon, in the *World*. The defendant proved that a novel bearing a similar title had been published in the early part of the century. In refusing an injunction, Jessel, M.R., after commenting on the lack of originalty in the title, said, "I do not say that there could not be copyright in a title, as for instance in a whole page of title, or something of that kind requiring invention. I am of opinion

(*z*) 1 Bond, 540.
(*a*) 20 L. T. N. S. 435.
(*b*) L. R. 18 Ch. D. 76, 89.

§ 153. Titles of books.

that there cannot be copyright at all in these common English words. Their adoption as the title of a novel might make a trade-mark, and entitle the owner of the novel to say, '*You cannot sell a novel under the same title so as to lead the public to believe they are buying my novel when they are actually buying yours.*'" James, L.J., said, "Where a man sells a work under the name or title of another man, or another man's work, that is not an invasion of copyright, it is a common law fraud," and at the end of the case "there cannot be in general any copyright in the title or name of a book," in which opinion the Master of the Rolls concurred.

This case may be regarded as putting on the right ground the law as to protection of titles, and settling a long and confused controversy. The dispute as to whether the right to a trade-mark was founded on property in the trade-mark or fraud on the property in the goods denoted by the trade-mark, which has been partially dealt with by the House of Lords (*c*), is not yet decided; this question as to copyright in titles is of a similar nature. Previous cases shew great confusion between copyright, trade-mark, and fraud, as grounds of jurisdiction. In *Mack* v. *Petter* (*d*), Lord Romilly held the plaintiff entitled to the use of a certain title, and restrained the defendant from publishing a work with any title such as to be a colourable imitation. In *Weldon* v. *Dicks* (*e*), the plaintiff published a novel 'Trial and Triumph,' and the defendant an entirely different novel under that name; and it was proved that other novels under the same name 'had been published in 1834, 1849, and 1865;

(*c*) *Singer Machine Manufacturing Company* v. *Wilson*, L. R. 3 App. Cases, 376.

(*d*) L. R. 14 Eq. 431.

(*e*) L. R. 10 Ch. D. 247.

§ 153. Titles of books.

Malins, V.C., nevertheless held that "the title of a book was material and valuable property and was therefore protected." In *Chappell* v. *Sheard* (*f*), the name and description of a song were held to be property. On the other hand, in *Maxwell* v. *Hogg* (*g*), it was held that there was no copyright in a title registered alone before the book bearing it was published, and that copyright could only be in words in the nature of a volume or part of a volume. The plaintiff's claim on the ground of trade-mark also failed. In *Kelly* v. *Hutton* (*h*) it was held that there was nothing analogous to copyright in the name of a newspaper, but that the proprietor could prevent its application to any *similar* production, and that this right was a chattel capable of assignment. In *Bradbury* v. *Beeton* (*i*), where the plaintiffs published *Punch*, a threepenny periodical, and the defendants *Punch and Judy*, a penny one, Malins, V.C., said, "The defendants have clearly no right to use a name calculated to mislead or deceive in purchasing persons of ordinary intelligence, but I am clearly of opinion that here the mass of mankind would not be so misled;" and refused an injunction. And in a late case of *Walter* v. *Head* (*k*) the sale of a mock edition of the *Times* of 1981 was restrained by the Court of Appeal, the defendants having copied in an enlarged form the well-known heading of the *Times*. In *Kelly* v. *Byles* (*l*) the Court of Appeal refused an application by the publisher of the 'Post Office Directory for West Yorkshire' to restrain the publication of a work called the 'Bradford Post Office Directory,'

(*f*) 2 K. & J. 117.
(*g*) L. R. 2 Ch. 307.
(*h*) L. R. 3 Ch. 703.
(*i*) 18 W. R. 33.
(*k*) Weekly Notes, July 29, 1881, not fully reported.
(*l*) L. R. 13 Ch. D. 682.

the Court saying that the claim was not analogous to copyright, but an extravagant extension of trade-mark. § 153. Titles of books. Results.

These later cases, finally confirmed by *Dicks* v. *Yates* (*m*), clearly shew that protection against appropriation of a title cannot be obtained on the ground of literary property. The Court will interfere, if at all, on the ground of injury to the property denoted by the title, by its use to denote a work liable to be mistaken for the plaintiff's. Fraud is probably necessary as a ground for interference, and it may be presumed if the second publisher of the title refused to change it on receiving warning from the first publisher of the injury done.

The law of the *United States* is similar. In *Osgood* v. *Allen* (*n*) the Court said, "The right secured by the Act however is the property in the literary composition, the product of the mind and genius of the author, and not the name and title given to it. When the title itself is original, and the product of an author's own mind, and is appropriated by infringement, as well as the whole or part of the literary composition itself, in protecting the other portions . . . Courts would probably protect the title. But no case can be found either in England or this country in which under the law of copyright Courts have protected the title alone, separate from the book which it is used to designate."

A registry of titles in alphabetical order would obviate many of the difficulties which publishers and authors find in the choice of a title.

III. *The work must be original.* Works that lack the originality necessary for copyright are almost always § 154. Originality.

(*m*) L. R. 18 Ch. D. 76.
(*n*) 1 Holmes, 185, 191.

§ 154. Originality.

infringements of the rights of other authors, and it is difficult to separate the two views of the case.

Where there is a common source of information or ideas, itself not copyright, it is open to all to use it, and to obtain copyright in the results of labour so bestowed. From the nature of the case results obtained by different workers having a similar end must be very similar, but the likeness of one man's work to that of his predecessor in the same field, does not hinder it from obtaining copyright, provided it is the result of his independent labours. He is, however, only allowed a very limited use of the copyright labours of his predecessors. Thus in *Kelly* v. *Morris* (*o*), a case having reference to directories, two of which, if correct, must be nearly identical, Page Wood, V.C., laid down the law as follows: "In the case of a dictionary, map, guide-book, or directory, where there are certain common objects of information, which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done; in case of a road book he must count the milestones for himself . . . generally he is not entitled to take one word of the information previously published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information, and the only use he can legitimately make of a previous publication is to verify his own calculations and results when obtained."

So in *Lewis* v. *Fullarton* (*p*), in reference to a gazetteer, the Master of the Rolls said, "Any man is entitled to publish a topographical dictionary, and to avail himself

(*o*) L. R. 1 Eq. 697, 701.
(*p*) 2 Beav. 6.

§ 154. Originality.

of the labours of all former writers whose works are not subject to copyright, and of all public sources of information; but while all are entitled to resort to public sources of information, none are entitled to save themselves trouble and expense by availing themselves for their own profit of other men's works still subject to copyright and entitled to protection.

The case of *Jarrold* v. *Houlston* (*q*) furnishes a good application of these principles. There the plaintiff had published a 'Guide to Science' in the form of question and answer dealing with the common phenomena of nature. The defendant published a similar work under a different title. The Court held (*r*) that the plaintiff's work had an original value, and was copyright, as reducing certain common matter to a systematic form of instruction; but that another person might originate another work in the same general form provided he did so from his own resources, and made the work he so originated a work of his own by his own labour bestowed on it. He might, however—

(1.) Use all common sources of information.

(2.) Use the work of another as a guide to these common sources.

(3.) Use another work to test the completeness of his own.

Translations.

There is copyright in each independent *Translation* of a non-copyright work (*s*), if it appears to have been made from the original by independent labour. So there may be copyright in *compilations*, if independent

(*q*) 3 K. & J. 708.

(*r*) In this case it was also held that conveying information by way of question and answer was not an original arrangement which could be copyrighted.

(*s*) *Wyatt* v. *Barnard*, 3 Ves. & B. 77.

§ 154. Originality. Translations.

work gives an original result. In *Sweet* v. *Benning* (*t*) it was held that there was copyright in certain original parts of a law reporter's work, such as the digested head-notes and abridged speeches of counsel; but not in the verbatim reports of the judgments of the Court.

Annotations.

An author republishing a non-copyright work with *annotations* and additions, may obtain copyright in his additions, if they are of a substantial nature. Thus, in *Cary* v. *Longman* (*u*), where the plaintiff had published Paterson's 'Roadbook,' with original additions, Lord Kenyon held it clear that he had a copyright in such additions and alterations, many of which were material and valuable; but that he certainly had no title to that part of the work which he had taken from Mr. Paterson. In an American case (*x*), the plaintiff claimed and obtained copyright in his annotations to Wheaton's 'International Law,' though they consisted largely of compilations from and references to official documents.

§ 155. New editions.

The question as to the effect of a publication of a *new edition*, with alterations, on the original copyright, arose in the Scotch case of *Black* v. *Murray* (*y*). There the plaintiffs had reprinted, with notes, illustrative quotations, and alterations in the text, a work the copyright in which had expired, and sued for an infringement of their copyright in the reprint. The Lord President said:—

"A new edition of a work may be a mere reprint of an old edition, and plainly that would not entitle the author to a new term of copyright running from the

(*t*) 16 C. B. 459. See also *Wheaton* v. *Peters* (Am.), 8 Peters, 591; *Gray* v. *Russell*, 1 Story, 11, 21.

(*u*) 1 East, 358. See *Gray* v. *Russell*, *v.s.*

(*x*) *Lawrence* v. *Dana*, 2 Am. L. T. R. N. S. 402.

(*y*) 9 Scotch Sessions Cases, 3rd Series, 341.

§ 155. New editions.

date of the last edition. On the other hand the new edition may be so enlarged and improved as to constitute in reality a new work, and that just as clearly will entitle the author to a copyright running from the date of the new edition. The difficulty will be to lay down any general rule as to what amount of addition, of alteration, or new matter will entitle a second or new edition of a book to the privilege of copyright, or whether the copyright extends to the book as amended or improved, or is confined only to the additions and improvements themselves, distinguished from the rest of the book."

Kindersley, V.C., dealt with the same question in the English case of *Murray* v. *Bogue* (*z*). He said, "Publishing another edition of his work does not affect an author's copyright in his first edition; but if he prints a second edition, not a mere reprint of the first, but containing material alterations and additions, *quoad* these it is a new work, and to enable him to sue in respect of any infringement of his rights in those portions of the second edition which are new, he must register the edition before suing. The extent however of the alterations is immaterial; to whatever extent a new edition is made a new work, the new part cannot be protected by suit until registration; but that effect of the Act has no operation as to the old parts (of the second edition); as to them the copyright is left as it was."

An author therefore has copyright in the new matter of a second edition for the statutory term of its first publication, in the old matter only from its original publication. As has been pointed out (*a*), this results in obsolète editions becoming common property, while revised ones are still the subject of copyright, but

(*z*) 1 Drewry, 353, 365.
(*a*) See § 28.

§ 155. New editions.

exposed to the competition of former editions to the detriment of the public; and it has been suggested that this should be remedied by continuing the copyright of all scientific and historical works to the lapse of the statutory term of the last edition in which substantial improvements have been made.

The additions must be of some material value to secure copyright. Thus in the Scotch case of *Hedderwick* v. *Griffin* (*b*), Scotch publishers issued a complete edition of the works of Dr. Channing, an American divine, with some slight revision by himself; but the Court held that the original matter introduced by the revision was too slight to obtain protection.

§ 156. Duration and extent of right.

Duration of Right (*c*).—Forty-two years from first publication, or the author's life and seven years from his death, whichever term shall be the longer.

Extent of Right.—(*d*) Throughout the British dominions (thus extending to the colonies as well as the United Kingdom).

§ 157. Persons who may acquire the right.

Persons who may acquire the Right.—1. British subjects, wherever resident at the time of publication.

2. Alien friends resident in the British dominions at the time of publication.

3. (Possibly). Alien friends wherever resident.

The last two classes rest on the authority of *Routledge* v. *Low* (*e*), which as to the 3rd head is in conflict with *Jefferys* v. *Boosey* (*f*). This last case was decided on the construction of the Copyright Statutes before 1831, the date of publication of the work in which copyright was

(*b*) 3 Sc. Sess. Cases, 2nd Series, 383.
(*c*) 5 & 6 Vict. c. 45, s. 3.
(*d*) Ibid. s. 29.
(*e*) L. R. 3 E. & I. Ap. 100.
(*f*) 4 H. L. C. 815.

claimed. The work was assigned in manuscript by an alien friend resident abroad, and first published in England, *the author continuing his foreign residence*; it was decided that neither statute nor common law copyright extended to such a publication.

§ 157 Persons who may acquire the right.

In *Routledge* v. *Low*, which was decided on the construction of the Act of 1842, A., a domiciled subject of the United States, before publishing his work went to reside for a short time in Canada, by arrangement with his publishers, Messrs. L., who thereupon published the work in London, the copyright being assigned to them and due registration taking place. Defendants reprinted the book, and Messrs. L. sued them for infringement of copyright. The case, being taken to the House of Lords, was heard before Lords Cairns, Westbury, Cranworth, and Chelmsford, who agreed that publication in the United Kingdom, together with temporary residence of the author in Her Majesty's dominions at the time of publication, conferred copyright on a foreigner. Lords Cairns and Westbury further held that residence in Her Majesty's dominions was not a necessary condition, and that publication in the United Kingdom was sufficient; Lords Chelmsford and Cranworth however expressed doubt as to this, and the matter must be considered doubtful. Copyright however is personal property, and under the Naturalisation Act (*g*), an alien friend may acquire and hold personal property in the same way in all respects as a British subject. Non-residence in the British dominions is not a necessary condition of a British subject's acquiring copyright, and from this, as pointed out by Mr. Justice Stephen (*h*), it seems probable that the view of the law taken by Lord Cairns is the right one.

(*g*) 33 Vict. c. 14, s. 2.
(*h*) C. C. Rep. p. 69, note.

§ 158. Infringements of copyright.

Infringements of Copyright have been well and shortly summarised by James, L.J., in *Dicks* v. *Yates* (*i*), as follows :—

"Literary property can be invaded in three ways, and in three ways only—

1. Where a publisher in this country publishes an unauthorized edition of a work in which copyright exists, or where a man introduces to sell a foreign reprint of such a work, that is open *Piracy*.

2. Where a man pretending to be the author of a book illegitimately appropriates the fruits of a previous author's literary labour, that is *Literary Larceny*.

Those are the only two modes of invasion against which the Copyright Acts have protected an author.

3. There is another mode which, to my mind, is wholly irrespective of any copyright legislation, and that is where a man sells a work under the name and title of another man or another man's work. That is not an invasion of copyright; it is *common law fraud*, and can be redressed by common law remedies."

§ 159. Literary piracy.

As to open *Piracy* of the whole of a work, there is very little to say; it generally occurs, as in *Routledge* v. *Low* (*j*), where there is some doubt as to the legal right; the case of *Walter* v. *Howe* (*k*) was a case of successful moral piracy not forbidden by the law. Partial piracy however is more common, as in the case of extracts from an acknowledged source. In *Sweet* v. *Benning* (*l*), a case of verbatim extracts from law reports, Jervis, C.J., spoke of "the fair right of extract which

(*i*) L. R. 18 Ch. D. 76, 90.
(*j*) L. R. 3 Eng. & Ir. Ap. 100.
(*k*) L. R. 17 Ch. D. 708.
(*l*) 16 C. B. 459, 481.

§ 159. Literary piracy.

the law allows for the purpose of comment, criticism, or illustration," but said that in the case before him there was no thought or skill brought to bear on the matter complained of; it was "a mere mechanical stringing together of marginal or side-notes which the labour of the author had fashioned ready to the compiler's hands." In *Campbell* v. *Spottiswoode* (*m*) the defendant had published a volume of 790 pages, 34 of which were taken up with a critical essay on English poetry, and the remaining 758 were taken up with complete pieces and extracts as illustrative specimens. Six poems and extracts, 733 lines in all, were taken from copyright works of the plaintiff; and he obtained an injunction against their publication, on the ground that no sufficient critical labour or original work on the defendant's part was shewn to justify his selection. So in *Roworth* v. *Wilkes* (*n*), where 75 pages out of 118, composing a work on fencing, had been inserted in a large encyclopædia, the extract forming a material part of the plaintiff's work, he obtained a verdict.

Honest and *bonâ fide* extraction with no *animus furandi*, will not necessarily protect the taker; thus in *Scott* v. *Stanford* (*o*), A. was in the habit of collecting and publishing, at a cost of three guineas, a statistical return of London imports of coal; B., *bonâ fide*, and with a full acknowledgment of his indebtedness to A., published these returns as part of a work on the mineral statistics of the United Kingdom. The extracted matter formed a third of defendant's work. Page Wood, V.C., granted an injunction, saying, "if in effect a large and vital portion of the plaintiff's work and labour has been

(*m*) 11 Simons, 31.
(*n*) 1 Campbell, 94.
(*o*) L. R. 3 Eq. 718.

§ 159. Literary piracy.

appropriated and published in a form that will materially injure his copyright, *mere honest intention on the part of the appropriator will not suffice*, as the Court can only look at the result, and not at the intention; the appropriator must be presumed to intend all that the publication of his work effects. . . . . No man is entitled to avail himself of the (copyright) labours of another for the purpose of conveying to the public the same information, although he may append additional information to that already published."

This shews that the *animus furandi* is not essential to piracy, though some previous cases lay stress on its importance. If however there are signs of its presence, attempts to conceal indebtedness, colourable alterations, or servile imitations, a smaller amount of appropriation will suffice to make the offence.

§ 160. Abridgments.

The theory of *Abridgments* (*p*) has been previously dealt with. The absence of recent cases on the subject in the English law renders it a little uncertain. It has been decided however that there are fair abridgments which are not infringements of copyright, and unfair abridgments which are, but the line between them is not very distinct. In *Gyles* v. *Wilcox* (*q*), in 1740, the first reported case on the subject, where the original consisted of 275 sheets, and the abridgment of 35, Lord Hardwicke said, "Where books are colourably shortened only, they are a mere evasion of the statute, and cannot be called abridgments. But this must not be carried so far as to restrain persons from making a real and fair abridgment, for an abridgment may, with great propriety, be called a new book, because not only of the

(*p*) See § 47.
(*q*) 2 Atkyns, 141.

§ 160. Abridgments.

paper and print, but the invention, learning, and judgment of the author are shewn in them, and in many cases are extremely useful." One of the chief early cases on the subject is that of *Dodsley* v. *Kinnersley* (*r*) in 1761, relating to the celebrated abridgment of 'Rasselas,' in which the compiler "left out all the moral reflections." The Court held that no certain line could be drawn to distinguish a fair abridgment, and seemed to hint that the quantity printed, and the possible injury to the book abridged, were the points to be considered. *In a case* (*s*) in 1774, where Newberry abridged Hawkesworth's voyages, Apsley, L.C., having consulted with Mr. Justice Blackstone, expressed his views at some length. He held that, "to constitute a true and proper abridgment of a work the whole must be preserved in its sense, and then the act of abridgment is an act of understanding employed in carrying a larger work into a smaller compass, and rendering it less expensive and more convenient, both to the time and use of the reader, which made an abridgment in the nature of a new and meritorious work. That this had been done by Mr. Newberry, whose edition might be read in a fourth part of the time, and all the substance preserved and conveyed in language as good or better than the original and in a more agreeable and useful manner. That he and Mr. Justice Blackstone were agreed that an abridgment where the understanding is employed in retrenching unnecessary and uninteresting circumstances which rather deaden the narration (!), is not an act of plagiarism upon the original work, nor against any property of the author in it; but an allowable and meritorious work."

Later cases however have not taken quite so favour-

(*r*) Amb. 403.
(*s*) Lofft. 775.

§ 160. Abridgments.

able a view of the merits of the abridger. In *D'Almaine* v. *Boosey* (*t*), a musical case, Lord Lyndhurst, speaking on the general question, said, "An abridgment is in its nature original, the compiler intends to make of it a new use, not that which the author proposed to make. *An abridgment must be bonâ fide, because if it contains many chapters of the original work or such as made that work most saleable, the maker of the abridgment commits a piracy.*" And in *Dickens* v. *Lee* (*u*), Knight Bruce, V.C., expressed himself with great doubt: he said, "I am not aware that a man has the right to abridge the work of another; on the other hand I do not mean to say that there may not be an abridgment which may be lawful, which may be protected; but to say that one man has the right to abridge, and so publish in an abridged form, the work of another without more is going much beyond my notion of what the law of this country is;" but again, "there may be such an use of another man's publications as, involving the exercise of a new mental operation, may fairly and legitimately involve it."

Results.

These cases do not easily yield a clear rule; the later ones materially narrow the former, and it is doubtful what decision one of the higher Courts might come to in the absence of any recent authority. A mere mechanical abridgment, or one containing the most saleable part of the author's work, will not apparently be allowed; but it seems that there may be an abridgment which by the amount of intellectual work expended on it will be protected, possibly if it is of such a different size and character as in no way to compete with the original author's work (*x*). This however is all that can be said,

(*t*) 1 Younge & Collyer, Exch. 288, 301.

(*u*) 8 Jurist, 183.

(*x*) In the Fine Arts however abridgments or reductions have been prevented. In *Gambart* v. *Ball* (14 C. B. N. S. 306), the sale of a

and the Commission have recognised the unsatisfactory state of the law by recommending that no copyright work be abridged without the author's consent. § 160. Abridgments.

The law of the *United States* is practically the same. The Courts, following the English cases, have reluctantly held, "contrary to principle," that a fair abridgment is not piracy. In *Gray* v. *Russell* (*y*) however the question was fairly put: "Will the abridgment in its present form prejudice or supersede the original work?" And in another case (*z*) McLean, J., said with justice: "An abridgment, if fairly made, contains the principle of the original work, and this constitutes its value." But the decisions have followed the English cases. In *Folsom* v. *Marsh* (*a*), Story, J., explained the nature of a fair and *bonâ fide* abridgment as follows: "It is clear that a mere selection or different arrangement of parts of the original work, so as to bring the whole into a smaller compass, will not be held to be such an abridgment. There must be real substantial condensation of the materials, and intellectual labour and judgment bestowed thereon, and not merely the facile use of the scissors, or extracts of the essential parts constituting the chief value of the work." And this perhaps expresses satisfactorily the present position of the English law. United States.

The question of *Translations* as infringements of copyright, naturally will rarely arise in England apart from the International question. There is no market in England for the translation into a foreign tongue of an § 161. Translations.

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reduced photograph of a painting was forbidden; and in *Bradbury* v. *Hotten* (L. R. 8 Ex. 1) *reduced* copies of cartoons in *Punch* met the same fate.

(*y*) 1 Story, 11.

(*z*) *Story's Exors.* v. *Holcombe*, 4 McLean, 306.

(*a*) 2 Story, 100.

§ 161. Translations.

English work. On principle however such a translation would clearly be an infringement of copyright in the original. The question arose indirectly in *Burnett* v. *Chetwood* (*b*) in 1720, where the author of a Latin work applied to restrain the publication of an English translation, and the Lord Chancellor decided the case on the curious ground that the book was not fit to be published in English, but said that "a translation might not be the same with the representing the original, on account that the translator has bestowed his care and pains on it, and so not within the prohibition of the Act." In *Murray* v. *Bogue* (*c*) however the Court said that if A. had published an English book, B. in Germany had translated it into German, and C. in England had retranslated B.'s translation into English, the law would protect A.'s book from C.'s retranslation. As a matter of inference it would also be protected from B.'s translation if published in England.

United States.

The Courts of the *United States*, before the Revised Statutes of 1870 and 1874, had decided very positively against the author's claim to protection. In *Stowe* v. *Thomas* (*d*) in 1853, A. wrote and copyrighted a work in English; she also had a German translation made, and copyrighted it. B. also translated the original work into German, and the Court refused to restrain him from publishing what Grier, J., declared to be "a transcript or copy of her thoughts or conceptions, but in no correct sense capable of being called a copy of her book" (!) He continued: "The author's exclusive property in the creations of his mind cannot be vested in him as abstractions, but only in the concrete form which he has given

(*b*) 2 Merivale, 441.
(*c*) 1 Drewry, 353, 368.
(*d*) 2 Am. Law Reg. 210.

§ 161. Translations. United States.

them and the language in which he has clothed them. When he has sold his book, the only property which he reserves to himself, or which the law gives him, is the exclusive right to multiply the copies of that particular combination of characters which exhibits to the eye of another the ideas intended to be conveyed." It need hardly be pointed out that this extraordinary doctrine would protect all piracy which did not consist in literal extracts; it would prohibit the literary plagiarist from compilations by scissors and paste, but allow him to construct his piracy by aid of a dictionary of synonyms.

The Revised Statutes (*e*) however allow the author to reserve the rights of translation, and, if he does so, protect him against unauthorized translations.

§ 162. Literary larceny.

II. *Literary Larceny*, where parts of the work are stolen verbatim, or under colourable disguise, to form part of another work. The test applied by English law is generally that laid down by Lord Eldon (*f*), that if there is "a legitimate use of a publication in the fair exercise of a mental operation deserving the character of an original work," there is no piracy. As has been pointed out, the English law lays too much stress on new matter added, too little on old matter taken. In a question of originality as against subsequent authors, the matter added is of importance; but in a question of piracy raised by previous writers, the matter taken is the point to be considered.

The English view of the matter received a good illustration in the case of *Spiers* v. *Brown* (*g*). The defendant

(*e*) § 4952.

(*f*) *Wilkins* v. *Aikin*, 17 Vesey, 422. See also *Longman* v. *Winchester*, 16 Vesey, 269; *Matthewson* v. *Stockdale*, 12 Vesey, 270.

(*g*) 6 W. R. 352; commonly known as "the French dictionary case."

§ 162. Literary larceny.

admitted that he had made considerable use of the plaintiff's dictionary in the compilation of his own, but alleged that he had corrected errors, compared it with other dictionaries, and really used independent labour in his compilation. Page Wood, V.C., said that where a work of an entirely original character was concerned, questions of copyright were very simple; but that there was a class of cases where the work related to a subject common to all mankind, and where the modes of expression and language were necessarily common. Then, applying Lord Eldon's test, he came to the conclusion that "though a good deal had been taken from the plaintiff, a good deal of labour had been bestowed on what was taken;" and therefore there was no infringement of copyright.

Piracy from original works is usually, as said by Lord Hatherley, easy to detect; the difficulty lies in the cases where there are common materials, and the question is whether one worker on them has availed himself unfairly of the results of his fellow-worker's labour. *Where the work is of a nature such that its sources are common to all, so that independent work for a similar purpose must end in similar results, each worker has copyright in the result of his independent labour and research; and his work is not an infringement of the results obtained by another, unless he has used those results instead of going to the original sources of information.*

Principle.

These principles are illustrated by the case of *Pike* v. *Nicholas* (*h*). The plaintiff had written a work in competition for a prize at the Eisteddfod, on the origin of the English people, which had obtained honourable mention and was published; the defendant had written a work on the same subject for a similar competition.

(*h*) L. R. 5 Ch. 251.

§ 162. Literary larceny.

He referred to plaintiff's work as an authority, and admitted that he had used it as a guide to older authorities. James, V.C., held his work to be an infringement of the plaintiff's right, but on appeal the Lords Justices held that common features of structure were inevitable and allowable when two men wrote upon a common subject; that an author who has been led by a former writer to refer to older works may without piracy quote passages from them, to which he has been referred by their quotation in his predecessor's work, and that on the whole there was not sufficient evidence of unfair use to constitute an infringement.

A similar illustration is found in the "directory case" of *Morris* v. *Wright* (*i*), where it was held that the compiler of a new directory was not justified in using slips cut out from one previously published, for the purpose of deriving information from them for his own work without any original inquiry, but that he might use them for the purpose of directing him to the parties from whom such information was to be obtained.

The question of piracy or no piracy must depend on a number of differing considerations of detail in each particular case, and principles laid down can be but vague. To Lord Eldon's test (*k*) however may be added the *dictum* in *Bramwell* v. *Halcomb* (*l*), that in questions of piracy "it is not only quantity but value that is always looked to," which is well expanded in the American case of *Folsom* v. *Marsh* (*m*) as follows: "It is certainly not necessary, to constitute an invasion of copyright, that the whole of a work should be copied, or even a large portion of it, in form or substance. If so much is taken that the value of the original is sensibly diminished, or

(*i*) L. R. 5 Ch. 279.
(*k*) *Wilkins* v. *Aikin*, 17 Vesey, 422.
(*l*) 3 My. & Cr. 737.
(*m*) 2 Story, 100, 115.

§ 162. Literary larceny.

the labours of the original author are substantially to an injurious extent appropriated by another, that is sufficient in point of law to constitute a piracy *pro tanto*. It is no defence that one has appropriated part and not the whole of the property. Neither does it necessarily depend on the quantity taken, but on other considerations, the value of the materials taken, and their importance to the sale of the original work. . . . *We must look then to the nature and object of the selections made, the quantity and value of the materials used, and the degree to which the use may prejudice the sale, or diminish the profits, or supersede the object of the original work.*" And the whole question is neatly summed-up in the American case of *Emerson* v. *Davies* (*n*) as follows:—

"The clear result of the authorities in cases of this nature is, that the true test of piracy or not is to ascertain whether the defendant has in fact used the plan, arrangement and illustrations of the plaintiff as the model of his own book, with colourable alterations and variations only to conceal the use thereof; or whether his work is the result of his own labour, skill, and use of common materials open to all men, and the resemblances are either accidental, or arising from the nature of the subject."

It may be added that the unauthorized reproduction of copies need not be for sale, or for the benefit of the reproducer. In *Novello* v. *Sudlow* (*o*) gratuitous distribution was held an infringement of copyright.

§ 163. Rights of authors.

I. *Rights of an Author.* (*p*) 1. Solely and exclusively by himself or his assigns to print or otherwise multiply copies of his book in the British dominions.

2. Solely and exclusively by himself or his assigns, or persons thereto authorized by him, to sell, publish,

(*n*) 3 Story, 768, 793.
(*o*) 12 C. B. 177.
(*p*) Nos. 1, 2, 3, see 5 & 6 Vict. c. 45, ss. 2, 3, 15.

or expose to sale or hire in the British dominions copies of his book. § 163. Rights of authors.

3. Solely and exclusively by himself or his assigns to import copies of his book printed abroad into the British dominions.

4 (*q*). If his "book" is published as part of an encyclopædia, review, magazine, or periodical publication.

(a.) In the absence of express or implied agreement to the contrary the author has rights 1, 2, 3, above, with regard to its publication in a separate form from the date of its first publication in any manner.

(b.) If there is an agreement express or implied that the publisher of the review or magazine shall have copyright in the article singly and as a part of his work, such publisher has the right to reprint the article as a part of the work for which it was written for twenty-eight years from first publication, but may not reprint it singly without the consent of the author or his representatives.

(c.) At the end of such term of twenty-eight years the author or his assigns have rights 1, 2, 3, for a further term of fourteen years.

(d.) While the copyright in the magazine or periodical belongs to its proprietor, the author may by express contract reserve himself the right of separate publication during such twenty-eight years (*r*).

(e.) In the case of encyclopædias, probably the division into twenty-eight and fourteen years does not exist, but the proprietor may reprint the work for forty-two years from first publication, the consent of the author being still required for the reprinting of his article in a separate form.

(*q*) 5 & 6 Vict. c. 45, ss. 18, 19.
(*r*) Ibid. s. 18.

§ 163. Rights of authors.

For the copyright in such articles to pass to the proprietor, he must pay for the article on the terms that the copyright shall belong to him. Mere payment will not imply such terms (*s*).

5 (*t*). The proprietor of a work first published after the author's death has the same rights as the author for a term of forty-two years from first publication.

6 (*u*). The person who employs another to write a book on the terms that copyright in such book shall belong to the employer and not to the author, has for the statutory terms the same rights as the author would have had in the absence of such agreement.

§ 164. Duties of authors.

II. *Duties of Author.* 1. To present a certain number of copies of his book of a certain quality to certain libraries specified in the Act (*v*) (*w*).

2. To register his book in the forms required by the Act, as a condition precedent of suing to protect his copyright (*x*). Registration need not precede the infringement complained of.

The register is kept at Stationers' Hall, and entries therein shall contain :—

(1) The title of the book.

(2) The date of first publication.

A registration cannot take place before publication.

(*Correspondent Newspaper Co.* v. *Saunders* (*y*).)

(*s*) *Walter* v. *Howe*, 17 Ch. D. 708.

(*t*) 5 & 6 Vict. c. 45, s. 3.

(*u*) Ibid. s. 18.

(*v*) Ibid. ss. 6–9.

(*w*) *i.e.* A copy of the best class of every book and new edition to the British Museum, within a month of first publication. A copy of the class of which the largest number are printed for sale, within one month after demand in writing, to the following libraries : Bodleian at Oxford, University at Cambridge ; Advocates' Library, Edinburgh ; Trinity College, Dublin.

(*x*) 5 & 6 Vict. c. 145, ss. 11–13, 24.

(*y*) 12 L. T. N. S. 540.

§ 164. Duties of authors.

(3.) The name and place of abode of the publisher. The "place of abode" may be the place of business. (*Nottage* v. *Jackson* (*z*).) The first publisher's name must be registered. (*Coote* v. *Judd* (*a*).)

(4.) The name and place of abode of the proprietor of the copyright.

If any of these particulars are incorrectly registered, both the registration itself and subsequent assignments of the work incorrectly registered are invalid. (*Low* v. *Routledge* (*b*).) This case however seems to conflict in principle with a case in artistic copyright where it was held that if the assignment sued under was registered, it was not necessary that the original work or previous assignment should be registered. (*Graves' case* (*c*).)

A fee of five shillings is payable on registering the original work, and each assignment of copyright, and the register may be inspected on payment of one shilling per entry.

In the case of periodical works it is sufficient to enter the date of publication of the first number, the name and place of abode of the proprietor, and of the publisher.

Investitive Facts.

§ 165. Investitive facts.

I. Publication—

1. Of a book capable of copyright.
2. In the United Kingdom.
3. By either:—
   (a.) A British subject resident anywhere.
   (b.) An alien friend resident in British dominions.
   (c.) (Possibly) by an alien friend resident abroad (*d*).

(*z*) Weekly Notes, Aug. 4, 1883.
(*a*) L. R. 23 Ch. D. 727.
(*b*) 10 L. T. N. S. 838.
(*c*) L. R. 4 Q. B. 715.
(*d*) *Routledge* v. *Low*, L. R. 3 Eng. & Ir. Ap. 100.

§ 165. Investitive facts.

4. Which book has not been previously published (*e*)—
(a.) In a foreign country.
(b.) In the United Kingdom.
(c). (probably) in the rest of Her Majesty's dominions (*f*).

II. (*g*) License to republish granted by the Judicial Committee of the Privy Council acts as a partial investment of copyright to the grantee.

III. (*h*) Registration in the register at Stationers' Hall is not an investitive fact of copyright, but is an investitive fact of the right to sue to protect such copyright.

In the case of *newspapers* (*i*) and other periodicals it is sufficient to register the first number. As copyright under the statute only vests in publication, employment by the proprietor of such a work to write on the terms that copyright shall belong to him, must be taken as an investitive, and not transvestitive fact. These terms need not be in writing; they may be implied not expressed (*j*).

Transvestitive Facts.

§ 166. Transvestitive facts.

The transvestitive facts of literary copyright are:—

1. (*k*) Assignment *in writing* from the author or owner.

2. (*l*) (subject to No. 1). All modes which pass personal property *inter vivos*, or on the death of the owner.

(*e*) 7 & 8 Vict. c. 12, s. 19.

(*f*) *Routledge* v. *Low* (*v.s.*); but 7 & 8 Vict. c. 12, s. 19, uses the language, "first published *out of Her Majesty's dominions*."

(*g*) 5 & 6 Vict. c. 45, s. 5.

(*h*) Ibid. s. 24.

(*i*) Ibid. s. 19.

(*j*) *Sweet* v. *Benning*, 16 C. B. 459; *Brown* v. *Cooke*, 16 L. J. Ch. 140, where it was said *obiter* that payment presumed employment on such terms, but *contra per* Jessel, M.R., *Walter* v. *Howe*, 17 Ch. D. 708.

(*k*) 5 & 6 Vict. c. 45, s. 23; *Leyland* v. *Stewart*, L. R. 4 Ch. D. 419.

(*l*) 5 & 6 Vict. c. 45, s. 25.

3. (*m*) Registration of such assignment at Stationers' Hall is a condition precedent to suing for infringement, § 166. Transvestitive facts.

4. (*n*) (partial). License to republish from the Judicial Committee.

5. (*o*) There may be a partial assignment of copyright, as of a share in it.

Divestitive Facts. § 167. Divestitive facts.

1. Expiration of statutory term of copyright.
2. Waiver of rights, which must probably be in writing.

Remedies for Rights infringed. I. *Of Authors.* § 168. Remedies against infringements.

1. (*p*) Action of detinue by registered proprietor after demand in writing for copies of his books unlawfully printed or imported, or damages for their detention.

2. (*p*) Action of trover for damages for conversion of such books.

3. (*q*) Seizure and destruction by custom-house officer of books unlawfully imported; fine of £10 and double the value of the books on the importer; of which £5 is to go to the officer, the rest to the proprietor of the copyright. Case to be heard before the justices of the peace for the county or place in which such book shall be found.

4. (*r*) Action for damages for infringement of copyright by unlawful printing and publishing.

5. Action for damages for importing unlawfully printed books for sale: (knowledge of the nature of the books is not necessary to constitute this offence) (*s*).

6. Action for damages for selling, publishing, or

(*m*) 5 & 6 Vict. c. 45, s. 24.
(*n*) Ibid. s. 5.
(*o*) Ibid. s. 13.
(*p*) 5 & 6 Vict. c. 45, s. 23.
(*q*) Ibid. s. 17.
(*r*) Ibid. ss. 15, 16.
(*s*) *Cooper* v. *Whittingham*, L. R. 15 Ch. D. 501.

§ 168. Remedies against infringements.

exposing for sale or hire, or having in one's possession for sale or hire, unlawfully printed or imported books, *knowing them to be such* (*t*).

7. Action for an injunction to restrain the committal of such offences.

Measure of Damages.—The defendant must account for each copy of his work sold as if it had been the plaintiff's, and pay the amount of profit which would have resulted from the sale of so many copies of the plaintiff's work (*u*).

Limitation of Actions.—Legal proceedings must be commenced within twelve months of the date of the offence (*v*).

§ 169. Remedies against author.

II. *Remedies against Author or Publisher.*—1. *For non-delivery of copies* within one month after demand in writing made by the libraries, or in certain cases within one month after publication, a fine not exceeding £5, and the value of the book, recoverable summarily (*w*).

2. *For non-registration,* loss of actions to protect copyright, until registration takes place (*x*).

3. *For false registration,*—(a)—*if wilful,* it is a misdemeanour, indictable criminally (*y*);—(b)—if *bonâ fide,* alteration of the entry by the Court on the motion of the person aggrieved (*z*).

There are a number of special penalties for infringement of University copyrights. As these are practically obsolete, Oxford having only six copyrights, Cambridge none, and as their abolition as far as special rights and privileges are concerned is recommended by the Commission (*a*), I have not thought it necessary to set them out.

(*t*) 5 & 6 Vict. c. 45, ss. 15–16.
(*u*) *Pike* v. *Nicholas,* L. R. 5 Ch. 251, 260.
(*v*) 5 & 6 Vict. c. 45, s. 26.
(*w*) Ibid. ss. 6, 9, 10.
(*x*) Ibid. s. 24.
(*y*) Ibid. s. 12.
(*z*) Ibid. s. 14.
(*a*) C. C. Rep. §§ 45–48.

Amendments proposed by Commission in Book Copyright. **§ 170.**

Recommendations of Copyright Commission.

1. That the law on the subject be codified (§ 13).

2. That the term of copyright be extended to the author's life, and thirty years after, in the case of works published with the author's name; thirty years from publication in the case of posthumous and anonymous works and encyclopædias, the author of an anonymous work to obtain full privileges by printing an edition with his name attached (§§ 40, 41).

3. That the term of twenty-eight years during which the author of an article in a periodical cannot republish without the *entrepreneur's* consent be reduced to three years (§ 43).

4. That during such three years the author shall have a right to sue to prevent unauthorized publications. At present only the proprietor can sue (§ 44).

5. That all special privileges to University copyright be abolished (§ 48).

6. That publication *within Her Majesty's dominions* shall vest Imperial copyright, instead of, as now, *publication in the United Kingdom only* (§ 58).

7. That first publication by a British author out of the British dominions shall not divest his power of obtaining copyright in this country, provided he republishes in the British dominions within three years of first publication (§ 61).

8. That aliens resident out of Her Majesty's dominions, but first publishing in them, be allowed copyright (§ 64).

9. That no abridgments of copyright works be allowed without the author's consent (§ 69.)

10. That a definition of the copyright parts of a newspaper, distinguishing between announcements of fact and literary work, be included in the statute (§ 88.)

§ 170. *As to Registration.*

Recommendations of Copyright Commission.

11. That registration of published works be made compulsory (§ 139).

As to registration.

12. That, if registration be continued at Stationers' Hall, effective power to regulate it be given to the Stationers' Company (§ 144).

13. That registration be effected by a deposit of a copy of the book at the British Museum, and the taking of an official receipt (§ 145).

14. That the registry and registrar be under Government control, and responsible to Government (§ 148).

15. That if the registry cannot be placed at the British Museum it be transferred to a Government office (§ 150).

16. That no owner of copyright should be able to sue for infringements of his copyright preceding registration, or for penalties for dealing with the results of such infringements even after registration, unless such registration has taken place within a month of publication (§§ 152, 154).

17. That compulsory presentation of copies to libraries be abolished, except in the case of the British Museum (§ 164).

18. That a copy of each issue of every newspaper be deposited at the British Museum.

19. That the provisions for piracy of books be extended to oral lectures pirated in print (§ 181).

This concludes our survey of the English Law of Copyright, so far as the United Kingdom alone is concerned. We are now in a position to treat of the English method of dealing with the problems of Artistic Copyright before dealing with Colonial and International Copyright.

CHAPTER VIII.

PRINCIPLES OF ARTISTIC COPYRIGHT.

§ 171. Introduction.

THE problems of Artistic Copyright are different in many ways from those which we have hitherto been considering in the case of Literary Property. Till now we have been occupied with productions the value of which to the public and to their author consists almost entirely in their communication by print or speech to the world, that is, in the mechanical reproductions of them which are distributed; the original manuscript in itself has only a fancy value; its main importance is as the text to be reproduced in a form accessible to the many. But in the case of works which are of the highest merit when in their original form; works of which any reproduction in the same medium or material is rare, while copies in other materials or modes are of a very different kind, the problem assumes a new form. Sculptures and paintings are of the greatest value as individual

§ 171. Introduction.

works; their reproductions by engraving, lithography, or photography are only made for the purpose of communicating in some degree, however inadequate, the merits of the original work, to those of the public who cannot see that original.

§ 172. Is artistic copyright desirable?

And the first great point of difference between the two classes of productions, Literary and Artistic, is, that it is possible to contend with far more force than in the case of literary works, that the institution of copyright in works of Fine Art is not desirable. It is not by any means clear at first sight what benefit the community will gain by State protection of works of art, or what harm the public will suffer by refusing to create artistic property.

No copy in the same material of the original painting can equal that original in merit, unless the copier possesses such talent that he would obtain far more return from original work. If the work professes to be a copy, its price is much smaller than that of the original, because the element of personal skill, which cannot be reproduced, is absent. While some ideas or designs of the author of the original picture are appropriated by the copyist, yet on the other hand, the increase of copies, by increasing the notoriety of the original author, may tend to increase the commercial value of his work. And if such copies are sold as originals, or if works, not copies, are sold as signed pictures of the original artist, the ordinary law as to forgery and obtaining money by false pretences seems sufficient to deal with such cases without creating a special class of property in artistic work.

Then as to engravings of an original work, it is true that money which might come to the artist may be paid to others for unauthorized engravings of the original

picture; but on the other hand it may be said that the public obtain more widespread knowledge of works of art, and more opportunities of æsthetic improvement if free trade in reproductions is allowed.

§ 172. Is artistic copyright desirable?

It has been argued before that the aim of the institution of literary property is to obtain good books at a very slight extra expense to the public. Will the result of the establishment of artistic copyright be to obtain better works of art than would be produced under a system of free reproduction, without a large increase in their price? And it may be urged that the tendency of a system of protection to artistic work will be to increase the price of all those reproductions of the original by which mainly it becomes accessible to the bulk of the community, without giving the public a corresponding benefit by drawing forth fresh talent to an artistic career.

§ 173. Arguments against artistic copyright.

This view of the matter has been put very forcibly by Sir James Stephen in the note appended to his signature as a member of the Copyright Commission, which, so far as it bears on the subject, I make no apology for reproducing:

§ 174. Sir J. F. Stephen's views.

"I dissent," says Sir James Stephen (*a*), "from all the suggestions made for extending copyright in works of art, and rendering the remedies against persons who infringe existing rights more efficacious. All these proposals appear to me to be founded upon a mistaken view of the principle on which the law of copyright ought to be based. They assume that the author of a work of art ought to be considered to have a right to every advantage which can possibly be derived from that work

(*a*) C. C. Rep. p. 57.

§ 174. Sir J. F. Stephen's views.

of art, even indirectly and by the exercise of independent ability. . . . . A painter is not to copy the painting of another painter, although the copy may require great labour and skill. Casts are not to be made of statuary, nor is a statue to be photographed, drawn, or engraved, without the leave of the owner of the copyright. It is admitted that in many instances these acts inflict no money loss on the author of the work of art, but it is said that they may hurt his reputation, and it is assumed that he is entitled to appropriate to himself every indirect advantage which may be obtained from his work."

"I think artistic reputation is too delicate a matter to be made the subject of legal protection. The law of copyright ought, in my opinion, to protect money interests only; and I think that the only money interests which it should protect are those which it creates; that is to say, the money interests of the author of a work of literature or art capable of being reproduced in such a manner that every copy is as valuable as the original.

"I approve of copyright in books, because the MS. has no money value till it is printed, and because when it has been printed, every copy is of equal value, so that unless a copyright law existed, the author of the most valuable book would have no money reward for writing it. For the same reason I approve of copyright in engravings, photographs, and other works of art capable of being mechanically reproduced in large numbers, each copy being of the same or nearly the same value as the original.

"I do not approve of copyright in pictures and statues, because a picture or statue has a value of its own, which is not affected by its being copied, and copies of it are themselves works of art of various degrees of merit. I think that such reproductions are sufficiently protected by

the ordinary law of property. No copy or cast of a picture or statue can be made without the consent of the owner, both of the picture and of the place in which it is kept, and I cannot see why, if the owner consents, the artist should have a right to object."

§ 174. Sir J. F. Stephen's views.

§ 175. Defences of artistic copyright.

And certainly the weakness of some of the defences of copyright put forward by artists would compel us to make a more extended examination of the question.

With regard to sculptures for instance, Mr. Woolner, R.A., says (*b*), "I do not know that sculptors have suffered from engravings, pictures, or photographs being taken of their designs. . . . . This has often happened to me. I cannot say that I have suffered, because I may say that it has been so much advertisement. But that is not the point: the point is that, the work being the property of the sculptor, no one has a right to copy it:" (a statement which, as an argument for the existence of artistic copyright, is a good example of the fallacy known as "begging the question"). Mr. Woolner complains further on of inaccurate casts and engravings of sculptures, as damaging the sculptor's reputation; but he admits that he has never heard complaints on the subject, and he repeats (*c*), "My private opinion is, that photographs do no harm to the artist—rather good than otherwise."

So again, Mr. Basil Field, the solicitor to a large number of the artistic societies, says (*d*), "A photograph, or an engraving from it, if well done, or done as the artist would do it, really enhances the value of the original work to the proprietor:" and again (*e*), "a well

(*b*) C. C. Ev. q. 4077.
(*c*) Ibid. q. 4096.
(*d*) Ibid. q. 3689.
(*e*) Ibid. q. 3631.

§ 175. Defence of artistic copyright.

engraved work is worth very much more in the market. (You will see "engraved," when it comes to Christie's, put in the catalogue.) The artist gets the advantage of having his work well engraved, which is a capital advertisement." (*f*)

§ 176. Views of English art-world.

On the other hand it is clear that in England the mass of artists and art publishers consider that the absence of the protection afforded by a system of copyright would be very injurious to them, and that the present English law, through its defects, is really injurious to the progress of art.

For instance, to take the evidence given before the Copyright Commission, Mr. Faed, R.A., said (*g*), "I have suffered a good deal through the practice of the multiplication of photographs myself. I remember some eighteen or twenty years ago, that I was in receipt of many hundreds a year for copyrights, but I get very little now. Mr. Graves" (the fine art publisher) "says that he cannot afford to pay so much for the copyright now, that the pictures are no sooner engraved than they are pirated, and sold in every quarter of Great Britain, and the result is, that he is incapable of paying the sums which he used to pay."

Sir Francis Grant, the late President of the Royal Academy, confirmed this. He said (*h*), "What I am most conscious of is, the immense deterioration in the value of copyrights, which has existed for many years past in consequence of photographic piracy. A publisher dares not risk a large sum; in fact, he is afraid

(*f*) Of course here stress should be laid on the *good* engraving, which advocates of artistic property contend will not be obtained without the intervention of copyright.

(*g*) C. C. Ev. q. 3482.

(*h*) Ibid. q. 3416.

to engrave a work, because no sooner is it engraved than he is undersold by piratical photographs. This piracy has deteriorated the value of copyright to an immense extent. In former years, for instance, a publisher would estimate a work at 300*l.*, which now he only estimates at 100*l.* He says, 'In the very first week that I bring out a picture, it is photographed.'" § 176. Views of English art-world.

This evidence is confirmed by other witnesses. Mr. Field says (*i*), that when an artist has habitually omitted to register his paintings, the market is so flooded with copies and imitations, that the price of his genuine work at auctions is materially diminished owing to the suspicion attaching to all work alleged to be his.

§ 177. Justification of artistic copyright.

It is admitted, that the chief pecuniary value of copyright in the fine arts lies in the right of engraving pictures (*k*); and as Mr. Graves says, a valuable picture does not necessarily imply a valuable copyright. All artists and publishers agree, that without protection good engravings can hardly be produced, as the competition of cheap and inferior copies will render the risk to the publisher very great. Some artists add, that the reputation of the artist is seriously damaged by the circulation of inferior representations of his work; but this does not seem in itself a sufficient reason for the institution of artistic property.

As far as paintings, drawings, and sculptures by themselves are concerned, the presence or absence of copyright will make very little difference; its justification, if at all, lies in the encouragement of engravings, whether from pictures or not. These are expensive when

(*i*) C. C. Ev. q. 4185.

(*k*) See evidence of Sir Francis Grant, C. C. Ev. § 3421; Mr. Graves, § 3171.

§ 177. Justification of artistic copyright.

produced well, of great value when good, and liable to be driven from the field by inferior competition. One result of the institution of artistic copyright will certainly be that the public will get better engravings and, indirectly, better pictures; the artist will obtain larger sums for his work, and the skilled engraver will be encouraged.

§ 178. Examination of Stephen's view.

Sir James Stephen's position as to the desirability of copyright in engravings and photographs seems fully justified by the evidence of practice; but it may be respectfully suggested that a copyright in engravings without a copyright in the paintings which are engraved, would be a little difficult to give legal effect to. Sir James Stephen would give A., the engraver of a painting, a copyright in his engraving, and that copyright would enable A. to prevent all other engravers from reproducing his engraving; but how would it interfere with another engraving or photograph made from the original painting by B., without any use of A.'s engraving. On the principles of English law, for example, it is open to any one to avail himself of matter contained in sources not copyright, and to obtain copyright in the results of his labour, without thereby infringing the copyright of other and prior borrowers from the same sources, if only he has made no use of their work. Here, according to Sir James Stephen, there is a painting not the subject of copyright. It is open therefore to all the world to engrave it, and to obtain copyright in each result obtained, which will not be an infringement of any other work. Yet this free competition in engravings would destroy the whole benefit of copyright in them. It is as if no books were held infringements of copyright, unless it was proved that their type was set up from

the printed work infringed, and not from a manuscript copy. § 178.

Examination of Stephen's view.

But it may be said the remedy of the maker of the first engraving will be against the owner of the picture. No engraving or photograph from the picture could well be made without the consent of the owner, and though the maker of the first engraving cannot sue the infringer directly, yet he can recover the damage he has suffered from the proprietor of the picture, who must have given his consent to a second engraving in breach of his covenant to assign the sale right. But what if the artist or proprietor sells the picture? Is he to be bound to do so with restrictive covenants to each purchaser against allowing engravings of the picture to be made? Will the remedy against competitive and piratical engravings be a long series of actions through the chain of purchasers of a picture, each enforcing the covenant made to him? And again, what is to happen if a copy of the picture is painted, which, as there is no copyright in the picture, may easily happen? How can engravings from that copy be prevented, unless a second series of restrictive covenants is initiated, a series probably inadequate, and certainly ludicrously cumbersome? And yet, if pictures are not the subjects of copyright, the whole benefit of copyright in engravings is lost, unless some such plan as this is adopted.

Result.

While agreeing in the main therefore with Sir James Stephen's distinction between engravings and paintings, I think that a partial copyright in engravings only would entirely fail in its effect; there would be as much competition as if no copyright existed, with the additional burden of useless restrictions. For this reason I should advocate copyright or the establishment of property in all works of art, while endeavouring to

§ 178. Examination of Stephen's view. Result.

induce artists to avail themselves of the ordinary law as to fraud and forgery, in dealing with the abuses of forged signatures and spurious "originals."

§ 179. Examination of other views.

A further ground indeed for artistic copyright is urged by some witnesses, as Mr. Woolner, R.A., and Mr. Graves, and is expressed in this way (*l*): "the work being the property of the artist, no one has the right to copy it;" and again, "in any case I hold that no person is justified in copying the work of an artist without his permission."

This, no doubt, represents a popular feeling that "the labourer is worthy of his hire," that when an author has produced a literary or artistic composition, he should be entitled to some remuneration for any use made of the ideas contained in that composition: as is said, "he has a right to his work;" "no one has a right to copy it without his consent."

As a *reason* for the establishment of copyright, this is clearly fallacious if the "right" referred to is a legal one; and if the right be moral, is anything else meant by the phrase than that possession of copyright by the artist is either desirable in the interests of the State, or approved by the mass of the community? In each of these cases the question must be finally decided by considerations of the benefit to be directly or indirectly gained by the community.

§ 180. Unpublished artistic work. What is publication?

Assuming however that artistic property is to be established by law, there are two or three points in which the conditions differ from those of literary property, and on these only I propose to dwell.

And in the first place the position of unpublished

(*l*) C. C. Ev. qq. 4077, 5444.

§ 180. Unpublished artistic work. What is publication?

artistic work differs very materially from that of unpublished literary work, and publication is of a different character. In literary property we have seen (*m*) that a work is "published," when the author makes such a communication of it to others that any member of the public, or a certain number of the public, determined merely by priority of application, may obtain a copy of the work either by purchase or gift. (This shuts out such cases as "printing for private circulation.") And in this process, there is a regular stage of the production known as "publishing" a book, and a regular section of producers, known as "publishers." But in many sections of artistic work it is difficult to say what is publication. Engravings and photographs are published, like books, by striking off or printing copies and offering them for sale; but what constitutes publication of a picture? Is it when an artist exhibits his work at the Royal Academy? Does he publish it, by merely shewing it to his friends at a private view? Or if at his private view he sells it to a friend, who keeps it on the walls of his private house, has publication taken place? Or is the work published when it hangs unsold in the artist's studio, visible to everyone who comes in?

And though the importance of these questions is mainly in view of the problem of registration, and of the English distinction of statutory and common law copyright, I think they will be solved more easily by leaving registration out of the question for the present.

It seems that until the work has been in some way exposed or shewn, so that it is possible for the public to view it unreservedly, it should be considered an unpublished work. Till such exhibition takes place, whether gratuitously or on payment, the artist should be taken

(*m*) See § 165.

§ 180. Unpublished artistic work. What is publication?

to reserve the work to the sight of himself and his licensees. Mere sale or exhibition to friends should not be considered such "publication" as divests the artist's rights, unless he chooses to take certain legal steps. Similarly any conditional exhibition might be held not to amount to publication, as for instance exhibition in a public gallery where no copying was allowed, and admission to which was therefore obtained by the public on an implied contract not to copy; or perhaps exhibition under similar conditions for the purpose of obtaining subscribers for a subsequent engraving.

On the other hand, exhibition in public galleries, without restrictions as to copying, offering of engravings or photographs for sale, or exposure of sculpture to the public, appear to be "publication" in any ordinary sense of the word.

The class of unpublished works then will be far larger than in the case of literary works, and much more profitable to the public. The manuscripts that do not see the light are perhaps numerous, but probably not of great value. But the pictures which are not exhibited, the sketches, drawings, paintings which are never open to public view, but remain with the artist or pass to some private buyer who does not exhibit them, are very numerous. Until the Winter Exhibition of 1882–1883, nearly all the paintings of D. G. Rossetti were, in this sense, unpublished; and though it is the practice in England for most leading artists to exhibit at one or other of the summer galleries, yet undoubtedly a large amount of good work is never communicated to the public, but remains for the private edification of the owner and his friends. And this suggests another argument against the institution of artistic copyright, that it may deprive the public of acquaintance with many really meritorious works of art, whose producers or owners do

not choose to expose them to public view. The strength of this however is lessened by the consideration that in most cases it would only be possible to engrave or photograph these unpublished works by stealth or fraud and that such engravings would almost inevitably be of an inadequate and inferior quality, thus both misrepresenting the works in question and lowering the public taste.

§ 180. Unpublished artistic work. What is publication?

The criterion of publication, in the Artistic Copyright Bill of the session of 1883, is only introduced with regard to engravings and photographs, the interpretation clause reading:

§ 181. Definition of publication in Artistic Copyright Bill of 1883.

"Publication shall mean:—

"In the case of engravings and photographs the first act of offering for sale or for delivery to a purchaser, or of advertising, notifying or exposing as ready for sale to the public, or for delivery to a purchaser, any copy of a work, or delivering at the Hall of the Stationers' Company a written request for the registration of such work," and the term of copyright is to be a fixed term of years, practically commencing with publication.

Drawings, paintings, and sculpture, it is proposed to treat in a different way. The copyright in these works of art is to be regulated by the life of the artist or owner of the copyright, and is to commence on "execution" of any work. The effect of this proposal would apparently be to destroy all common law copyright in unpublished paintings and works of that class, and with it all questions of publication. The only objection to this proposal would be, if registration were required to commence at a correspondingly early period; for such a requirement would be burdensome in the extreme. But the Bill, while requiring registration for

§ 181. Definition of publication in Artistic Copyright Bill of 1883.

engravings and photographs on penalty of inability to sue for infringements occurring or commencing before registration, does not make registration of drawings, paintings, or sculpture, compulsory, or require it as a condition precedent to actions for infringement of copyright. This leads us to consider whether registration can, in the interests of the community, be, as proposed by this Bill, dispensed with.

§ 182. Registration of artistic work.

Against compulsory registration of artistic work a most vigorous protest is raised by artists. They strongly object to the trouble of registering every sketch picture or drawing made by them, and this trouble is a far more serious matter than in the case of books. Registration is also far more effective as a history of literature, and a guide to the owners of literary copyright. There is a fairly definite line to be drawn between published and unpublished literary works, and a definite class of business men who publish books, and can see to the formalities of registration. Of course in the case of engravings, and other mechanical reproductions from an artistic original, the same considerations apply as in the case of books, but paintings, sculptures, and drawings, stand on a very different footing.

An enormous number of works of art are yearly produced, which remain in the artists' possession; which have no particular name, or no name which would serve to identify them to a stranger, and of which the vast majority will never be pirated. It is difficult to see what purpose an entry of these works in the register can serve; in the case of most of them it will be to the artist an expensive useless and worrying form, while it rarely can be made definite enough to be of assistance to the public searching the register. And indeed I do not

§ 182. Registration of artistic work.

regard the argument that the public are entitled to know what works they may copy with safety as of much weight. If once the principle of literary and artistic property is adopted, the presumption should be in favour of its owners and not of its would-be appropriators.

The present Lord Bramwell took a similar view of the use of registration in his judgment in the case of *Ex parte Beal* (*n*). He said: "In almost all cases a man who copies a work without the authority of the owner, must know that he is pirating the work of somebody. There may be a conceivable case in which a man has been deceived, having been told by a person, who pretended to be the owner of the copyright, that he might copy the picture. It is possible that in such a case a man might have been acting innocently;" but as a rule the register is for the intentional wrongdoer.

Registration really only becomes important when a dispute has arisen to copyright, and the artist or owner wishes for *primâ facie* evidence of his right; that is when, publication of the original having taken place, the issuing of copies by other than the artist or his assignees may be looked upon as a probable contingency. Before that time any unauthorized copy must be obtained by some kind of stealth or fraud, and to require registration by the author or owner as a condition precedent to his remedy would be to favour the pirate at the expense of the public. For, as is suggested, a copy made in such a way could rarely be of much merit, and the public as purchasers would suffer correspondingly.

§ 183. Proposals of Copyright Commission as to registration.

The Copyright Commission (*o*) have suggested compulsory registration in the case of engravings, prints and

(*n*) L. R. 3 Q. B. 387, 392.
(*o*) C. C. Rep. §§ 156–159.

§ 183. Proposals of Copyright Commission as to registration.

photographs, which, (subject to some qualifications in the case of photographs,) are as a rule made for sale to the public; and in these cases none of the difficulties suggested above arise. The Commission propose however, that in the case of paintings, drawings and sculptures, registration should only be required when the copyright and the picture are in different hands; that is to say, when the owner of the picture or his predecessors have assigned to others the right to reproduce it. This amounts to a proposal that if the owner of the picture has still the right to reproduce it, no registration need take place, even though he has published it; but, on the other hand, that when the picture and the right to reproduce it have been separated, the assignment shall be registered, even though no publication has taken place, and the right to reproduce has not been used. More logical distinctions would seem to be either that only published works need be registered, or that no registration at all should be required for paintings or drawings. For in the first case, until the artistic work is published by the author or his assigns, no one else can have any pretence of a right to reproduce. When it is published, it needs protection, and it may be said that it is important to the public to know whether the right of reproduction in connection with it is reserved, and that registration may therefore justly be required. On the other hand, as suggested by Lord Bramwell, the cases where genuine purchasers, as distinguished from intending pirates, would invoke the register must be very rare. The same view is held by Mr. Field, who puts the matter very forcibly in his evidence before the Commission. He said (*p*): "Not one private collector in a hundred does want the copyright in a picture which he buys at a sale, (they

Evidence as to uselessness of registration.

(*p*) C. C. Ev. q. 4185.

§ 183. Proposals of Copyright Commission as to registration.

as a rule, buy direct from the artist if they want the copyright,) as he cannot profitably engrave it; . . . and unless he is a pirate, he does not want to make copies for sale. I will state, also—and I have it from the lips of the best known publishers in London—that they who want the copyright for the purpose of engraving, never consult, and would never think of consulting the register, but would, and always do write direct to the artist, whom they would wish to superintend the plate, if living, or to his family if he were dead. But, I am bound to assume that the purchaser would wish to consult the register, *otherwise I leave no use whatever for compulsory registration.* Well, what is he to do? Is he to go up to London and consult the register?" And after suggesting the difficulties in the way of this course, chiefly arising from the necessarily vague description of the work in the register, he answers his question (*q*): "Of course the intending purchaser would do nothing so foolish; he would simply write to the artist, whose name he must know in order to consult the register, and to whom a very loose description of the picture . . . would suffice to identify the particular work, . . . he would inquire into the title of the vendor . . . and upon the answer given to these inquiries he would determine to bid, or not to bid. *Compulsory registration is worse than useless to him.*"

Publications of pictures or drawings without reserve are very rare; registration of every private sale would be both cumbersome and useless. In my opinion, therefore, the most advantageous proposal is that of the Copyright Bill, that no registration be required for works of the class of paintings and drawings. Result.

(*q*) C. C. Ev. q. 4185.

§ 184. Effect of sale on copyright. Commissioned works.

The next question of difficulty as to the nature of artistic property arises as to the effect on copyright of the making on commission, or the first sale, of a picture or photograph. Artists generally, though inclined to recognise exceptions in the cases of portraits and works painted on commission, express a wish to retain the copyright in themselves, if no express agreement on the subject is come to. But it is very difficult to distinguish where the portrait or commissioned picture begins, and the ordinary painting leaves off. The present English law, which provides that if no agreement in writing is made on the sale with respect to the copyright, that right is destroyed, is indefensible. Artists urge that if they retain the copyright, they will be able to secure that any engraving or reproduction of the picture which may be made is a good one; while there will be no security for this if the private purchaser alone may regulate reproductions. The advantages of their proposal cannot be put higher than this, for their copyright is of no positive value, unless the owner of the picture gives them leave and ample opportunity to have the picture reproduced, good engravings being a work of great time and labour; on the other hand, though purchasers of pictures generally object to buying a picture without the copyright, if such a suggestion is made to them, and though they would object to reproduction by others, yet private purchasers rarely use the copyright themselves.

The Copyright Commission, after (*r*) giving up in despair the attempt to define a "portrait" or a "commission," came (*s*) finally to the conclusion that in the absence of express stipulation the copyright should belong to the purchaser.

(*r*) C. C. Rep. §§ 109, 110.
(*s*) Ibid. § 115.

§ 184. Effect of sale on copyright. Commissioned works.

The Copyright Bill, on the other hand, puts forward the artists' view of the question by proposing, though not in express words, that the copyright shall, in the absence of express agreement, remain in the painter, except that, in the case of portraits executed on commission, the painter shall not be entitled to make any reproduction whatever without the consent of the owner; and similarly apparently the owner is not to be entitled to make any copy without the consent of the painter, which in the case of family portraits seems a rather unfortunate proviso. In other words, the proposal is this: In the case of all verbal sales of pictures, the artist will retain the right to publish, and receive the profits from, engravings, photographs, and other reproductions of such picture (except copies in the same material); the new proprietor or buyer will, except in the case of portraits, have no check on the circulation of copies, and no share in the profits resulting from reproductions.

Result.

This would of course be a very satisfactory position for the artistic world; but it is unfortunate that it would frequently arise from the ignorance of the purchaser, who would imagine he was buying what really, for the want of express stipulation, did not pass to him. I incline, therefore, on the whole to the opinion that the solution proposed by the Copyright Commission is the best one for the interests of the public. Then it would require an express stipulation in writing, which must be distinctly brought to the notice of the purchaser, to retain a copyright in the artist, which would otherwise pass to the buyer of his picture.

§ 185. Photographs.

With regard to the copyright in photographs, the Copyright Bill proposes the same rule as for paintings, with the exception that in the case of portraits executed

§ 185. Photographs.

on commission, it shall be unlawful for anyone, even the owner of the copyright, to sell or exhibit in public copies of such portrait without the consent of the person who gave the commission.

The Commissioners recommend that the copyright shall vest in the "proprietor of the negative," instead of, as in the Bill, the "author or maker of the negative;" they insert, however, the same proviso as to the necessity of the consent of the sitter to the exhibition or sale of his portrait.

The proposal of the Bill seems clear, and, with its safeguarding proviso, satisfactory (*t*). The proposal of the Commission errs a little, in my opinion, in its failure to define who is the "proprietor of the negative." Some proviso is surely needed to the effect that where the negative is made as the result of a commission or order, it shall belong to the person giving such order.

§ 186. Infringements.

As to infringements, the English rule seems a satisfactory one. Any unauthorized reproduction, which may diminish the artist's reputation by being taken for his original work, or for a representation of his work, or which may diminish the commercial value of his artistic productions by interfering with their sale, should be treated as an infringement. But such a result will not take place unless there is either exposure for sale, or public exhibition, a limitation which prevents interference with private copies made for amusement or purposes of artistic education.

§ 187. Searchand seizure.

The only other point that calls for notice is the special importance in dealing with piratical copies, of full powers

(*t*) The recent case of *Nottage* v. *Jackson* (Weekly Notes, Aug. 11, 1883) shews the necessity however of a clearer definition of the "author or maker" of a negative or of a photograph.

§ 187. Search and seizure.

of search and seizure. The piratical publisher spreads his wares through travelling pedlars, who have no money to pay penalties, and whom imprisonment does not deter, while the real offender remains behind unknown. Ample power of prompt seizure of piratical copies will in some degree counteract this evil.

§ 188. Codification.

Finally, the Law of Artistic Copyright may be based on, at the most, two sets of principles, and dealt with very shortly. Paintings, drawings, sculptures, and works where the original is of the greatest value, fall under one head; engravings, photographs, and other mechanical reproductions, all of nearly equal value, from a common original, rank beneath the other. There is clearly no need for the separate and accidental legislation at present applied in England to each variety of artistic work, and codification and unification of the law on this head should be effected as quickly as possible.

CHAPTER IX.

ENGLISH LAW OF ARTISTIC COPYRIGHT.

English statutes.

§ 189. THE English Law as to Copyright in Works of Fine Art is even more complicated than the law which establishes literary property. Three separate sets of statutes deal with copyright in prints and engravings, sculptures, and paintings drawings and photographs, respectively, and deal with them in a very confusing way. The law as to engravings is to be found in 8 Geo. II. c. 13, amended by 7 Geo. III. c. 38, and 17 Geo. III. c. 57, and in 6 & 7 Will. IV. c. 59, and 15 & 16 Vict. c. 12, s. 14. Sculptures are regulated by 54 Geo. III. c. 56, and paintings, drawings, and photographs by 25 & 26 Vict. c. 68. During the present session a codifying and amending Bill, having been prepared by a committee of the Law Amendment Society appointed for the purpose, was brought into the House by Mr. G. W. Hastings. It passed its second reading but was then persistently blocked, and succumbed in the "Massacre of the Innocents" in July.

NOTE.—The six Acts, which formerly regulated Copyright in Designs have been repealed by the Patents Act, 1883 (46 & 47 Vict. c. 57); which provides new law on the subject, see §§ 47–61.

SECTION I.

Unpublished Works.

§ 190. Unpublished works of art.—§ 191. Cases on the subject: *Prince Albert* v. *Strange*.—§ 192. *Jefferys* v. *Boosey*.—§ 193. *Turner* v. *Robinson*.—§ 194. Statute of 1862.—§ 195. Recent cases.—§ 196. Result.—§ 197. What is publication? *Turner* v. *Robinson*.—§ 198. General conclusions.

§ 190. Unpublished works of art.

But before endeavouring to reduce the existing chaos of legislation into order, we must first deal with the question of property in unpublished works of art.

The owner of a picture, engraving, drawing, photograph, sculpture, or other work of fine art, has a right before publication to prevent any copy being made of it (*a*).

I should not have thought it necessary to set out at any length the authorities for this proposition had not the Act of 1862 (*b*), which was passed two years after the last of the cases cited as authorities, led off with the startling preamble: "Whereas by law, as now established, the authors of paintings, drawings, and photographs *have no copyright* in such their works," I think the explanation must clearly be that the phrase "copyright" is used in the restricted sense in which it had been used in the great case of *Jefferys* v. *Boosey* (*c*) (1854), namely, as defined at p. 954, as "the exclusive right of multiplying copies of a work already published." However, in a very recent case at *Nisi Prius*, before Day, J., that learned judge expressed considerable doubt as to the effect of the preamble. The present Mr. Justice Stephen also, in his admirable

(*a*) *Turner* v. *Robinson* (1860), 10 Ir. Ch. Rep. 121, 510; *Prince Albert* v. *Strange* (1849), 1 McN. & G. 25.

(*b*) 25 & 26 Vict. c. 68.

(*c*) 4 H. L. C. 815.

§ 190. Unpublished works of art.

digest of the law appended to the report of the Copyright Commission, when speaking of (*d*) "the assumption on which the Act is based, that apart from it there is no copyright in paintings, etc.," says: "This assumption is however not absolutely correct . . . It can hardly have been intended to abolish the common law principles as to unpublished compositions by this statute, but I am not sure that that is not its effect."

It is therefore desirable to go a little more in detail into the authority for the original proposition.

§ 191. Cases: *Prince Albert* v. *Strange*.

It is unnecessary to refer again to the cases in support of unpublished literary property, which however are based on the same principle. The case in which the question first arose is the celebrated one of *Prince Albert* v. *Strange* (*e*) (1849).

In that case the Queen and Prince Albert had been in the habit of making etchings and drawings for their own amusement, and of having copies struck off from the etched plates by workmen. They had no intention of publishing these works, and designed the copies for their private use and for presentation to a few intimate friends. The workman they employed struck off copies on his own account, and retained them; he afterwards parted with the collection he had thus formed, which finally came into the hands of Strange, who proposed to exhibit it to the public, and to publish a descriptive catalogue. Prince Albert applied for an injunction as to both the exhibition and the catalogue, which was granted by Vice-Chancellor Shadwell, whose order was affirmed on appeal by Lord Cottenham. The Lord

(*d*) C. C. Rep. p. 75, note.
(*e*) 2 De G. & Sm. 652: (on appeal), 1 McN. & G. 25.

Chancellor based his decision on the two grounds of property infringed, and breach of trust. He said (*f*), "The property of an author or composer of any work, whether of literature, art, or science, in such work, unpublished and kept for his private use or pleasure, cannot be disputed, after the many decisions in which that proposition has been affirmed or assumed, I say assumed, because in most of the cases which have been decided, the question was not as to the original right of the author, but whether what had taken place did not amount to a waiver of such right . . . a question which could not have arisen if there had not been such original right or property;" and, again, "the exclusive rights in the author of unpublished compositions, which depend entirely upon the common law right of property." The Lord Chancellor also laid stress on the breach of trust in the workman who printed the copies, in retaining some impressions for himself, and finally granted the injunction on both grounds, the right of property infringed, and the breach of trust.

§ 191. Cases: *Prince Albert* v. *Strange.*

The next case which may indirectly throw some light on the question is the case of *Jefferys* v. *Boosey* (*g*), in which, though the main question was as to whether English copyright could exist in the work of a foreign author, first published in England by his assignee, yet the Law Lords, after hearing the judges, were led to deal with the question of copyright at common law. And Lord Cranworth, the Lord Chancellor, at the beginning of his judgment, says (p. 954): "The right now in question is not the right to publish, or to abstain from publishing a work not yet published at all, *but*

§ 192. *Jefferys* v *Boosey* (1854).

(*f*) 1 McN. & G. 42.
(*g*) 4 H. L. C. 815.

§ 192. *Jefferys* v. *Boosey.*

the exclusive right of multiplying copies of a work already published." Copyright, *thus defined,* if not the creature, as I believe it to be, of our own statute law, is now entirely regulated by it. Lord Brougham again says (p. 962): "The right of the author before publication we may take to be unquestioned . . . But if he makes his composition public, can he retain the exclusive right which he had before?" Lord St. Leonards also holds (p. 977) "that no common law right to copyright exists after publication," and again (p. 979), "The common law does give a man who has composed a work a right to that composition, just as he had a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of for ever copying his own composition, *after he has published it to the world,* is a totally different thing."

All the *dicta* therefore in *Jefferys* v. *Boosey* are addressed to the proposition that copyright *after publication* rests entirely on the statute law; the common-law property before publication is unhesitatingly admitted, and nothing is said to qualify the direct decision in *Prince Albert* v. *Strange* (*h*).

§ 193. *Turner* v. *Robinson.*

And the later Irish case of *Turner* v. *Robinson* (*i*) (1860), as affirmed on appeal, while of most importance on the question of what constitutes publication, also fully confirms the common law right. The question in that case is not whether the right exists, but whether it has been waived or lost. The defendant's counsel commence their argument (p. 511) by the admission that the owner of a work has a right "to keep it secret." The Lord

(*h*) 1 McN. & G. 25.
(*i*) 10 Ir. Ch. 121, 510.

Chancellor confirms this, and remarks on the ambiguity of the word "copyright," as applicable both to the common law right of ownership before publication, and the statutory right of control after publication. § 193. *Turner* v. *Robinson.*

Down to 1862 therefore there are clear decisions of the highest authority for a common law "copyright" in unpublished artistic property; and the only authority to the contrary is the preamble of the statute of 1862 (*k*), "Whereas by law as now established, the authors of paintings, drawings, and photographs have no copyright in such their works." This is, as a statement of the existing law, untrue, unless "copyright" is used in the limited sense in which it was used in *Jefferys* v. *Boosey* and which was referred to in *Turner* v. *Robinson*, viz., the exclusive right to multiply copies of a work after publication. § 194. Statutes of 1862.

And it is submitted that the preamble must be clearly interpreted in that sense rather than in the broader sense, which would state incorrectly the result of three decisions of the highest authority within the previous thirteen years, and in effect reverse those decisions.

If so therefore the doubts of Mr. Justice Stephen and Mr. Justice Day are unfounded. The case before the latter learned judge was *Selligsen and Sommerfeld* v. *Legge and Judd & Co.*, a short report of which appears in the *Daily News* of the 23rd of June, 1883. An artist named Cowie had painted a picture of 'The Finding of the Body of the Prince Imperial,' and on March 28th, 1882, had assigned the copyright of the picture, together with the possession of the picture, for three years, to the plaintiffs, who were art publishers, § 195. Recent cases.

(*k*) 25 & 26 Vict. c. 68.

§ 195. Recent cases.

for the purpose of exhibition. The plaintiffs proposed to engrave the work, and to use the exhibition of the picture as a means of selling their engravings. The painter exhibited the picture to the Queen on the 10th of May, and soon after that it was exhibited in a gallery in London for the London season, admission being obtained by payment. There was apparently no express prohibition from copying the picture shewn to visitors. On July 13th the proprietor of the *Whitehall Review* published as a supplement to their journal a lithograph of the picture, made from a sketch supplied by the artist, and on July 17 the picture was registered at Stationers' Hall. The plaintiffs sued for damages for violation of their property in the unpublished picture, being unable to sue for penalties for violation of statutory copyright, owing to the publication complained of having preceded registration. The defendants contended that there was no property before registration (on the strength of the preamble of the Act of 1862); that the plaintiffs had published the picture; that if there was property before publication the right to prevent reproductions could not be separated from the property of the picture; and that the publication in the *Whitehall Review* was by the license of the plaintiffs. On this last point the jury found against the plaintiffs, thus avoiding any real argument of the legal points, but Mr. Justice Day however expressed an opinion against the plaintiffs so far as the case had gone, an opinion which it is respectfully suggested would have been modified on further consideration and argument. That property in unpublished works of art exists seems clear, and there seems no reason why the property in the work on the one hand, and the sole right to reproduce it with the consequent right of preventing others from reproducing it on the other hand,

§ 195. Recent cases.

may not be in different persons. Such a separation was admitted in the cases of *Duke of Queensberry* v. *Shebbeare* (*l*), and *Thompson* v. *Stanhope* (*m*), in each of which the property in the work, or a copy of it, was distinguished from a right to publish it, and it was held that the proprietor of the right to publish could restrain the proprietor of the manuscript from printing it. It is true that in each of these cases the proprietor of the right to publish was also the author, but it is submitted that the reversal of the relation makes no difference. Possibly where the proprietor of the right to publish is not the author, he can only exercise his right through the author, or by an action against the author, but the result is the same.

§ 196. Result.

In recapitulation therefore the author or proprietor of an unpublished work of art has by the common law of England the right to prevent any copy of such work being made or published without his consent.

§ 197. What is publication?

This right ceases on publication, after which the position of the author or proprietor is regulated entirely by the statute law. Before therefore dealing with the statutory provisions of the English law on the subject, we may consider the rather difficult question of what constitutes publication.

And, curiously enough, the English law is almost devoid of authority on the subject. Sir J. F. Stephen, in his Digest, says (*n*): "As to what amounts to a publication of a work of art, I know of no precise authority." This probably overlooks the Irish case of *Turner* v.

(*l*) 2 Eden, 329.
(*m*) Amb. 737.
(*n*) C. C. Rep. p. 90.

§ 197. What is publication?

Robinson (*o*), and there are also one or two scattered *dicta* on the subject, but the point is certainly by no means clear.

Turner v. *Robinson.*

Turner v. *Robinson* was decided on appeal in Ireland by the Lord Chancellor, the Master of the Rolls, and the Lord Justice of Appeal in 1860, two years before the English Act which gave copyright to paintings. The facts of the case were shortly these. In 1856, Henry Wallis painted a picture representing the 'Death of Chatterton,' and in the same year sold it to Egg; in 1859 Turner purchased from Egg "the sole right to engrave and publish an engraving of the picture," with possession of the picture for a certain time for the purpose of exhibiting it to obtain subscriptions for his engravings. While Turner was thus exhibiting it in Dublin, Robinson, the defendant, having seen the picture at the exhibition, arranged models to represent the picture in his studio, and from them obtained a stereoscopic photograph, which he offered for sale. Turner applied for an injunction to restrain the sale. There was no statutory copyright in pictures existing; the only ground therefore for the injunction must be at common law, and the defendant's counsel accepted the position that a common law right existed, but contended that it had been lost by publication. The sole question before the Court was whether the prior dealings with the picture constituted a publication, and these prior dealings were as follows:—

Alleged publications.

The picture had been exhibited by Wallis at the Royal Academy in 1856.

In the same year, by Wallis' permission, a wood engraving of the picture had been published in the 'National Magazine,' with a descriptive article.

(*o*) I. R. 10 Ch. 121, 510.

§ 197. What is publication?

The picture had also been exhibited at the Manchester Exhibition in 1857, and by Turner in Dublin in 1859.

With regard to the exhibition at the Academy and at Manchester, it appeared that, at each gallery, copying the pictures exhibited was absolutely forbidden, and with regard to the exhibition at Dublin, though there was no express rule as to copying, the plaintiff had published a general notice against photographic infringements of his pictures before the exhibition commenced.

These facts were held both by the Master of the Rolls and the Court of Appeal not to constitute such publication as divested the common-law copyright; they agreed that there had been in the case of the exhibitions limited or conditional publication, the condition being that the inspection by members of the public was not to be used by them for the purpose of reproducing copies of the picture; but they held that such a limited publication was not fatal to the plaintiff's rights. As to the wood engraving, the Master of the Rolls held that its publication could not affect the copyright in the picture, though the artist or proprietor of the picture could not sue if the engraving were pirated.

The judgments contain no very clear principle of publication; but it would seem that it must consist in unconditional exhibition of a work to the public, or such of the public as choose to come to inspect it. A *dictum* of Lord Langdale's, in *Dulglish* v. *Jarvie* (*p*), rather supports this by suggesting that it is a publication of a design for a shopkeeper to shew it to a customer. The Sculpture Act, 54 Geo. III. c. 56, gives copyright "from the first putting forth and publishing" the sculpture in question, which is explained by the Lord Chancellor in *Turner* v. *Robinson* as "the moment when the eye of the

(*p*) 2 McN. & G. 231, 235.

§ 197. What is publication?

public first rests upon it." Similarly copyright under the Engraving Acts dates from "first publication" of the engravings, which appear to mean exposure to the public, whether for sale or not. *Mayall* v. *Higbey* (*q*) (1862) seems to be an authority for the proposition that a loan of photographs, in order that engravings may be made from them and published, does not amount to publication of the photographs.

§ 198. General conclusions.

On the other hand, the Act of 1862 (*r*), giving statutory copyright to paintings and drawings, the term being for the life of the author and seven years after his death, throws considerable difficulties in the way of the above conception of publication as the divestitive fact of copyright at common law. The copyright which is created by that statute belongs to "the author of every original painting, drawing, or photograph," wherever made, and apparently quite independent of the question of publication. For the mere making of a painting, which is kept in privacy in the same way as a manuscript poem, cannot be called "publication" without great straining of language. We are reduced apparently to these two alternatives :—

1. Either there is a common law copyright in all works of art till publication ; and a statutory copyright commencing in the case of sculptures, engraving, and prints on their publication, and in the case of drawings, paintings, and photographs on their making, thus giving in the latter case, as in the case of lectures, an overlapping statutory or common law right till publication.

2. Or there is in sculptures, engravings, and prints a common law copyright till their publication, when statu-

(*q*) 6 L. T. N. S. 362.
(*r*) 25 & 26 Vict. c. 68.

tory copyright commences; while in paintings, drawings, and photographs there is no common law copyright; there is a statutory copyright commencing on their making, but requiring their registration before it can be enforced. § 198. General conclusions.

It is with great diffidence submitted that the former is the more correct view of the law, as best agreeing with the principles of unpublished property, which undoubtedly applied, prior to the Act of 1862, to paintings, drawings, and photographs until their publication (*s*).

Section II.

English Law as to Engravings and Prints.

§ 199. Statutes.—§ 200. Subject-matter of right.—§ 201. Nature of right.—§ 202. Investitive facts.—§ 203. Transvestitive facts.—§ 204. Divestitive facts.—§ 205. Infringements of copyright.—§ 206. Copies in pen and pencil.—§ 207. Principle of infringement.—§ 208. Remedies for infringement.—§ 209. International copyright.—§ 210. Recommendations of Commission.

The statutes at present regulating copyright in engravings and similar works of art are— § 199. Statutes.

8 Geo. II. c. 13 (1735).
7 Geo. III. c. 38 (1766).
17 Geo. III. c. 57 (1777).
6 & 7 Will. IV. c. 59 (1836), and
15 & 16 Vict. c. 12, s. 14 (1852).

A "*print*" is defined as being "any historical print or prints, or any other print or prints of any portrait, conversation, landscape or architecture [map, chart or plan], or any other print or prints whatsoever" (*t*). It includes § 200. Subject matter of right.

(*s*) Questions of a similar nature came under discussion in the American cases of *Oertel* v. *Wood*, 40 How. Pr. N.Y. 10; and *Oertel* v. *Jacoby*, 44 How. Pr. N.Y. 179, cited by Drone, p. 287, note, in which contradictory decisions were given.

(*t*) 7 Geo. III. c. 38, s. 1.

§ 200. Subject matter of right.

"prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely (*u*).

It was decided in the case of *Stannard* v. *Lee* (*x*) by the Court of Appeal, reversing the decision of Bacon, V.C. (*y*), that maps being defined as "books" in the Act of 1842 (*z*), are no longer to be treated as works of art, but as literary works, and must therefore be registered under the Act of 1842. Bacon, V.C., expressed subsequently in *Stannard* v. *Harrison* (*a*) his dissent from that decision.

There is probably no copyright in obscene, blasphemous, seditious or libellous prints. (*Fores* v. *Johnes* (*b*).)

§ 201. Nature of the right.

Any person has the sole right or liberty of multiplying, by any mechanical or other process, copies of any print, which he has

(I.) Invented or designed, graved, etched or worked in mezzotinto or chiaro-oscuro.

(II.) Or from his own work, design or invention has caused or procured to be designed, &c.

(III.) Or which he has engraved or caused to be engraved, &c., from any picture, drawing, model or sculpture, whether ancient or modern (*c*).

Any process by which pictures or engravings may be imitated or copied may come within the express words the legislature have used (*d*). Thus the words include

(*u*) 15 & 16 Vict. c. 12, s. 14.
(*x*) 24 L. T. N. S. 459.
(*y*) 23 L. T. N. S. 306.
(*z*) 5 & 6 Vict. c. 45, s. 2.
(*a*) 24 L. T. N. S. 570.
(*b*) 4 Esp. 97.
(*c*) 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, ss. 1, 2; Stephen's Digest, § 22; C. C. Rep. p. 67.
(*d*) Kelly, C.B., in *Graves* v. *Ashford*, L. R. 2 C. P. 410, 421.

§ 201. Nature of the right.

the right of producing reduced photographic copies of an engraving (*e*).

Where it was proved that the plaintiff gave an engraver a rough sketch of a map, with directions as to its size and contents, and furnished him with information to be recorded on it from time to time, he was held entitled to the copyright in the engraving, as being one who from his own invention had caused it to be designed (*f*).

The right is a separable one; that is to say, the right of producing engravings "of one size" can be assigned, the right of producing all other sizes of prints remaining in the original proprietor (*g*).

Duration of right.

The duration of the right is for twenty-eight years from the day of first publication of the print (*h*).

§ 202. Investitive facts.

The *Investitive Fact* of copyright in engravings is publication of such a work as specified above.

To be the subject of copyright the print must be engraved, etched, drawn or designed in Great Britain. Mere publication in Great Britain will not suffice (*i*).

There is no limitation as to the nationality of the engraver or designer.

No formalities as to registration are required. The day of first publication, with the name of the proprietor, must be truly engraved on each plate and printed on each print (*k*).

Both the date and the name of the proprietor must appear on the plate and print, but it is sufficient if the

(*e*) *Gambart* v. *Ball*, 14 C. B. N. S. 306.
(*f*) *Stannard* v. *Harrison*, 24 L. T. N. S. 570.
(*g*) *Lucas* v. *Cooke*, L. R. 13 Ch. D. 872.
(*h*) 7 Geo. III. c. 38, s. 6.
(*i*) 17 Geo. III. c. 57, s. 1; *Page* v. *Townsend*, 5 Simons, 395.
(*k*) 8 Geo. II. c. 13, s. 1.

§ 202. Investitive facts.

proprietor be named; he need not also be described as "proprietor."

Thus, "Newton del. 1st May 1826, Gladwin sculp.," was held a compliance with the requirements of the Act (*l*); as was also, "London, published by Henry Graves & Company, May 1st 1861, Printsellers to the Queen, 6 Pall Mall" (*m*).

If the engravings are included as illustrations in a book, the book must be registered under the Act of 1842 (*n*), and the requirements as to name of proprietor and date of publication need not be complied with (*o*).

So also maps, charts and plans must be registered, and need not comply with the formalities of the Engraving Acts (*p*).

§ 203. Transvestitive facts.

Transvestitive Facts of Copyright. A licence to reproduce an engraving, to bind the proprietor, must be in writing, and signed by the proprietor, in the presence of and attested by two or more credible witnesses (*q*).

§ 204. Divestitive facts.

Divestitive Facts of Copyright:—

1. Waiver.
2. Expiration of the statutory term.

§ 205. Infringements of copyright.

Infringements of Right.

The question to be decided is whether the defendant's print is substantially a copy of the plaintiff's, and published without the plaintiff's consent (*r*); a copy has

(*l*) *Newton* v. *Cowie*, 4 Bing. 234.
(*m*) *Graves* v. *Ashford*, L. R. 2 C. P. 410.
(*n*) 5 & 6 Vict. c. 42.
(*o*) *Bogue* v. *Houlston*, 5 De G. & S. 267; *Maple* v. *Jun. Army and Navy Stores*, L. R. 21 Ch. D. 369.
(*p*) *Stannard* v. *Lee*, 24 L. T. N. S. 459, C.A.
(*q*) 17 Geo. III. c. 57.
(*r*) *Moore* v. *Clarke*, 9 M. & W. 692.

§ 205. Infringements of copyright.

been also defined as "that which comes so near the original as to give to every person seeing it the idea created by the original" (*s*). If the making of such a copy without licence is proved, it is immaterial whether the seller or maker knew that his print was pirated or not (*t*).

In the above statement these limitations must however be made. The object of the Acts is twofold:

(1.) The protection of the reputation of the engraver.

(2.) His protection against any invasion of his commercial property in the print.

The work complained of as an infringement must therefore be a copy, either exact or colourable, of the plaintiff's engraving, or of that part of the plaintiff's engraving which constitutes the real merit and labour of the engraver (*u*).

It is not therefore a piracy of an engraving to make another engraving from the original picture, though it may be a piracy of the picture (*x*).

Similarly it has been held that a Berlin wool pattern made from an engraving is not a violation of copyright in the engraving (*y*).

The exhibition of a larger coloured diorama made from a print does not infringe the copyright in the print (*z*).

In *Dicks* v. *Brooks* in the Court of Appeal, Lord Justice Baggallay expressed a doubt whether or not a chromo-lithograph was an infringement of a print; and Lord Justice Bramwell said: "I do not say that if this

(*s*) *West* v. *Francis*, 5 B. & Ald. 737.
(*t*) *West* v. *Francis* (*v.s.*); *Gambart* v. *Sumner*, 5 H. & N. 5.
(*u*) *Dicks* v. *Brooks*, L. R. 15 Ch. D. 22.
(*x*) *De Berenger* v. *Wheeble*, 2 Stark. N. P. C. 548.
(*y*) *Dicks* v. *Brooks*, L. R. 15 Ch. D. 22.
(*z*) *Martin* v. *Wright*, 6 Simons, 297.

§ 205. Infringements of copyright.

were an ordinary engraving with no picture in the case, a lithograph taken from it would not be a copy. I think that a photograph taken from it would be a copy."

§ 206. Copies in pen and pencil.

The cases are not very clear as to how far copying by pen or pencil is an infringement. Chief Justice Erle laid down the rule in *Gambart* v. *Ball* (*a*), as prohibiting any mode of copying or multiplication of copies which depreciates the commercial value of the engraving to its proprietor. The distinction therefore seems a question of degree. Several of the judges seem to have felt great difficulty as to the case of individual copies made, as it were, for private use. Lord Justice Baggallay in *Dicks* v. *Brooks* (*b*), said "the statutes cannot have been intended to apply to a lady copying a print or a part of a print upon a china plate, or to a person who for his own amusement makes an etching, drawing, or water colour sketch from an engraving;" and Willes, J., in *Gambart* v. *Ball* (*c*), "felt a difficulty as to copying by hand," and "was not disposed to concur, if it had been necessary, in the view we take of the statute, to hold that a copy made by pen or pencil would be an infringement;" while Byles, J., also suggested doubts as to the case of "a man's making and selling a pen and ink copy of a print," and "transferring the design to a carpet, or a piece of Berlin woolwork, or a porcelain table service," without solving the doubts he suggested.

The recent case of *Dicks* v. *Brooks* (*d*) has dealt with the last suggestion of Mr. Justice Byles, and it is submitted that the true line of distinction on the other

(*a*) 14 C. B. N. S. 306.
(*b*) L. R. 15 Ch. D. p. 36.
(*c*) 14 C. B. N. S. p. 318.
(*d*) L. R. 15 Ch. D. 22.

points is whether the copies, howsoever made, will compete commercially with the engraving by tending to lessen its sale. A skilful copyist in pen and ink or pencil might find a large market for his sketches, and it is submitted that if made for sale, or sold, they would be infringements of the copyright in the engraving of which they were copies. On the other hand, it would be ridiculous to hold that a young lady making one copy of an engraving for her own amusement was infringing copyright, although she might happen to sell her copy afterwards.

§ 206. Copies in pen and pencil.

The principle of infringement seems therefore to be that any unlicensed copy of an engraving which may affect the sale or commercial value of the print copied will be held an infringement of copyright; but that a reproduction of the design, which cannot be held either likely to affect the sale of the engraving or such as to reproduce the engraving, will not be actionable.

§ 207. Principle of infringement.

Copyright is therefore infringed by—

1. In any manner copying and selling, or causing to be copied and sold, a copyright print [provided that the copy is of the print, and is such as to affect its commercial value].

2. Importing or causing to be imported for sale any such print.

3. Publishing, selling, or otherwise disposing of or causing to be published, sold, &c., any such print (*e*).

If the consent of the owner of copyright is pleaded, it must be produced in writing, signed by him, and attested by two witnesses (*f*).

The assignee of copyright in a print is not compelled

(*e*) 8 Geo. II. c. 13; Stephen's Digest, § 37; C. C. Rep. 85.
(*f*) 17 Geo. III. c. 57.

§ 207. Principle of infringement.

to prove a *written* assignment, in order to recover damages against the infringer.

The sale of engravings printed surreptitiously from the proprietor's plate is not an infringement of copyright, but may probably be a breach of contract (*g*).

§ 208. Remedies for infringements.

Remedies for Infringements.

The proprietor of copyright has—

1. An action for damages against the offender (*h*).

Any member of the public has—

2. An action for penalties; viz., 5*s*. for each print found in the offender's possession, half to go to the Crown and half to the person suing for the penalty. The plate and prints are to be forfeited to the proprietor of the copyright, who shall destroy the same (*i*).

This penalty is payable per print, and not per parcel or set of prints (*k*).

The action for penalties must be brought within six months after the commission of the offence (*l*).

The penalties recoverable and copies liable to forfeiture under these Acts may be recovered in England or Ireland either by action or by summary procedure before two magistrates having jurisdiction where the party offending resides, and in Scotland as set out in the Act (*m*).

This mode of procedure is open to the two objections set out more fully hereafter, viz. (1) that it is very difficult to proceed in the "places of residence" of the

(*g*) *Murray* v. *Heath*, 1 B. & Ad. 804.
(*h*) 17 Geo. III. c. 57.
(*i*) 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, s. 5.
(*k*) *Ex parte Beal*, L. R. 3 Q. B. 387.
(*l*) 7 Geo. III. c. 38, s. 7.
(*m*) 25 & 26 Vict. c. 68, s. 8.

hawkers, who by selling piratical engravings and photographs are the chief instruments in infringements; and (2) that no power of search for, or seizure of piratical copies is given to any one, and the section therefore loses much of its effect. § 208. Remedies for infringements.

By 7 & 8 Vict. c. 12, ss. 2 and 4, the provisions of the English Acts as to engravings may be extended to engravings published abroad on such terms as the Crown may by order in Council determine, and engravings have been accordingly included in most of the conventions with foreign states. § 209. International copyright in engravings.

Besides the general recommendations as to uniformity of law in all branches of Fine Art, dealt with hereafter, the Commission specially recommend with regard to engravings:— § 210. Recommendation of the Copyright Commission as to engravings.

1. That the transfer of copyright in engravings should be on the same basis as that of photographs, *i.e.*, that the copyright in a print should belong to the owner of the plate from which it is printed, but that, in the case of engravings, &c., made on commission, no copies be sold or exhibited without the sanction of the person who ordered them (§§ 121, 122).

2. That engravings and prints be subject to compulsory registration, as in the case of books, *i.e.*, that no action shall be brought in respect of anything made or done before registration, or in respect of any dealings after registration, with anything so made or done before registration, unless registration has been effected within a month of publication (§§ 154, 159).

3. The general provisions giving power to search for and seize piratical copies are to be applied to engravings and prints.

SECTION III.

Paintings, Drawings, and Photographs.

§ 211. Statutes.—§ 212. Subject-matter of the right.—§ 213. Nature of the right.—§ 214. Investitive facts. Registration.—§ 215. Transvestitive facts. *Tuck* v. *Canton*.—§ 216. Divestitive facts. —§ 217. Infringements of the right.—§ 218. Remedies and penalties.

§ 211. Statutes.

STATUTORY copyright in paintings, drawings, and photographs was first given by an Act of 1862 (*n*), the preamble of which recited, that "by law as now established, the authors of paintings, drawings, and photographs have no copyright in such their works." The meaning of this has been already discussed (*o*), and it is submitted that it only refers to the sole right of multiplying copies after publication of the original work, as defined in *Jefferys* v. *Boosey* (*p*), and that copyright in common law probably exists until the publication of the work in question. It may be noticed also that this statute covers classes of works which stand on a slightly different footing; paintings and drawings are naturally classed with sculptures, as works of which the original has most value, while copies are either rare, or inadequately represent the original; photographs on the other hand naturally fall into the class of works where mechanical reproduction gives a large number of copies of almost equal value, and the original negative or plate is analogous to the type from which a book is printed.

§ 212. Subject matter of the right.

Subject-matter of the Right.—Copyright may exist in every original painting, drawing, and photograph which

(*n*) 25 & 26 Vict. c. 68.
(*o*) §§ 194, 196.
(*p*) 4 H. L. C. 815.

shall be or shall have been made anywhere by a British subject, or person resident within the dominions of the Crown, and which shall not have been sold or disposed of before the 29th July, 1862 (*q*). § 212. Subject-matter of the right.

The phrase "original photograph" is rather contradictory, as all photographs are, in one sense, "copies" of something, but it has been decided that there is copyright in a photograph taken from a picture (*Graves' case* (*r*)). Of course, if there is no copyright in the picture copied, a second photograph taken from it will not infringe the copyright of the first photograph, and will have copyright of its own.

It is submitted, that if pictures sold before the 29th July, 1862, have never been published, copyright at common law, at any rate, exists in them until publication.

Nature of the Right.—Copyright in a painting, drawing, or photograph is the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph and the negative thereof, by any means and in any size (*s*). § 213. Nature of the right.

It has been suggested that the right is merely *ipso genere*, *i.e.*, that, to use the words of Mr. Justice Blackburn, in the case of *Ex parte Beal* (*t*) "the enactment might merely mean" (to forbid) "the imitation of a painting by a painting, of a drawing by a drawing, and of a photograph by a photograph, and that a photograph of a drawing would not be within the meaning of the

(*q*) 25 & 26 Vict. c. 68, s. 1.
(*r*) L. R. 4 Q. B. 715.
(*s*) 25 & 26 Vict. c. 68, s. 1.
(*t*) L. R. 3 Q. B. 387, 394.

Nature of the right.

§ 213. Legislature." But the Court in that case unanimously rejected this in favour of the wider interpretation, making "reproduction of the design" the only thing necessary to constitute an infringement of the right. This, however, must be qualified by the doctrine of *Dicks* v. *Brooks* (*u*), to the effect that the reproduction must be such as either injures the reputation of the artist, or affects the commercial value of his work. But this point falls more naturally under the head of infringements of copyright.

The right is treated as personal or movable estate (*x*).

Duration of the right.

Copyright in paintings, drawings, or photographs, lasts for the natural life of the author, and seven years after his death, if the necessary conditions are complied with (*y*).

Investitive facts.

§ 214. The investitive facts of copyright in paintings, drawings, and photographs are—

(1.) Of the right;—the making of a work, the subject of copyright, by a British subject or a person resident within the British dominions (*z*).

Registration.

(2.) Of the remedy:—No action shall be sustainable, nor any penalty be recoverable in respect of anything done, before registration at Stationers' Hall of the work in respect of which copyright is claimed under the Act (*a*).

All subsequent assignments must also be registered, the entry containing—

(1.) Date of assignment.

(2.) Names of parties thereto.

(*u*) L. R. 15 Ch. D. 22.

(*x*) 25 & 26 Vict. c. 68, s. 3.

(*y*) *Ibid.* s. 1.

(*z*) *Ibid.* s. 1.

(*a*) *Ibid.* s. 4.

§ 214. Investitive facts.

(3.) Name and place of abode of assignee.
(4.) Name and place of abode of author of work.
(5.) Short description of name and subject of work.
(6.) Optional, a sketch, outline, or photograph of such work.

If the assignment of copyright sued under was registered before the act complained of, it is not necessary that the original copyright, or its previous assignments, if any, should have been registered. (*Graves' Case* (*b*)).

The person to sue for an infringement must be the proprietor when the infringement is committed. (*Dupuy* v. *Dilke* (*c*)).

Place of Abode.—It was decided in *Nottage* v. *Jackson* (*d*) that the place of business of art publishers may be for the purposes of registration their place of abode; the object of the information being to tell searchers in the register where the owner of the copyright is to be found.

Short Description of Name and Subject.—What is required here has been laid down by Mr. Justice Blackburn, in the case of *Ex parte Beal* (*e*), as follows: "I do not think that it is necessary to make the description so precise as the registration of a specification of a patent, in order that all may know what it is they are prohibited from copying; or such as to give information to persons who had never heard or known of the picture, what it was they were not to copy.... The object of the Legislature, as pointed out by the statute, is that there shall be such a description of the picture as to enable a person who has it before him to judge whether or not

(*b*) L. R. 4 Q. B. 715.
(*c*) W. N. 1879, p. 145.
(*d*) Weekly Notes, Aug. 11, 1883; L. T. paper, Aug. 11, 1883, pp. 274, 279.
(*e*) L. R. 3 Q. B. 387, 392.

§ 214. Investitive facts.

the registration applied to the picture he was about to copy. It will be sufficient to describe the subject by some conventional name, and the particulars of the subject need not be given in detail." For example, the titles: 'Ordered on Foreign Service,' representing an officer taking leave of a lady; 'My First Sermon,' representing a little child awake, sitting in a pew; and 'My Second Sermon,' representing the same child asleep, were held sufficient for registration, the name alone being used (*f*). Some doubt was expressed in the same case as to the sufficiency of the registration of the name only, of pictures entitled 'A Distinguished Member of the Royal Humane Society,' representing a dog; and 'A Piper and Pair of Nutcrackers,' representing a bullfinch and two squirrels; and though the point was raised subsequently in *Graves' case* (*g*), the case was decided on another issue.

Author of a Photograph.—The question as to the person answering this description was raised in the recent case of *Nottage* v. *Jackson* (*h*). The large photographic firms had been in the habit of registering the firm or the employer as the "author," and many thousands of photographs had been registered in this way. At last the question as to the sufficiency of such registration came before the Courts, and Mr. Justice Field held that such a registration was invalid, his ruling being affirmed by the Court of Appeal. All the judges rather shrank from the problem of finding the "author" of a photograph, though they were agreed that the photographers had not found him. It was suggested however by the

(*f*) *Ex parte Beal*, L. R. 3 Q. B. 387, 392.

(*g*) L. R. 4 Q. B. 715.

(*h*) L. T. paper, Aug. 11, 1883, pp. 274, 279; Weekly Notes, Aug. 11, 1883.

Master of the Rolls, that the person who is actually present when the photograph is taken, who superintends the arrangements, places the person to be photographed, and gives the necessary orders, is probably the "author" of the photograph. His name therefore should be registered as such author, and his life will furnish the term of copyright. This ridiculous result follows from the practice of draftsmen, condemned by the Master of the Rolls, of using words in a sense in which no one else uses them.

§ 214. Investitive facts.

The provisions of the Copyright Act (*i*) as to the manner of keeping the register of books, and its production in evidence, apply also to the register of works of art, the fee for making any entry therein is however reduced to one shilling.

Amongst these provisions is one (*j*), that if any person shall deem himself aggrieved by any entry in the register, he may apply to one of the Superior Courts for an order that such entry may be expunged or varied. "A person aggrieved" was defined by Mr. Justice Hannen (*k*) as "a person who can shew that the entry is inconsistent with some right that he sets up in himself, or in some other person, or that the entry would really interfere with some intended action on the part of the person making the application."

§ 215. Transvestitive facts.

The *Transvestitive Fact* of Copyright is:—

Assignment in writing, signed by the proprietor of the copyright, or his agent appointed in writing for that purpose. Such an assignment must be registered (*l*).

It has been however recently decided in the case of

(*i*) 5 & 6 Vict. c. 45, ss. 11–13; 25 & 26 Vict. c. 68, s. 5.
(*j*) 5 & 6 Vict. c. 45, s. 14.
(*k*) *Graves' Case*, L. R. 4 Q. B. 715, 724.
(*l*) 25 & 26 Vict. c. 68, s. 3, 4.

§ 215. Transvestitive facts.

Tuck v. *Canton* (*m*) that a document, said not to be an assignment of the entire copyright, but a licence to imitate the picture in chromo-lithography, or any form of colour-printing, does not need registration under the statute. This decision however seems open to very grave doubt. The document in question ran: "The sole right to reproduce the picture and chromos, or in any other form of colour printing, to be vested in you for the term of two years," and on certain other conditions —absolutely. This seems a clear assignment of part of the copyright; the Act therefore requires it to be in writing (§ 3); and the words of section 4 direct registration "of every assignment of every copyright to which any person shall be entitled under this Act. It is the 3rd section, therefore, which creates a copyright assignable at law, and it is submitted that without that section even a partial assignment could not take place so as to enable the assignee to sue in person; that therefore the right of the plaintiff in that case was a copyright "to which he was entitled under the Act," and that it therefore required registration under the 4th section. Moreover, the decision seems open to this further objection; the registered proprietor of copyright may assign all his copyright in parts, or give licences covering all methods of reproduction, so that no right remains in him; yet none of these will need be registered, and so the purpose of the Act may be defeated.

If *Tuck* v. *Canton* is rightly decided (*m*) a partial assignment or a license to reproduce in a certain manner, need not be registered.

To pass the copyright to the buyer when the original painting, or drawing, or negative of a photograph is first sold, disposed of, or made, or executed for or on behalf of

(*m*) 51 L. J. Q. B. 363.

any other person for a good or valuable consideration, there must be an express agreement in writing at or before such sale or disposition, signed by the seller or his agent (*n*). § 215. Transvestitive facts.

Similarly on such a sale, the vendor cannot reserve the copyright to himself, while parting with the picture, without an express reservation of the copyright in writing, signed at or before the sale, by the vendee, assignee, or person in whose behalf the painting is made (*n*).

The effect of this is, that when a picture, drawing, or negative of a photograph first changes hands without any agreement in writing as to the copyright, all copyright in the picture is lost, unless the picture is made for or on behalf of any other person for a good and valuable consideration; that is to say, is executed on commission, in which case the copyright belongs to the person giving the commission, unless there is an express reservation in writing of copyright by the artist.

§ 216. Divestitive facts.

The *Divestitive Facts* of Copyright are .—

1. Lapse of the term of copyright.
2. First sale of the work without a written agreement, as has just been explained.
3. Waiver of rights.

Infringements of Right.—As has been seen (*q*), the elements for infringement of the right, are—

1. A reproduction of the design by any means and in any size.
2. Interference by such reproduction with either (a) the artist's reputation, (b) or the commercial value of his work (*r*).

(*n*) 25 & 26 Vict. c. 68, § 1.
(*q*) § 207.
(*r*) *Ex parte Beal*, L. R. 3 Q. B. 289; *Dicks* v. *Brooks*, 15 Ch. D. 22.

§ 217. Infringements of the right.

This last condition requires that the reproduction should be made for sale, or used so as to compete with a copyright work; and also that it should be of such a nature as to be mistaken for or to imitate such a work. Thus, in *Dicks* v. *Brooks* (*s*) a Berlin-wool work pattern was held not to infringe the copyright in an engraving; and in *Martin* v. *Wright* (*t*) a dioramic exhibition in colours was held not to infringe copyright in an engraving.

It should be borne in mind that in the case of a picture which has been engraved or otherwise reproduced, there are two methods of procedure against infringements: one for infringement of the copyright in the painting, when the formalities of the Act of 1862 (*u*) must be complied with; the other, in compliance with the provisions of the Engraving Acts (*x*), for infringement of copyright in the engraving. To sustain this latter it must be proved that the piratical copy is made from the engraving; as a second engraving made direct from the picture does not infringe the copyright in the first engraving.

In the case of *Tuck* v. *Canton* (*y*), where the assignee of the right to reproduce a picture in chromo-lithography sued an infringer of his right, it was objected that his prints did not comply with the provisions of the Engraving Acts, and Mathew, J., held that as the assignment was of the right of reproducing the picture, the plaintiff might sue for infringement of his right to reproduce the picture in a particular way, and so avoid the question as to his print. This appears to be inconsistent

(*s*) L. R. 15 Ch. D. 22.
(*t*) 6 Simons, 297.
(*u*) 25 & 26 Vict. c. 68.
(*x*) See § 208.
(*y*) 51 L. J Q. B. 363.

§ 217. Infringements of the right.

with the case of *Lucas* v. *Cooke* (*z*), in which case the partial assignment was of the right to produce an engraving in one size, while the infringement was a chromolithograph, and Fry, J., held that the plaintiff must shew that the infringement was derived from his engraving in order to succeed in his suit.

§ 218. Remedies and penalties.

I. Every one who, without the consent of the proprietor (*a*),

1. Repeats, copies, colourably imitates, or otherwise multiplies for sale, hire, or exhibition and distribution, or causes to be repeated, etc., any copyright work or the design thereof;

2. Knowing any copy to be unlawfully made, imports into the United Kingdom, sells, publishes, lets to hire, exhibits, distributes; or offers for sale, etc.; or causes or procures to be imported, etc., any such copy:—

Forfeits a sum of £10 per copy to the owner of the copyright.

All such copies and the negatives of piratical photographs are to be forfeited to the proprietor of the copyright.

The Custom House officers are authorized to seize all piratical copies imported without the consent of the owner of the copyright (*b*).

Every person who:

1. Fraudulently signs, or causes to be signed, any name, initial, or monogram, upon any painting, etc.;

2. Fraudulently sells or exhibits, or offers for sale, etc., any painting, etc., having thereon the signature of a person who did not execute such work;

3. Fraudulently utters or causes to be uttered any

(*z*) 13 Ch. D. 872.
(*a*) 25 & 26 Vict. c. 68, s. 6.
(*b*) *Ibid.* s. 10.

§ 218. Remedies and penalties.

colourable copy of any painting, etc., whether copyright or not, as the work of the author of the original;

4. Fraudulently makes or sells any altered copy of a painting, etc., which has left the possession of the author as an unaltered copy:—

Forfeits a sum not exceeding £10, or double the full price at which such fraudulent copies were offered for sale; such copies are forfeited to the person or his assigns or representatives to whom such work is fraudulently ascribed (*c*). To enable these penalties to be recovered, the person to whom the painting, etc., is fraudulently attributed must have been living within twenty years previous to the alleged infringement.

The case of *R.* v. *Closs* (*d*), shews that, apart from this statute, such signature would not be forgery, but might be a cheat at common law, if it was alleged that through the false token the prisoner sold the picture and obtained the money.

All penalties and forfeitures may be recovered:

In England and Ireland—

1. By action.
2. By summary proceeding before any two justices having jurisdiction where the party offending *resides.*

In Scotland as provided by the Act (*e*).

The proprietor may recover also, in addition to the penalties, damages and forfeiture of the copies by an action against the infringers (*f*).

These penalties are not mere debts, but in the nature of a punishment, so as to prevent them being barred by a composition deed with defendant's creditors (*g*).

(*c*) 25 & 26 Vict. c. 68, s. 7.
(*d*) 27 L. J. M. C. 54.
(*e*) *Ibid.* s. 8.
(*f*) *Ibid.* s. 11.
(*g*) *Ex parte Graves, In re Prince,* L. R. 3 Ch. 642.

There is no special time fixed within which actions must be brought, as is the case in the other Copyright Acts. § 218. Limitation of actions.

SECTION IV.

Copyright in Sculpture.

§ 219. Statutes.—§ 220. Nature of the right.—§ 221. Investitive facts. —§ 222. Infringements of the right.—§ 223. Remedies for infringements.—§ 224. Recommendations of the Commission.

STATUTORY Copyright in sculpture was first given in England in 1798 (*h*); and much strengthened in 1814 (*i*). The former Act has now been repealed (*j*), and the law on the question now rests on the Act of 1814 (*k*). As appeared in the evidence of Mr. Woolner before the Commission, the copyright in sculpture is of very small importance; only one case is reported under any of the Acts, and a few scattered *obiter dicta* are found in cases dealing with other classes of artistic property. The case in question is that of *Gahagan* v. *Cooper* (*l*) (1811), for piracy of a bust of C. J. Fox, but owing to the bad wording of the Act of 1798, the plaintiff failed, Lord Ellenborough saying, "These artists must again apply to Parliament for protection; and they had better not model the new Act themselves, as they seem to have done the old." § 219. Statutes.

Some fatality however seems to attend the draftsmanship of Acts relating to sculpture. The Act of 1814 (*m*) contains in its 1st clause a definition of works pro-

(*h*) 38 Geo. III. c. 71.
(*i*) 54 Geo. III. c. 56.
(*j*) 24 & 25 Vict. c. 101.
(*k*) The provisions as to Copyright in Sculpture contained in 13 & 14 Vict. c. 104, §§ 6, 7, have been repealed by the Patents Act, 1883, 46 & 47 Vict. c. 57, §§ 60, 113, as to all sculptures made after the 25th of August, 1883.
(*l*) 3 Camp. N. P. 111.
(*m*) 54 Geo. III. c. 56, s. 1.

§ 219. Statutes.

tected, of which Sir James Stephen says (*n*): "This section is a miracle of intricacy and verbosity. It also contains an 'of,' which may be a misprint, as it seems to make nonsense of several lines, and a most puzzling 'such' . . . The section forms a sentence of thirty-eight lines, the first half of which is repeated in the second half in so intricate a way that the draftsman appears to have lost himself in the middle of it. It admits of a doubt whether a cast from nature of an animal is the subject of copyright at all, and whether it must not be a cast from a cast from nature."

§ 220. Nature of right.

The subject matter of the right is any "new and original sculptures, models, copies, or casts" of a large number of things enumerated at great length in the Act. What a "new and original copy" may be is not very clear, but it is hardly worth while attempting to elucidate an Act on which no case has arisen in nearly seventy years.

Persons entitled to the right.

The persons entitled to the right are: Whoever makes or causes to be made any sculpture the subject-matter of copyright, or purchases such right from its proprietors by deed in writing signed by the proprietor in the presence of and attested by two witnesses (*o*).

Duration of the right.

The duration of the right is fourteen years from the first putting forth or publishing the sculpture in question (*p*), with a further term of fourteen years if the maker of the original sculpture shall be living at the end of the first fourteen years (*q*).

The investitive fact of copyright in sculpture is "Publication, or first putting forth." What constitutes

(*n*) C. C. Rep. p. 75, note.
(*o*) 54 Geo. III. c. 56, s. 1.
(*p*) *Ibid.* § 1.
(*q*) *Ibid.* § 6.

publication has been treated of in *Turner* v. *Robinson* (*r*) by Lord Chancellor Brady, where he says: "The *terminus a quo* from which the protection to works of sculptures commences, is the publication of the work, that is from the moment the eye of the public is allowed to rest on it. Many large works in this branch of art which decorate public squares and other places are of course so published; but there are others not designed for such a purpose, which could never be published in any other way than by exhibition; therefore I apprehend that these works of sculpture must be considered as 'published' by exhibition at such places as the Royal Academy and Manchester, so as to entitle them to the protection of the statutes from the date of such publication."

§ 221. Investitive fact.

Infringements of the right (*s*) are: Making or importing, or causing to be made or imported or exposed for sale, or otherwise disposed of, any pirated copy or cast of anything protected by the Act, whether by moulding, copying from, or imitating in any way the original, to the damage of the proprietor of the work so pirated.

§ 222. Infringements of the right.

The remedies for infringements (*t*) are (1)--an action for damages.

§ 223. Remedies.

(2) If the sculpture has been registered in accordance with § 6 of the Designs Act (*u*), and all copies published after registration have been marked with the word "registered" and the date of registration; the proprietor

(*r*) 11 Ir. Ch. 510, 516.

(*s*) 45 Geo. III. c. 56, § 3.

(*t*) *Ibid.* § 3.

(*u*) 13 & 14 Vict. c. 104, ss. 6, 7. This remedy, owing to the repeal of the Designs Act by the Patents Act, 1883, only applies to copyright sculptures published before 25th August, 1883.

§ 223. Remedies.

may for every infringement after registration recover a penalty not less than £5 or more than £30; either by action or by summary proceeding before two justices having jurisdiction where the offender resides. In which case the penalty inflicted shall be leviable by distress (*x*).

Limitations of actions.

All actions must be brought within six months of the discovery of the offence complained of (*y*).

It is a condition precedent of the right and remedy that the proprietor shall put his name and the date, (what date is not clear,) on every sculpture, cast, etc., before it shall be put forth or published (*z*).

§ 224. Recommendations of Commission.

The Copyright Commission, while assimilating the law as to sculpture to that of paintings and drawings, specially recommend—

(1.) That every form of copying sculpture, whether by sculpture, modelling, photography, drawing, engraving, or otherwise, should be included in the protection of copyright. A proviso is added to this that if the sculpture is only copied as an accessory in a scene, such copying shall not be an infringement (C. C. R. § 99).

(2.) That copyright should exist in copies or casts from the antique (C. C. R. § 100).

(3.) That the powers to search for and seize piratical copies of sculptures should be the same as those recommended for paintings and other works of fine art (C. C. R. § 180).

The Commission therefore proposes in effect the extension of copyright in sculpture; this recommendation is based mainly on the damage to the reputation of the sculptor by incorrect copying, and the money value of

(*x*) As provided in 5 & 6 Vict. c. 100, s. 8.
(*y*) 54 Geo. III. c. 56, s. 5.
(*z*) *Ibid.* § 1.

photographs of sculptures. I think it very doubtful however whether the entire absence of copyright in sculpture would harm anybody; the rights given are very little used at present, and copying, except by photographs, appears to be rare; while it is disputed whether copying by photographs does not benefit the artist as an advertisement more than it harms him by the pecuniary loss he may sustain.

§ 224. Recommendations of Commission.

Section V.

§ 225. General recommendations of Commission as to artistic copyright.

The recommendations of the Copyright Commission as to the Law of Artistic Copyright are as follows:—

1. That the law with respect to the different branches of artistic work should be as far as possible assimilated; when distinctions are made, they are between the processes of indefinite multiplication such as photographs and engravings, and those classes of works of individual value such as paintings, drawings, and sculpture (C. C. R. §§ 94, 118).

2. That the term of copyright for all works of fine art except photographs be the life of the artist and thirty years after his death. For photographs it is to be thirty years from publication, except when part of a book, when the term of literary copyright is to apply (C. C. R. § 95, § 119).

3. That it should be open to British subjects and aliens domiciled in the British dominions to obtain copyright in works wherever published (C. C. R. § 96).

4. That other aliens should only obtain national copyright for works first published in the British dominions (C. C. R. § 98).

5. That every form of copying sculpture, whether by sculpture, modelling, photography, drawing, engraving, or otherwise, should be considered an infringement of

§ 225. General recommendations of Commission as to artistic copyright.

copyright, unless the sculpture was merely an accessory in the copying of a scene (C. C. R. § 99).

6. That copies of non-copyright statues should be susceptible of copyright (C. C. R. § 100).

7. It being found impossible to distinguish between portraits and other pictures, or to decide what constitutes a work executed on commission, the Commission recommend that in the absence of a written agreement to the contrary the copyright in a picture or drawing (§ 117) should follow the ownership of the picture, belonging to the purchaser, or person for whom the picture is made (C. C. R. §§ 108–110, 115).

8. That the copyright in engravings or photographs should belong to the owner of the plate or negative, but in the case of works executed on commission no work should be exhibited or sold without the sanction of the person who ordered them (C. C. R. §§ 121, 122).

9. That, if he has not the power at present, an artist be empowered to sell his sketches and studies for a finished picture without infringing the copyright in the picture.

10. With regard to the registration of paintings and drawings, that it be optional so long as the property in the picture, and the copyright, are vested in the same person, but that if they are separated, registration should be compulsory.

11. That in these cases the register should contain :—

(a.) The date of the agreement separating copyright.

(b.) Names of parties thereto.

(c.) Names and places of abode of artist and proprietor of copyright.

(d.) Description of nature and subject of work, and if described, a sketch (C. C. R. §§ 151).

12. That registration of engravings, prints, and photographs be compulsory (C. C. R. § 159).

13. The Commission, while wishing to strengthen the power to seize piratical copies, do not feel able to recommend that a magistrate should have power to issue a search warrant for houses on evidence of reasonable cause to suspect the existence of piratical copies therein (C. C. R. § 175).

§ 225. General recommendation of Commission as to artistic copyright.

14. They recommend that power be given to seize piratical copies on the persons of hawkers, &c., by peace officers without warrant, acting under the orders and responsibility of the proprietor of copyright or his agent (C. C. R. § 178).

§ 226. Artistic Copyright Bill of 1883, proposals of.

It may be useful here to give some account of the provisions of the Bill to codify and amend the Law of Artistic Copyright, prepared by a specially appointed Committee of the Society for the Amendment of the Law, and introduced into the House of Commons by Mr. G. W. Hastings, M.P.

While it follows in many points the recommendations of the Commission, it yet leans strongly to the artists' view of the question. It has the great merit of proposing to repeal the six previous Acts dealing with the question, and to furnish in one statute of thirty clauses the whole law of the subject. All kinds of works of art are as far as possible treated similarly, one broad distinction being made between mechanical reproductions, as engravings and photographs, and valuable originals, as paintings, drawings, and sculptures.

The Bill is to apply to all works of fine art executed or first published after the passing of the Act (§ 4, s. 3).

I. With regard to *engravings and photographs*:—

The Bill proposes a copyright of fifty years dating from the first day of the calendar month in which they shall be published (§§ 5, 9).

§ 226. Artistic Copyright Bill of 1883, proposals of.

"Publication" is to mean the first act of offering for sale or of delivering to a purchaser, or advertising or exposing as ready for sale to the public, or for delivery to a purchaser, any copy of a work, or delivering at Stationers' Hall a written request for registration (§ 3).

The copyright shall vest in any person being a British subject or domiciled in the United Kingdom at time of first publication, on his :—

(*a.*) Executing or causing to be executed from his original design an engraving (§ 4, s. 1).

(*b.*) Executing an engraving from the design of another, without infringing any copyright, if not ordered or employed to do so (§ 4, s. 2).

(*c.*) Employing another to execute an engraving, which does not infringe copyright.

(*d.*) Making a photograph or a negative from which a photograph is first published after the passing of the Act (§ 9).

(*e.*) Ordering a photographic copy to be made of a work of fine art in which he is the owner of the copyright, when the copyright shall belong to him, and not to the photographer (§ 9).

(*f.*) Employing others as paid assistants to take or assist in taking engravings or photographs (when the copyright shall belong to him and not to the assistants) (§ 11) (*a*).

When a photographic portrait is executed on commission, copies shall not be sold or exhibited without the consent in writing of the commissioner, and powers of search and seizure are given to enforce the clauses (§ 10.)

There shall be no copyright in an engraving of an engraving (§ 4. s. 2).

II. As to *paintings, drawings and sculpture,* the term of copyright shall be the life of the person to whom

(*a*) This clause is prophetic of the decision in *Nottage* v. *Jackson.*

copyright in them is given, and thirty years after his death (§ 5). § 226.

Artistic Copyright Bill of 1883, proposals of.

Copyright, "being the sole right of copying, reproducing, repeating, multiplying copies of the work, and of the design thereof of any size, and either in the same material or by the same kind of art in which such work shall have been first executed, or in other form or material, or by any other kind of art in which such work shall have been first executed, or in any other form or material or by any other kind of art" (§ 4, s. 1), is given to every person, being a British subject, or domiciled in the United Kingdom either at the time of execution or first sale of the work:

(a.) Who shall execute or cause to be executed a work of fine art (§ 4, s. 1).

(b.) Who shall execute a work of fine art from the design of another, without infringing copyright, unless employed to do so by the author of the design (§ 4, s. 2).

(c.) Who shall employ others as paid assistants to execute or make any work of fine art (when the copyright shall belong to him and not to the assistants) (§ 11).

This copyright is to commence at the execution of the work, or its sale, if being executed before the passing of the Act, or out of the British dominions, it is first sold in them after the coming into operation of the Act (§ 4, ss. 1, 3).

The painter of a portrait on commission shall not be entitled to repeat the portrait in any way without the consent of the owner for the time being of the painting (§ 6).

The artist when retaining the copyright of a picture he has sold shall not be entitled to make or sell any

§ 226. Artistic Copyright Bill of 1883, proposals of.

replica, or copy in the same material, but shall be entitled to sell or make use of his sketches, models, &c., used in making the original work (§§ 7, 8).

III. *General provisions of the Act.*

Copies may be made direct from a non-copyright work without infringing copyright in copies previously made (§ 12).

A copyright work may be copied as part of a scene, if it is accessory and not principal (§ 13).

All assignments of copyright and licences to copy must be in writing, signed by the owner of copyright or his agent appointed in writing (§ 14) (*b*).

Penalties. Any person—

(a.) Copying in any manner without the written consent of the owner, a work of fine art or the design thereof.

(b.) Selling, importing, exporting, exhibiting, distributing, or causing to be sold any such copy, knowing or having reasonable cause for believing such copy to be an infringement, unless he is the owner or has the written consent of the owner (§ 15), is liable to a penalty of not exceeding £20, and double the full price at which these copies are offered for sale, to go to the owner.

This penalty is recoverable either by action or by summary jurisdiction before two justices.

The owner may also—

(a.) Recover damages and obtain an injunction.

(b.) Obtain a penalty of £5 by summary jurisdiction.

For offence (b) above, although the infringement is not *knowing*; provided it is not with the written consent of the proprietor (§ 16).

(*b*) To meet the decision in *Tuck* v. *Canton*, 51 L. J. Q. B. 363.

§ 226. Artistic Copyright Bill of 1883, proposals of.

All copies and the plates, &c., from which such copies are taken shall be the property of the owner of the copyright, and may be recovered by him (§ 17).

On proof by evidence of one credible witness before two justices of the peace, &c., summarily, that there is reasonable cause to suspect that any one has in possession piratical copies or falsely signed works of art (s. 22), a search warrant, with power to enter houses and seize such copies, may be issued (§ 18) (*c*).

Piratical copies may be seized without warrant elsewhere than at the possessor's own house by any peace officer, at the request and risk of the owner of the copyright or his agent, and adjudicated upon by a court of summary jurisdiction (*d*).

The owners of works of art who do not own the copyright, may nevertheless obtain an injunction against piratical infringements, and the seizure of all piratical copies and means for their manufacture (§ 20).

The provisions as to fraudulent signatures and copies are practically the same as in the existing law, with an increase of penalties and more minuteness of definition (§ 21).

Procedure generally is summary throughout the United Kingdom (§§ 23–27). The Act is extended to the Channel Islands, thus extirpating a nest of artistic piracy (§§ 1, s. 3; 27).

Registration.

All copyrights in engravings and photographs, and all assignments and licences of such copyrights, shall be entered at Stationers' Hall, in forms prescribed (§ 28, ss. 1, 2).

No legal proceedings shall be taken by the owner or licensee till the copyright or licence is registered. If it

(*c*) This proposal is disapproved of by the Copyright Commission.
(*d*) This proposal is approved of by the Copyright Commission.

§ 226. Artistic Copyright Bill of 1883, proposals of.

is not registered before the last day of the calendar month following the month in which it is published, no legal proceedings shall be taken in respect of any copy made before registration, even though dealt with by sale, &c., after registration (§ 28, s. 3).

Copyrights in paintings and sculpture, and assignments and licences thereof, may be registered at Stationers' Hall, if the owners so desire. No penalty shall follow non-registration (§ 29).

§ 227. Laws of other countries as to artistic copyright.

Foreign countries (*e*) usually either deal with artistic and literary copyright in the same law, as is done by the United States, Switzerland, Spain, and Austria, or, while using separate statutes, yet make but slight differences in their treatment of the subject. The tendency is to give the artist full protection, the term of copyright being usually the same as for books, but in some features the laws are more favourable to the public than the English law. Thus Russia, Norway, Austria and Germany allow sculptures to be made from paintings, or paintings from sculptures, without infringing copyright; Austria requires that the artist, to obtain copyright in his work, must expressly reserve the right at the time of publication, and must exercise it within two years of first publication. Norway and other countries allow reproductions of a work of art, as illustrations of a literary work. In some matters the artist is more favoured. Thus Germany and Norway provide that the artist shall retain the copyright on the sale of a work of art without special agreement. Portugal, on the other hand, provides that it shall pass to the purchaser. Italy gives absolute monopoly copyright for ten years, after which, though reproduction by the same method is forbidden,

(*e*) Copinger, 500–600 *passim*.

§ 227. Laws of other countries as to artistic copyright.

it may take place by different methods, as by engraving a picture, or by making a drawing of a statue. The usage varies as to the requirements of registration and deposit of copies; Germany, Spain and Russia require registration, but no deposit; France, deposit of engravings; Italy, the deposit of three copies, which may be photographs; while Portugal exacts six copies of engravings and drawings, two of sculptures and paintings; Austria and the Scandinavian States require neither registration nor deposit; the United States, that before publication a description of the painting or work of fine art shall be deposited with the Librarian of Congress, and a photograph of the actual work within ten days of the publication.

It should be added that most of the nations which specially reserve copyright to the artist, make an exception in the case of portraits made to order, in which the right cannot be exercised without the consent of the person giving the commission.

CHAPTER X.

COLONIAL COPYRIGHT.

§ 228. History and present position of Colonial Copyright.—§ 229. Recommendations of the Commission.—§ 230. Summary of the recommendations of the Commission.—§ 231. Foreign and Colonial reprints.—§ 232. Result.

History and present position of colonial copyright.

§ 228. ALTHOUGH the relations of the English law of Copyright to special colonial laws, and the position of colonial authors and publishers, have only as yet been brought into prominence in practice with regard to Canada, questions of importance must sooner or later arise with regard to all the colonies, and must therefore be treated generally (*a*).

Legislation on the subject at present has the following results. The Imperial Act of 1842, in conjunction with the decision of the House of Lords in *Routledge* v. *Low* (*b*), provides that Imperial Copyright can only be secured by publication in the United Kingdom, but, when secured, extends over the whole of the British dominions. A colonial author publishing in the colony, if there is any colonial law of copyright, obtains the copyright provided by that law, which only extends over the colony of publication. If there is no colonial law, he has no protection. This naturally was, and still is a great grievance to the colonial author and publisher. But further, the

(*a*) See generally C. C. Rep. §§ 187–201; C. C. Ev. qq. 5345–5387, 5800–5841.

(*b*) L. R. 3 Eng. & Ir. Ap. 100

§ 228. History and present position of colonial copyright.

colonial public suffered from the unsuitable or insufficient supply of English copyright works. The scattered population of an infant colony, lacking the distributive organizations of advanced civilization, were unable to purchase the high-priced editions which the mechanism of circulating libraries enabled English authors and publishers to issue. Yet colonial publishers were debarred from printing cheap and suitable editions of English works unless the author's consent were obtained, and were prevented from importing the cheap foreign reprints which other countries, especially the United States and Germany, provided. English publishers naturally did not consider it worth while to publish a cheap colonial edition, whose import into the United Kingdom might spoil their English market.

The special pressure of the North American colonies on these grounds led in 1847 to the passing of the *Foreign Reprints Act* (*c*), which enabled the Crown to suspend the Act of 1842 so as to admit foreign reprints into particular colonies, if proper provision were made for securing remuneration to the authors of these reprinted works, by collecting a duty or royalty on their import. Though this Act was passed to meet the special case of Canada, nineteen colonies have under it obtained the benefit of special Orders in Council, by making what were supposed to be suitable arrangements for the protection of British authors. From 1866 to 1876 (*d*) Canada paid to the British Government under this Act the sum of £1084 13*s*. 3½*d*., the remaining eighteen colonies only contributing £70 19*s*. 11*d*., and seven of them paying nothing at all. It is admitted that the measures for protection are absolutely inefficient, and

(*c*) 10 & 11 Vict. c. 95.
(*d*) C. C. Rep. § 193.

§ 228. History and present position of colonial copyright.

that large numbers of reprints are smuggled in without paying duty.

The decision in *Routledge* v. *Low* (*e*) in 1868 called attention to the unsatisfactory position of colonial authors and publishers, and the Canadian Government in 1869 proposed that Canadian publishers should be allowed to reprint the works of English authors without their consent, on paying them a royalty of 12½ per cent. on the published price. After much discussion however this proposal fell to the ground, and in 1875 the Canadian Legislature passed a Copyright Act giving power to any person domiciled either in Canada or any part of the British dominions, or in any country having a copyright treaty with Great Britain, to obtain copyright in Canada for twenty-eight years, with a second term of fourteen years by either publication or republication of his work in Canada. This colonial copyright was concurrent, but not co-terminous with the imperial right. Under the Act, up to November 1876, thirty-one works of British authors were published with their consent in Canada, at a price not only far lower than that of the English copyright edition, but also lower than that of the competing reprints from the United States, which were thus practically excluded from Canada.

In consequence of doubts as to the effect of the Imperial Act of 1842 on the Canadian Act (*f*), a special English Act in 1878 gave power to her Majesty to assent to the Canadian Act; and, a question having arisen as to whether these Canadian reprints should be allowed to enter the United Kingdom, a clause was added prohibiting such foreign imports. Such is the present state of the matter, the Canadian question being complicated

(*e*) L. R. 3 Eng. & Ir. Ap. 100.
(*f*) 38 & 39 Vict. c. 53.

by the proximity of the United States, and the consequent intermixture in discussion of the "American question." India has already a Copyright Act, containing similar provisions to those of the English Act of 1842; and the question will become of great importance to all the colonies as their literary civilization increases.

§ 228. History and present position of colonial copyright.

The Commission recommend a series of measures which, if adopted, will have the effect of greatly improving the position both of colonial authors and publishers, and of the colonial public. The British reader will at any rate be no worse off, and it is a matter of great debate whether his position would not be improved thereby.

§ 229. Recommendations of Commission.

With regard to works published in the British dominions and outside any particular colony, the Commission recommend:—

1. (*g*) That a certain time be allowed to the author or owner of such work in which either (a) by republication of his work in such colony; or (b) by importation of copies of his work, he may provide for the colony a supply of his work, *suitable in price, and "sufficient for general sale and circulation."*

Note.—Though the Commission do not expressly deal with the question of suitability of price, yet, taken in connection with subsequent provisions, regulation of price must be implied. For the supply of a high-priced English edition would be utterly unsuitable for the majority of the colonies, and, in the words of the Commission, "insufficient for general sale and circulation" therein.

2. If the owner or author provides such a "suitable

(*g*) C. C. Rep. § 207.

§ 229. Recommendations of Commission.

supply," the Commission recommend that he be protected both against colonial republication and foreign reprints.

3. But should the author fail to provide this suitable supply within the specified time, the Commission recommend that the Colonial Government be empowered to grant to others licences to republish his work in the colony, subject to payment of a specified percentage on the retail price as royalty to the author or owner of the copyright.

4. Should such republication by licence take place, foreign reprints are to be excluded.

5. Should neither the author nor colonial licensees furnish a suitable supply, the Commission recommend that foreign reprints be admitted as now, greater safeguards being obtained for the author's royalty returns (*h*).

6. The Commission further recommend that first publication in any part of the British empire should vest copyright over the whole of the British dominions (*i*).

7. As regards the spread of licensed reprints of copyright works, colonial reprints are not to be imported into the United Kingdom, and *ex converso* English reprints of colonial works are not to be imported into the colony of first publication without the author's consent.

The Report is silent as to the importation of colonial reprints of English works into some other colony than the one where the licence for them was obtained; apparently they should be treated as foreign reprints, but exempted from payment of duty, the royalty on the original licence being the author's remuneration.

I presume, though the Report does not say so, that the Commission recommend the introduction of the royalty

(*h*) C. C. Rep. § 215.
(*i*) C. C. Rep. § 58.

system into the United Kingdom, so far as regards colonial works of which the author has not provided a suitable supply in a reasonable time in England; otherwise the term "English reprints" in the seventh recommendation can only refer to reprints by the consent of the author, a limitation disadvantageous to the English public.

§ 229. Recommendations of Commission.

Briefly, therefore, the results of the Commission's scheme are these:—*The end* for each colony and country is to secure a supply of every work suitable and sufficient for general sale and circulation in such country. This end is to be obtained—

§ 230. Summary of the Commission's recommendations.

1. By direct supply by the author.
2. Failing that, by colonial republication on licence, protected from competition, and paying the author a royalty.
3. Failing these two, by importation of foreign reprints, also paying a royalty.

The recommendation of the Commission which has excited most controversy is that relating to the exclusion of foreign and colonial reprints of English works from the United Kingdom, though published abroad by the author or with his consent.

§ 231. Foreign and colonial reprints.

It is said on the one hand that it is unfair to the public to allow an author to sell at a high price without competition in England, while he publishes at a much lower price in the colonies. The colonial price proves the English price too high. On the other hand, authors and publishers urge that the English high price is necessary to protect capital invested; and that colonial low prices are possible because only successful works are reprinted, and reprinted at a cost of production much

§ 231. Foreign and colonial reprints.

smaller, because from an already printed copy; because, also, colonial editions are treated as subsidiary and unimportant.

I think that the recommendations of the Commission should be upheld. English publishers defeat their own end by fixing their English prices too high, and they have always expenses of production, not incurred in colonial reprints. English prices may therefore fairly be left to the operation of ordinary economical laws, without competition from foreign reprints produced under more favourable circumstances. For we have to consider not only the publisher's production of a particular work, but also his continuance in the trade of publisher. He must recoup himself for unsuccessful ventures by successful ones; it is not for the State to interfere with his successful productions and thus destroy the possibility of his continuing to produce.

§ 232. Result.

The system of colonial copyright recommended by the Commission thus resolves itself into an approximation to the ideal system. The author has copyright in the colony of production, and is protected during a reasonable time all over her Majesty's dominions. If at the expiration of that time he has taken no steps to provide any section of the empire with a suitable supply of his works, it is open to others to do so, on paying him remuneration for value received. Failing this further supply, the empire must look to foreigners, taxing them in like manner for the benefit of the author. The primary object throughout is the supply of the public with good books; as a means to this, due remuneration is secured to the author, but he is not allowed to hinder the public from securing his works at a reasonable price.

CHAPTER XI.

INTERNATIONAL COPYRIGHT.

§ 233. Introduction.

BEFORE proceeding to the English solution of the problem, we may briefly recapitulate the conclusions arrived at in an earlier part of this essay (*a*).

Intellectual productions which do not conform to the conditions required by the State as grounds for affording protection, have no copyright. One of these conditions has usually been, that either first publication shall take place within the territory of the State, or one of its subjects shall be the author. In days when nations were more isolated, and intellectual communication less rapid, one of the chief aims of a State was to secure to its subjects the first benefit of literary labour. It also protected the works of its own subjects even if first published abroad, because in their case there was some security for further publication at home.

Greater freedom of intercourse in the republic of letters made the value of foreign literary labour more evident, and it became desirable to offer inducements for its speedy communication to a public more extensive

(*a*) See § 16.

§ 233. Introduction.

than that of its State of production. Publications unauthorized by the foreign owner or author effected such communication, but offered no inducement to foreign authors to help in spreading their work; and when the principle, "that the intellectual labourer is worthy of his hire," had been grasped at home, it was seen to be no less applicable abroad. No State however took the course of offering local copyright to all works wherever published, without compliance on their part with conditions prescribed by the local law. France by the decree of 1852 gave copyright to foreign works, wherever published, on their authors depositing in France the two copies required by the local law, and the new Belgian code adopts nearly the same principle. But the majority of European States, England, Germany, the Scandinavian States, and Switzerland adopt the principle of reciprocity, and give local copyright to works published in foreign States if those States afford reciprocal advantages to works published at home. Spain adopts a modified reciprocity, and gives protection on fulfilling certain conditions, if the law of the State of production recognises literary property. France and Belgium also dispense even with their local formalities in the case of States securing similar advantages by convention.

At the present time therefore international recognition of copyright on conditions is general throughout Europe. The problem of non-recognition of International Copyright by a State which makes great use of the literary property to which it refuses protection, arises only in the case of the United States, and there the local features of the question demand separate study.

§ 234. English law.

International Copyright in England at present rests on an Act of 1844 (*b*), which enables her Majesty to grant,

(*b*) 7 & 8 Vict. c. 12.

by Order in Council, copyright to works first published in a particular foreign country :— § 234. English law.

1. If due protection has been secured by such country for similar works of British subjects first published in England (*c*).

2. For a period to be named in the order, not exceeding the English term for similar works (*d*).

3. If the following conditions as to registration and deposit of copies are fulfilled :—

I. The following schedule, taken from Sir J. F. Stephen's Digest (*e*), will shew the formalities of REGISTRATION required in International Copyright :—

The register must shew, if the work is—

1. A book *or translation.*	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.
2. A dramatic piece or musical composition, whether printed or in manuscript.	Do. . . .	Do. . . .	Do. . .	Do., and time and place of first representation or performance.
3. Engraving or print.	Do. . . .	Do. of inventor, designer, or engraver.	Do. . .	Do. of first publication in the foreign country.
4. Sculpture .	Descriptive title	Do. of maker .	Do. . .	Do.
5. Paintings, 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. . .	*Nil.*

(*c*) 7 & 8 Vict. c. 12, § 14.
(*d*) *Ibid.* § 2.
(*e*) C. C. Rep. p. 87, note.

§ 234. English law.

II. *Deposit of copies.* A copy of the first edition, and of any subsequent edition containing additions or alterations, must be deposited at Stationers' Hall within a time specified in each Order in Council.

Foreign authors are however exempt from the English duty of presentation to libraries (*f*).

And no copyright (*g*) can be secured in the United Kingdom in any work published outside her Majesty's dominions except under this Act. Any suggestion of common law copyright is thus specially negatived; and this clause was the ground of the dramatic decisions in *Boucicault* v. *Delafield* (*h*) and *Boucicault* v. *Chatterton* (*i*), referred to elsewhere.

Nothing in the Act however was to prevent the publication of translations of any book whose author might be entitled to the benefit of the Act. As the English nation obtains most of its knowledge of foreign works through translations, this reservation deprived the grant to foreign authors of much of its value. The negotiation of the Convention with France in 1852 made this practically felt, and accordingly an Act of 1852 (*j*) repealed the former clause, and provided that the Order in Council might give protection to authorized translations of a foreign work for a period not exceeding five years, on certain conditions. This protection consisted of the right to prevent other translations being published. The conditions which the author was required to fulfil, were briefly (*k*):—

(*f*) 7 & 8 Vict. c. 12, §§ 3, 6.
(*g*) *Ibid.* § 19.
(*h*) 1 Hem. & Miller, 597.
(*i*) L. R. 5 Ch. D. 267. See p. 99.
(*j*) 15 & 16 Vict. c. 12, ss. 1, 2, 3.
(*k*) *Ibid.* § 8.

(1.) Conditions as to registration and deposit of the original work as above. § 234. English law.

(2.) That the author should notify in the original work his reservation of the right of translation.

(3.) That the author should publish a part or the whole of his translation within one year after fulfilment of condition 1, and the complete translation within three years (*l*).

(4.) Conditions as to registration and deposit of the translation as above.

In the dramatic case of *Wood* v. *Chart* (*m*) it was decided that a "translation" under this Act must be literal and full; an abridged and adapted work was held not to fulfil the conditions.

The position of foreign authors with whose country England has a copyright convention is therefore this:—

1. By registration and deposit in England of the original work, they obtain copyright in it for the term specified in the convention. This being fulfilled,

2. By publication of an authorized translation within three years of such deposit, followed by registration and deposit of such translation, they obtain the right to prevent other translations being issued for a term of five years from such publication.

3. At the expiration of such five years, the foreign author still has copyright in his translation, but independent translations may be made from the original work.

England has concluded a large number of conventions under these Acts; and as France has treaties with thirty-seven States, and other countries with smaller members, a network of International Copyright exists over Europe. The general result is, that if an author in

(*l*) Three months, in the case of a dramatic piece
(*m*) L. R. 10 Eq. 193.

§ 234. English law.

an European State wishes to secure protection and the fruits of his labour in any other European State, he can do so by complying with certain not very onerous conditions; if he does not choose to do so, it is open to anyone to supply that State with his work. In some States, as in England, he must provide his work in a form accessible to the inhabitants, *i.e.*, in their native tongue, within a certain time, or else others may do so without making the author any return.

§ 235. Should the royalty system be introduced into international copyright?

The aim of International Copyright, as explained elsewhere, is that the public shall have all published works placed within their reach. The first chance of doing this should be given to the author, and he should be allowed a reasonable time to effect the communication. If he fails to do so, others should be allowed to publish his work on condition of paying him a royalty for value received.

This last point appears to be absent in all International Copyright conventions; it is however recommended by the Copyright Commission for adoption in Colonial Copyright. Whether it should be adopted or not must depend on the circumstances of the particular community. Each State wishes to secure good and cheap books for its subjects by securing a reward to their author, and all States should give the author the first chance of communicating his work to them, and directly securing his reward. But if he fails to do so, the problem of action is a difficult one.

A State amply supplied with good books need not specially facilitate the communication of foreign works apart from their author's wish. It desires to encourage authors all over the world, and may therefore fairly secure the return of a small royalty to all authors whose

books are read by its people, even at the risk of shutting out some foreign books by handicapping the home "*entrepreneur.*" Its loss by shutting out one book or a few will not be much; the loss to the world by withdrawing some of the encouragement given to authors may be considerable.

§ 235. Should the royalty system be introduced into international copyright?

But a small, imperfectly-developed State will want all the books it can obtain. Its small royalty, if established, will not lead immediately to publication by foreign authors, and it may prevent the home publisher from producing. Here the immediate loss from the imposition of a small royalty outweighs the ultimate gain, and it should not be imposed.

The conclusion thus reached is, that in literary and advanced States the royalty should be imposed, even if the foreign author does not himself communicate his work, but that it should be abandoned in imperfectly developed civilizations.

The latter however is the position adopted by England. An author may have—

(1.) Copyright by first publication in England under its copyright laws.

(2.) Copyright by first publication in another country with which England has a copyright convention, if he fulfils certain conditions.

(3.) Copyright in an English version of his work if he takes steps to provide the English people with such a version within a reasonable time. If he does not, others may do what he has neglected to do. He is not allowed to prevent them, or entitled to receive any reward for the work which they have appropriated.

§ 236. Criticisms of the existing law.

Apart from this question of principle, some minor points dealt with by the Commission require considera-

§ 236. Criticisms of the existing law. Registration and deposit.

tion. At present, foreign authors are under the obligation of registering both their original work and the authorized translation at Stationers' Hall, and of depositing there a copy of each, which is forwarded to the British Museum. Foreign Governments, especially France and Germany, complain that these restrictions are an unnecessary burden on their subjects; they are, in fact, not required by the majority of States. Registration in England is used as an evidence of copyright in case of disputes; but a copy of the foreign register, attested by an English official, would serve the purpose equally well and remove a burden from the foreign author.

For deposit of a copy of the work in England there is more to be said; it is an advantage to the National Library to secure as complete a set as possible of foreign works, and if this proviso helped that end it would be desirable to retain it. But experience has shewn that the number of works deposited is neither large, nor of the class specially sought by the British Museum (*n*): the obligation acts as a tax and a deterrent formality on the foreign author, and its abolition is therefore recommended by the Commission. Possibly an exception might be made in the case of authorized translations and their deposit still required.

Time allowed for translation.

A further point on which complaints have been received from the French Government has reference to the period of time allowed the author in which to translate his work, so as to secure the sole right of translation. At present, at least part of an authorized and literal translation must be published within a year of publication of the original: it is however urged that this is too short a period in which to judge of the success of a work, and to secure an efficient translation of it; the Commission

(*n*) C. C. Ev. q. 1660.

§ 236. Criticisms of the existing law.

therefore with reason recommend the omission of the regulation as to part publication, thus merely requiring that the translation be published within three years of first registration abroad. It may be noted that this really shortens the term granted to the author; the previous term of three years dated from English registration, the abolition of which is suggested, and this was always subsequent to registration abroad. On principle however it seems fair that the "reasonable time to communicate" should date from first registration in the country of first publication.

Time during which right of sole translation is reserved.

In the second place, complaint was made that the five years during which the right of sole translation was reserved was too short a term to ensure the author his fair return. The Commission suggest an extension of the term to ten years; the justification even of this restriction must be sought in the extreme difficulty of making a good translation, a task requiring literary labour far exceeding mere mechanical translation. The author's translation may very inadequately represent his original, and must be literal (*o*); for this reason it may be desirable that he should not be allowed too extensive a right of sole translation. But the suggested term of ten years errs, if at all, on the ground of inadequacy rather than of excess.

The Commission suggest that these concessions should only be made to foreign authors where English authors obtain reciprocal privileges, and though reciprocity is generally a dangerous game to play at in the interests of the public at large, the objections to using it in this case seem slight. The reciprocal concessions will probably only too readily be made, as England is behind

(*o*) *Wood* v. *Chart*, L. R. 10 Eq. 193.

§ 236. Criticisms of the existing law.

most continental countries in the protection afforded to literary property, and in liberality to authors.

§ 237. Recommendations of Commission.

The Copyright Commission recommend:—

1. That the obligation on foreign authors: (a) to register their works; (b) to deposit a copy in England, be abolished, if English authors are relieved of the corresponding duties of the countries with whom we have conventions (C. C. R. §§ 264, 267).

2. That the foregoing recommendation shall also apply to authorized translations when made abroad, but not when made in England (C. C. R. §§ 275, 276).

3. That the necessity to publish part of the authorized translation within one year of registration of the original in England be abolished (C. C. R. § 279).

4. That the period of five years from publication of an authorized translation during which the sole right of translation may be reserved be extended to ten years (C. C. R. §§ 281, 283).

§ 238. The American question.

The preceding sections have dealt with our relations with countries with whom we have International Copyright on the basis of International Conventions. But a few, amongst whom unfortunately is that nation which makes most use of the works of British authors, the United States, refuse to protect the works of foreign authors, or, in other words, to recognise International Copyright. We have argued in a previous part of the essay that the question of what shall be protected as property must be determined by considerations of ultimate expediency or utility; all ideas of abstract rights apart from positive law, and of natural laws apart from good and evil consequences, must be set aside, and the

problem solved solely by considering the interests of the community at large. From this point of view, when a nation says, as the United States practically do say, that they do not consider it to their interest to recognise literary property in the works of foreign authors published abroad, it will serve no useful purpose to indulge in rhetorical sentences about "national robbery," or "national dishonesty"; we can only endeavour to shew that such a nation has mistaken its true interests, and is in reality injuring instead of benefiting itself. And as on a superficial view of the matter the United States do not seem to be suffering from their copyright policy, we have to inquire more carefully into the conditions of the problem, and to try to discover an acceptable compromise between the two nations.

§ 238. The American question.

The position of affairs in the United States is as follows. They recognise national copyright, although a branch of the vigorous opposition to property in inventions or the patent law also attacks even domestic literary property. Indeed, they are even more liberal than England in their recognition of some classes of works published abroad; for instance, copyright can be obtained in the United States, though not in England, for a play that has been previously publicly represented abroad, but not printed. But with regard to the works of foreigners printed abroad, there is no protection; anyone may publish them in the States without any payment to the author, and there is no local copyright of any kind in them even when published by an United States citizen. As a consequence, the United States are flooded with cheap reprints of successful English works; and, although the actual cost of production of a book is greater in the States than in England, English com-

§ 239. Present position of the United States on the question.

§ 239. Present position of the United States on the question.

petition is rendered practically impossible by several causes (*p*):—

(1.) Books imported into the States pay an *ad valorem* duty of 25 per cent.

(2.) A British publisher pays his author, while an American republisher of English works is free from this item of expenditure.

(3.) The American publisher is saved the expense of corrections in proofs, said to be 40 per cent. of the whole cost of printing in England, by his ability to reprint direct from the printed book.

(4.) The American publisher has not the speculative risks which the English publisher has to allow for; he can choose the works he will publish by the test of actual success, instead of having to guess at the effect they will produce on the public.

These four causes enable American publishers to issue reprints of English copyright works at a price far below that at which they are issued in England, though this price is not apparently lower, and indeed generally higher than the ultimate price of a really successful work in England. In the case of books copyrighted in the States, the price appears to be about the same as that of the original English editions of similar works. This however does not apply in the case of works such as novels, to which the peculiar English system of circulating libraries attaches an entirely fictitious price. At any rate, English reprints are far cheaper than original American works.

§ 240. Results of the attitude of the United States.

To this pecuniary advantage in competition there must be ascribed as a result to a certain extent the undoubted fact that English reprints are on the average better as

(*p*) C. C. Ev. q. 1277, evidence of Mr. Murray.

literary works than the American originals. Publishers cannot afford to pay authors highly when the works they publish have to compete with books produced by a system which offers greater attractions to authors to write, but published at a price which does not include any remuneration to those authors. It is said (*q*) by Americans that a publisher expects to lose money over the first work he publishes of any unknown author. Where there is such small lucrative demand for literary work there will naturally be slight literary work produced. It will not pay the best men to devote their time to literature, and so the average literary standard will be lower. Sir Julius Benedict (*r*) suggests that the failure of America to produce any original musician is probably partly due to the fact that, owing to the enormous competition of foreign music, as to which the foreign author has not the protection of copyright, no sufficient remuneration can be offered to the home producer. In literature, one of the best educated people in the world, and one of the largest reading populations, yet can shew very few names of more than third-class merit in the different branches of literary production. Indeed, so far back as 1833 a report (*s*) was made by Mr. Clay to the United States Government as to the injury done to American literature by the competition of English reprints, which, he said, made the trades of publishing and of writing American literature almost impossibilities. This then is one serious evil, resulting from the present system, which the United States must consider, and accept responsibility for, if they continue such a system.

§ 240. Results of the attitude of the United States.

(*q*) C. C. Ev. q. 1840.
(*r*) C. C. Ev. q. 1466.
(*s*) C. C. Ev. q. 1847.

§ 241. The "courtesy" of the American book trade.

Before however dealing with the position that the American nation or its specially interested classes take up in this controversy, it will be well to examine the actual working of the present American book trade. At first there was unlimited competition, house outbidding house in the cheapness of the edition it offered. "The state of Nature was a state of War;" but as in Hobbes' world, so here, in practice the evils of a state of war were felt, and a "Social Compact" of an indefinite kind was come to among the leading houses. By this "courtesy of the trade"(*t*) it was understood that the house first publishing a reprint of any foreign work should be left in undisturbed possession, without competitive issues from the other houses. This appears only to apply to the larger firms, and there are in consequence perpetual piracies by the small, and occasional quarrels among the larger houses. But the fact remains that the interest of publishers has established a species of International Copyright in practice, although the author does not necessarily obtain anything by it. This system has however brought some small return to the author; for it becomes the interest of the American publisher to secure as early as possible "advance-sheets" of any English work likely to be popular, and for these advance-sheets he is willing to pay the English author or publisher sums which occasionally form an adequate remuneration for the foreign circulation. For instance (*u*), £300 was paid for the advance-sheets of a novel by an author of very moderate capacity; £1000 was paid to Livingstone's family for the advance-sheets of his 'Last Journals,' and Mr. Putnam (*x*), a member of one of the leading publishing firms of New

(*t*) C. C. Ev. q. 1494.
(*u*) C. C. Ev. q. 1855.
(*x*) C. C. Ev. q. 1855.

York, says that the average payment for advance-sheets is from £25 to £100, and that the price increased considerably between 1871 and 1876. Mr. Herbert Spencer (*y*) obtains fair remuneration for his American circulation, Messrs. Appleton, his publishers, being protected by the "courtesy of the trade;" Professor Tyndall (*z*) and Dr. Huxley obtain a percentage in a similar way. On the other hand, many English authors, especially Mr. Tennyson, Mr. Charles Reade, and our most popular poets and novelists, obtain no return from the circulation of their works in the States. Canon Farrar (*a*) received £50 for the advance-sheets of his 'Life of Christ,' of which a small American firm immediately issued a competing edition; and Mr. Matthew Arnold (*b*) has only obtained in return for a large circulation of his works, the sum of £50 from American publishers. The publishers who make arrangements as to advance-sheets (*c*) also obtain stereotyped plates, and blocks for engravings, and thus have an advantage over their rivals. Being houses of considerable capital and power, they can ruin smaller rivals by competition; the fear of this protects most of their issues from the small houses, the "courtesy of the trade" from the larger ones.

§ 241. The "courtesy" of the American book trade.

The result of the present system thus is that English authors are dependent on the generosity of American publishers for remuneration for their work; and that they frequently do obtain such remuneration owing to the fact that American publishers have in their own interests established a sort of copyright in reprints,

(*y*) C. C. Ev. q. 5629.
(*z*) C. C. Ev. qq. 5610, 5791.
(*a*) C. C. Ev. q. 2671.
(*b*) C. C. Ev. q. 3863.
(*c*) C. C. Ev. q. 5793.

§ 241. The "courtesy" of the American book trade.

the investitive fact being first republication in the States.

The opposition which hinders this system from becoming universal and obtaining legal recognition comes from those American publishing houses, who are also printers and binders, and from the representatives in Congress of the Western States, who equally object to the law of patents. The long delay in the conclusion of a copyright treaty results almost entirely from the great influence brought to bear on Congress by the Typographical Union of the United States. The history of this opposition, and its degrees and divisions, are well set out in the evidence of Mr. Appleton, a member of that large New York firm, who deal most liberally with British authors, and Mr. Edward Dicey, before the Copyright Commission (*d*). It is not necessary to go minutely into the history of the different bills brought before Congress, or into the various shades of opinion on the copyright question said to exist in the States, and it will therefore be sufficient to state briefly the general effect of the evidence.

§ 242. Parties on the copyright question in the United States.

International Copyright is only supported vigorously by American authors, and those publishing houses which are not also manufacturing and printing houses. It is vigorously opposed by the publishing and printing firms, and by that school of speculative economists of which the late Mr. Carey was the chief; there is also a passive opposition by the Western population, who object equally to the law of patents, and there is a general fear on the part of readers that the price of books will be enormously raised by such a system. This reading population is very large, and is accustomed to cheap editions; its expecta-

(*d*) C. C. Ev. qq. 1431–1512 (Dicey); 3521–3608 (Appleton).

§ 242. Parties on the copyright question in the United States.

tion of high-priced books as a result of International Copyright is therefore an important factor in the problem. The opposition of the printing publishers is however the chief obstacle; their power in the press places at their disposal great opportunities of influencing Congress, and they have at their back the feeling in favour of protection existing in all protected trades. It is with them that a compromise must be made; if they can be satisfied, an international copyright treaty may be obtained, and their views and requirements must therefore be carefully considered.

American publishers fear (*e*) that the English author will either reprint his work in England, or prevent its reprinting in America, unless he obtains his own terms from the American publishers. They therefore insist on the book's being "*manufactured and published in the United States*," and some of them carry this so far as to wish to forbid the importation of English stereotype plates, which effect a great saving in cost of printing. Mr. Dicey (*f*) thinks that the arrangement must be on the basis of a royalty, any publisher having liberty to republish on paying a certain percentage to the author, who is without any right of *veto*. Mr. Appleton (*g*), on the other hand, probably a better authority as to American opinion, thinks that such a basis is not favoured in the States, on the ground mainly that if every publisher may reprint, there is no security for capital invested by the first publisher, and no encouragement to advertise. This would hinder the production of costly books, which require great expenditure of capital to publish them, and would therefore check rather than

(*e*) C. C. Ev. q. 1468.
(*f*) C. C. Ev. q. 1479.
(*g*) C. C. Ev. qq. 3562, 3586.

§ 242. Parties on the copyright question in the United States.

increase the supply of foreign works. American publishers will probably be content with an arrangement by which foreign authors might obtain copyright in the United States on entering into a contract with an American citizen to manufacture and republish the work in all its parts in the United States. We may admit at once that this plan is mainly in the interest of the American publisher, and that, if the importation of stereotype plates is forbidden, the cost of books will be increased to the American buyer, but American re-manufacture appears to be a *sine quâ non* with American publishers, and must therefore be accepted by English authors.

§ 243. Results.

The English Government therefore should enter into negotiations for a copyright treaty on this basis, endeavouring if possible to obtain concessions as regards the importation of stereotype plates. The author should also be allowed a reasonable time from first publication in which to republish in America, and to provide for the case of his failing to do so the United States might be asked to accept the "Sherman proposal" (*h*) of liberty to all to print on paying a royalty to the author, if at the expiration of the "reasonable time" he had not made separate arrangements for reprinting.

It will be seen that this arrangement, if adopted (and if the point of "American manufacture" is conceded such a result does not seem impossible), is not very different from that recommended previously as the ideal system of International and Colonial Copyright, and there need therefore be no hesitation in accepting it. It must however be borne in mind that the immediate gain from a copyright treaty is all on our side, the immediate loss on

(*h*) C. C. Ev. q. 3560.

§ 243. Results.

that of the States. English authors will at once gain largely, while some increase in the price of books in the States to the reading public is inevitable. The benefit to America, which is great and certain, can only shew itself in course of time when the greater encouragement to American authors has resulted in greater development of American literature. To make the United States see the benefit to them of a treaty is therefore difficult, while it is to our great and immediate advantage to obtain one. It is we, then, who must make the concessions, and be prepared to yield much if we can only ensure that the vast American demand for English literature shall necessarily result in a return, however inadequate, to the real producers of that literature. And since France, which previously suffered in a similar way from Belgian piracy, has succeeded in concluding a treaty which puts an end to "*la contrefaçon Belge*," there seems no reason why England may not hope for the same good fortune in negotiations with the United States.

CHAPTER XII.

CONCLUSION.

The law of copyright has a communistic character.

§ **244.** THE limits of our subject have now been reached. We have endeavoured to set out in detail the principles which should regulate the Law of Property in Literary and Artistic Compositions, and to consider more generally the grounds on which such property should be based. We have investigated, minutely with regard to England and the United States, and more briefly with regard to other countries, the extent to which these or other principles have been acted upon in the Law of Copyright, and in the case of England we have traced the historical growth of such a law.

And the whole of this discussion has tended to shew the "communistic" character of the Law of Copyright. Literary and artistic productions are treated as property, but that property is created in, and limited by, the interests of the community. Strictly dealt with, it should be limited until further limitation defeats its own end. The term of protection is to be made long enough to induce the best authors to produce the best classes of works, and in strictness should be no longer. But if, as often happens, it appears unjust to popular opinion that an author should lose the fruits of his labour during his lifetime, or, as in some cases, that his immediate descendants should suffer, an arbitrary term is sug-

gested, without reference to the value of particular works, but ensuring that at least all literary property shall last till no one will be specially grieved by its abolition.

§ 244. The law of copyright has a communistic character.

This of course is nothing else than reversion of a man's property to the community on his death, a system which was one of the first steps by which individual property was carved out of the property of the community, and which is one of the suggestions of Communism or Socialism (*a*) at the present day. I do not point this out as an objection to the system, for I think it the right one, but rather that its true character may be seen. For discussions of the Laws of Literary and Artistic Property have been so fruitful both in arguments from analogy and in arguments which, if analogically applied, would lead to results startling and unwelcome to those who put them forward, that it is important that the principles on which the law rests should be clearly grasped. By all means let it be acknowledged that literary property is a creation of the State, and that the State in creating it may impose conditions and limitations, even though the acknowledgment is used as the basis for a suggestion that no book should obtain copyright unless it has a good index! (*b*) But let us remember that the position is applicable to all kinds of property. Limit in the interests of the State the duration of property in books, if you like, but recognise that the same arguments may be used to limit the duration of property in land, the power of bequest at death, and the devolution of the property of an intestate. And above all, a caution which is most necessary in arguing the matter, and dealing with questions of so-called "justice," "right," and "utility," let us be careful

(*a*) J. S. Mill, Pol. Econ. Bk. II. c. 2, §§ 3, 4.
(*b*) C. C. Ev. q. 2777.

§ 244. The law of copyright has a communistic character.

that we understand what we mean by these terms, for though such an investigation may be tedious to our lofty intellects, perhaps even fatal to our pet arguments, it will certainly result in greater clearness and brevity, and less idle declamation.

ADDENDUM.

A Divisional Court, consisting of the Lord Chief Justice and Stephen, J., has just decided the important case of *Duck* v. *Bates* (November 20). The infringement of copyright complained of was the performance of Byron's play 'Our Boys' by an amateur dramatic club in the Boardroom of Guy's Hospital, and an audience composed mainly of nurses and patients. The representation was not public, nor for profit. Lord Coleridge held that this did not constitute an infringement of copyright, on the ground that the particular facts shewed no benefit or advantage to the performers, or injury or loss to the complainant. Mr. Justice Stephen concurred. In view of the importance of the case, leave to appeal was given. Both learned judges carefully guarded themselves from determining that no free performance would be an infringement of copyright, and only said that representation for profit, though not essential, was an important element to be considered. In the course of the argument it was intimated from the Bench, that Brett, M.R., was not satisfied with some of his expressions in the case of *Wall* v. *Taylor*, on the subject of infringements of copyright. (See §§ 124 *et seq*).

APPENDIX.

THE following twenty-seven patents and privileges are, I believe, all those contained in Rymer's Fœdera which relate to the question of Literary Property; they clearly, however, do not exhaust the list of royal grants. For instance, in *Atkins* v. *The Stationers' Company* (*a*), the counsel for the king's patentee speaks of fifty-one patents granted by the Crown; and in the remarkable cesser of "privileges" by the richer printers to the Stationers' Company cited above (*b*) and set out in Ames, some eighty or ninety books, as to which such printers "had licenses from the Queen granting them a property in the printing of copies," are recited.

The examples contained in Rymer are partly "patents," relating to works in which the Crown claimed prerogative property; partly "privileges" in works in regard to which there was no such alleged Crown property. After 1617 many of them are granted by a "common form" of grant of a lengthy nature. It will be noted that some of them relate to works in which there would be no copyright at the present time; some involve the notion of licensing; some border on monopolies to inventions, and very few afford simple instances of copyright as it is now, created by direct royal grant.

CASES.	NOTES.	
1. *Nov.* 12, 1539.—A proclamation to printers and booksellers forbidding the printing of any *Bible* in the English tongue for the next five years, except such as shall be approved of by Thomas, Lord Cromwell.	1. This relates to licensing, not copyright.	1. Rymer, 14, 649.
2. *March* 12, 1542.—Licence to Anthony Marlar to be sole printer of the *Bible* in our English tongue, as authorized, for the next four years.	2. A grant by patent of prerogative property of the Crown.	2. R. 14, 745.

(*a*) Carter's Rep. 89.
(*b*) Herb. Ames T. A. iii. 1672–1675. See above, p. 80.

	Cases.	Notes.
3. R. 14, 766.	3. *Jan.* 28, 1543.—Licence to Richard Grafton and Edward Whitchurch to solely print such *service books* as shall be in use for seven years next ensuing; forfeiture the penalty of infringement: the reasons given, that such books have hitherto been printed abroad, and the authority of the Bishop of Rome therein set out.	3. As head of the Church, the King claimed the books of church ritual as his prerogative property. The origin of this grant, however, is clearly politico-ecclesiastical.
4. R. 15, 150. See above, § 68, note.	4. *April* 19, 1547.—Appointment of Reginald Wolff as the *King's* bookseller and *printer*, and a warning to other printers not to print books issued by him.	4. The first book published *cum privilegio* was by Richard Pynson, the *King's printer* in 1519; this protection made the post of some value, and the necessity for it was probably the origin of the royal "privileges."
5. R, 15, 255.	5. *April* 18, 1551.—Privilege to Lawrence Torrentinus of Germany solely to print the *Pandects*, for the encouragement of learning.	5. There would now be no copyright in a reprint of the Pandects: Edward VI.'s scholastic tastes would naturally lead him to encourage learning.
6. R. 15, 628.	6. 1563.—Thomas Cooper granted the exclusive privilege to print an *English dictionary*, corrected and augmented by him, for twelve years.	6. Privilege granted for the whole of the work of another on account of Cooper's corrections.
7. R. 16, 97.	7.—Richard Wright granted the exclusive privilege to print a *translation of Tacitus* for his life.	7. For encouragement of learning.
8. R. 17, 15.	8. *May* 5, 1617.—Nicholson Hillyard granted exclusive privilege to invent, engrave, and print *portraits of the king* for twelve years; leave to set up a press, and protection from counterfeits.	8. Privilege for engravings, and protection against the charter of the Stationers' Company.

Cases.	Notes.	
9. *April* 29, 1617. — Privilege to Fynes Morrison to exclusively print his *Itinerary* for twenty-one years; power to obtain fines and seize copies: the Stationers' Company called or to assist.	9 and 10. Possibly simple examples of modern copyright, unless the printing was licensed apart from the Stationers' Company. Both these "privileges" are granted on the "common form" of grant, which here appears for the first time.	9. R. 17, 10.
10. *Mar.* 11, 1618. — Privilege to Samuel Daniel to exclusively print a *History of England*, collected by himself, for ten years.		10. R. 17, 72.
11. *Mar.* 11, 1618.—Licence to Rathburne and Burgess to exclusively print *maps* of the chief towns in England for twenty-one years, and to set up printing presses.	11. Privilege for maps, and protection against the charter of the Stationers' Company.	11. R. 17, 74.
12. *March* 20, 1618.—Grant to Marriott of exclusive privilege of printing the *Pharmacopœia*, which had been compiled by the College of Physicians.	12. There is nothing like copyright for merit here. Marriott had not even compiled the work.	12. R. 17, 77. See also Cal. Dom. 1611–1618, p. 536.
13. *April* 4, 1618.—Privilege to Sibdale to exclusively print a work on the *translations of the Bible* written by Fulke, then *deceased, for the profit of Hester, his daughter.*	13. Possibly a Crown patent; at any rate there would ordinarily be no copyright in Sibdale; the "children clause" is novel.	13. R. 17, 80.
14. *Feb.* 13, 1621.—Licence to John Legate the son to exclusively print and sell *Thomas Thomas his dictionary*, which had been augmented by John Legate the father.	14. Same as No. 6, with addition of grant to children.	14. R. 17, 283. See also Cal. Dom. 1619–1623. *Feb.* 13.
15. *Feb.* 17, 1623.—Grant to Withers of exclusive privilege of printing and selling *Hymns etc. of the Church translated by him* into lyric verse, for *fifty-one* years, and no Prayer Book to be sold unless his work was bound with it; powers to seize piracies.	15. Probably patent of Crown property, or at any rate connected with it; unusually lengthy term; proviso as to binding novel. The motive assigned (Cal. Dom. 1619–1623, p. 502), is that "his Majesty has taken special notice of the book and conceives it to tend to the glory of God."	15. R. 17, 454.

	Cases.	Notes.
16. R. 17, 484.	16. *April* 24, 1623.—Grant to Speede to solely print his Genealogies and Scripture Maps: term extended from seven to twenty-eight years, inadequate remuneration having been received. No Bible to be sold unless this is bound with it.	16. Similar to No. 15. The extension of term new, and shews motives of grant. The first grant for ten years was made in 1610 (Cal. Dom. 1603–1610, p. 639); this was renewed for seven years in 1617 (Cal. Dom. 1611–1618, p. 431); a further grant is made in 1634.
17. R. 18, 676.	17. *April* 24, 1626.—Grant to Sandys of exclusive privilege to print his *translation of Ovid* into English verse for twenty-one years.	17. Similar to Nos. 9 and 10; made on the "common form of grant."
18. R. 18, 680.	18. *April* 26, 1626.—Grant to Webb of exclusive privilege of *teaching languages on his method*, and *printing* books for that purpose for thirty-one years.	18 and 19. Copyright subsidiary to monopoly of inventions.
19. R. 18, 857.	19. *March* 9, 1627.—Licence to Morley to solely *print books for teaching* English and Latin *on a method invented by him*, with conditional monopoly of teaching.	19. See also S. P. Dom. 1623–25, p. 364.
20. R. 19, 161.	20. *April* 26, 1630.—Licence to Willett to exclusively print "Synopsis Papismi" written by his father, the late Dr. Willett. The licence recites "that the stationer who heretofore had the copy thereof is not able, or at least not willing, to disburse or expend so much moneys as the charge of reprinting the same will require; that he has utterly relinquished the same, and that thereupon few or none at all of the said books are to be procured." The sole reimprinting and reimpressing for twenty-one years is granted.	20. This is analogous to a licence to republish on ground of refusal of owner to reprint after author's death; combined with a grant to children.

Cases.	Notes.	
21. *April* 5, 1631.—Licence to Wackerlin solely to print a number of *Latin classics*, on the expiration of a grant which had been made to the Stationers' Company in 1613.	21 and 22. Ordinarily there would be no copyright in Latin classics. In the State Papers we find that Wackerlin petitioned for a grant for thirty-one years, which he might let to the Stationers' Company, and thereby make a small profit.	21. R. 19, 269. See also Cal. Dom. 1629–1631, pp. 514, 557.
22. *April* 6, 1632.—Licence to Farnaby to exclusively print other *Latin classics* for twenty-one years.		22. R. 19, 366.
23. *Nov.* 12, 1632.—Licence to University of Oxford to appoint three printers.	23. Protection against the charter of the Stationers' Company.	23. R. 19, 393.
24. *Nov.* 1, 1634.—Licence to John Day, fishmonger, to print *weekly bills of the price of foreign commodities* for fourteen years.	24. In the nature of an invention.	24. R. 19, 577.
25. *Aug.* 18, 1635.—Licence to Braithwaite to print *books for teaching to sing on a method invented* by him.	25. Invention; similar to Nos. 18 and 19.	25. R. 19, 656.
26. *July* 4, 1635.—Licence to Holyocke to print and sell a *dictionary* compiled by him; provisions for seizure of piratical *imitations*.	26. Apparently a simple case of copyright.	26. R. 19, 642.
27. *Dec.* 14, 1635.—Licence to George Sandys to print and sell his paraphrase of Scripture psalms for fourteen years.	27. A simple case of copyright, unless connected with Crown prerogative in the Bible.	27. R. 19, 708.

We can perhaps conclude from this list that grants from the Crown were as a rule confined either to patents of prerogative property, or to privileges to private individuals where special rights were conferred, either on others than authors, or in opposition to the privileges of the Stationers' Company, or of the nature of patents to inventions. These grants were initiated apparently by the creation of the post of "*Regius Impressor*." We may note the very varying times for which protection was conferred—four, seven, ten, twelve, fourteen, twenty-one, twenty-eight, thirty-one, fifty-one years, and the life of the author. We may

also note as a curious fact that fifteen out of the twenty-seven instances quoted—all those from 1617 to 1632—are dated between the 13th of February and the 5th of May, eight of them being in the month of April; the reason why literary privileges should be granted at that period of the year not being clear.

The following privileges and documents relating to the History of Copyright, *inter alia*, are found in the Calendars of Domestic State Papers.

1560.—Warrant for a licence to John Bodleigh to print the English Bible faithfully translated with annotations in the year 1560. (S. P. Dom. 1547–1580, p. 166.)

1566 (?)—The Queen to all printers, booksellers, and stationers: There having been a great number of primers and prayer-books printed in the realm, through every man's having leave to print them, we have granted, for the sake of uniformity in private prayer, to William Seres, stationer of London, the sole licence for ten years of printing all books of private prayer, hitherto permitted to be printed. (S. P. Dom. 1566–1579, Addenda, p. 25.)

1585.—The petition of the printers of London, complaining of the conduct of Joseph Barnes, printer of Oxford, in reprinting the book called 'The Revolution,' and praying restitution of their *property seized at Barnes' suit* for their printing and publishing a book compiled by Dr. Bilson. (S. P. Dom. 1581–1590, p. 296.)

Here evidently the powers of search and seizure had been exercised to protect literary property, as in the following case.

1585.—Petition of poor artificers occupying the trade of printing, who complain of wrongs done them by a few privileged persons, by whom *many of the petitioners have been cast into prisons.* (S. P. Dom. 1581–1590, p. 299.)

1592.—Grant to Richard Field, printer, of the sole licence of printing 'Orlando Furioso,' translated into English verse by John Harrington. (S. P. Dom. 1591–94, p. 179.)

As Harrington had died in 1582, this is apparently not a simple case of copyright, but the creation of a monopoly not for the benefit of the author.

1597.—Privilege to Henry Stringer, the Queen's footman, for fourteen years, to print certain school-books, after the expiration of a former privilege to Thomas Marsh. (S. P. Dom. 1595–7, p. 352.)

1604, Feb. 2.—Licence to Robert Barker in reversion after John Norton to print all books in Latin, Greek, and Hebrew, Trimelius' Latin Bible, and all charts and maps. (S. P. Dom. 1603–1610, p. 74.)

This is a clear case of monopoly apart from literary property.

1605, June 26.—Grant to James Ryme, bookseller, of the sole privilege of printing and selling certain Latin works of H. Zanchius for fourteen years, *the price of them to be fixed by the Archbishop of Canterbury.* (S. P. Dom. 1603–10, p. 226.)

The provision as to price is novel: the books are such as could not be the subject of copyright.

1607, Jan. 5.—Licence to Wm. Stallenge for twenty-one years to print a book called 'Instructions for the planting and increase of mulberry trees, breeding of silk-worms and making of silk.' (S. P. Dom. 1603–10, p. 344.)

A monopoly akin to patent.

1608, Feb. 18.—Grant to M. Bradwood of the sole privilege of printing 'Jewell's Defence of the Apology of the Church of England, and his book of Articles.' (S. P. Dom. 1603–10, p. 406.)

Jewell died in 1571; so this is another instance of monopoly created not for the author's benefit.

1608, April 29.—Grants to G. Humble of privilege for twenty-one years to print a book compiled by John Speed, called the 'Theatre of the Empire of Great Britain, with cartes and maps.' (S. P. Dom. 1603–10, p. 425.)

Aug. 13, 1608.—Licence for ten years to Sir W. Woodhouse to print reports, &c., of the case between Robt. Calvin and R. Smith, concerning the question of the Postnati of Scotland. (S. P. Dom. 1603–10, p. 452.)

This is a grant of Crown property, the law reports being the King's.

Jan. 1610.—Licence to John and Jane Danyell to print and publish the works entitled 'Danyell's Disasters.' (S. P. Dom. 1603–1610, p. 584.)

Feb. 20, 1611.—Licence to J. Minsham of the sole printing for twenty-one years of a Dictionary Etymological of twelve languages. (S. P. Dom. 1611–18, p. 10.)

It is not stated whether he was its author.

April 2, 1613.—Licence to the Warden and Company of Booksellers of London to print and sell Cate's distichs and other books for twenty-one years. (S. P. Dom. 1611–18, p. 179.)

Not a case of author's copyright.

Mar. 3, 1615.—Grant to Jordan and Hooker of London, *nominees of Edw. Lord Morley*, of the sole printing of a small book, entitled 'God and the King,' with instructions for the same to be taught in Latin and English in all schools. (S. P. Dom. 1611–18, p. 484.)

This is a monopoly with compulsory purchase of the monopolised article. The "nominee" clause is common in other grants of the period, but unusual in privileges of printing.

July 19, 1618.—Licence to W. Alley, at nomination of T. Middleton,

of the sole printing and publishing of 'The Peacemaker,' a book by Middleton, for seven years. (S. P. Dom. 1611–18, pp. 556, 564.)

Here the author nominates.

June 1619.—Statement by John Bill of the right acquired by Bonham Norton and himself . . . in the copyright of a work called 'The Confutation of the Rheimish Testament,' written by the late Dr. Fulke, which his daughter, Mrs. Ogden, has obtained a license to print. (S. P. Dom. 1619–23, p. 55.)

Here the licence from the Crown conflicts with prior rights in the King's printers.

Sept. 14, 1623.—Grant of sole licence of printing and publishing the 'Attorney's Academy' to J. Parish. (S. P. Dom. 1623–25, p. 75.)

Oct. 28, 1624.—The King asks the Bishop of London's opinion on a new alphabet invented by William Morley, a minister, for the more easy attaining of languages, for the sole printing and publishing of which he requests a patent. (S. P. Dom. 1623–25, p. 364.)

1625.—Petition of R. Young, *assignee of his Majesty's printer for the Latin tongue.* (S. P. Dom. 1625–6, p. 211.)

This is an example of the way in which the sole rights of printing were used to make lucrative places. There is also a grant of the office of King's Printer in the Admiralty and Ecclesiastical Courts for life. (S. P. Dom. 1603–1610, p. 131.)

1630, July 14.—Robert Barker, King's Printer. Council direct certain persons to aid him in search for persons importing books of right belonging to him. (S. P. Dom. 1629–31, p. 306.)

1629, Sept. 8.—Grant to Clement Cotton for twenty-one years of sole privilege of printing a Concordance to the Bible. (S. P. Dom. 1629–31, p. 53.)

Petition of Cotton, reciting that being poor he has assigned his privilege to Bourne for a sum of money, against Order of Council restraining the binding of the Concordance with the Bible. (S. P. Dom. 1629–31, p. 138.)

Oct. 28, 1633.—"Lady Eleanor Davies was last Thursday fined £3000 in the High Commission Court, and committed close prisoner to the Gate House for printing books at Amsterdam of the interpretation of part of the new laws and some of the prophets." (S. P. Dom. 1633–34, p. 261.)

March 1634.—Petition by Withers that his privileges may be enforced against the Stationers.

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