against I. for the value of the collection, that for prints whose objects were general satire or ridicule of prevailing fashions or manners, F. might recover; but not for those whose tendency was immoral or obscene, nor for such as were libels on individuals, and for which F. might have been rendered criminally answerable for libel in selling[1]. And where A. was exhibiting a libellous picture, which B. destroyed, it was decided in an action by A. against B. for the value of the picture and loss of the profits of the exhibition of it, that the picture had no value in law as a work of art, its value being merely the canvas and paint forming its component parts; and it was said by the learned judge who presided at the trial that an injunction would be granted against its exhibition, and that the exhibitor was both civilly and criminally liable for the libel[2]. And in that case declarations of the spectators who saw the picture when exhibited were received as *evidence* as to whom the figures were meant to represent.

Of claims to the Copyright in pictures, if not engraved.—It must also be observed that engravings and not pictures, *as such*, are the especial object of protection under the Engraving Copyright Acts. Thus, where M. had painted a picture from his sketches, which picture he sold, and some years after engraved from his sketches a print of the same subject, one of which W. bought and had it painted in colours on a large scale with dioramic effect, and exhibited it for money as "Mr. Martin's grand picture of Belshazzar's feast," upon a Bill filed by M., the court decided that the Engraving Acts did not apply to such a case as this, and refused to grant an injunction to restrain W. from exhibiting his copy and representing to the public that it was

[1] Per Lawrence, J., in *Fores* v. *Johnes*, 4 Esp. 97.

[2] Per Lord Ellenborough, C. J., in *Du Bost* v. *Beresford*, 2 Camp. 511. The celebrated painter Hogarth, under somewhat the like circumstances, acted with greater discretion than Du Bost. In a picture called "The Misers' Feast," Hogarth had represented as the miser a certain gentleman proverbial for his avarice. Hearing of this, his son called at Hogarth's to see the picture, and on its being shown to him, asked "whether that odd figure was intended for any particular person;" the reply being "it was thought to be very like one Sir Isaac Shard," Mr. Shard immediately drew his sword, and slashed the canvas. Hogarth was in great wrath, but on Mr. Shard stating who he was, and that he was ready to defend any proceedings on the subject, the painter very wisely submitted to the loss of his picture as a just penalty for the "unwarrantable license" he had been guilty of. See 'Biographical Anecdotes of Hogarth,' p. 69, 3rd edition.

the work of the plaintiff, until the right had been established at law, at the same time observing that if M. had exhibited his picture as a diorama, then he might have been entitled to an injunction[1].

Again, it has been said that the Engraving Acts are manifestly confined to prints taken from plates, the engraving upon which plates has been *pirated from other engravings*, and consequently where H. had been employed by M. to engrave plates for him, which H. did, and then took several proof impressions from them, which he retained for his own use, it was decided that although H. was guilty of a breach of contract in not delivering *all* the impressions to M., yet that neither trover could be maintained for them, nor would an action lie under the Engraving Acts; the impressions having been legally taken from lawful plates, and a breach of contract only been committed by H. in not handing them over to M.[2]

In another case where an action had been brought on the Statutes of 8 Geo. II. c. 13, and 17 Geo. III. c. 57, for the piracy of two prints engraved from pictures of which the plaintiff had bought the copyright for engraving from the artist, and then employed the defendant to engrave them, which he did; at the same time making sketches from the pictures, from which sketches he afterwards engraved two other prints not copied from the plaintiff's, such act on the part of the defendant was held *not* to amount to a piracy of the plaintiff's engravings, and the learned judge who tried the cause said it would destroy all competition in the art of engraving to extend the monopoly to the *paintings* themselves from which the defendant's engravings were made, and not from the plaintiff's prints[3].

Notwithstanding the very high authority of the great judge who tried that case, and of the previous dictum of Lord Mansfield on the point, it may be doubted whether his direction on that occasion will stand the test of further inquiry. If it be sound, then it is obvious that the value of the copyright which an artist has in the *invention* or *design* of his picture is compa-

[1] Per Shadwell, V.C., in *Martin* v. *Wright*, 6 Sim. 297.

[2] *Murray* v. *Heath*, 1. B. and Ad. 804.

[3] Per Abbott, C.J., in *De Berenger* v. *Wheble*, 2 Stark. 548; And in another case Lord Mansfield, C.J., is reported to have said:—"in the case of prints no doubt different men may take engravings from the same picture." *Sayre* v. *Moore*, 1 East, 361. n.

ratively small; and that the enormous capital embarked in the copyright of pictures and engraving them, is placed in the greatest jeopardy; because it follows that any one who can surreptitiously or otherwise obtain access to a picture, either before or after it is engraved, so as to obtain sketches from, or a copy of it, may thus proceed to engrave the picture, provided he does not copy from the authorized engraving.

The Engraving Acts were passed with the express object of encouraging the art of *designing* for the purposes of engraving, and *if the original design be not made public before the engraving from it be published, in accordance with the conditions imposed by the Engraving Acts*, it would seem to have been the intention of the Legislature to protect the invention of the design, as well as the authorized engraving from that design[1].

Now, as formerly, there are thousands of pictures or designs, coloured or plain, which are prepared of the required size for engraving, and from which the engravings are made. In other cases, where the picture is larger than the plate, it is usual to make a drawing from the picture of the size to be engraved; and it is from such reduced copy that the engraver works, giving the finishing touches to his work from the original picture when he is fortunate enough to obtain access to it for that purpose.

It may be, and usually is, that there are two copyrights connected with every engraving—one in the invention of the picture or design, the other in the engraving.

The copyright in a picture, as such, is not protected. It is merely the *design* of the picture *when coupled with engraving*, which is entitled to copyright.

How to secure the copyright in a picture.—The design or subject of a picture therefore appears to be on the same footing as an invention entitled to protection under the Patent Law; or as public lectures were as to copyright in them prior to the Act of 5 and 6 Will. IV. c. 65. If the *design* of the picture before it is made public be in any manner copied, whether by engraving, lithography, or any other mechanical process, and the copies are published in accordance with the *conditions* of the Acts of Parliament, then it seems to have been the intention of the Legislature that neither the original design of the picture, or the engraving, etc., from it should be copied for any other engraving,

[1] See the words of the Statute, 7 Geo. III. c. 38. s. 1: Appendix, p. 26.

and that the copyright is secured as well in the design of the picture as in the engraving, etc.

Danger in exhibiting pictures before they are engraved.—But if, on the other hand, as is usually the case at the present day, the picture or design be privately or publicly exhibited or otherwise published before it has been engraved, and the prints from the engraving are published, then it would seem that the design is public property; and that the work of the engraver, exclusive of the design, is alone entitled to copyright; in other words, that any one may engrave the subject provided they do not copy it from the engraving[1].

Engravers not entitled to retain proofs.—It is also requisite to notice that an asserted usage amongst engravers to retain a certain number of the proof copies of their works for their own use, when *employed* to engrave a work, was negatived by the Jury in the only case where the point appears to have been decided[2]. If therefore an engraver desires to retain proof impressions of his work for his own use, the right to do so should form a part of his contract with his employer, and such contract should in all cases be *in writing*.

As to the liability of a painter or engraver's executors or administrators in respect of a work which he has contracted to execute; where he dies before completing it, his representatives are thereby discharged from his contract. The undertaking is merely personal in its nature, as in the case of a literary composition, and by the event of the contractor's death has become impossible to be performed[3].

As to the forgery of pictures.—This infamous fraud has in-

[1] In a recent case in equity before Lord Langdale and Lord Cranworth, then Baron Rolfe, Lords Commissioners, where an *ex parte* injunction had been granted to restrain the use of a registered design under the Ornamental Designs Act, and upon the coming in of the defendant's answer it appearing that the plaintiff had two months before the registration exhibited a drawing of the design at his place of business to his customers there, and this fact not appearing on the bill, Lord Langdale said, "the question at law is therefore whether this state of facts did not deprive the plaintiff of the protection of the Act," and the court confirmed a previous order of the Vice-Chancellor dissolving the injunction on the ground that the plaintiff had suppressed the fact above stated as to the exhibition of his design prior to its registration. *Dalgleish* v. *Jarvie*, 20 L. J. Ch. 475.

[2] See *Murray* v. *Heath*, 1 B. and Ad., 804.

[3] By Lord Lyndhurst in *Marshall* v. *Broadhurst*, 1 Tyrwhitt 349. See also Williams's Executors, p. 1467, 4th edition.

creased to such an extent that it may be useful to call attention to the law affecting such cases. As it at present stands, pictures as we have seen are not the subject of copyright, excepting only as regards their design for the purposes of engraving. Thus copies may be and in many cases are multiplied at discretion to the serious injury of the fame of the artists who painted the originals, as well as to the annoyance and pecuniary loss of the persons who may become the purchasers of such forged copies.

But although the copying of a picture without the artist's or owner's permission may not be illegal, yet if such copy be made with the fraudulent object of inducing some person to purchase it as a picture painted by the author of the original work, and which object would seem clear where the signature to the original picture has been forged upon the copy, in such a case there can be no doubt that not only the person making the copy with such object, but also the person causing it to be so made, would upon principle be legally liable for such fraudulent act, although not carried to final completion by a sale of the copy; and an artist is equally liable who, with a similarly fraudulent object, forges upon his own picture the signature of some more celebrated artist.

There is also another fraud practised upon the purchasers of pictures, but which is happily of more rare occurrence; where an artist of celebrity, regardless of his fame, and of the first principles of common honesty, takes advantage of the conventional value of his name with the public by slightly painting on, and signing with his own name, pictures painted by other persons, and which pictures are then, upon the strength of his signature, sold as being his productions[1].

7. *The piracy of copyright* existing under the Engraving Acts is thereby declared to consist in engraving, etching, or working

[1] It is vain to cite the names of celebrated artists in favour of the practice, or who have been otherwise "assisted" in their pictures. In every case where a picture is not entirely painted by an artist, unless it is bought with a full knowledge of all the circumstances, it is a fraud upon the purchaser who buys it direct from the artist or his agent. The *extent* of the fraud must of course depend on the amount of the unknown man's work which has been allowed to remain in the picture; but as the conventional value of the picture depends on the hand that painted it, a fraud is practised by an artist who sells a picture as painted by himself which in fact is not so.

in mezzotinto or chiaro-oscuro, or in any other manner copying or selling, or causing to be engraved, etched, or copied and sold in the whole or in part, by varying, adding to, or diminishing from the main design—or in printing, reprinting, or importing for sale, or causing to be printed, reprinted, or imported for sale any such print or any parts thereof without the consent of the proprietor, first obtained in writing, signed by him in the presence of two or more witnesses; or in publishing, selling, or exposing for sale, or in any other manner disposing of any such print without such consent as aforesaid, or causing the same to be done[1]; and such copying as above mentioned includes prints taken by *lithography*, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely[2].

In considering questions of piracy under the Engraving Copyright Acts, the same principles will apply as those which govern cases of piracy of literary copyright. Thus, while the primary object of the Engraving Copyright Acts was "for the encouragement of the arts of designing and engraving," and to secure to the artists the profits of their works; the interests of knowledge in those arts require a reasonable freedom to others in the use of all such works as are to a limited extent made public property by the fact of their publication[3]. The law of artistic copyright is therefore to be administered in such a manner as not to curtail the fair and reasonable use of existing works which are the subject of copyright. What is, or is not, such a fair and reasonable use must necessarily in many cases be a nice question to determine.

The intention of the Legislature to be gathered from the Engraving Acts appears to have been to invest the proprietor of the copyright of an *engraving* with the whole profit to be derived from its publication, either in its original or in any other form; as during the continuance of the proprietor's term, the public are expressly prohibited from re-engraving or otherwise similarly

[1] See 8 Geo. II. c. 13, s. 1. Appendix p. 62. Also 7 Geo. III. c. 38. s. 2. Appendix p. 64. 17 Geo. III. c. 57. Appendix p. 68. And 6 and 7 Will. IV. c. 59. s. 2. Appendix p. 69.

[2] 15 Vic. c. 12. s. 14; ib. p. 69.

[3] See observations of Lord Mansfield, C.J., in *Sayre* v. *Moore*, 1 East, 361 n., which was an action founded on the Engraving Acts for piracy of a *chart*.

copying his work "in the whole or in part, by varying, adding to, or diminishing from the main design[1]."

It consequently follows that the copyright of the proprietor may be pirated in different modes:—1. By re-engraving or otherwise similarly copying the whole engraving, either from the plate or an impression from it. 2. By re-engraving or otherwise similarly copying a part of the engraving by varying, adding to, or diminishing from the main design. 3. And to these must be added the printing, reprinting, or importing for sale, or publishing, or disposing of pirated copies of the engraving[2].

Copying the whole engraving.—In all cases of infringement of copyright, the first point for consideration on the part of the proprietor and his advisers is to ascertain whether he has a clear legal title if he intends to adopt proceedings at law; or such *legal*, or at least a good equitable title, if he avails himself of the protection afforded by a Court of Equity; and that the conditions required by the Engraving Acts have been complied with in the publication of the prints. When the proprietor is prepared with proper evidence on these points, then where the whole work has been copied, the only question to determine upon a comparison of the original print[3] and the pirated one is whether the latter is a copy of the former; and a late celebrated judge defined the copy of a print to be "that which comes so near to the original as to give every person seeing it the idea created by the original[4].

Copying a part of the engraving.—This class of cases must ever comprise those which are the most difficult to decide, as they involve the question—What use may be lawfully made of the original engraving? We have just seen that the acts declare it to be piracy to copy the original work "in part by varying, adding to, or diminishing from the main *design*;" and in ascertaining what use may be lawfully made of the original, the best

[1] See 8 Geo. II. c. 13, s. 1. Appendix p. 62. Also 17 Geo. III. c. 57. Appendix p. 68.

[2] Ib. Also 7 Geo. III. c. 38, s. 2. Appendix p. 64. 17 Geo. III. c. 57. Appendix p. 68.

[3] That an *impression* taken from the original engraved plate is sufficient evidence on the part of the plaintiff, without the production of the plate, see *Thompson* v. *Symonds*, 5 T. R. 41.

[4] Per Bailey, J., in *West* v. *Francis*, 5 B. and Ald. 743; S.c. 1 D. and Ry. 407.

test is to ascertain whether the parts copied from it tend to, or do in point of fact, injure the sale of the original print, and thus diminish the value of the proprietor's copyright in it. Thus where R. had published a work on fencing, containing a number of plates, and W. in an Encyclopædia under the head "Fencing" published three engravings representing figures in exactly the same attitudes as R.'s, but disguised with a different costume, Lord Ellenborough, C. J., who presided at the trial of an action brought by R. against W. for the piracy of the prints and part of the letterpress of R.'s work, told the jury that the *intention* to pirate is not necessary in an action of this sort; it is enough that the publication complained of is in substance a copy whereby a work vested in another is injured, and added that the question would be as to the prints, whether W. had copied the main design; and the jury found a verdict for the plaintiff, with separate damages for the piracy of the letterpress and the prints[1]. And in a somewhat recent case the facts were, that M. was the proprietor and publisher of an engraving of the portrait of a mare called "Beeswing," and C. was the printer and publisher of a book in which was published a woodcut of "Coronation," the winner of the Derby in 1841, which cut was said to be a piracy of M.'s engraving, with slight variations; and upon an action brought by him against C., under the 17 Geo. III. c. 57, the learned judge who tried the cause directed the jury "to consider whether the main design of the plaintiff's engraving had been copied, and whether the defendant's was substantially a copy of the plaintiff's," and upon the jury finding a verdict for the defendant, this direction was afterwards held to be correct[2].

In all these cases therefore, one of the questions of fact for the jury to determine is, whether the alterations in the engraving be colourable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a copy of the other, and nothing more than a copy[3].

Copying the title of a print is such an invasion of the right of

[1] *Roworth* v. *Wilkes*, 1 Camp. 94.

[2] *Moore* v. *Clarke*, 9 M. and W. 692; see also *West* v. *Francis*, 5 B. and Ald. 737, where all the pirated engravings varied from the originals in some respects, but preserved generally the design of the originals.

[3] Per Lord Mansfield, C. J., in *Sayre* v. *Moore*, 1 East, 361, n., which was an action under the Engraving Acts for piracy of a sea-chart.

the proprietor of the copyright that, during the existence of such copyright, a court of equity would doubtless, as in the case of piracy of title of a literary work[1], restrain its wrongful appropriation for any other print, although such print might not be a piracy. The title of a print being used to mark its individuality becomes a most valuable addition to the copyright, and consequently its wrongful usurpation for any other print might, and most probably would, be a serious injury to the proprietor of the copyright in the engraving having such title, as it would intercept profits which would otherwise accrue to him from the sale of his prints.

As to maps, charts, and plans.—We have seen[2] that the copyright in these invaluable works is protected under the Engraving Acts to the same extent as all other engravings, and also that since the 1st July, 1842, they have received the additional protection afforded them by the Statute of 5 and 6 Vic. c. 45, being thereby placed in all respects upon an equal footing with literary copyright works. It may however be useful to notice in this place the only reported case as to the piracy of "maps, charts, or plans," as the principle to be deduced from it applies to all works of that class. It was an action under the Engraving Acts for piracy of a *sea-chart*, tried before that great judge, Lord Mansfield, C. J., in 1785; and the facts were, that the defendant had taken the body of his publication from the work of the plaintiffs, but that he had made many alterations and improvements thereupon. His Lordship, in his direction to the jury, said "the rule of decision in this case is a matter of great consequence to the country. In deciding it we must take care to guard against two extremes equally prejudicial; the one, that men who have employed their time for the service of the community may not be deprived of their just merits, and the reward of their ingenuity and labour; the other, that the world may not be deprived of improvements, nor the progress of the arts retarded." And after observing with reference to literary copyright and prints, that there was no copyright in the *subject*, he proceeded to observe to the jury, that "whoever has it in his intention to publish a chart, may take advantage of all prior publications. There is no monopoly of the subject here any more than in the other

[1] See *Hogg* v. *Kirby*, 8 Ves. Jun. 215. [2] *Supra*, p. 17.

instances; but upon any question of this nature the jury will decide whether it be a servile imitation or not. If an erroneous chart be made, God forbid it should not be corrected, even in a small degree, if it thereby become more serviceable and useful for the purposes to which it is applied. But here you are told that there are various and very material alterations. This chart is upon a wrong principle, inapplicable to navigation. The defendant therefore has been correcting errors, not servilely copying. If you think so, you will find for the defendant; if you think it is a mere servile imitation, and pirated from the other, you will find for the plaintiff;" and the jury accordingly found their verdict for the defendant[1].

Selling pirated copies of prints—liability of printsellers.—We have seen[2] that the piracy of engravings not only consists in copying them, but also in printing, reprinting, or importing them for sale, without the consent in writing of the proprietor, to be signed by him in the presence of two or more witnesses; and that it is also piracy to publish, *sell*, or expose for sale any such unauthorized print.

As the law stands, printsellers are placed in a most unjust position; it has long since been determined that the seller of a pirated print is liable to the proprietor of the copyright, although at the time he sold it he did not know that it was an unauthorized copy[3], the words "*knowing* the same to have been so reprinted," etc., which occur in the Act of the 8 Geo. II. c. 13, s. 1, having been omitted in the 17 Geo. III. c. 57. And in another case, the facts were, that the defendant had purchased a large quantity of engravings in London for re-sale, and amongst them were three copies of a print, which the plaintiff proved to be a French piracy from a print of his; and having, *ex parte*, obtained an Injunction against the defendant, on the cause afterwards coming on to be heard, although the plaintiff's print was not then produced, or the pirated copies in question, and there was no proof that the name of the proprietor, or date of the publication, was on the plaintiff's print, yet as the defendant by his answer had not suggested that the copies he had sold were not pirated from the plaintiff's, and the defendant had not tendered

[1] *Sayre* v. *Moore*, 1 East. 361, n.
[2] *Supra*, p. 29.
[3] See *West* v. *Francis*, 5 B. and Ald. 742.

to the plaintiff his costs upon being served with the Injunction, the court made it perpetual, and decreed the defendant to pay the costs of the suit, saying that it was not reasonable that a party, whose copyright had been pirated, should sustain the further injury of having to bear the costs of obtaining protection[1].

8. *The remedies of the original proprietor of the copyright and his assignees,* as given by the Engraving Acts for piracy of the copyright, are—1. That the offender shall forfeit the plates on which such prints shall be copied. 2. And all prints therefrom to the proprietors of the copyright, who shall forthwith destroy the same pirated plate and prints. 3. The offender also incurs the penalty of 5*s.* for every such print found in his custody, either printed, or published, or exposed for sale, or otherwise disposed of contrary to that statute, one half thereof to the Crown, the other to the person who shall sue for the same in any of the courts of record at Westminster[2], together with full costs of suit[3]; but *the prosecution must be commenced* within six calendar months after the discovery of the offence committed[4]. 4. And a special action on the case in any court of law of Great Britain or Ireland for such damages as *a jury* shall assess, together with double costs of suit[5].

Proceedings at law under the Engraving Acts in cases of piracy of copyright were at first directed to be taken in the courts of record at Westminster[6], but subsequently in any court of law in Great Britain or Ireland[7], and now the County Courts have jurisdiction in such cases[8] where the debt, damage, or demand does not exceed £50[9], or to any amount where the plaintiff and defendant agree that the Court shall have power to try the case[10]. The institution of the County Courts and the

[1] Per Leach, V. C., in *Fradella* v. *Weller*, 2 R. and M. 247.

[2] 8 Geo. II. c. 13, s. 1. See Appendix, p. 62. Also 7 Geo. III. c. 38. s. 5. Appendix, p. 66.

[3] 7 Geo. III. c. 38. s. 5.

[4] Ib. s. 6. See also 8 Geo. II. c. 13. s. 4.

[5] 17 Geo. III. c. 57. See Appendix, p. 68, also 6 and 7 Will. IV. c. 59. s. 2. Appendix, p. 69.

[6] 8 Geo. II. c. 13, s. 1. See Appendix, p. 62; also 7 Geo. III. c. 38. s. 5. Appendix, p. 66.

[7] 6 and 7 Will. IV. c. 59. s. 2. See Appendix, p. 69.

[8] 9 and 10 Vic. c. 95, s. 58.

[9] 13 and 14 Vic. c. 61, s. 1.

[10] Ib. s. 17.

jurisdiction they possess in cases of piracy of copyright (even as far as such limited jurisdiction extends), is a great and just boon to the proprietors of such property, as well for the expedition and economy of the proceedings, as also that the parties themselves and their wives may be examined as witnesses, and thus giving those persons having a clear *legal* title to copyright a more efficient remedy than they previously possessed; although by the recent alterations in the law of evidence the parties and their wives may now also give evidence in their own cause as well in Chancery as in the superior courts of law.

Evidence for the Plaintiff.—We have seen[1] that there may be, and usually are, two copyrights claimed in every engraving—one for the design or subject, the other for the work of the engraver. If the proprietor of the copyright be the inventor of the design, his proofs will therefore be—1. His invention and execution of such design. 2. That he engraved or caused it to be engraved or lithographed, etc., as the case may be[2]. 3. That he complied with the *conditions* imposed under the Engraving Acts[3]. 4. That the impressions or copies were first published on the day named on them, and that he thus was and still is the proprietor of the copyright. The production of the plate is not requisite, an impression is sufficient evidence (*Thomson* v. *Symonds*, 5 T. R. 41). 5. The piracy will be proved by the production of a pirated copy, comparing it with the plaintiff's, proving by skilled witnesses the extent to which it was copied from the plaintiff's, either as to the design or engraving, etc., or both, according to the copyright claimed, and that it was either made, published, or sold by the defendant.

If the proprietor of the copyright be *assignee* thereof, then, in addition to such of the above proofs as are applicable, if he claim such right both in the design as well as the engraver's work, he must prove his title to the design by deed of assignment[4], attested by two witnesses, and that he engraved or caused the work to be engraved[5]; or if the engraver executed it on his own account, then the title to his copyright therein must be proved by deed of assignment, in the same way as from the inventor of the design.

If the copyright claimed be only in the engraver's work, and

[1] *Supra*, p. 26. [2] Ib. p. 17. [3] Ib. p. 18.
[4] *Power* v. *Walker*, 4 Camp. 8; S. c. 3 M. and S. 7.
[5] See 7 Geo. III. c. 38. s. 2: Appendix, p. 64.

not the design, then of course the proofs will be confined to that claim only.

The Evidence for the Defendant.—In answer to the plaintiff's action, the defendant may show—1. That the conditions imposed by the Engraving Copyright Acts have not been complied with—including therein the publication of proof impressions before letters[1]. 2. That the engraving was obscene, libellous, or otherwise immoral[2]. 3. If copyright be not claimed in the design, then that defendant's work was not copied from plaintiff's, but from the original design or studies from it[3]. 4. Or if the copyright in the design be claimed, that it was published by being exhibited or otherwise made public before it was engraved[4]. 5. And that the copyright has expired[5].

Proceedings in equity are frequently either essential or advisable (where the work in dispute is of sufficient value to warrant the expense), in preference to those at law, especially where the party injured has only an *equitable* title to the copyright, or where it is of importance immediately to restrain the sale of the pirated work. Under the existing unjust and absurd system[6] the Courts of law have no power to restrain the sale of a pirated Copyright work, although the fact of such piracy may be indisputable; it can only be done by obtaining an Injunction from the Court of Chancery, such Injunction being a writ from that Court prohibiting the continuance of the wrongful act complained of.

The principle upon which *Injunctions* were formerly granted by the Court of Chancery to restrain the publication, sale, or other piracy of prints, as in all other cases of copyright, was that of making the legal right effectual; and accordingly, where a fair doubt existed as to such legal right in the plaintiff, the Court always directed it to be tried, making some provision in the interim—the best that could be for the benefit of both parties[7]; and although injunctions are now more liberally granted, yet still equity generally requires the plaintiff to show a *primâ facie* legal

[1] *Vide supra*, p. 21, 22. [2] Ib. p. 23. [3] Ib. p. 25.
[4] Ib. p. 27. [5] Ib. p. 18.
[6] "We assert as an indisputable proposition that every court ought to possess within itself the means of administering complete justice within the scope of its jurisdiction." Vide Second Report of Common Law Commissioners, p. 36.
[7] Per Lord Eldon, C., in *Wilkins* v. *Aiken*, 17 Ves. 422.

title[1]. But where the plaintiff had only an equitable title, and it has been requisite to send the case to law to try the question of piracy, the defendant has been put under terms to admit in the action the legal copyright of the plaintiff; and this was considered as the settled practice[2] at the period when courts of equity most justly became invested with power to try the legal title, without requiring the parties to proceed at law to establish the same[3], and were thus empowered from the 1st of November, 1852, to administer complete justice to the parties. But when the Court has doubts as to the construction of a Copyright Act, it will still leave the plaintiff to his remedy at law[4].

The granting or refusal of an injunction in any case is a matter resting in the sound discretion of the Court[5]; and it has been decided that its jurisdiction to relieve by injunction is not taken away because an Act of Parliament provides a remedy by special action on the case, such jurisdiction being founded on the right of property given by that Act[6].

It may therefore be considered as the practice in equity that to entitle a plaintiff to relief it is not now indispensable for him to have a strictly legal title, it being sufficient that he has a clear equitable title[7], and the present course is for the Court to grant the injunction in all cases where there is a clear colour of title founded upon a long possession and assertion of right[8], provided the work be not disentitled to protection on principles of public policy, as being clearly irreligious, immoral, libellous, or obscene[9], the onus of showing which is on the defendant, as *primâ facie* the copyright confers title[10]. But at the same time it must

[1] See Drewry on Injunctions, p. 192.

[2] Ib. p. 197, citing *Sweet* v. *Shaw*, 17 L.J. Ch. 216; and *Sweet* v. *Cater*, 5 Jurist, Ch. 68.

[3] See 15 and 16 Vic. c. 86. ss. 62–67.

[4] *Perfect* v. *Shepard*, before Sir W. Page Wood, V.C., 24 Feb. 1853, which case arose under the Ornamental Designs Copyright Act, 5 and 6 Vic. c. 100.

[5] Story's Equity Jurisprudence, s. 863, citing 1 Mad. Ch.Pr. 104.

[6] *Sheriff* v. *Coates*, 1 Rus. and M. 159, which was a case of piracy under the Calico Printing Acts.

[7] *Mawman* v. *Tegg*, 2 Russ. 385; and *Sweet* v. *Shaw*, *supra*.

[8] Story's Equity Jurisprudence, s. 935, citing Eden on Injunctions, p. 284; and *Tonson* v. *Walker*, 3 Swans. 679.

[9] Ib. s. 396, citing *Lawrence* v. *Smith*, Jac. 471.

[10] Ib. 472. Per Lord Eldon, C.

be borne in mind that it is one of the first principles of equity that to entitle the plaintiff to relief he must have acted equitably to the defendant in the subject-matter of the suit; and thence it has been established as an inherent doctrine of the Court of Chancery that it will not entertain stale or antiquated demands, or encourage laches and negligence[1].

And in applications for ex parte Injunctions the greatest care should be taken by the solicitor in getting up the case and instructing counsel, that every fact likely to be material as affecting the question should be fully stated; for it has been said by very high authority, that such applications are very analogous to the case of Insurances, in which it is not only required to state all the matters you believe to be material, but all which are in fact so; if anything be concealed, the concealment of which may diminish the rate of premium, the policy is vitiated. So if a party abstain from stating facts in his bill which the court sees are material, he forfeits his right to the Injunction[2].

In addition to the relief granted in ordinary cases of piracy, the court has also restrained the sale of pirated copies of prints in the hands of an innocent purchaser of them[3]. It has also restrained the publication of prints surreptitiously obtained, which have been taken from plates engraved for the plaintiff's amusement and not intended to be made public[4]. And in an early case at law, it was said that an Injunction would be granted to prevent the exhibition of a libellous picture[5].

9. *The transfer of Copyrights.*—As to the purchase of Copyrights we have seen[6] that according to the Engraving Acts, it is an act of piracy in any person even to print, publish, or sell an engraving "without the consent of the proprietor first obtained in writing, signed by him in the presence of *two* or more witnesses." It therefore follows that in order to render a contract valid for the purchase of a copyright, such contract must be in

[1] See Story's Equity Jurisprudence, s. 529, and numerous cases there cited.

[2] Per Rolfe, Lord Commissioner, in *Dalgleish* v. *Jarvie*, 20 L.J. Ch. 476.

[3] *Fradella* v. *Weller*, 2 Rus. and M. 247. As to the *legal* liability of an innocent purchaser of pirated prints, see *West* v. *Francis*, 5 B. and Ald. 737, and *supra*, p. 33.

[4] *Prince Albert* v. *Strange*, 18 L.J. Ch. 120.

[5] Per Lord Ellenborough, C.J., in *Du Bost* v. *Beresford*, 2 Camp. 511.

[6] *Supra*, p. 29.

writing[1], and signed and witnessed as above specified; and as both the painter, or other inventor of the design, as well as the engraver of it, have each a distinct copyright in his work, care should always be taken that the contracts for the purchase of their rights are duly signed and witnessed as the statute directs. But even then the purchaser cannot sue a pirate in any court of law, because to invest himself with the *legal* title as assignee of the copyright, it must have been assigned to him by *deed*[2], duly stamped with the proper *ad valorem* duty on the price of the copyright, signed by the proprietor, and his signature attested by *two* witnesses[3].

The general practice amongst the purchasers of copyrights under the Engraving Acts appears to be only to acquire an *equitable* title to them—that is, by paying the proprietor the purchase-money, and in some cases taking his receipt for the money, with an undertaking to execute an assignment of the copyright when called upon to do so. As the law stands on the subject, the purchaser of a copyright having only such equitable title to it, although courts of law will recognize such equitable interest[4], yet if his right be infringed upon, he cannot proceed at *law*, but must resort to the Court of Chancery for relief; and in the event of selling his copyright, unless he makes it part of his contract with the purchaser that only an equitable title will be given him, he may insist upon having a legal title at the vendor's expense. When a copyright is *valuable*, it is therefore dangerous and most unwise on the part of the purchaser not to be duly invested with the *legal* title to it.

The practice amongst Artists as to their claims to Copyright.—When an artist sells his picture, it seems to be generally understood that the copyright for purposes of engraving passes with the picture to the purchaser, unless the artist at the time of the

[1] *Power* v. *Walker*, 4 Camp. 8; S. c. 3 M. and S. 7, where the point arose upon a literary copyright. See also Chitty on Contracts, p. 71, 4th edition.

[2] Ib. See also *Thompson* v. *Symonds*, 5 T. R. 41; also per Tindal, C. J., in *De Pinna* v. *Polhill*, 8 C. and P. 78.

[3] In a somewhat recent case for piracy of a *literary* copyright, claimed under the act of 8 Anne, c. 18, the first section of which requires the author's consent to be signed in the presence of *two* witnesses, the plaintiff was nonsuited because his purchase-deed was only attested by *one* witness. *Davidson* v. *Bohn*, 18, L.J. C.P. 15.

[4] See *Simms* v. *Marryat*, 20 L.J. Q.B. 459.

sale either verbally or in writing reserves the copyright. No case appears in the books in which this point has ever been discussed or decided, and it may well be doubted whether such a practice, which by some persons only is asserted to amount to a usage or custom, could be established in any court of law[1] or equity in this country, even assuming that no legislative enactment existed on the subject. It is but natural justice that the artist should have the whole profits allowed by law to be derived from the invention of his picture as well as its execution. Each work he produces may be a double source of direct profit to him: first, by sale of the picture; second, by the exercise or sale of the copyright, or the exclusive right of multiplying copies of the picture by any of the various processes of engraving. It is rare to find that artists are good men of business; and as this arises from the peculiar nature of their occupations, they require and deserve that more than ordinary precaution should exist in their favour. The Legislature has therefore enacted that their designs shall not be engraved, etc., without their consent in *writing*, signed in the presence of *two* witnesses. The wisdom and justice of this enactment, so far as the *written* consent is required, is the more obvious when it is considered that some artists obtain much more for their copyrights than for their pictures[2]; and yet if a painter should happen to forget the reservation of his copyright before he has sold his picture, it is attempted to be treated as a usage to defraud him of it! But any usage to be admissible must be consistent with the principles of law[3]. Looking to the object and enactments of the Legislature in the Engraving Acts, it seems clear that its intention would be frustrated by recognizing any such unjust mode of divesting an artist of his copyright as that said to exist; and consequently, that

[1] A general understanding of persons engaged in a particular occupation or business is widely different from a legal custom, which, as in the case of bankers, can only be established by a long, well-known, acknowledged, and *universal* usage and practice amongst persons engaged in that business to act in accordance with it. See per Parke, B., in delivering the considered judgment of the Court in *Bellamy* v. *Majoribanks*, 21 L.J. Ex. 75.

[2] Take for example the two pictures by Sir Edwin Landseer in the Vernon Gallery, "Peace and War." His price, it has been said, was £1000 for those pictures, while he obtained £2500 for the copyright of them.

[3] See 3 Kent's Com. 260. Also observations, *supra*, p. 7.

in the absence of any express sale of the copyright with the picture, the purchase of the latter only will not include the copyright, excepting only in those cases where the picture has been commissioned or purchased with express notice to the artist that it was so commissioned or purchased for the purpose of engraving, in which case equity would probably protect the employer or purchaser, and enforce an assignment of the copyright from the artist.

The various modes of transfer of Copyrights.—Although personal estate, they can only be legally transferred, as already stated, by *deed*[1] of assignment in case of purchase, or other consideration, or gift, by the will of the proprietor, or by operation of law; as by administration to his effects in case of his dying intestate, or by his bankruptcy, or insolvency, forfeiture to the Crown in case of conviction for felony, or seizure by the sheriff under any writ of execution.

The practice amongst printsellers as to the transfer of their copyrights in engravings seems to be as loose and unrecognized by law as that usually adopted and understood by the purchasers of copyrights from artists. The purchase and possession of the metal or other plate on which the work is engraved is considered completely to vest the copyright in the purchaser, and it appears to be only in works of considerable value that the deed of assignment required by law to vest the legal title to the copyright in the purchaser, is ever executed by the proprietor. It is only requisite again to observe that the purchaser in such cases can have nothing more than perhaps a doubtful equitable title to the copyright, and that the fact of his not having the *legal* title properly assigned to him, exposes him to the chance of all the difficulties and increased expense above stated[2].

[1] *Vide supra*, p. 39, for enactment of the statute, and observe that *two* witnesses are required.

[2] *Supra*, p. 39.

CHAPTER III.

AS TO COPYRIGHT IN WORKS OF SCULPTURE.

1. Of what the Copyright consists. The number and mode of interpreting the Copyright Acts.—2. The territorial extent of protection they afford. —3. The works entitled to Copyright.—4. The persons entitled to Copyright.—5. The extent of Copyright or term of years for which it is granted.—6. The *conditions* upon which it is granted. Those which apply where a sculptor models a work on his own account. And those where he is employed to execute a model. Non-performance of these conditions fatal to claim for Copyright.—7. Works not entitled to Copyright.—8. Piracy of the Copyright defined. Legal principles applicable to such piracy.—9. Remedies of proprietor of Copyright. By the Sculpture Copyright Acts. At Common Law. In Chancery. Under "the Designs Act, 1850."—10. Importance of performance of *conditions* imposed by that Act as well as the Sculpture Copyright Acts. Fallacy of supposing that practice amongst Sculptors as to securing Copyrights is legal.—11. Procedure in cases of piracy—at Law—in Chancery.—12. As to the transfer of Copyright.

1. *Copyright of Sculpture* consists in the sole and exclusive liberty of multiplying copies of any work which is the subject of such right under the Statutes relating thereto.

We have seen[1] that those Acts are three in number, viz. the 38 Geo. III. c. 71; 54 Geo. III. c. 56; and 14 Vic. c. 104. ss. 6, 7. As there is no authority which proves that copyright in works of sculpture existed by the common law, it follows that it is to these Acts alone the sculptor can be advised to look for protection of the copyright in his productions. In putting a construction upon any one of these Acts the court will give effect to the *intention* of the Legislature to be collected from all of them[2]. The two

[1] *Supra*, p. 14.

[2] See observations of Best, C. J., in delivering Judgment of the Court in *Newton* v. *Cowie*, 4 Bing. 245, on the Engraving Acts; see also those of Lord Denman, C. J., on the Literary Copyright Acts in *Russell* v. *Smith*, 17 L.J., Q.B., 229.

first are known as "the Sculpture Copyright Acts;" and it is very important, as will presently be shown, that sculptors should carefully perform the *conditions* imposed on them by these Acts, because if they do not, no copyright is acquired in a work, nor is any person guilty of an *illegal* act (however immoral it may be) in copying it who can obtain an opportunity of doing so.

2. *The territorial extent of protection* afforded by these Acts is most extensive. The Copyright of Designs Act, as just observed, only gives additional remedies in favour of such works as are the subject of protection under the Sculpture Copyright Acts, it is consequently to them that we must look for the territorial extent they embrace. The first of these Statutes, as we have seen, was passed in 1795; the second in 1814, after the Union with Ireland. Both these Acts are silent as to the portion of the British Dominions to which the Legislature intended they should extend; nor can its meaning on that point be in any way collected by implication from the wording of any of the clauses. Under these circumstances therefore the protection afforded by the Statutes in question includes the whole of the British Dominions *except* the Channel Islands; the Isle of Man[1], and perhaps such of the Colonies to whose condition the Acts would not be applicable or beneficial, and also excepting the British possessions comprising the territory of the East India Company[2].

3. *The Works entitled to protection for Copyright*.—The Act of 1798 gives a copyright for any *new* model or copy or cast made from such new model[3]; but the Act of 1814 only confers copyright for any new and *original* work[4]. The latter Statute is also much more comprehensive than the former, which it in great measure supersedes; but as the Act of 1798 has not been repealed, it must, as before stated, be read in conjunction with the Act of 1814 in order to arrive at the intention of the Legislature. It has therefore been printed in the Appendix hereto.

[1] No general Act of Parliament extends to the Isle of Man unless it be expressly named in such Act. See 4 Inst. 284; see also the Patent Law Amendment Act, 15 and 16 Vic., c. 83. s. 18, which specifies the Isle of Man as part of the British Dominions to which Patents shall extend.

[2] See Dwarris on the Statutes, pp. 526–7, 2nd edition, and authorities there collected.

[3] 38 Geo. III. c. 71. s. 1: Appendix, p. 72.

[4] 54 Geo. III. c. 56. s. 1: Ib. p. 75.

The Statute of 1814 enacts that every person who shall make or cause to be made any new and original sculpture or model or copy or cast of the human figure, or of any bust or busts or of any part of the human figure, clothed in drapery or otherwise, or of any animal or animals or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture[1], or of any alto or basso-relievo representing any of the matters or things aforesaid, or any cast from nature of the human figure or of any part or parts of the human figure, or of any casts from nature of any animal or of any part or parts of any animal, or any such subject containing or representing any of the matters and things aforesaid, whether separate or combined—is to have the *sole right* and property of all and in every such new and original sculpture, etc., aforesaid[2].

4. *The persons entitled to Copyright*, it will be observed, are every person who shall make "or cause to be made" any new and original sculpture, and their assigns. From these words "cause to be made" it therefore seems to have been the intention of the Legislature to vest the copyright in the *employer*, and not in the sculptor, in all those cases where he is employed to design or model a work.

It is of much importance to bear this distinction in mind with reference to the performance of the *conditions* to be observed by the proprietor of the copyright, which conditions will shortly be stated.

5. *The extent of copyright, or term of years for which it is granted* in the work is fourteen years from first putting forth or publishing the work[3], with an additional term of fourteen years[4] to commence at the end of the first fourteen, if the person shall

[1] It seems difficult to understand why these latter words were not deemed sufficient. The enumeration of subjects is so ludicrously clumsy and unartistic, that assuredly no *artist* could have "*modelled*" that portion of the Act. *Vide supra*, p. 14. n. 1.

[2] 54 Geo. III. c. 56. s. 1 : see Appendix, p. 75.

[3] Ib.

[4] Ib. s. 6. This placed sculptors on the same statutory footing as authors ; but as the latter have now a term of forty-two years in their works, with the chance of a longer one if they survive that period, (see 5 and 6 Vic. c. 45, s. 3.) it is difficult to see the reason why sculptors are deprived of the same measure of justice.

be then living who made or caused to be made the work in which the copyright exists, which copyright is only acquired—

6. *Upon the following conditions.* That before the work is put forth or published, the proprietors shall cause to be put thereon, 1. Their names.—2. The date[1].

If therefore a sculptor models a work on his own account, which he is afterwards commissioned to execute in marble or any other material, the copyright vests in, and is the property of the sculptor, provided he has complied with the conditions above-mentioned,—that is, by engraving on the *model* as well as on every cast or copy thereof, his names and the date (namely the day of the month and year) when the model is first shown or otherwise published in his studio or elsewhere, *and such date must never be altered.* It is a popular and fatal error amongst sculptors to suppose that their names and the year when the finished *copy* from the model is executed are sufficient to engrave on such copy. Where the easy and plain conditions of the Acts of Parliament are not complied with, the copyright is not acquired.

If, on the other hand, the sculptor does not model the work on his own account, as is almost always the case for gold and silversmiths' works, busts, and public monuments, etc., then, as above stated, the copyright does not vest in the sculptor, but in the person causing the work to be made, provided his names with the date of the first publication be engraved on the *model* and every cast or other copy thereof as the proprietor of the copyright. But there can be no objection to the sculptor adding his names with any addition denoting the work to have been executed by him.

That the non-performance of the statutary conditions as above pointed out, is fatal to the existence of a copyright in any work of sculpture, seems clear by analogy with the cases decided upon the Engraving Acts as to the date of publication of a print, as well as the intention of the Legislature in imposing the conditions[2], namely, that the public may know the day when the copyright expires. Nothing can be more easy than the performance of the conditions imposed by the statutes, and yet they appear

[1] 54 Geo. III. c. 56. s. 1: see Appendix, p. 75. If the work be registered under the Designs Act, see further conditions requisite to be observed, *infra*, pp. 47, 48.

[2] *Vide supra*, p. 18 *et seq.*

to be most rarely complied with. Indeed, to such an extent does this ignorance of or want of attention to the above conditions prevail amongst sculptors and their employers, that it may be doubted whether the copyright is acquired in above *one* out of every hundred works of sculpture produced in this country.

7. *As to works not entitled to copyright*, the same principles apply to the productions of the sculptor as to those of the painter and engraver[1]. Thus no obscene, libellous, or other immoral work is within the protection of the Sculpture Copyright Acts; and a caricature bust, statue, statuette, or other representation of a person which exposes him to public hatred, contempt, or *ridicule*, is libellous[2].

And to these must be added all those works in respect of which the above-mentioned statutory conditions have not been performed.

8. *The piracy of the copyright* is declared to consist in making or importing, or causing to be made or imported, or exposing to sale, or otherwise disposing of any pirated copy or pirated cast of any such new or original work as above specified, whether such pirated cast be produced by moulding or copying from or imitating *in any way*[3] such work, to the detriment, damage, or loss of the original or respective proprietors of the same work so pirated[4].

As the legal principles which govern the piracy of prints have been already explained and illustrated[5], and as the same principles will be found to apply in most cases which may arise under the Sculpture Copyright Acts, it would be superfluous to repeat them in this place.

9. *The remedies* given by the statutes to the proprietors of the copyright in case of piracy of their works, are a special action on the case against the pirate for such damages as *a Jury* shall assess, with double costs[6]. But such action must be commenced within *six* calendar months next after the discovery of the offence[7].

[1] As to which *vide supra*, p. 23 *et seq.*

[2] See Sel. Ni. Pri. 1045, 11th edit. citing *Villiers* v. *Mousley*, 2 Wils. 403; *Digby* v. *Thompson*, 4 B. and Ad. 821.

[3] These words appear sufficient to protect a work from being copied either upon a reduced or increased scale without the consent of the proprietor of the copyright.

[4] 54 Geo. III. c. 56. s. 3; see Appendix, p. 76.

[5] *Supra*, p. 28 *et seq.* [6] 54 Geo. III. c. 56. s. 3. [7] Ib.

But the remedy thus given appears to have been unnecessary, because in all cases where the copyright is vested in any person, the common law gives the ordinary remedy[1] by action on the case, in the event of such right being infringed. It would therefore seem that a plaintiff in such case may avail himself either of the remedy given him by the statute, or by the common law.

Or the plaintiff may proceed in Chancery against the pirate for an injunction to restrain him from continuing his piracy, and an account of the profits he made thereby.

Or the proprietor of the copyright may have his work *registered* under "the Designs Act, 1850," by *the Registrar of Designs*[2], on furnishing him with—1. Such copy, drawing, print[3], or description in writing or in print, as in the judgment of the Registrar shall be sufficient to identify the work—2. The name of the proprietor—3. His place of abode or business or other place of address—4. Or the name, style, or title of the firm under which he may be trading. Such registry to be for the whole or any part of the term during which copyright in such work shall exist under the Copyright Acts: and the Registrar to give the proprietor a certificate of such registration[4]; and if any person shall during the continuance of the copyright in any work so registered pirate the same in such manner, and under such circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending forfeits to the proprietor of the work for every such offence a sum not less than £5 and not exceeding £30, for the recovery whereof the proprietor may proceed under the Designs Act, 1842, 5 and 6 Vic., c. 100. s. 8, either—1. By an action of debt, or on the case against the party offending, or—2. By summary proceeding before two[5] Justices having jurisdiction where the offending party resides. *Upon condition* that every

[1] By Lord Ellenborough, C. J., in *Roworth* v. *Wilkes*, 1 Camp. 97.

[2] This office is now (1853) at No. 1, Whitehall. Attendance 10 to 4; but designs and transfers can only be registered between 11 and 3.

[3] But in case it appears to the Registrar that such copy, drawing, or print cannot be furnished, or that it is unreasonable or unnecessary to require the same, he may dispense with it. See 13 and 14 Vic. c. 104. s. 11.

[4] 13 and 14 Vic. c. 104. s. 6.

[5] But *one* Justice appointed under the Metropolitan Police Acts has co-extensive power with two or more ordinary Justices. See 2 and 3 Vic. c. 71. s. 14.

copy or cast of the work which shall be published by him after such registration as aforesaid must be marked—1. With the word "registered,"—2. And with the date of registration[1].

It cannot be too strongly again impressed upon sculptors, and other proprietors of copyright in sculpture, that to entitle themselves to any copyright in their works, they must strictly comply with the *conditions* imposed on them by the Sculpture Copyright Acts[2]; and if they desire to obtain the benefits of the Copyright of Designs Act, by registering their works, that the *conditions* imposed on them by that Statute, as above stated, must also be complied with. It may be that the Legislature intended the observance of the conditions in the last-mentioned Act to obviate the necessity of the sculptor's observing those under the Sculpture Copyright Acts; but in the absence of any decision on that point, and seeing that the Designs Act is a penal Statute, and therefore to be construed strictly, it is most advisable not to run any risk, but carefully to comply with *all* the conditions above specified.

It is a fallacy to suppose that the practice (or mis-called usage) amongst sculptors and their employers as to securing and transferring their copyrights can be upheld in opposition to the express requirements of the law on the subject.

As to procedure in cases of Piracy.—It must also be remembered that any proceedings against a pirate must be commenced *within six calendar months* after the discovery of the offence[3], if such proceedings are taken under the Sculpture Copyright Acts.

As regards the Court in which it will be proper to commence any process *at law* in case of piracy, that is, whether in the County Court or one of the Superior Courts, will depend upon the amount of the damage claimed by the plaintiff, and other circumstances which have been already pointed out as to proceedings at law under the Engraving Acts[4]. Where the work has been "registered" under the Designs Act, and no question of importance is likely to arise as to the title to the copyright, then in small cases it may be advisable to proceed summarily before two Justices for the penalties claimable under that Act[5].

[1] See 13 and 14 Vic. c. 104. s. 7: Appendix, p. 78.
[2] *Vide supra*, p. 46.
[3] 54 Geo. III. c. 56. s. 5. See Appendix, p. 77.
[4] *Vide supra*, p. 34, also pp. 46, 47.
[5] Ibid. p. 49.

If however it be of importance effectually to prevent a pirate from selling pirated copies of a work or otherwise invading a copyright, it may be advisable, when the work is of sufficient value to justify the proceeding being taken, to apply to the Court of Chancery for an *Injunction* to restrain the party from continuing the injury.

For proceedings in equity in such cases, *vide supra*, p. 36 *et seq.*

12. *As to the transfer of Copyrights* the reader is referred to pp. 38, 39, *supra*, relating to the transfer of Copyrights under the Engraving Acts, as the statements there made equally apply in all essential points to those under the Sculpture Copyright Acts. It therefore seems only requisite to observe as to the purchase of Copyrights under those Acts, that the 54 Geo. III. c. 56, s. 4, expressly specifies a *deed* in writing, signed by the proprietor in the presence of and to be attested by *two* or more witnesses, as being requisite to justify the purchaser in exercising the copyright, and consequently to vest the legal title to it in him.

CHAPTER IV.

OF THE CHIEF DEFECTS OF THE EXISTING LAWS OF ARTISTIC COPYRIGHT, WITH SOME SUGGESTIONS FOR THE AMENDMENT OF SUCH LAWS.

I. *Defects in the Engraving Copyright Acts.*

1. Their protection only extends to Great Britain and Ireland.—2. To acquire Copyright the work must be Engraved, etc., there.—3. Term of Copyright too short.—4. Copyright of a Picture unprotected.—5. And Proofs before Letters.—6. Pirated Copies, if not for sale, may be imported.—7. Printsellers liable for selling Pirated Copies, although not knowing them to be so pirated.—8. Penalties for Piracy too small.—9. Copyright only to be assigned by Deed.—10. Or in any way transferred save by Deed, Will, etc.—11. No means for public to ascertain Proprietor of Copyright for time being.—12. Ruinous Costs and delay of proceedings in case of Piracy.

II. *Defects in the Sculpture Copyright Acts.*

1. Channel Islands and Isle of Man not included in protection given.—2. Term of Copyright too short.—3. No protection against Drawings from works of Sculpture.—4. Also the same defects as 8, 9, 10, and 11 above mentioned, as to the Engraving Acts.

III. *Suggestions for Amendment of the Law of Artistic Copyright.*

1. That present Acts should be repealed, and Laws consolidated into one Act, which should protect existing *bonâ fide* claims to Copyright.—2. Copyright to be extended to all parts of the British Dominions, and term to be same as for Literary Copyright.—3. Works of British subjects to be entitled to Copyright, although not first published here, in certain cases.—4. Pictures, as such, to be the subject of Copyright.—5. Making fraudulent copies of Pictures to be declared a criminal offence.—6. Exhibition of a Picture not to affect the Copyright.—7. Copyright of Sculpture to include all enlarged or reduced copies of a work.—8. Only mode by which artists should be divested of their Copyright.—9. Name of proprietor no longer requisite to appear on the work.—10. No pirated copies to be imported for any purpose whatever.—11. No printseller to be liable for selling pirated copies if ignorant of the piracy. Forgery of Stamp of Printsellers' Society, etc., to be declared a misdemeanour.—12. Penalties for Piracy to be increased, and all paid to proprietor of Copyright.—13. Artistic Copyrights to be registered, etc., and transferred by note in writing to be signed by proprietor and regis-

tered.—14. Copyright Registration Office to be under one management in three departments, Literary, Artistic, and Useful and Ornamental Designs.—15. Registration of Copyright to be *primâ facie* evidence of title.—16. Courts to have discretion in all cases of piracy to make defendant give security for plaintiff's costs.—17. That Common Law Courts should have powers to grant Injunctions, etc.—18. All Courts, at request of plaintiff or defendant, to have power to refer case to arbitration.—19. Each party in case of piracy, at commencement of proceedings, to deliver particulars of demand and defence, etc., to be verified upon oath. IV. Conclusion.

HAVING in the last and previous chapters endeavoured to state the existing laws of Artistic Copyright, it now only remains to point out what appear to be the leading defects in them, and to suggest some remedies for their removal.

I. *As to the Engraving Copyright Acts.*

The chief defects of these Acts may be comprised under the twelve following heads, which will be stated as briefly as possible, because most of them have been noticed in detail in their proper order in the two previous chapters.

1. The territorial extent of protection is at present limited to Great Britain and Ireland alone[1], so that in all other portions of the British dominions the copyright acquired under the Engraving Acts may be pirated with impunity.

2. No copyright can be acquired unless the work be either "engraved, etched, drawn, or designed" in Great Britain or Ireland[2]. Thus if any person, although a British subject, designs and engraves a work in the Isle of Man, the Channel Islands, or any of the British colonies, etc., he can neither acquire or confer on any one a copyright in Great Britain or Ireland under the Engraving Acts; the *publication* alone of the work there being insufficient.

3. An artist has only the short term of twenty-eight years granted him for his copyright[3], which is an inadequate return for his invention and industry. Originally it was only fourteen years, the first Act obtained by Hogarth having been framed on the Literary Confiscation Copyright Act of 8 Anne[4], which only allowed a term of fourteen years in favour of books published after the 10th of April, 1710. Maps and plans are included in

[1] *Vide supra*, p. 16. [2] Ib. p. 16. [3] Ib. p. 18.
[4] See 'Biographical Anecdotes of Hogarth,' p. 38, 3rd edit.

the Engraving Acts; but by a statute passed in 1842[1], copyright in them, as well as in books and music, is extended to a certain term of forty-two years, with the chance of a longer period, according to the duration of the designer or author's life. Why should not a similar extension of term be granted in favour of *artistic* copyright?

4. The copyright of a *picture* as such is unprotected. It is only the *design* of the work when coupled with engraving that is entitled to copyright. And unless an engraving from a picture be actually published before the picture is exhibited or otherwise made public, it would seem that the copyright even in the design is lost, and that any one may either engrave or re-engrave the picture provided he does not copy from the original engraving[2]. The forgery of pictures[3] would also be sensibly diminished if, as pictures, they were entitled to copyright.

5. No provision is made for the publication of proof impressions of prints before letters. It would seem that the date of publication must appear upon *every* impression taken from the plate, or the copyright in the engraving upon such plate is lost[4]. It may also be doubted whether there is any copyright in the engravings or other illustrations forming part of a book, unless the name of the proprietor and date of publication appears on each print[5].

6. It is declared piracy to import *for sale* a pirated print[6], but it is not piracy if not imported for sale. No books reprinted from works entitled to copyright in this country are allowed to be imported for private use or otherwise. Are not the proprietors of *artistic* copyright entitled to a similar protection?

7. Printsellers and other persons *selling* pirated copies of prints are guilty of piracy, although they may have both purchased and sold such copies in ignorance of the fact of their being pirated[7].

8. The penalties given for the infringement of the copyright[8] are too small to afford sufficient protection, and one-half is payable to the Crown. And no equitable jurisdiction is given to the courts of common law, as has been done by the recent Patent Law Amendment Act of 15 and 16 Vic. c. 83, s. 42, for

[1] See 5 and 6 Vic. c. 45. s. 2.
[2] *Vide supra*, p. 25.
[3] Ib. p. 27, 28.
[4] Ib. p. 18.
[5] Ib. p. 20, 21.
[6] Ib. p. 29.
[7] Ib. p. 33.
[8] Ib. p. 34.

granting Injunctions, and other purposes important to the protection of the proprietor.

9. The proper assignment of the legal interest in a copyright, which is purchased under the Engraving Acts, involves the cost of a Deed of Assignment, which must be stamped with an *ad valorem* duty, signed by the proprietor, and attested by two witnesses[1].

10. The absence of any legal mode of transfer of the copyright in any case, unless by deed or will, except by operation of law, as in the case of intestacy, bankruptcy, etc.

11. The absence of any means by which the public may ascertain the proprietors of a copyright for the time being, whose permission may be required for re-engraving either the whole or a portion of any plate, or for any other purposes relating to the copyright.

12. And lastly, the all-important evil of the ruinous cost and delay attendant on the proceedings requisite for sustaining and protecting a valuable copyright, in case of its being pirated.

II. *As to the Sculpture Copyright Acts.*

The leading defects existing under these Statutes are nearly as numerous as those under the Engraving Copyright Acts. They may be comprised under the *four* following heads:—

1. The Channel Islands and the Isle of Man are not included in the protection afforded to the works of the sculptor[2], and consequently they may be pirated there with impunity.

2. The inadequacy of the term granted for copyright in works of sculpture, which is only fourteen years *certain,* with the chance of a similar term if he should be living at the expiration of the first fourteen years[3].

3. The total absence of any protection for the sculptor against drawings or engravings of any description being made from his works without his permission. If well designed and engraved, they might be profitable to him in various ways—while, on the contrary, if they are badly executed, they may be alike injurious and annoying to him.

4. And in addition to these, the eighth and four following defects above pointed out as existing under the Engraving Copyright Acts, apply with equal force as to sculpture.

[1] *Vide supra*, p. 38. [2] Ib. p. 43. [3] Ib. p. 44.