

### III. *Suggestions for remedying the above defects.*

It is not supposed that the following suggestions are not open to objections, and capable of great improvements; but they are laid before the public, in the hope that those who are best qualified to decide on what is needful to be done in favour of the proprietors of copyrights and artistic inventions, may be induced to interest themselves in the subject, and promote such measures as may be considered best calculated to meet the requirements of the case. And of him who does so, it may be said, in the words of Lord Coke, "blessed be the amending hand."

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The chief points to be included in any Act which may be passed for the amendment of the laws of Artistic Copyright, appear to be the following:—

1. The repeal of all the present complicated<sup>1</sup> Engraving and Sculpture Copyright Acts, except of course so far as relates to any existing rights. To consolidate the law relating to artistic copyright in one act, and, to some extent, to make such act retrospective, so as to protect all existing *bonâ fide* claims to copyright in works as to which it has not been acquired in consequence of the non-performance of the *conditions* imposed by the existing statutes; and also to protect the copyright as to those pictures which may have been exhibited before being engraved and prior to the passing of the act, provided the claims to such works, and copyright in pictures exhibited are established to the satisfaction of the registrar, and duly registered within six months from the passing of the act, at the Registration Office to be established as hereinafter mentioned.

2. That the copyright to be given in favour of artistic productions should extend to all parts of the British dominions; and that the term of years for which such copyright should endure be the same as that granted in 1842 in favour of books, music, maps, charts, and plans by the Act of 6 Vic. c. 45.

3. That as to any work of art by a *British* subject, if such work be first published in this country, or within six months

<sup>1</sup> "Les lois ne doivent point être subtiles; elles sont faites pour des gens de médiocre entendement; elles ne sont point un art de logique, mais la raison simple d'un père de famille."—L'Esprit des Lois, par Montesquieu, liv. 29. c. 16.

after its publication elsewhere, the copyright, if duly registered, should be secured without reference to the country where the work was designed or executed.

4. That copyright should be granted in pictures *as such*, and without reference to their being engraved.

5. That the making of a copy for sale of a picture, without the permission of the proprietor of the copyright thereof, or making such copy with a fraudulent object, or selling or offering for sale such copy as an original picture, knowing or having reason to believe it to be only a copy, should be declared a misdemeanour. And that fraudulently signing a picture painted by another person, or forging the signature to any painting, drawing, engraving, or work of sculpture, be also declared a misdemeanour, as well in the person committing such fraud, as also in any person selling or offering such picture, etc., for sale, knowing or having reason to believe that such fraud had been committed as to such picture, etc.

6. That the exhibition or other publication of a picture, drawing, or work of sculpture shall not affect the copyright for purposes of engraving or otherwise; and that during the term for which the copyright is granted the picture, etc., shall neither be engraved or in any manner copied without the permission of the proprietor of the copyright thereof.

7. The copyright of sculpture not only to include all copies of the same size as the original work, but also all copies upon an enlarged or reduced scale, and likewise the right of engraving in any way any design made from the original work or any copy thereof.

8. An artist should only be divested of his copyright by such note or memorandum in writing, to be signed by him and registered as hereinafter mentioned, or by operation of law, excepting as to *portraits*, the copyright whereof should in all cases be the property of the artist's employer.

9. That it should no longer be requisite for the name of the proprietor of the copyright of any engraving or work of sculpture to appear thereon.

10. That no pirated copies of any artistic work entitled to copyright in the British dominions should be allowed to be imported for any purpose whatever.

11. That no printseller, auctioneer, or other person be deemed

guilty of piracy for selling pirated copies of any print or other work entitled to copyright, if in ignorance of the fact of their being such pirated copies; and that forging the stamp or mark of "the Printsellers' Society," or of any other society, upon any print or other work being the subject of artistic copyright, be declared a misdemeanour.

12. That the penalties for infringement of copyright should be increased, and the whole of such penalties made payable to the proprietor of the copyright, as in the Designs Amendment Act of 13 and 14 Vic. c. 104. s. 7.

13. To avoid the present cumbrous and expensive transfer of artistic copyrights by deed, and also to furnish the public with the time of the commencement and expiration of a copyright, and the name of its proprietor for the time being, that an office for the registration of artistic copyrights should be established<sup>1</sup> somewhat upon the same plan as the Registry of Literary Copyrights; and also that under the Useful and Ornamental Designs Acts. That every artist who may wish to secure a copyright in his work, may do so on registering the same. The registration fee to be only one shilling, and the Registrar to be furnished with a slight outline of the work or a written description of it. The copyright to become public property unless the work be registered within six months from its publication by being exhibited or otherwise published. When registered, the Registrar to furnish the artist or other proprietor of the copyright with a numbered certificate of the registration; and that such number, with the year and letters denoting the Artistic Registration Office, should be put on the work registered and on every copy thereof, and every engraving therefrom, and every impression taken from such engraving: thus, for example "A.R. 1853, No. 10,021<sup>2</sup>." That in the case of illustrations of a book, the registration of the first design or plate in the book, together with the title of such book and the name of the author, if any be given, should be

<sup>1</sup> This has been done already as to *foreign* artistic copyrights under the International Copyright Act of 1844, 7 Vic. c. 12. s. 6, which are registered at Stationers' Hall. It would seem more advisable that the registration of artistic copyrights should be made in a separate department, so as to be kept quite distinct from literary copyrights.

<sup>2</sup> On referring to this date and number in the Artistic Register, the exact day of registration and publication, with the name of the proprietor of the copyright, and all other requisite particulars would be ascertained.

sufficient, and the same date and number used for all the subsequent plates. That upon all *copies* of paintings, drawings, and works of sculpture so registered as aforesaid, there shall be added the word "Copy" immediately following or under the number. That for the transfer of a copyright no deed should be requisite, nor any stamp duty payable upon the purchase money. That any note or memorandum in writing of the transfer signed by the proprietor should be sufficient when accompanied by the registration thereof. A fee of 2s. 6d. only to be paid for the registration of a transfer<sup>1</sup>. Persons making a false entry in the register to be guilty of a misdemeanour.

14. In order to secure unity and economy of administration, that the Artistic Copyright Registration should be united under one roof and management with the two now existing for the registration of literary copyrights, and useful and ornamental designs; but each of the three to be kept as distinct departments.

15. That every copyright and transfer of the same should be registered as a condition precedent to the right of the proprietor to sue for any infringement thereof, and that such registration should in all cases be *primâ facie* evidence of the proprietorship of the copyright, subject to be rebutted by other evidence.

16. That in all proceedings for infringement of copyrights, the defendants should be liable at the discretion of the Court to give security for the plaintiff's costs; such security to be increased from time to time, so that such costs may at all times during the progress of the case be fully covered by such security.

17. That the most ample equitable as well as legal jurisdiction should be conferred upon all courts of common law, so as by injunction<sup>2</sup> and otherwise to enable them to do complete justice in all cases relating to copyrights, and disputes arising between literary men, artists, sculptors, etc., and their employers, touching any work being the subject of copyright; but the

<sup>1</sup> It seems very desirable to offer every inducement, by a low fee and otherwise, for the registration of works of art. A most extensive and interesting record of British Art would thus be gradually accumulated, giving great additional value to the works registered from the information the register would afford of their origin, and the transfer of the copyright in them.

<sup>2</sup> See the admirable Patent Law Amendment Act, 15 and 16 Vic. c. 83, s. 42.

jurisdiction of the County Courts as to amount, to remain as at present.

18. That in the event of any proceedings being taken in any court of law or equity, relating to any work being the subject of copyright, that such court or any judge thereof should, upon the application of the plaintiff or the defendant<sup>1</sup>, to be made at any stage of the proceedings, be at liberty to refer the case to arbitration upon such terms as may be deemed best to meet the requirements of the case; and to name the arbitrators or umpire as the case may be, should the parties differ about the same, or not appoint such arbitrators or umpire.

19. That in all proceedings to be taken, the plaintiff shall at the commencement thereof deliver the particulars of his demand, and of the specific injury of which he complains. And if the defendant appears and defends, he shall at the time of his appearance deliver the particulars of his defence. The truth of both the plaintiff's and defendant's particulars to be verified upon oath previous of their delivery, and neither party to be allowed to give evidence as to points not comprised in his particulars.

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IV. Whether these suggestions, or any of them, are or are not deemed worthy of adoption, surely it must be considered that the time has now arrived when reasons of policy and justice<sup>2</sup> alike demand that the literary, artistic, and other inventive talent of the British people should be better cared for than it has been hitherto; and the proprietors of Copyrights, whether British or foreign, no longer exposed to the delays and costs in protecting

<sup>1</sup> Since this was written the Second Report of the Common Law Commissioners has appeared, and for their excellent recommendations on the subject of arbitration see pp. 5-6 of that Report.

<sup>2</sup> The rights which are, and will be, created under the Conventions entered into by Her Majesty by virtue of the International Copyright Acts, and the rapidity and economy with which copyright questions are disposed of in other countries, especially in France, form a most material *political* element in considering this question. The principle upon which such conventions are based is that of perfect reciprocity. But can it be said that such reciprocity exists in point of fact,—or that great injustice is not done to a French subject who is exposed to the frightful delays and expense attendant upon protecting his copyright in England, while on the other hand a British subject having a similar right in France is not exposed to such inconvenience or loss there?

their property, which are entailed upon them by the existing laws. Productions of the human intellect, which ought as such to be deemed worthy of the highest consideration, should at least have the same *legal* value as any other kind of personal estate.

The law recognizes copyright as property; and yet, while it is justly deemed a *criminal* offence to steal a man's purse, it is not a criminal offence deliberately to rob him of his copyright, even in the most wilful and manifest case of piracy.

But such is the peculiar and difficult nature of copyright questions, especially in cases of only *partial* infringement, that effectual protection and justice for the proprietors of such property is only to be obtained by the adoption of the suggestion made by the Committee of the House of Commons on arts and manufactures<sup>1</sup>, namely, by the establishment of a cheap and accessible copyright tribunal. What that tribunal should be, is the difficulty to be solved, and it may perhaps be found that arbitrators to be chosen by the litigant parties would be at least the most satisfactory to them, in the majority of cases, if not the best. Armed with powers to decide between the plaintiff and defendant, many an unjust proceeding would thus be nipped in the bud; and if the arbitration were conducted without unreasonable delay, time, anxiety, and costs would also be saved; and oftentimes the hostile parties reconciled,—an event of somewhat rare occurrence in the history of litigation where it is prolonged to much extent, but which, apart from higher motives, is often of the deepest importance to the character and interests of the litigants and their families.

Instances are constantly arising where the injustice of one of the parties alone prevents the case being referred to arbitration at the commencement of litigation, and which, after very heavy costs have been incurred, is, at the suggestion of the Judge, or for some less cogent reason, referred immediately it comes on for trial.

It would therefore seem most advisable that the Courts should be empowered to *compel* a reference in any such case, at any stage of the proceedings, upon such terms as they should see fit to meet the requirements of the case.

The result of such an enactment, in addition to the advantages before alluded to, would, it is believed, in most cases, prove an

<sup>1</sup> *Vide supra*, Introduction, p. 3.

efficient protection to the owners of copyright, and the consequent advancement of art and literature. Considering the inherent love of justice, and the habits of liberty and self-government of the British people, there seems good reason to believe that compulsory arbitration in *all* copyright cases would work most satisfactorily to the parties litigant, because they would themselves have the means of selecting those persons to decide their case whom they considered most competent to form a sound conclusion upon the subject of the injury complained of,—and should any question of law arise, the opinion of one of the Courts might be taken upon it, as a special case, in a most inexpensive way.

Upon the whole therefore such a system of compulsory arbitration<sup>1</sup> would probably be found the nearest approach that, at present, can be safely made to the efficient, cheap, and accessible tribunal required in all disputes as to Copyright property.

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If it has been satisfactorily proved that the Laws of Artistic Copyright are in a very defective state, and that such laws are of much national as well as individual importance, the proprietors of Artistic Copyrights may reasonably hope that those laws will be amended.

Sound and comprehensive legislation in favour of the productions of artistic genius and industry would form the best foundation upon which to erect the superstructure of a *School of British Art* which, for its grandeur and intellectual beauty, would be in keeping with the power, the genius, and the resources of the country; and afford material aid in the great and good cause of civilization.

<sup>1</sup> Since this was written, the author is glad to find that the Common Law Commissioners have reported in favour of *compulsory* arbitration, to a considerable extent; and also that the Superior Courts of Common Law should be armed with ample powers to do complete justice between suitors in all cases in which such courts have jurisdiction, so as to put an end to the present vicious system of driving parties to seek relief in the Court of Chancery, in those instances where the Courts of Common Law have now no power to afford equitable relief. See pp. 5, 35, 38, 39, and 40 of the Report. These and other admirable suggestions of the Commissioners it is earnestly to be hoped will be speedily adopted by the Legislature.

## APPENDIX.

THE STATUTES RELATING TO COPYRIGHT  
IN ENGRAVINGS, ETC.

8 GEORGE II., CHAP. 13.

## AN ACT

For the encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the time therein mentioned.

[A.D. 1735.]

WHEREAS divers persons have, by their own genius, industry, pains, and expense, invented and engraved, or worked in mezzotinto or chiaro-oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: And whereas printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof: For remedy thereof, and for preventing such practices for the future, may it please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-oscuro, or from his own works and invention shall cause to

After 24th  
June 1735  
the property  
of historical  
and other  
prints vested  
in the inventor  
for fourteen  
years.



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- Of Copyrights, 38, 41, 49.

## USEFUL DESIGNS.

- See Designs Acts, Useful and Ornamental.





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