

THE LAW OF COPYRIGHT.



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# LAW OF COPYRIGHT,

IN WORKS OF LITERATURE AND ART:

INCLUDING THAT OF THE

DRAMA, MUSIC, ENGRAVING, SCULPTURE, PAINTING, PHOTOGRAPHY  
AND ORNAMENTAL AND USEFUL DESIGNS;

TOGETHER WITH

INTERNATIONAL AND FOREIGN COPYRIGHT,

WITH THE STATUTES RELATING THERETO,

AND

*REFERENCES TO THE ENGLISH AND AMERICAN DECISIONS.*

BY

WALTER ARTHUR COPINGER, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

*"Non equidem hoc studeo, bullatis ut mihi nugis  
Pagina turgescat, dare pondus idonea fumo."—PERS.*

LONDON:  
STEVENS AND HAYNES,  
Law Publishers,  
BELL YARD, TEMPLE BAR.

1870.

LONDON:  
PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD STREET  
AND CHARING CROSS.

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## P R E F A C E.

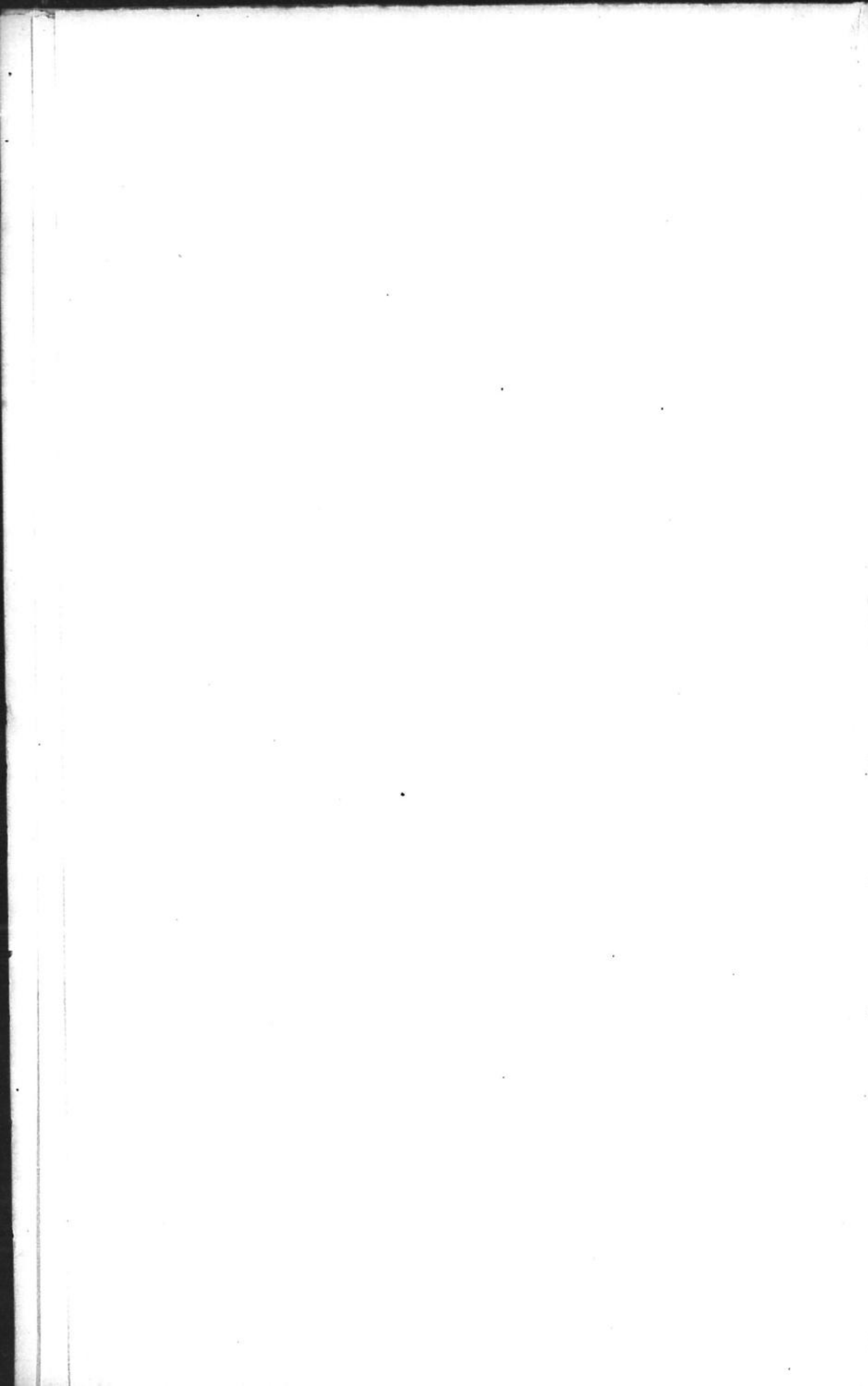
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THE decisions of our Courts of Law and Equity on the subject of Copyright during the last few years have been numerous; and so severely has been experienced the want of a work embodying these decisions, and presenting an exposition of the principles on which they have been determined, that little apology will be deemed necessary for introducing to the profession a digest of the Copyright Laws.

If I have, by the classification adopted, in any way facilitated the lawyer in his search for the principles of law as applicable to particular circumstances, and have proved of assistance to the literary man or the artist in the acquirement of that peculiar knowledge of the law which, for the due protection of his production is so requisite, I shall have attained an object at once gratifying to myself, and sufficiently compensative for my labour.

WALTER COPINGER.

Middle Temple.  
Oct. 1870.



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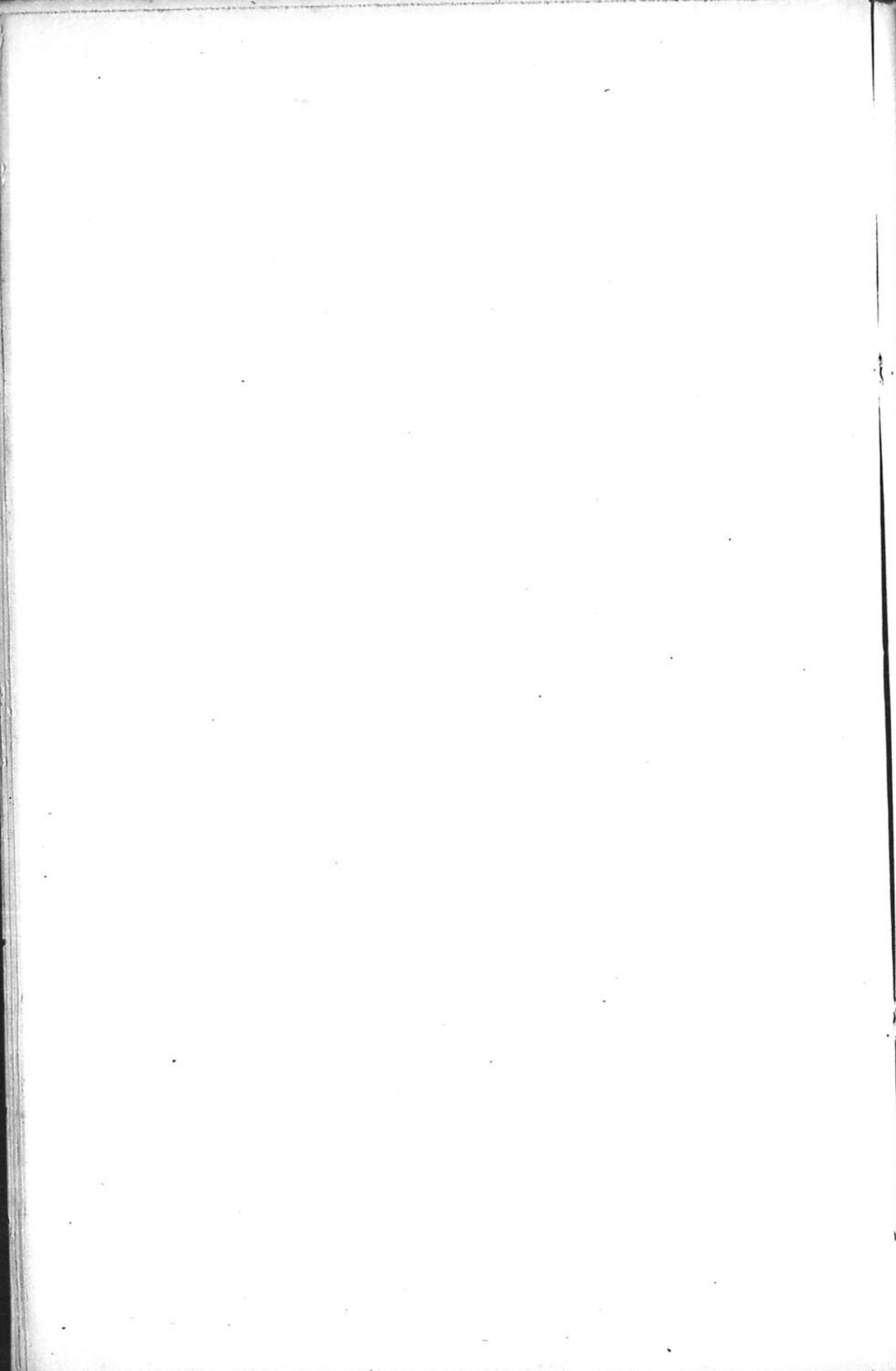
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## ADDENDUM.

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THE following information has been published in the United States, showing by what means a copyright can there be secured.

Copyrights may be secured under the revised Act of Congress, which took effect on the 8th of July, 1870, by observing the following regulations:—

1. A printed copy of the title of the book, map, chart dramatic or musical composition, engraving, cut, print, photograph, chromo, or design for a work of the fine arts for which copyright is desired, must be sent by mail, addressed "Librarian of Congress, Copyright matter, Washington, D.C."

This must be done before publication of the book or other article.

2. A fee of 50 cents, for recording the title of each book or other article, must be inclosed with the title as above, and 50 cents in addition (or 1 dollar in all) for each certificate of copyright under seal of the Librarian of Congress, which will be transmitted by return mail.

3. Within ten days after publication of each book or other article, two complete copies of the best edition issued must be mailed to perfect the copyright, with the address, "Librarian of Congress, Copyright matter, Washington, D.C."

If the above direction is complied with, both books and titles will come free of postage, and postmasters will give receipt for the same if requested. Without the deposit copies above required, the copyright is void, and a penalty



of 25 dollars is incurred. No copy is required to be deposited elsewhere.

4. Copyrights recorded at a date prior to the 8th of July, 1870, in any district clerk's office, do not require re-entry at Washington. But one copy of each book or other article published since the 4th of March, 1865, is required to be deposited in the Library of Congress, if not already done. Without such deposit copyright is void.

5. No copyright is valid unless notice is given by inserting in the several copies of every edition published, on the title-page or the page following, if it be a book; or if a manuscript, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model of a sign intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or the face of the substance on which the same is mounted, the following words, viz. :  
"Entered according to Act of Congress, in the year        ,  
by                    , in the office of the Librarian of Congress,  
at Washington."

6. Each copyright secures the exclusive liberty of publishing the book or article copyrighted for the term of twenty-eight years. At the end of that period the author or designer may secure a renewal for the further term of fourteen years, making forty-two years in all.

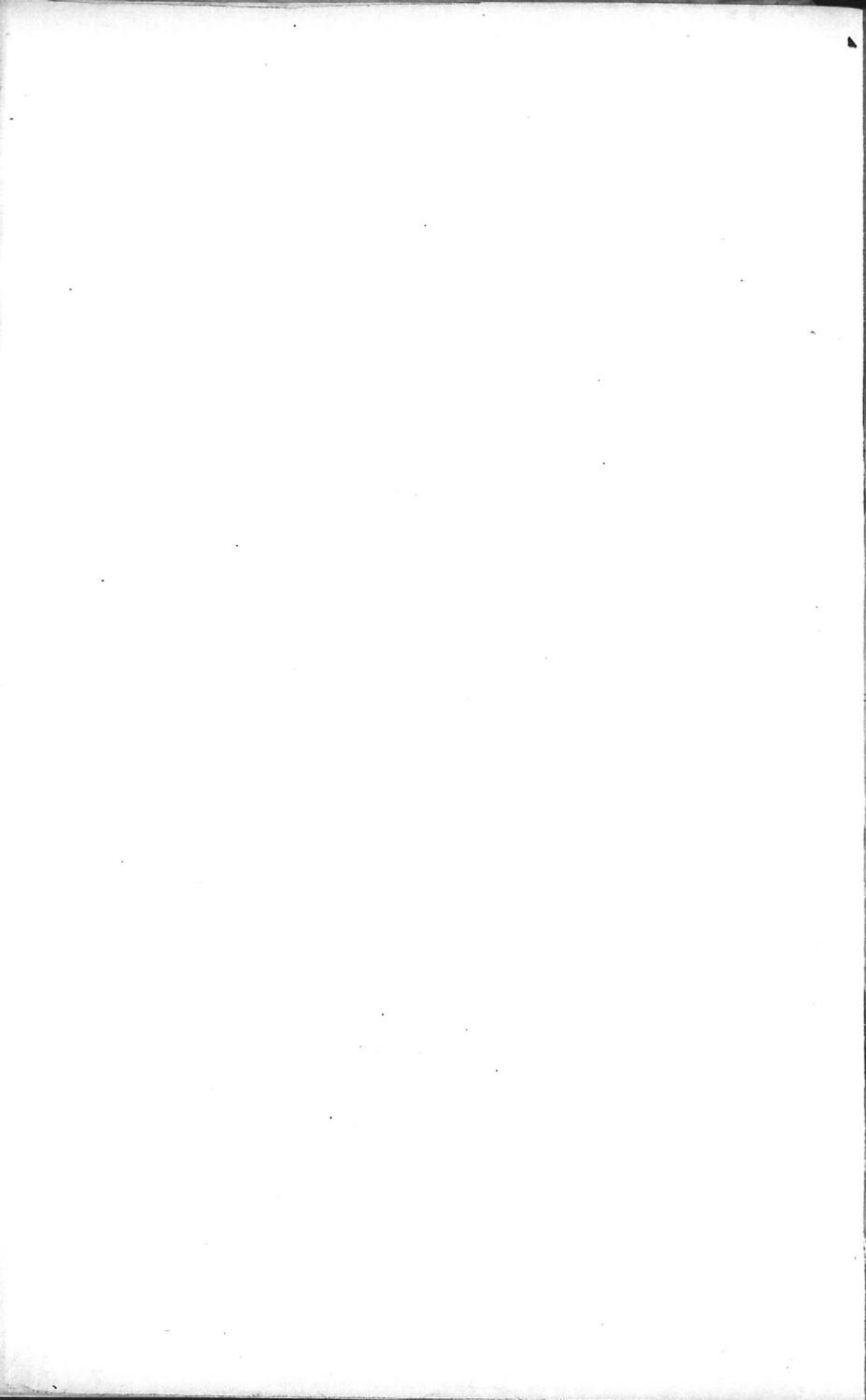
7. Any copyright is assignable in law by any instrument of writing; but such assignment must be recorded in the office of the Librarian of Congress within sixty days from its date. The fee for this record is fifteen cents for every 100 words, and ten cents for every 100 words for a copy of the record of assignment.

8. In the case of books published in more than one volume, or of periodicals published in numbers, or of engravings, photographs, or other articles published with variations, a copyright must be taken out for each column of a book, or number of a periodical, or variety, as to size or inscription, or any other article.

9. To secure a copyright for a painting, statue, or model or design, intended to be perfected as a work of the fine arts, so as to prevent infringement by copying or vending such design, a definite description of such work of art must accompany the application for copyright, and a photograph of the same, at least as large as "cabinet size," should be mailed to the Librarian of Congress within ten days from the completion of the work.

10. In all cases where a copyright is desired for any article not a book, the applicant should state distinctly the title or description of the article in which he claims copyright.

11. Every applicant for a copyright must state distinctly in whose name the copyright is to be taken out, and whether title is claimed as author, designer or proprietor.



# THE LAW OF COPYRIGHT.

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## CHAPTER I.

### HISTORICAL VIEW OF THE COPYRIGHT LAWS.

COPYRIGHT may be defined as the sole and exclusive liberty of multiplying copies of an original work or composition (a). Definition and nature of copyright.

The right of an author to the productions of his mental exertions may be classed among the species of property acquired by occupancy; being founded on labour and invention (b).

A literary composition, so long as it lies dormant in the author's mind, is absolutely in his own possession. Ideas drawn from external objects may be communicated by external signs, but words demonstrate the genuine operations of the intellect. The former are so identical with himself, that when by the author resolved into the latter, they lose not their original characteristic; and whether or not they be regarded as of pecuniary value in the

(a) 14 M. & W. 316. The term "copyright" may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it, or publish it, he has a right to enforce that undertaking. The other sense of that word is, the exclusive right of multiplying copies; the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word. (Per Baron Parke, in *Jefferys v. Boosey*, 4 H. L. C. 920.)

(b) Hoffman's 'Legal Outlines,' sect. iii.; Locke on Gov. pt. 2, c. 5.

## CAP. I.

way of recital or sale, he ought to be the sole arbiter to authorize or to prohibit their publication, and have full control over them, before they are actually submitted to public inspection. In ancient times orations, plays, poems, and even philosophical discourses, were usually orally communicated, and all ages have allotted to the composers the profits which arose from this mode of publication. They were rewarded by the contributions of the audience or by the patronage of those illustrious persons in whose houses they recited their works. A recompense of some sort was regarded as a natural right, and anyone contravening it, was esteemed little better than a robber. Terence sold his 'Eunuchus' to the ædiles, and was afterwards charged with stealing his fable from Nævius and Plautus. "*Exclamat furem, non poetam, fabulam dedisse*" (a). He sold his 'Hecyra' to Roscius, the player. Statius would have starved had he not sold his tragedy of 'Agave' to Paris, another player:

*"Esurit, intactam Paridi nisi vendat Agaven"* (b).

These sales were founded upon natural justice. No man could possibly have a right to make a profit by the publication of the works of another, without the author's consent. It would be converting to one's own emolument the fruits of another's labour.

In later times the method of publication was usually by writing, or describing in characters those words in which an author had clothed his ideas. Characters are but the signs of words, and words are the vehicle of sentiments. Here the value which distinguishes the writing arises merely from the matter it conveys. The sentiment is, therefore, the thing of value from which the profit must

(a) *Prologus ad 'Eunuchum'*:

*"Exclamat, furem, non poetam, fabulam  
Dedisse, et nihil dedisse verborum tamen;  
Colacem esse Nævi, et Plauti veterem fabulam,  
Parasiti personam inde ablatam et militis."*

(b) Juvenal, *Sat.* vii. 87.

arise. No man has a right to give an author's thoughts to the world, or to propagate their publication beyond the point to which he has given consent. His reputation is concerned and he has a right to defend it. This is natural justice, and dictated by reason; consequently, as *Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet* (a), we may obviously assume that though copyright, as a species of property, was in a strictly accurate sense unknown to, or at least was not by precedent established at common law, yet "the novelty of the question did not bar it of the common law remedy and protection" (b).

Distinct properties were not adjusted at the same time and by one single Act, but by successive degrees, according as either the condition of things or the number and genius of men seemed to require. When once established, the same law which pointed out and settled the line of demarcation commands the observance of everything that may be conducive to the end for which these various boundaries were erected. "*Nequaquam autem omnes res,*" says Puffendorf (c), "*statim ab initio humani generis, aut ubique locorum ex definito aliquo præcepto juris naturalis debuerunt proprietatem subire; sed hæc est introducta, prout pax mortalium id requirere visa fuit.*"

The necessary consequence of being a distinguishable property was its having a determinate owner. As property must precede the violation of property, so the rights must be instituted before the remedies for their violation; and the seeking for the law of the right of property in the law of procedure relating to the remedies is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead of the consequence, of property therein. If the essential principle for one source of property be production, the mode of production is unimportant; the

Property in literary compositions.

(a) Co. Lit. 319, b. Jenk. Cent. 117.

(b) 4 Burr. 2345. *Nihil quod est contra rationem est licitum*: Co. Lit. 97, b. *Sou le ley done chose, la ceo done remedie a vener a ceo*: 2 Roll. R. 17. *In novo casu, novum remedium apponendum est*: 2 Inst. 3.

(c) *De Jure, Nat. et gen.* lib. iv. c. iv. s. 14. *Vide ibid.* s. 6.

## CAP. I.

essential principle is applicable alike to the steam and gas appropriated in the nineteenth century, and the printing introduced in the fifteenth, and the farmers' produce of the earlier ages. The importance of the interest dependent on words advances with the advance of civilisation. If the growth of the law be traced with respect to the words that make and unmake a simple contract, and with respect to the words that are actionable or justifiable as defamation, and with respect to the words that are indictable as seditious or blasphemous, it will be thought reasonable that there should be the same growth of the law in respect of the interest connected with the investment of capital in words. In the other matters the law has been adapted to the progress of society according to justice and convenience, and by analogy it should be the same for literary works, and they would become property with all its incidents, on the most elementary principles of securing to industry its fruits and to capital its profits (a).

In the vast complications of human affairs, requiring new applications of old principles continually to be made; in the measureless range of human thought, bringing new doctrines out of the mass of new and old events; in the immense fields of human exploration, luminous with the light of every species of science, over which the race of man is always travelling; in the unlimited expansibility of human society, developing new aspects, new relations, new wants; in the fact that, although the reported decisions of the courts are numerically great, they embrace but comparatively few even of the questions which have arisen heretofore; in the known fact, also, that evermore the surges of time are driving the shores of human capability further towards the infinite,—we read the truth, pervading every system of jurisprudence, that whenever a matter comes before the courts, it is really a call for a new enunciation of legal doctrines, and that from the past we only gather a few rules to guide us in the future. We learn that both the olden and the new light point to the

(a) *Per* Mr. Justice Erle in *Jefferys v. Boosey*, 4 H. L. C. 870.