musical composition, unless an entry in the registry book, to which reference has already been made (*a*), shall be made of such assignment, wherein shall be expressed the intention of such parties that such right should pass by such assignment.

This provision will prevent the recurrence of what took place in *Cumberland* v. *Planché* (*b*), where, by the transfer of the copyright of a play, the right of representation was held to have passed also.

It is competent for an assignee of the sole right of representing a dramatic piece to sue for penalties under 3 & 4 Will. 4, c. 15 (*c*), notwithstanding the assignment is now made by deed, or registered under 5 & 6 Vict. c. 45 (*d*).

The administrator of an author of a dramatic piece first acted in 1843, by deed dated the 14th of April, 1859, in consideration of £100, assigned to the plaintiff the copyright and right of representation in all dramatic pieces written by the author; no entry of the assignment to the plaintiff had been made in the registry book in pursuance of the section under consideration; and it was held that the plaintiff might maintain an action for penalties under statute 3 & 4 Will. 4, c. 15, against the defendant, for representing the piece without his licence within twenty-eight years of its publication, the period for which the sole liberty of representation is given by that statute, although the deed was not registered under statute 5 & 6 Vict. c. 45, s. 22 (*e*).

That section in terms applies only to the effect of an assignment of the copyright, and was intended to correct what had probably been an omission in previous legislation; for upon the construction of statute 3 & 4 Will. 4, c. 15, s. 1, by the Court of Queen's Bench in *Cumberland* v. *Planché*, the assignment of the copyright of a dramatic piece carried with it, incidentally, the exclusive right of representation. Section 22 of statute 5 & 6 Vict. c. 45 was intended to meet that decision by enacting that no

(*a*) *Ante*, p. 67. (*b*) 1 Ad. & E. 580. (*c*) App. xvii.
(*d*) *Marsh* v. *Conquest*, 17 C. B. (N.S.) 418. (*e*) App. xxxii.

assignment of the copyright of a dramatic piece or musical composition should be holden to convey the right of representing or performing it, unless an entry was made in the registry book that it was the intention of the parties that such right should pass by the assignment. That enactment does not apply to a case in which there is an assignment of the *right of representing or performing*. In the case of *Lacy* v. *Rhys*, there was an assignment of the right of acting, as well as of the copyright; and it was held, that it did not follow that, because section 24 required registration of an assignment of the copyright, and there was such an assignment there, therefore the assignment of the *right to represent* was in any way affected: *Utile per inutile non vitiatur*. When a person professes to convey two things, one of which he has a right to convey and the other he has not, the instrument operates to pass the property in that which he has a right to convey, and the rest is surplusage (*a*).

Assignment of the right of representation need not be registered.

It is clear, therefore, that an assignment merely of the right of representation needs not to be registered under the 22nd section.

The legal assignment must be in writing.

The legal assignment must be in writing. This was decided in *Shepherd* v. *Conquest* (*b*), where it appeared that the plaintiffs, being proprietors of the Surrey Theatre, verbally agreed with one Courtney that the latter should go to Paris for the purpose of adapting a piece there in vogue for representation on the English stage; that the plaintiffs should pay all Courtney's expenses, and should have the sole right of representing the piece in London, Courtney retaining the right of representation in the provinces. Courtney accordingly proceeded to Paris, produced a piece called 'Old Joe and Young Joe,' and was paid by the plaintiffs as agreed. The piece was brought out at the Surrey Theatre by the plaintiffs, and afterwards at the Grecian Saloon by the defendant, who had obtained an assignment from Courtney. The representations by the

(*a*) *Per* Cockburn, C.J., in *Lacy* v. *Rhys*, 4 B. & S. 873, 883; 12 W. R. 309; 33 L. J. (Q.B.) 157; 10 Jur. (N.S.) 612. See *Marsh* v. *Conquest*, 10 L. T. (N.S.) 717; 17 C. B. (N.S.) 418. (*b*) 17 C. B. 427; 25 L. J. (C.P.) 127.

defendant at the Grecian Saloon were the infringements of the plaintiffs' right complained of. The defendant objected that, as there was no assignment in writing from Courtney to the plaintiffs, the action was not maintainable. The plaintiffs contended that no assignment was necessary, for that, by virtue of Courtney's employment by them, they were the proprietors of the piece in question from the first moment of its composition, or that at least they were entitled to the sole right of representation in London. The Court of Common Pleas were of opinion that though Courtney made the adaptation at the suggestion of the plaintiffs, he acquired for himself, as the author of the adaptation, and as far as that adaptation gave any new character to the work, the statutory right of representing it; and that, inasmuch as the plaintiffs had no assignment in writing of that right, they could not sue for an infringement of it.

In the course of the delivery of the judgment, Jervis, C.J., doubted whether, under any circumstances, the copyright in a literary work, or the right of representation of a dramatic one, could become invested *ab initio* in an employer other than the person who had actually composed or adapted the work. But he was clearly of opinion that no such effect could be produced when the employers merely suggested the subject, and had no share in the design or execution of the work, the whole of which, so far as any character of originality belongs to it, flows from the mind of the person employed. It appeared to him to be an abuse of terms to say that, in such a case, the employers were the authors of a work to which their minds had not contributed an idea; and it is upon the author, in the first instance, that the right is conferred by the statute which creates it. Literary property stands upon a different and higher ground from that occupied by mechanical invention. The intention of the legislature in the enactments relating to copyright was to elevate and protect literary men; such an intention can only be effectuated by holding that the actual composer of the work is the author and proprietor of the copyright, and that no

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relation existing between him and an employer, who himself takes no intellectual part in the production of the work, can, without an assignment in writing, vest the proprietorship of it in the latter (*a*).

The enactments upon which literary property and patents for inventions are respectively founded differ widely in their origin and in their details. In order to show that the position and rights of an author with the former Acts are not to be measured by those of an inventor within the latter, it is only necessary to bear in mind that, whilst on the one hand a person who imports from abroad the invention of another, previously unknown here, without further originality or merit in himself, is an inventor entitled to a patent; on the other hand, a person who merely reprints for the first time in this country a valuable foreign work, without bestowing on it any intellectual labour of his own, as by translation (which, to some extent, must impress a new character), cannot thereby acquire the title of an author within the statutes relating to copyright (*b*). In *Morris* v. *Kelly* (*c*) an injunction was granted to restrain the performance of a comedy, the copyright of which had been sold by the author and had been afterwards assigned by writing to the plaintiffs, although it did not appear whether the original assignment was in writing, that fact being presumed till the contrary was shewn.

The composer's interest is not affected by showing that the song was composed to be sung by a particular performer at the opera, and that by the regulations of that establishment such compositions become the property of the house (*d*).

Infringement of the copyright in a musical composition.

As to what amounts to an infringement of the copyright in a musical composition (*e*), it has been decided that to publish, in the form of quadrilles and waltzes, the airs of an opera of which there exists an exclusive copyright,

(*a*) *Ante*, p. 44.
(*b*) Jervis, C.J., in *Shepherd* v. *Conquest*, 25 L J. (N.S.) (Ch.) 127.
(*c*) 1 Jac. & W. 481. (*d*) *Storace* v. *Longman*, 2 Camp. 27.
(*e*) Assumption of the name and description of a song, see *Chappell* v. *Sheard*, 2 K. & J. 117.

amounts to such. In *D'Almaine* v. *Boosey* (*a*), the plaintiff published, first the overture, and then a number of airs, and all the melodies. It was admitted that the defendant had published portions of the opera containing the melodious parts of it; that he had also published entire airs; and that, in one of his waltzes, he had introduced seventeen bars in succession containing the whole of the original air, although he added fifteen other bars which were not to be found in it. This, it was contended, was not a piracy: first, because the whole of each air had not been taken; and secondly, because what the plaintiff had purchased of the original author was the entire opera, and the opera consisted, not merely of certain airs and melodies, but of the whole score. Lord Lyndhurst, Chief Baron, however, held, as to the first argument, that piracy might be of part of an air as well as of the whole; and with reference to the second, that, admitting that the opera consisted of the whole score, yet if the plaintiff was entitled to the work, *à fortiori* he was entitled to publish the melodies which formed a part. The Lord Chief Baron regarded the subject of music on a different principle to that which he regarded other literary works; for he would not admit that the adapting for dancing, or otherwise, from the original composition, in which some degree of art is needed, could be deemed such a modification of an original work as should absorb the merit of the original in the new composition. It is the air or melody which is the invention of the author, and which may, in such case, be the subject of piracy; and a piracy is committed if, by taking, not a single bar, but several, that in which the whole meritorious part of the invention consists is incorporated in the new work.

"If," said Lord Lyndhurst, "you take from the composition of an author all those bars consecutively which form the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them, in a different order, or broken by the intersection of

(*a*) 1 Y. & C. 288. See *Chappell* v. *Sheard*, 1 Jur. (N.S.) 996.

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others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now, the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is, when the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding variations makes no difference in the principle."

A novel may be dramatized without infringement.

Though no person may, without the author's written consent, represent the incidents of his published dramatic piece, however indirectly taken, yet no action will lie, at the suit of the author of a novel, against a person who dramatizes it and causes it to be acted on the stage (*a*).

This was decided in *Reade* v. *Conquest* (*b*). The second count of the declaration alleged that the plaintiff was the duly registered proprietor of the copyright in a certain registered book, namely, a tale or novel or story entitled 'It is Never too Late to Mend,' and complained that the defendant, without the plaintiff's consent, dramatized the said novel, and caused it to be publicly represented and performed as a drama at the Grecian Theatre for profit, and thereby the sale of the book was injured, &c. To this count there was a demurrer; and it was insisted, on the part of the defendant, that representing the incidents of a published novel in a dramatic form upon the stage, although done publicly and for profit, is not an infringement of the plaintiff's copyright therein; and the Court of Common Pleas were of opinion that the defendant was right (*c*).

(*a*) *Reade* v. *Conquest*, 9 C. B. (N.S.) 755; S.C., 30 L. J. (N.S.) (C.P.) 209; 9 W. R. 434; 7 Jur. (N.S.) 265. (*b*) *Ibid.*

(*c*) In a French case cited in Le Blanc on 'Piracy,' p. 233, under the

Neither the 3 & 4 Will. 4, c. 15, nor the 5 & 6 Vict. c. 45, contemplated the conversion of a book into a dramatic piece, and the definition of copyright in the second section of the latter Act, "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied," evidently did not include the claim of the plaintiff in the above case.

But the drama may not be printed.

All that was here decided was, that the defendant had a right to act, that is to say, to speak and *represent, the drama* which was constructed out of the plaintiff's novel; it was not held that the defendant had a right to *print it.*

In a subsequent case, in 1862 (*a*), Lush, as counsel for the defendant, submitted that he had a right to print and publish such a drama, with the exception of any passages which were mere copies of the novel; but the circumstances of the case did not render it necessary that the point should be decided. "If that question should arise," said Erle, C.J., "it would then be time to decide whether the defendant could find any defence; but it is clear he could not in that case defend himself on the ground that he was the author of the parts which he copied."

The question, however, has since arisen in the case of *Tinsley* v. *Lacy* (*b*). A bill was filed by the publishers and owners of the copyright in two novels, called 'Aurora Floyd' and 'Lady Audley's Secret,' written by Miss Braddon. The novels had been dramatized by a Mr. Suter and performed at the Queen's Theatre. The defendant, Mr. Lacy, had *published* the two plays as they were performed. It was proved that a large portion of the dramas, including the most striking incidents and much of the

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name of *Lefranc* v. *Paul de Brusset*, a different principle was followed. The defendant there had dramatized a tale written by the plaintiff, and represented it upon the stage for profit; the plaintiff claimed to be entitled, as *collaborateur*, to a portion of the profits, and the court decided that, although he could not claim in that capacity, inasmuch as the adaptation of the tale to the stage was without his knowledge or consent, still he had a good claim for damages against the defendant for the piracy, and they mulcted the defendant in damages and costs.

(*a*) *Reade* v. *Conquest*, 31 L. J. (C.P.) 153; 8 Jur. (N.S.) 764; 11 C. B. (N.S.) 479. (*b*) 32 L. J. (Ch.) 535; 11 W. R. 876; 1 Hem. & Mill. 747.

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actual language of the novels, had been taken bodily from the novels. Vice-Chancellor Wood, in passing judgment, admitted that the defendant was entitled to dramatize the novels for the purpose of a mere acting drama; but held that he was not so entitled for the purpose of printing or selling his compilation. "He has taken," said the Vice-Chancellor, "to use the language of Lord Cottenham in *Bramwell* v. *Halcomb*, the vital portion of the novels, the leading incidents of the plot, and in many instances the very language of the novel itself. He reprints in his books (and I confine myself to what appears in the books, and say nothing as to the represented drama), the very words of the most stirring passages of the novels. It is no answer to say that similar infringements have often been committed. Although Sir Walter Scott and other authors did not choose to assert any claim of this kind, this does not affect the rights of the plaintiff; and it is to be observed, moreover, that there has been a considerable alteration of the law since the time referred to by the extension of copyright to dramatic performances. . . . The question of the extent of appropriation which is necessary to establish an infringement of copyright is often one of extreme difficulty; but, in cases of this description, the quality of the piracy is more important than the proportion which the borrowed passages may bear to the whole work. Here it is enough to say, that the defendant admits that one-fourth of the dramas is composed of matter taken from the novels. In *Campbell* v. *Scott* (*a*), which has a strong bearing on this point, the defendants had published a work containing biographies and selections from the works of a large number of modern poets, and among others, six short poems and extracts from larger poems written by the plaintiff. The defence was, that the poems were *bonâ fide* selections, forming a very small proportion of the writings of the plaintiff; that such compilations were cautiously made by the most respectable publishers; that the price of the compilation was £1 1*s*.,

(*a*) 11 Sim. 31.

while the plaintiff's entire works were published at 2*s.* 6*d.*; and that the plaintiff would be rather benefited than injured by the defendant's work, which contained 10,000 lines, of which only a few hundreds were taken from the plaintiff's poems." The Vice-Chancellor, after observing that in the case of the '*Encyclopædia Londinensis*' the jury found for the plaintiff, though the matter taken formed but a very small proportion of the work into which it was introduced, adds, that "it is not necessary to consider whether the selections were the cream and essence of all that Mr. Campbell ever wrote. There is no doubt that in this case, as in that of Campbell's poems, the passages taken were the striking passages, and these have been taken by the author of the defendant's publications for the express purpose of using Miss Braddon's property for his own benefit. So long as he confined himself to dramatic representation she could not be interfered with; but when he printed his plays he brought himself within the letter of the law."

The only way in which it appears possible for an author to prevent other persons from reciting or representing as a dramatic performance the whole or any portion of a work of his composition, is himself to publish his work in the form of a drama, and thus bring himself within the scope of the dramatic copyright clauses.

Where the plaintiff, the author of a drama, published a novel founded thereon, containing in substance the same incidents, characters and language, and the defendant's son dramatized the novel, and in so doing took many of the characters and incidents and much of the language of the novel, and, consequently, much which was the same as in the plaintiff's drama, but without having seen or in any way known of the plaintiff's drama, and the defendant then represented what his son had so dramatized, at his theatre; such representation was held to be an infringement of the plaintiff's stage copyright in his drama, as the defendant's son was not the author in respect of such parts of his drama copied from the novel which were

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the same as the corresponding parts of the plaintiff's drama (*a*).

The pianoforte score of an opera.

The pianoforte score of an already existing opera, whether arranged by the composer himself or by another person, is the subject of copyright. The arrangement of the opera score for the pianoforte involves labour as well as intelligence and skill, which constitutes it a new work (*b*). In Renouard's '*Traité des Droits d'Auteurs*,' tome ii. p. 190, pt. iv. ch. 2, p. 78, it is said: "*Des arrangemens, variations, valses, contredanses, etc., composés sur un thème, un air, un motif même, appartenant au domaine public; des pots-pourris, sorte de compilation musicale, disposés dans un certain ordre et avec certaines liaisons ou transitions, sont-ils des objets de privilège? Je n'hésite pas à croire que la solution affirmative résulte des principes généraux sur la matière, exposés au commencement de ce chapitre. Il résulte des mêmes principes que ces compositions ne conféreront un privilège qu'autant qu'elles supposeront de l'art, du travail, un effort d'intelligence; qu'elles seront, en un mot, une production de l'esprit.*"

Remedy in cases of infringements.

The 21st section of the 5 & 6 Vict. c. 45 (*c*) gives to the proprietors of the right of dramatic or musical representation or performance, during the term of their interest, all the remedies provided by the 3 & 4 Will. 4, c. 15. By the second section of this latter Act it is enacted, that if any person, during the continuance of the exclusive right of representing a dramatic piece, cause to be represented, without the author's or the proprietor's previous written consent, such production at any place of dramatic entertainment within the British dominions, every such offender shall, for each representation, be liable to the payment of not less than 40*s*., or of the full amount of the advantage arising from the representation, or of the loss sustained by the plaintiff, whichever shall be the greater damage.

(*a*) *Reade* v. *Conquest*, 31 L. J. (C.P.) 153; 8 Jur. (N.S.) 764; 11 C. B. (N.S.) 479.

(*b*) *Wood* v. *Boosey*, 7 B. & S. 869; L. R. 2 Q. B. 340; 36 L. J. (Q.B.) 103; 15 W. R. 309; 15 L. T. (N.S.) 530; affirmed 9 B. & S. 175; L. R. 3 Q. B. 223; 37 L. J. (Q.B.) 84; 16 W. R. 485; 18 L. T. (N.S.) 105.

(*c*) App. xxxi.

These penalties are recoverable by the author or proprietor in any court having jurisdiction in such cases in that part of the British dominions where the offence is committed.

Actions to be brought within twelve months.

The third section of the 3 & 4 Will. 4, c. 15, provides that all proceedings for any offence or injury against that Act shall be brought within twelve months from the committing of the offence, or else the same shall be void and of no effect.

CHAPTER XII.

COPYRIGHT IN ENGRAVINGS, PRINTS, AND LITHOGRAPHS.

Nature and origin of the right.

STRANGE yet true it is, that an art of so much importance —one which has exercised such an influence on the refinement of the people, and tended so apparently, yet indirectly, to the formation of the polished character of civilized Europe—should have remained for years without any protection whatever from the legislature.

In England, protection was not afforded to the artist until that great engraver and designer, Hogarth, arose like a giant from the most elevated of his associates in the art, and without the aid of his keen and penetrating intellect discovered, that, toil and labour how much soever he might, the product of his intellectual genius was by no means regarded as solely his, nor he deemed to have acquired a more permanent property in it than the purchaser or imitator of one of his numerous works of art.

Engravings resemble literary works as regards the incorporeal right in them accruing to the author by the exertion of his mental powers in their production; but differ, as they also require a considerable amount of his manual skill and labour; they are, therefore, his property upon the same general principles as any other manufacture.

In handling the present state of the law on this branch of the fine arts we may properly investigate, under one view, the various Acts of Parliament which are particularly appurtenant to the collective arts of designing, engraving, and etching, inasmuch as they, unlike those respecting literary copyright, have not yet been consolidated. A bill, however, to effectuate this, and to

consolidate the whole of the law of copyright in works of fine arts, is certainly now before the House, but when it will probably become law is a matter difficult of solution.

Engravings are works having a commercial value, and as such have a double claim upon the protection of the legislature. On the one hand, the artist claims that the productions of his genius may be protected, and injury to his fame and reputation, by the circulation of inferior imitations, prevented, or preventively guarded against; and on the other hand, security in the possession of the money value of the creation of his own mind.

Fine arts encouraged by the Stuarts.

During the reign of the Stuarts the fine arts received more or less patronage, and engraving and other productive arts began to flourish accordingly. George I. knighted the engraver of the Cartoons. Line engraving, however, had been most cultivated, and the amount of skill required to imitate a plate must have nearly equalled that of its first production; every stroke of the graver would have to be repeated, so that the pirate could hardly undersell the original; and from the costliness of this style and its refinement few could afford to purchase, and few, perhaps, would appreciate. As so much talent had to be spent by the engraver in transferring the forms to a new medium, from the canvas to the copper-plate, the value of the right of engraving to the owner of the picture was small; and the picture itself, whether a portrait or work of imagination, was executed solely as an individual work of art. Gradually, however, it became a practice to publish small prints, not for the profit on them, but to assist in spreading the reputation of the painter, and this was done in the case of portraits of public men. Of course the name of the artist was not omitted; it was attached to the corner, to secure, not, as now, the property in the print, but the fame of the picture. The diffusion of some new mechanic or chemic arts of engraving or etching facilitated this (*a*).

The first Act recognising engraving as an art, and

(*a*) Turner on 'Copyright in Designs,' p. 13.

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The first copyright engraving Act.

extending towards its professors the protection they so unquestionably deserved, was that of the 8 Geo. 2, c. 13 (*a*), entitled "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." After reciting that "divers persons had, by their 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 that printsellers and other persons had of late, without the consent of the inventors, designers, or 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," it enacted, that from and after the 24th of June, 1735, every person who should invent and design, engrave, etch, or work in mezzotinto or chiaro-oscuro any historical or other print or prints, should have the sole right and liberty of printing and representing the same for the term of fourteen years, to commence from the day of the first publishing thereof, which should be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints. And the Act inflicted on other persons pirating the same "without the consent of the proprietor thereof first had and obtained in writing," the penalty of forfeiting the plate, the sheets on which the prints were copied, together with 5*s.* for every print so pirated, the one moiety to the king, and the other to any person who should sue for the same. And it further provided, that it should be lawful for any person who should thereafter purchase any plate for printing from the original proprietor, to print and reprint from the said plates without incurring any penalty.

Under this Act Lord Hardwicke refused relief to a person complaining of the piracy of a drawing or design

(*a*) App. i.

which he had only procured to be made; "for," said he, "the case was not within the statute, which was made for the encouragement of genius and art; if it was, any person who employs a printer or engraver would be so too. The statute is, in this respect, like the statute of new inventions, from which it is taken."

No provision, it will be seen, is in this Act made for the protection of any work of which the engraver is not also the designer; and this has been accounted for by the fact that Hogarth, by whose influence the Act was introduced, was invariably the designer as well as the engraver of his celebrated works.

The second Act.

The 7 Geo. 3, c. 38 (*a*), was made to remedy this oversight, and protection consequently extended to any person making an engraving from the original work of another. Its title is, "An Act to amend and render more effectual an Act made in the 8 Geo. 2, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints, and for vesting in and securing to Jane Hogarth, widow, the Property in certain Prints." The first section recites that the former Act had been found ineffectual for the purposes thereby intended, and enacts that all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro-oscuro, any historical print or prints, or any other print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have the benefit and protection of the said Act and this Act, under the restrictions and limitations thereinafter mentioned. The second section enacts that all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have the benefit and protection of the said Act and this Act for the term thereinafter mentioned (twenty-eight years), in like manner as if such print had been graved or drawn

(*a*) App. iv.

from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this Act and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as in the said Acts mentioned (*a*).

The third Act.

The next Act (17 Geo. 3, c. 57) (*b*) gave a special action upon the case, in which the proprietor might recover damages.

Provisions of Acts to be strictly complied with.

In order to vest the copyright of an engraving in the designer or engraver of the same, no registration, such as is necessary in the case of literary copyright, is required; the Acts above enumerated have merely to be strictly complied with. In the first place, it is therefore important that engravings should contain the date of publication and name of the publisher, in order to entitle the party to the penalties imposed by the statute Geo. 2. The reason assigned by the court in *Sayer* v. *Dicey* (*c*) being, "that any person may know when the proprietor's exclusive right ceases, and when, and against whom, he may be guilty of offending contrary to the statute." Lord Hardwicke, in an early case, doubted whether the clause on this subject in the Act ought to be construed as directory or descriptive, but he was of opinion that the property was vested absolutely in the engraver, although the *day* of publication was not mentioned, and compared it to the clause under the Statute of Anne, which requires entry at Stationers' Hall, upon the construction of which it has been determined that the property vests although the direction has not been complied with (*d*). However, it has subsequently been taken for granted by the Court of King's Bench that both the name and date should appear; the *date*, Lord Kenyon observed, is of importance, that the public may know the

(*a*) For the defective working of this Act, see Mr. Corrie's remarks in *Reg.* v. *Powell*, the 'Times,' November 10, 1862. (*b*) App. x. (*c*) 3 Wils. 60.
(*d*) *Blackwell* v. *Harper*, 2 Atk. 95; Barn. Ch. Rep. 210. See *Jefferys* v. *Baldwin*, Amb. 164; *Roworth* v. *Wilkes*, 1 Camp. 94; *Harrison* v. *Hogg*, 2 Ves. 323; *Thompson* v. *Symonds*, 5 T. R. 41.

period of the monopoly; the *name* should appear, in order that those who wish to copy it may know to whom to apply for consent (*a*).

In *Harrison* v. *Hogg* (*b*) Lord Alvanley differed from Lord Hardwicke, considering the insertion of the name and date essential to the plaintiff's right; and this ruling has been followed in all subsequent cases, though it is not deemed necessary that the designation "proprietor" should be added to the same (*c*).

As to the date.

The correct date is, moreover, a *sine quâ non*. In *Bonner* v. *Field* (*d*) this objection prevailed. It was an action for pirating a print of the seal of the Countess of Talbot. The plaintiff had been employed by Lady Talbot to engrave this plate for her, which he executed on the 1st of June, 1778, when he took off some impressions for her use. On the *following day* she gave the plate to the plaintiff, who engraved on the bottom of it, "Drawn and engraved by J. Bonner; published on the 1st of June, 1778, as the Act directs." The declaration having stated that the plaintiff was the proprietor on the 1st of June, Lord Mansfield nonsuited the plaintiff on the ground that he had no title on the day when he claimed it.

Engravings or etchings when published with letterpress.

These essentials, in order to secure to the artist the copyright in engravings or etchings when published separately, are not requisite where the engravings form part of a book in which there is copyright; for the Copyright Act, 1842, gives a copyright in "every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, manuscript, map, plan, or chart, separately published," and this definition, though it would not, of course, extend to prints or designs separately published, yet is sufficiently comprehensive to include prints and designs forming part of a book. The book is not less a book

(*a*) *Thompson* v. *Symonds*, 5 T. R. 41.

(*b*) 2 Ves. 323; *Newton* v. *Cowie*, 4 Bing. 234; *Brooks* v. *Cock*, 3 Ad. & E. 138, 4 N. & M. 652; *Colnaghi* v. *Ward*, 12 L. J. (Q.B.) 1; 6 Jur. 969; *Bogue* v. *Houlston*, 5 De G. & Sm. 267; *Avanzo* v. *Mudie*, 10 Ex. 203 *Graves* v. *Ashford*, 15 W. R. 495; Kerr on Injunc. 465.

(*c*) *Newton* v. *Cowie*, *supra*.

(*d*) Cited 5 T. R. 44.

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because it contains prints or designs, or other illustrations of the letter-press. A book must include every part of the book; it must include every print, design, or engraving which forms part of the book, as well as the letter-press therein, which is another part of it. A plaintiff published a book containing letter-press, illustrated by wood engravings, printed on the same paper at the same time. The defendants published a similar book with different letter-press, but containing pirated copies of the wood engravings. The plaintiff, upon motion for an injunction, proved that he had complied with the requisitions of the Copyright Act, 1842, but had not complied with the Act for the protection of engravings (8 Geo. 2, c. 13), by printing the date of publication and the name of the proprietor on each copy. Vice-Chancellor Parker considered the plaintiff entitled to an injunction, for upon the construction of the 5 & 6 Vict. c. 45, where there are designs forming part of a book in which a person has copyright, such copyright extends to the illustrations and designs of the book, equally as to the letter-press (*a*).

Ignorance no excuse.

It matters not whether the person selling the pirated engravings is aware of their being spurious or genuine; for though the 8 Geo. 2, c. 13 (*b*), imposed, first, a penalty upon any person who should engrave, copy, or sell, or cause to be copied or sold, in the whole or in part, by varying, adding to, or diminishing from the main design; and, secondly, upon persons selling the same, "*knowing the same to be so printed or reprinted;*" yet in the 17 Geo. 3, c. 57 (*c*), the words "knowing the same to be so printed or reprinted" are omitted; and it may, therefore, fairly be inferred that the legislature intended to comprehend even those who were not aware that they were selling base copies (*d*).

The former part of the 17 Geo. 3, c. 57, s. 1, applies

(*a*) *Bogue* v. *Houlston*, 5 De G. & Sm. 267; *Woods* v. *Highley*, 1866, before Vice-Chancellor Wood. (*b*) App. i. (*c*) App. x.
(*d*) *West* v. *Francis*, 5 Barn. & Ald. 737; 1 D. & R. 400; *Gambart* v. *Sumner*, 1 L. T. (N.S.) 13; *Clement* v. *Maddick*, 1 Giff. 98; 5 Jur. (N.S.) 592.

to persons who actually make the copy, and who therefore must know it to be a piracy. But the latter branch applies to all persons who import for sale, or sell, any copy of a piratical print.

As to what is an infringement.

What is an infringement is, in many cases, a difficult matter to solve. There can be no reason why a person should not be liable where he sells a copy with a mere collusive variation, for a copy is defined to be that which comes so near to the original as to give to every person seeing it the idea created by the original (*a*).

Great solicitude is requisite to guard against two extremes equally prejudicial: the one, that men of ability, who have employed their energies 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 community may not be deprived of improvements, nor the progress of the arts retarded. The Act which secures copyright to authors, guards against the piracy of the words and sentiments, but it does not prohibit writing on the same subject. As in the case of histories and dictionaries: in the first, a man may give a relation of the same facts, and in the same order of time; in the latter, an interpretation is given of the identical words. In all these cases the question of fact to come before a jury is, whether the alteration be colourable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a mere transcript. So in the case of prints, no doubt different men may take engravings from the same picture. There is no monopoly of the subject here any more than in the other instances, but upon any question of this nature, the jury will decide whether it be a servile imitation or not (*b*).

The first engraver does not claim the monopoly of the use of the picture from which the engraving is made; he says, Take the trouble of going to the picture yourself, but

(*a*) *West* v. *Francis*, *supra*. See *Roworth* v. *Wilkes*, 1 Camp. 94; *Moore* v. *Clark*, 9 M. & W. 692.

(*b*) *Sayre* v. *Moore*, 1 East, 361, n.

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do not avail yourself of my labour, who have been to the picture and have executed the engraving (*a*).

An engraver is invariably a copyist, and if engravings from drawings were not to be deemed within the intention of the legislature these Acts would afford no protection to that most useful body of men, the engravers. The engraver, although a copyist, produces the resemblance he is desirous of obtaining by means very different from those employed by the painter or draftsman from whom he copies; means which require great labour and talent. The engraver produces his effects by the management of light and shade, or, as the term of his art expresses it, the *chiaro-oscuro*. The due degrees of light and shade are produced by different lines and dots; he who is the engraver must decide on the choice of the different lines or dots for himself, and on his choice depends the success of his print. If he copies from another engraving, he may see how the person who engraved that has produced the desired effect, and so without skill or attention become a successful rival (*b*).

Engraving Acts extended to Ireland.

The Engraving Acts were extended to Ireland in 1837. By the 6 & 7 Will. 4, c. 59 (*c*), it was enacted that, from and after the passing of that Act, if any engraver, etcher, printseller, or other person should, within the period limited for the protection of copyright in engravings, engrave, etch, or publish, or cause to be engraved, etched, or published, any engraving or print of any description whatsoever, either in whole or in part, which might have been or which should thereafter be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him, her, or them respectively with his, her, or their own hand or hands in the presence of and attested by two or more credible witnesses, then every such proprietor should and might, by and in a separate

(*a*) *De Berenger* v. *Wheble*, 2 Stark. N. P. C. 548.
(*b*) *Newton* v. *Cowie*, *per* Best, C.J., 4 Bing. 246; *Martin* v. *Wright*, 6 Sim. 297.
(*c*) App. xx.

action upon the case, to be brought against the person so offending in any court of law in Great Britain or Ireland, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, should give or assess.

Engraving Acts to include lithographs.

The 15 & 16 Vict. c. 12, s. 14, declares that the provisions of this Act and the engraving Acts collectively are intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly (*a*).

The right in engravings may be infringed by photography.

It is therefore an infringement of the copyright given by the Engraving Acts to copy by photography, or sell a photographic copy of a print in which a copyright has been acquired under these Acts (*b*). The question arose not long since.

It was in an action for the infringement by the defendant of the plaintiff's copyright in two engravings, the one from Rosa Bonheur's 'Horse Fair,' the other from Holman Hunt's 'Light of the World.' It was proved that the plaintiff was the proprietor of these two engravings, and that the defendant had copied them on a very reduced scale by means of photography, and sold a great number of copies. The point was argued before the Court of Common Pleas, and it was unanimously decided that all processes for the indefinite multiplication of copies, whether mechanical or otherwise, were within the Acts for the protection of artists and engravers; and that when they declare mechanical processes of multiplying copies to be within them, no doubt they would have also thus declared the multiplication by means of photography, if the art of photography had then been known. If the object of the Acts of Parliament on the subject were, not simply to protect the reputation of the artist or the engraver, but to protect him against the invasion of his substantial

(*a*) App. lxxx.

(*b*) *Gambart* v. *Ball*, 14 C. B. (N.S.) 306; 11 W. R. 699; 32 L. J. (C.P.) 166; *Graves* v. *Ashford*, 15 W. R. 495; L. R. 2 C. P. 410; 16 L. T. (N.S.) 98; 36 L. J. (C.P.) 139.

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commercial property in the work of his genius or of his industry, it is plain that he sustains an injury by another offering a photographic copy which is capable of exciting in the mind of the beholder the same or somewhat similar pleasurable emotions as would be communicated by a copy of the engraving itself. The value of the artist's property would be sensibly diminished were the multiplication of copies by means of photography held to be lawful. In the case above referred to, Chief Justice Erle, in passing judgment, said: "In the representation of 'The Horse Fair,' we feel the same degree of pleasure in looking at the forms and attitudes of the beautiful animals there portrayed, whether we see them in the size in which they are drawn in the original picture, or in the reduced size of the engraving, or in the still more diminished form in which they appear in the photograph. . . . The object of the statute, to my mind, was, not merely to prevent the reputation of the artist from being lessened in the eyes of the world, but to secure to him the commercial value of his property, to encourage the arts, by securing to the artist a monopoly in the sale of an object of attraction. . . . It seems to me that the making of copies in that way and selling them is within the words as well as the meaning of the Act" (*a*).

Though the language of the statute includes, as we have seen, copies made by mechanical or chemical process, and capable of being multiplied indefinitely, yet it would seem not to include copies made by hand or designs transferred to an article of manufacture.

What not an infringement.

Nor where the print or engraving differs materially from the original in character, and is dealt with in a different manner, can the former be considered a piracy of the latter within these Acts. Thus in 1821, plaintiff, a celebrated artist, composed and painted from sketches he had designed a picture called 'Belshazzar's Feast,' which he shortly afterwards sold. In 1826 he engraved and published from the sketches a print of the same name,

(*a*) This judgment was confirmed on appeal by the Court of Exchequer Chamber.

having previously done all necessary acts for securing to himself the copyright of the print. The defendant having purchased one of the prints, had it copied on canvas in colours on a very large scale, with dioramic effect; and he publicly exhibited such dioramic copy at the Queen's Bazaar in Oxford Street for money, describing it, in his handbills and advertisements as "Mr. Martin's grand picture of 'Belshazzar's Feast,' painted with dioramic effect." The plaintiff applied for an injunction, but the Vice-Chancellor refused to grant one, on the ground that exhibiting for profit was in no way analogous to selling a copy of the plaintiff's print, but was dealing with it in a very different manner. The Engraving Acts were not intended to apply to a case where there was no intention to print, sell, or publish, but to exhibit in a certain manner. "If, however," added the Vice-Chancellor, "Martin had exhibited his picture as a diorama, then he might have been entitled to an injunction" (*a*)

The statutes do not apply to the taking a print unlawfully from a lawful plate. In *Murray* v. *Heath* (*b*), where the defendant, an engraver, took a number of impressions from a plate engraved by himself, but which he had undertaken to engrave for the use of the plaintiff, it was decided that no action was maintainable against him under the 17 Geo. 3, c. 57 (*c*). Of course at common law an action for damages might have been maintained by reason of the breach of contract to deliver to the plaintiff all the impressions.

So, upon a similar principle, it was held in *Mayall* v. *Higbey* (*d*) that a person who lends photographs to another for a particular purpose, may prevent him from taking and selling copies, except in pursuance of the purpose for which they were lent, and this, although the photographs have been published and irrespective of the question of copyright. The above was a case in which the plaintiff had lent photographs of eminent persons to Tallis, the

(*a*) *Martin* v. *Wright*, 6 Sim. 297; *Page* v. *Townsend*, 5 Sim 395.
(*b*) 1 Barn. & Adol. 804. (*c*) App. x. (*d*) 1 H. & C. 148.

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proprietor of the 'Illustrated News of the World,' for the purpose of engraving them for that newspaper. Tallis became bankrupt, and his assignees sold the photographs to the defendant; and it was held that the plaintiff was not only entitled to the photographs but to the unsold copies, and to an injunction to restrain the further sale. The Court said that there was no question of copyright, and compared it to the case of a valuable statue, which a friend to whom it is lent has no right to get copied.

In what class of engravings no copyright.

No copyright can exist in any obscene, immoral, or libellous engraving (*a*); and were one to destroy such a print or engraving, he would merely be liable at law to pay the value of the paper and print (*b*).

International copyright.

By an Act of Parliament to amend the law relating to international copyright (7 & 8 Vict. c. 12, ss. 2–4) (*c*), Her Majesty is empowered by an order in council to grant the privilege of copyright for such period as shall be defined in such order (not exceeding the term allowed in this country) to the authors, inventors, and makers of books, prints, articles of sculpture, and other works of art, or any particular class of them to be defined in such order, which shall, after a future time to be specified in such order, be first published in any foreign country, to be named in such order. But no such order in council shall have any effect unless it shall be therein stated as the ground for issuing the same that due protection has been secured by the foreign power named in such order in council for the benefit of parties interested in works first published in the dominions of Her Majesty similar to those comprised in such order. And every such order in council is to be published in the 'London Gazette' as soon as may

(*a*) See 5 Geo. 4, c. 83, s. 4; 1 & 2 Vict. c. 38, s. 2; 20 & 21 Vict. c. 83; *Fores* v. *Johnes*, 4 Esp. 97.

(*b*) *Du Bost* v. *Beresford*, 2 Camp. 511. In *The Emperor of Austria* v. *Day and Kossuth*, 7 Jur. (N.S.) 641, Ch.; on appeal, 4 L. T. (N.S.) 494, the Lord Chancellor stated that the cases of *Burnett* v. *Chetwood* (2 Mer. 441, note) and *Du Bost* v. *Beresford*, *supra*, were wrongly decided. Compare the fact of the liability of the destroyer for the amount of the paper, with the maxim in Moor, 813: "*Inveniens libellum famosum et non corrumpens punitur*," and, *if possible*, reconcile the two.

(*c*) App. lviii.

be after the making thereof, and from the time of such publication shall have the same effect as if every part thereof were included in the Act. And no copyright is allowed in any work of art first published out of Her Majesty's dominions otherwise than under this Act.

Summary proceedings for the recovery of penalties.

In concluding, we will offer a few remarks on the remedy afforded by a late Act of Parliament for the recovery of the penalties for infringement under the Engraving Acts. The mode of recovery was much simplified by the 8th section of the 25 & 26 Vict. c. 68, commonly known as the Copyright (Works of Art) Act (*a*). By this clause all pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders pursuant to any Act for the protection of copyright engravings, may be recovered by the person empowered to recover the same, and thereinafter called the complainant or the complainer, as follows:

In England and Ireland.

In *England* and *Ireland*, either by action against the party offending, or by summary proceedings before any two justices having jurisdiction where the party offending resides (*b*);

In Scotland.

In *Scotland*, by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judg-

(*a*) App. xcii.

(*b*) A magistrate sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, or the lord mayor, or an alderman of London, sitting at the Mansion House, or Guildhall Justice Rooms, has power, when sitting alone, to exercise the jurisdiction given by this Act to two justices. 2 & 3 Vict. c. 71, s. 14; 11 & 12 Vict. c. 43, ss. 29, 33, 34.

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ment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by pounding; provided always that it shall be lawful to the sheriff, in the event of his diminishing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

Further, it is declared lawful for the superior courts of record in which any action may be pending, or if the courts be not then sitting, then for a judge of one of such courts, on the application of either the plaintiff or defendant, to make an order for an injunction, inspection, or account, as to such court or judge may seem fit.

Evidence on behalf of plaintiff.

The evidence to be adduced at the trial on behalf of the plaintiff is simply that he is the proprietor of the print or engraving pirated; and it is sufficient that he produce one of the prints taken from the original plate. The production of the plate itself is not requisite.

CHAPTER XIII.

COPYRIGHT IN SCULPTURE AND BUSTS.

The art of sculpture

THE art of sculpture has never been particularly favoured by the English nation. It is an art which ought certainly to be patronised more extensively, for it refines and improves the public mind and taste.

The erection of national monuments to the memory of individuals who by their works or their virtues have conferred lasting benefit or honour on mankind in general or their own country in particular, or in order to commemorate important public events, is a means by which the art produces the most influential moral effects.

These mementoes or memorials, though in the present age the unphilosophical and sciolistic spirit of some have led them to regard with contempt this method of honouring the illustrious great, excite a laudable admiration for the service or benefit to which they testify, and are living realities to perpetuate at once the respect entertained by the nation, both for the individual himself and the performance that has entitled him to their gratitude. When efficiently executed, they not only perpetuate the memory of the individual himself and record his good deeds, but appeal continuously to the national mind, and encourage and stimulate all posterity to follow in his footsteps. The person represented seems to be ever present. The deeds commemorated appear still in vivid force, and although we have not the actual presence of the departed, we retain his remembrance and preserve much of his influence.

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"Public monuments, moreover," says Mr. Harris (*a*), "give a character to a nation and record the existence of what are in reality its noblest treasure,—the great men who have adorned it. They much influence the genius of a people, and in their turn exhibit the national feeling and genius. Indeed, the moral effect of these erections, both in ancient and modern times, has been made obvious. . . . . The essential advantage in regard to civilization, arising from the national veneration paid to heroes and great men, results from the stimulus which it excites to emulate their virtues, and to shun all those vices which are opposed to the latter, and by which lustre like theirs would be tarnished. The use of monuments in this respect is two-fold: first, to preserve the memory of those great men to whom they are erected, and of their virtues also; secondly, to testify the regard of the nation for those great men and for the virtues which they displayed. In both these respects, they are extensively and directly conducive to civilization, and are calculated to carry it to its highest point."

On these social grounds, therefore, it is incumbent upon the legislature to cherish and encourage an art yielding fruit such as this is capable of bearing.

Busts of private individuals are not likely to have much value as copyright, but busts of great men have a general interest and value. The demand for copies is so small that seldom is it that piracy takes place. The only case in which we remember the Sculpture Act being applied, is that of a bust of Fox.

The means of reproduction by a cast is very simple and merely mechanical (at least, after a single copy has been obtained), and this fact accounts for the limited application of the Act. Most of the ornamental casts in request are taken from foreign works of art, or from such as have been dedicated to the public by exposure or become public property; seldom is the licence of the original designer required. There is little skill in the

(*a*) 'Civilization considered as a Science.'

preparation of the type-mould, which corresponds to the plate of the engraver, unless, perhaps, where the scale is reduced (*a*).

Extent and duration of Acts.

The copyright in busts and sculptures mainly depends upon the 54 Geo. 3, c. 56 (*b*). This Act amended and extended the provisions of the 38 Geo. 3, c. 71, which had been found ineffectual for the purposes thereby intended. So ineffectual had it proved that although avowedly passed for the preventing the piracy of busts and other figures made and published by statuaries, it was decided to be no offence to *sell* a pirated cast of a bust if the piracy had any addition to or diminution from the original; nor was it an offence to *make* a pirated cast if it were a perfect *fac simile* of the original (*c*). Lord Ellenborough thought the statute had been passed with a view to defeat its own object, and taking advantage of the opportunity of making a joke, which the bar, as a matter of duty, had to imagine exceedingly good, advised artists when they applied to Parliament for further protection, not to *model* the new Act themselves as they appeared to have done the one in question.

The two statutes above referred to are commonly known as the Sculpture Copyright Acts, and the court will, in putting a construction upon any one of them, give effect to the intention of the legislature by construing them collectively (*d*).

The 54 Geo. 3, c. 56 (18th of May, 1814), enacts that every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or any part or parts of any animal, combined with the human figure or otherwise, or of any subject being matter

(*a*) Turner on 'Copyright in Design.'
(*b*) App. xii.
(*c*) *Gahagan* v. *Cooper*, 3 Camp. 111.
(*d*) *Newton* v. *Cowie*, 4 Bing. 245, and *Russell* v. *Smith*, 17 L. J. (Q.B.) 225, 229; the former with reference to the Engraving Acts, the latter to literary copyright.

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of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things thereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things thereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure and human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human frame or otherwise, and of all and in every such new and original sculpture, model, copy, and cast of any subject being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy, and cast in alto or basso-relievo, representing any of the matters or things thereinafter mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same; provided in all and every case the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published.

After the expiration of this term of fourteen years the copyright shall return to the person who originally had the copyright, if he be then living, for the further term of fourteen years, excepting in the case where such person shall by sale or otherwise have divested himself of such right (*a*).

(*a*) Sect. 6, App. xv. See *Grantham* v. *Hawley*, Hob. 132, cited *Lunn* v. *Thornton*, 1 C. B. 379; Vin. Abr. 'Grants,' M., *Carnan* v. *Bowles*, 2 Bro. C. C. 85.