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Conditions to be complied with in order to effectuate a copyright.

The conditions under which the copyright is acquired are almost identical with those required to be performed in order to obtain a copyright under the Engraving Acts. When a sculptor models a design for himself, and afterwards executes from such model a finished bust for another in marble or any other material, it is not sufficient for the sculptor, in order to acquire the copyright therein, to affix his name and the year when the finished copy from the model was executed (as is frequently the case); he must conform strictly to the letter of the Acts (*a*), and therefore engrave on the *model*, as well as on every cast or copy thereof, his name (*b*), and the day of the month and year when the model is first shewn or otherwise published in his studio, or elsewhere; and such *date must never be altered.*

Assignment of the right.

By the 54 Geo. 3, c. 56, it was further provided that no person who should thereafter purchase the right or property of any new and original sculpture, or model, or copy, or cast, or of any cast from nature, of the proprietor, expressed in a deed in writing signed by him in the presence of and attested by two or more witnesses, should be subject to any action for copying, or casting, or vending the same; and that all actions brought for pirating under this Act should be commenced within six calendar months next after the discovery of the offence.

Registration.

Sculptures and models may now be registered under the Designs Act (13 & 14 Vict. c. 104, s. 6) (*c*), which provides that the registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy, or cast within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print, or description, in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular sculpture, model, copy, or cast in respect of which registration is desired, and the name of the person

(*a*) As under the Designs Act, see *Pierce* v. *Worth*, 18 L. T. (N.S.) 710.
(*b*) The name need not necessarily be the baptismal and surname of the proprietor, but such as he or his co-proprietors are commonly known by or trade under.
(*c*) App. lxx.

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claiming to be proprietor, together with his place of abode or business, or other place of address, or the name, style, or title of the firm under which he may be trading, shall register such sculpture, model, copy, or cast, in such manner and form as shall from time to time be prescribed or approved by the Board of Trade, for the whole or any part of the term during which copyright in such sculpture, model, copy, or cast may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said registrar shall certify under his hand and seal of office, in such form as the said board shall direct or approve, the fact of such registration and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business, or other place of address.

The application under this section need not necessarily be made by the author; it is to be made by the proprietor.

Infringement of the right, and penalties attached thereto.

The 7th section (*a*) provides that if any person shall, during the continuance of the copyright in any sculpture, model, copy, or cast which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy, or cast, in such manner and under such circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending shall forfeit for every such offence a sum not less than £5 and not exceeding £30, to the proprietor of the sculpture, model, copy, or cast whereof the copyright shall have been infringed; and for the recovery of any such penalty the proprietor of the sculpture, model, copy, or cast which shall have been so pirated shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842: provided always, that the proprietor of any sculpture, model, copy, or cast which shall be registered under this Act shall not

(*a*) App. lxx.

be entitled to the benefit of this Act unless every copy or cast of such sculpture, model, copy, or cast which shall be published by him after such registration, shall be marked with the word "registered" and with the date of registration.

This is a great improvement on the law as it stood prior to the year 1842, but why the provisions for registration should not have been extended to engravings and prints is a matter of surprise.

In conclusion, we must express a hope that protection will before long be afforded to the sculptor against drawings or engravings of any description, which may now be taken from his work with impunity. If the sculpture be a production of any merit and value, if well designed and engraved, it might be profitable to the author in various ways; while, on the contrary, if it be badly or carelessly executed, it may be alike annoying to him and injurious to his reputation and fame.

CHAPTER XIV.

COPYRIGHT IN PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

The arts of painting and drawing.

Of all the branches of the fine arts this was the last recognised as worthy of protection by the legislature. On what ground it is difficult to comprehend. Where is the difference in principle between a picture and a poem?

The claims of the artist to a copyright in his works are quite as valid as those of the literary author in his; and if the principle were once admitted that a man should be protected in the enjoyment of his intellectual productions, and a certain period of exclusive possession allowed to the author for his benefit, before the public were in full and free enjoyment of the work, on what ground could Parliament so long withhold the same privilege from the artist as it had already granted to the author.

It is a strange anomaly that while the law gave a property to that which was, in the ordinary way, the work of a man's hands, and allowed a copyright in inventions and designs, it should have afforded no protection to those productions which were exclusively the creations of the mind. It was thought but an act of justice and right that a copyright should exist in literary productions, but when it was proposed, as late as 1862, to give a similar right in pictures, a cry was raised that it was derogatory on the part of jurisprudence to protect the works of those who contributed by their art to the honour of their country, the elevation of the national taste, and the amusement, instruction, and delight of the community at large.

With respect to the fine arts, two series of Acts had

been passed, giving a copyright of a limited and special nature in sculptures and engravings; hence this unaccountable opposition to the bestowing a copyright in paintings appears the more extraordinary. For while an engraving enjoyed protection, the picture from which it was taken was without. A man might make any number of copies of the best work of the artist—sell them, and there was no remedy. Not unfrequently these copies were sold as originals, and even the name of the original artist forged upon them, but the injured party was without redress.

The evil was almost peculiar to this country. In most European countries the principle of copyright extended through the whole range of the fine arts, and, unlike our law, especially protected the works of painters.

At the present day, if one purchases the copyright of a picture he holds the picture, free from any interference, and with the perfect right of dealing with it as he pleases. If, however, he buys the picture simply as a picture, he will then have the gratification and delight resulting from its contemplation—he cannot make copies or engravings from it, or use it for a different purpose from that for which the artist sold it. The same rule applies to authors. When a person buys a book he can read it, but cannot multiply copies of it unless he purchases the copyright. This appears but fair, especially if we bear in mind that the greater part of the artist's remuneration probably arises from the reproduction of his work.

The existence of copyright in painting is a protection also to the purchaser of a picture. It was formerly well known that after a person had purchased a picture the artist might have made a copy and multiplied it to any extent, although the purchaser might have been under the impression that he had bought a picture as being the single work of the artist. Of course such an action would not have become an honourable man, but still the right remained to the artist to act in such a manner had he thought proper. It is not a desirable thing to have a great work of art multiplied indefinitely, and hawked

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about for sale. It is well known that the frequent repetition of a work of art diminishes the worth of the original; indeed, nothing detracts so much from its commercial value.

At length the wished-for day arrived, and the artists succeeded in obtaining for their protection an Act of Parliament.

Creation of copyright in works of art.

The Act (25 & 26 Vict. c. 68) (*a*) is entitled, 'An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the commission of Fraud in the Production and Sale of such Works.' It provides that the author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made, either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of the Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death; provided that when any painting or drawing or the negative of any photograph shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof unless it be expressly reserved to him by agreement in writing, signed at or before the time of such sale or disposition by the vendee or assignee of such painting or drawing or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or

(*a*) App. lxxxviii.

executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless at or before the time of such sale or disposition an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorized, shall have been made to that effect. CAP. XIV.

It is important that the artist, at the sale or at or before the time of delivery or the completion of the bargain, should obtain the signature of the vendee or assignee, or of the person for whom the work has been executed, to a written reservation of the copyright to himself, if he desires to retain it; or assign in writing the same to the purchaser at or before the completion of the transaction, otherwise the copyright will be irredeemably lost. If the vendee obtains not this assignment in writing, he will be unable to protect himself against piracy or repetition by the artist, as section 6 only protects pictures, &c., in which there is subsisting copyright. The copyright cannot, unless reserved in writing, vest in the vendor; it cannot, if not assigned in writing, vest in the vendee or assignee. It, however, would pass without a written agreement to the person for or on whose behalf a work is expressly executed, *as in commissions.* By whom it may be claimed.

The copyright given by the above section is qualified by the following one, to the extent that nothing shall prejudice the right of any person to copy or use any work in which there is no such copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

This must refer to and include all works of ancient and deceased masters, and all paintings of living artists sold before the passing of this Act, or since, without the statutory provisions having been complied with for the creation and transfer of copyright.

All formalities, such as are required under the Engraving or the Sculpture Copyright Acts, are unnecessary in the assignment and transfer under this Act; for copyright is declared to be personal property, and capable

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Assignment and registration.

of being assigned by any note or memorandum in writing, signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

By the 4th section (*a*) it is declared that a book of registry shall be kept at Stationers' Hall, entitled 'The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs,' in which shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment; and that such memorandum shall contain a statement of the date of the agreement or assignment, and of the name and address of the person in whom such copyright shall be vested, and also of the author of the work, together with a short description of the subject of the work; and if the person registering shall so desire, a sketch, outline, or photograph of the work.

It is not a valid objection that the registration does not give such a description of the work as may enable a person from it alone to ascertain whether he is about to sell the copy of a registered work, for that knowledge may be gained from other sources, and the object of the legislature, as pointed out by the statute, is that there shall be such a description of the picture as to enable a person who has it before him to judge whether or not the registration applies to the one he is about to copy. This was decided in 1868. Mr. Henry Graves, being the proprietor of the copyright in two paintings in oil and in a photograph, entered them under this section, thus: "Painting in oil, 'Ordered on Foreign Service;' painting in oil, 'My First Sermon;' photograph, 'My Second Sermon.'" The first picture represented an officer taking leave of a lady; the second, a young child sitting in a pew, apparently listening with her eyes wide open; the photograph represented the same child asleep in a pew; and it was considered that the nature and subject of the works were sufficiently described under this section. "If we consider it as a question of fact," observed Mr. Justice Blackburn, "there can be no

(*a*) App. lxxxix.

reasonable doubt that the description of each of the pictures is sufficient. The picture, 'Ordered on Foreign Service,' represents an officer who is ordered abroad, taking leave of a lady, and no one can doubt that is the picture intended. So again 'My First Sermon' describes with sufficient exactness a child, impressed with the novelty of her situation, sitting in a pew, and listening with her eyes open; while the same child, fast asleep in a pew, forms the subject of 'My Second Sermon.' Who can doubt that in each of these cases the description is sufficient? There may be a few instances in which the mere registration of the name of the picture is not sufficient; for instance, Sir E. Landseer's picture of a Newfoundland dog might possibly be insufficiently registered under the description of 'A distinguished Member of the Humane Society.' Similarly, the well-known picture called 'A Piper and a Pair of Nutcrackers,' representing a bullfinch and a pair of squirrels, might not be accurately pointed out by its name. In either of those cases the names would scarcely be sufficient, and it would be advisable for a person proposing to register them to add a sketch or outline of the work. But when the subject is indicated, as it is here, it seems to be merely a question of fact whether the description affords enough information, and I cannot doubt that it does" (*a*).

No copyright to accrue until after registration.

It is further enacted by the 4th section that no proprietor of any copyright shall be entitled to the benefit of this Act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration (*b*).

This section, though it prevents an assignee from suing for penalties, before the assignment to him has been registered, does not render it necessary that all or any previous assignment should also be registered, or that the copyright of the original author should be registered (*c*).

(*a*) *Ex parte Beal*, 3 Law Rep. (Q.B.) 387; 37 L. J. (Q.B.) 161; S. C. 18 L. T. (N.S.) 285. (*b*) *Vide ante*, p. 72. See App. lxxxix.
(*c*) *Re Walker & Graves*, 20 L. T. (N.S.) Q.B. 877.

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The enactments of the 5 & 6 Vict. c. 45, in relation to the registry thereby prescribed, are applicable to the registry under the 25 & 26 Vict. c. 68, except that the forms of entry prescribed by the earlier Act may be varied under the latter to meet the circumstances of any case. Consequently, the making of false and fraudulent entries of proprietorship of copyright for any purpose, either to acquire property in such copyright or to improperly restrain the publication or copying of works in which no copyright lawfully exists, is a misdemeanour. And the person aggrieved may apply to the court or a judge to obtain an order for the cancellation or substitution of names so inserted (*a*).

Infringement of the right, and penalties attached thereto.

Invasion of the property is guarded against by the 6th section, which provides that if the author, after having sold or disposed of the copyright, or if any other person not being the proprietor for the time being of the copyright, shall repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or knowing that any such repetition (*b*), copy, or other imitation has been unlawfully made, shall import into the United Kingdom, or sell, publish, let to hire, exhibit or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed or offered for sale, hire, exhibition, or distribution any repetition, copy, or imitation of the said work, or of the design thereof, such person, for every such offence, shall forfeit to the proprietor of the copyright for the time being a sum not exceeding £10; and all such repetitions, copies, and imitations, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

(*a*) *Chappell* v. *Purday*, 12 M. & W. 303.

(*b*) *Actus non facit reum, nisi mens sit rea* (*Reg.* v. *Sleap*, 8 Cox, C. C. 472; *Reg.* v. *Cohen*, *ibid.* 41; *Hearne* v. *Garton*, 28 L. J. (M.C.) 216.

Under this clause, where the subject of a picture is copied, it is of no consequence whether that is done directly from the picture itself or through intervening copies; if, in result, that which is copied be an imitation of the picture, then it is immaterial whether that be arrived at directly or by intermediate steps. A copy, therefore, from an intervening copy is a copy from the original work, and within the prohibitory clauses of the statute. Nor does the copying refer merely to the imitation of a painting by a painting, or drawing by a drawing, or a photograph by a photograph, so that a photograph of a drawing, or a drawing of a painting, protected by the Act, would be a piracy. For, on inspecting the 1st section, which is the key to the whole Act, it gives to the author of every original painting, drawing, or photograph the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof, by any means and of any size; and the terms used are so extensive that it is plain that a photograph of a painting, of a drawing, or of another photograph made without the consent of the owner, though of a different size, provided it be a reproduction of the design, is an infringement such as would subject the maker to the penalty.

The penalties cumulative.

Moreover, the offending individual is liable to the penalty for every copy sold. Thus, where twenty-six copies were disposed of in two parcels of thirteen copies each, it was held that the penalty was properly imposed on every copy sold. "In the case of *Brooke* v. *Milliken* (*a*)," says Mr. Justice Blackburn, in *Beal's Case* (*b*), to which we have already referred, "the penalty was imposed by 12 Geo. 3, c. 36, for importing for sale any book first published in this kingdom and reprinted in any other place, and it enacted that the offender should forfeit £5. and double the value of every book sold. In that case there could be no doubt that the meaning of the statute was, the penalty should be cumulative, viz., double the

(*a*) 3 T. R. 509. (*b*) Law Rep. 3 (Q.B.) 395.

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value of each book. In the present case the words are, 'such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding £10.' It is quite clear that this imposes a penalty for every copy sold; a different construction would result in an absurdity, and defeat the intention of the legislature. The penalty is imposed also for importation, and it would be monstrous, that if a man had consigned from abroad a cargo of imitations, the utmost penalty that could be imposed on him would be the sum of £10. It would be well worth his while to run the risk of paying that small sum, and to import and distribute for sale elsewhere a quantity worth many thousands. The legislature were dealing with an offence which was likely to be committed wholesale, and they have used words meaning that the sale of every copy shall be an offence, and if ten copies be sold at one time, ten offences are committed, and the offender may be punished for each separately."

Provisions for repressing the commission of fraud in the production and sale of works of art.

The 7th section (*a*) imposes penalties on every person doing or causing to be done any of the following acts:

1st. If he shall fraudulently sign or otherwise affix, or cause to be signed or otherwise affixed, to any painting, drawing, or photograph, or the negative thereof, any name, initial, or monogram.

This clause was rendered necessary by the decision in the case of *The Queen* v. *Closs* (*b*). A picture had been painted by Mr. Linnell, who signed and sold it for £180. The prisoner was a picture dealer, and was indicted for fraudulently selling a copy of Linnell's picture as and for the genuine picture which he had painted. Mr. Linnell's name was likewise painted on such copy, which the prisoner sold for £130. The indictment contained three counts: the first charged the prisoner with obtaining money under false pretences, but upon this count he was acquitted; the second count charged him with a *cheat* at common law (*c*), by means of writing Linnell's name upon the copy; and

(*a*) App. xci. (*b*) 27 L. J. (M. C.) 54; 7 Cox, C. C. 494; 6 W. R. 109.
(*c*) *Albin's Case*, Tremaine, P. C. 109; *Worrall's Case*, *ibid.* 106; 2 East, P. C. 18, cited 2 Russell on 'Crimes,' 282.

the third count charged the prisoner with a *cheat* by means of a forgery of Linnell's name upon the copy. Upon these last two counts the prisoner was convicted; but his counsel objecting, that they disclosed no indictable offence at common law, the judgment was respited in order that the opinion of the Criminal Court of Appeal might be taken upon the objection so raised. The case was afterwards argued before five judges, who formed such court of appeal, and they unanimously held that the conviction was *wrong;* that there was no forgery; that "forgery must be of some document or writing," and Linnell's name in this case must be looked at merely as in the nature of an arbitrary mark made by the master to identify his own work, and was no more than if the painter had put any other arbitrary mark made by him, as a recognition of the picture being his. As to the second count of the indictment, the court held that the conviction could not be sustained, because it did not sufficiently shew that the prisoner sold the copy by *means* of Linnell's signature being forged upon it.

2nd. If he shall fraudulently sell, publish, exhibit, or dispose of the same, or offer it for sale, exhibition or distribution.

3rd. If he shall fraudulently sell any copy or colourable imitation of any painting, drawing, or photograph or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been executed by the author of the original work from which such copy or imitation shall have been made.

4th. If, where the author of any painting, drawing, or photograph, or negative of a photograph, shall have sold such work, any person shall afterwards make any alteration by addition or otherwise during the life of the author, without his consent, and shall knowingly sell (*a*) or publish such work, or any copies thereof so altered, or of any part thereof, as or for the unaltered work of such author.

(*a*) Unless the person selling were cognizant of the fact of alteration the Act would be an entirely innocent one. See *Reg.* v. *Sleap*, 8 Cox, C. C. 472; *Reg.* v. *Cohen*, *ibid.* 41; *Hearne* v. *Garton*, 28 L. J. (M.C.) 216.

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This clause is intended to prevent the alterations so frequently made in the works of great artists for fraudulent purposes. Mr. Charles Landseer stated a most glaring case in his evidence before a committee appointed by the Society of Arts. It appears that he painted a picture called the 'Eve of the Battle of Edgehill,' in which he introduced two dogs, which had been touched up by his brother Sir Edwin, and, as he himself admitted, greatly improved. The picture was sold to a dealer, who cut out the figures of the dogs and sold them as the work of Sir Edwin Landseer, and he then filled up the hole in the original picture with two dogs painted by an inferior artist, and sold the whole picture as the work of Mr. Charles Landseer.

Every offender under this section shall forfeit to the person aggrieved a sum not exceeding £10, or not exceeding double the full price at which all such copies or altered works shall have been sold or offered for sale; and they shall be forfeited to the person, or the assigns, or legal representatives of the person whose name, initials, or monogram shall have been fraudulently used; provided such person shall have been living at or within twenty years next before the time when the offence may have been committed.

It would seem that if the double price of the copies be less than £10, yet that amount may still be recovered, and that if the double value exceed £10, then any sum up to such double price may be recovered by the person aggrieved, as an inducement to him to proceed, he having to give up the spurious work to the true artist or his representatives, and receive from the person who has defrauded him the price he has paid and as much more.

The penalties imposed as a punishment for a criminal offence.

Under these penal sections it has been determined that a person sentenced to pay a penalty cannot, by executing a deed of arrangement with his creditors, escape from the imprisonment consequent on a failure to pay (*a*).

(*a*) *Graves, Ex parte*, 19 L. T. (N.S.) 241; Law Rep. 3 Ch. 642; 16 W. R. 993; *Bancroft* v. *Mitchell*, Law Rep. 2 (Q.B.) 549. See, however, *Johnson*,

Mr. Graves, the well-known publisher of engravings, became the proprietor of the copyright in Frith's 'Railway Station' and other paintings, and the designs thereof, and also in the copyright in the engravings of such pictures. Photographic copies of these engravings were then fraudulently made, and sold for about one-twentieth of the price at which the copies of Mr. Graves's prints were sold. Such photographic copies were exact reproductions of the engravings and of a large size. Upon the 16th of May, 1868, a man named William Banks Prince was convicted by a magistrate at Lambeth of having sold no less than nineteen of the fraudulent photographic copies in question. He was adjudged to pay a penalty of £5 in respect of each of the copies sold; and, in default of payment, the magistrate, under powers given him by the Small Penalties Act, 1865, sentenced Prince to fourteen days' imprisonment in respect of each of the nineteen offences he had committed by selling the photographic copies. While the magistrate was giving his judgment Prince executed a deed of composition with his creditors, which contained a release from them. That deed was assented to by certain creditors of Prince, and then registered in due form. Not having paid the penalties in which he was convicted he was taken into custody upon a magistrate's warrant, and imprisoned pursuant to his sentences. Thereupon he applied to the Bankruptcy Court for his discharge from custody, upon the ground that the penalties in which he had been convicted were *debts*, from the payment of which he had been released by the deed of composition executed between him and his creditors. The court held that Prince was entitled to his discharge.

From this decision Mr. Graves appealed to the lords justices, upon the ground that penalties recovered under

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Ex parte, In re Johnson, 15 W. R. 160; 15 L. T. (N.S.) 163; *Rex* v. *Stokes*, Cowp. 136; *Rex* v. *Wakefield*, 13 East, 190; *Rex* v. *Myers*, 1 T. R. 265. As to limitation of time of three months for action under the 8 Geo. 2, c. 13, not applying to an action for damages, see *Graves* v. *Mercer*, 16 W. R. 790.

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with certain peculiarities arising from the nature of their textile materials.

The first Act granting protection to the inventor of designs was passed in 1787 (the 27 Geo. 3, c. 38). This Act was followed by the 29 Geo. 3, c. 19, and the 34 Geo. 3, c. 23. But these Acts did not extend to Ireland, nor to fabrics other than linen and cotton, and did not afford any protection to designs on fabrics composed of animal products, as wool, silk, or hair, or mixtures of those materials with flax and cotton. The printing on fabrics of animal and vegetable substances, and on mixed fabrics, having subsequently grown up into an important branch of manufacture, an Act of Parliament was introduced in 1839 (2 Vict. c. 13), by which the same protection was given to designs printed on fabrics of animal substances, or a mixture of animal and vegetable substances, as was afforded to designs printed on fabrics of vegetable substances; and the provisions of the existing Acts were extended to Ireland.

We followed the French in establishing any design rights at all; and it would be well if we adopted their simple, sensible arrangement for securing them.

In the early part of the last century the French entertained more correct notions of the rights of property in design than the British, and so convinced were they that great benefits would flow from rejecting the claim of the copyist to reap the original designer's profits, that, in 1737 and 1744, laws established a property in designs for the manufacturers of Lyons, and in 1787 the benefits of legal protection were fully established. The basis of the pre-eminence of the French, and the means by which they have attained their unrivalled position in *taste*, is *efficient protection*, and it is certainly singular that this fundamental element and primary cause of superiority should have been so long overlooked in this country.

Division of the right.

We have in England two distinct rights, founded upon different Acts of Parliament, in the application of designs —copyright in the application of designs for ornamental

purposes, and copyright in the application of designs for the shape and configuration of articles of utility.

The former, of which we shall first treat, is regulated by the 5 & 6 Vict. c. 100, amended by 6 & 7 Vict. c. 65, 13 & 14 Vict. c. 104, 21 & 22 Vict. c. 70, and 24 & 25 Vict. c. 73.

Copyright in designs for ornamental purposes.

The 5 & 6 Vict. c. 100 repeals all the previous Designs Acts, and enacts that the proprietor of every new and original design not previously published (*a*), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and whether such design be so applicable for the pattern or for the shape or configuration, or for the ornament, or for any two or more of such purposes, or by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, natural, mechanical, or chemical, separate or combined, shall have the sole right of applying the same to any article of manufacture or to any such substance as aforesaid during the respective terms thereinafter mentioned (*b*).

Duration of the right.

The terms are to be computed from the time of the design being registered.

Class		
I.	Articles of manufacture composed wholly or chiefly of any metal or mixed metals.	Five years.
II.	Articles of manufacture composed wholly or chiefly of wood.	The period of three years.
III.	Articles of manufacture composed wholly or chiefly of glass.	
IV.	Articles of manufacture composed wholly or chiefly of earthenware, bone, papier-mache, and other solid substances.	

(*a*) As to what amounts to publication, see *Cornish* v. *Keene*, Webst. Pat. Ca. 501, 508. See Anon. 1 Chitt. 24; *Carpenter* v. *Smith*, 9 M. & W. 300; S.C. Webst. Pat. Ca. 530, 536; *Jones* v. *Berger*, *ibid.* 550; *The Household Company* v. *Neilson*, *ibid.* 718, n.; *Stead* v. *Williams*, 7 Man. & Gran. 818. See *Prince Albert* v. *Strange*, 1 H. & Tw. 1; *Dalglish* v. *Jarvie*, 14 Jur. 945; S.C. 2 Mac. & G. 231.

(*b*) App. xxxvi.

Class		
IV.	Articles of ivory not comprised above (*a*).	
V.	Paper-hangings.	
VI.	Carpets.	
„	Oil-cloths (*b*).	
VIII.	Shawls to which the design is not applied solely by printing, or by any other process by which colours are or may be produced upon tissue or textile fabrics (*c*).	
XI.	Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which the colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches.	The period of three years.
VII.	Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics.	The period of nine months.
IX.	Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced.	
X.	Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the woven fabrics enumerated above (*d*).	The period of three years.
XII.	Woven fabrics not comprised above (*e*).	The period of twelve calendar months.
XIII.	Lace, and any article of manufacture or substance not comprised above.	

The Board of Trade empowered to extend time.

By the 13 & 14 Vict. c. 104, s. 9 (*f*), the Board of Trade is empowered from time to time to order that the copyright of any class of designs or any particular design registered or which may be registered under the Designs Act, 1842, shall be extended for such term, not exceeding the additional term of three years, as the said board may think fit; and the said board has power to revoke or alter any order as may from time to time appear necessary. When-

(*a*) By the 13 & 14 Vict. c. 104, s. 8. (*b*) By the 6 & 7 Vict. c. 65, s. 5.
(*c*) *Norton* v. *Nicholls*, 5 Jur. (N.S.) 120; 7 W. R. 420.
(*d*) *Vide Lowndes* v. *Browne*, 12 Ir. Law Rep. 293; time of protection extended by 7 & 8 Vict. c. 12, s. 3.
(*e*) *Harrison* v. *Taylor*, 4 H. & N. 815; 5 Jur. (N.S.) 1219; 29 L. J. (Ex.) 3. Copyright in designs for damasks after the 5th of November, 1850, under the power conferred on the Board of Trade by the 9th section, for the period of two years, in addition to the term of one year given by the Act.
(*f*) App. lxxi.

ever any order is made by the said board under this provision it must be registered in the office for the registration of designs; and during the extended term the protection and benefits conferred by the said Designs Acts are to continue as fully as if the original term had not expired.

Registration of designs for ornamental purposes.

No person is entitled to the benefit of the Act unless the design in respect of which he seeks protection has, previous to publication, been registered in accordance with the Act, and unless at the time of such registration such design has been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which such registration is made, and unless the name of such person shall be registered according to this Act as a proprietor of such design (*a*), and unless after publication of such design every such article or substance to which the design is applied has thereon, at the end or edge thereof (*b*) or other convenient place, the letters "Rd.," together with such number or letter, and in such form as shall correspond with the date of the registration of such design according to the registry in that behalf; and such marks may be put on any such article or substance, either by making the same in or on the material itself, or by attaching thereto a label containing such marks.

When a piece of manufacture with a design impressed upon it is registered without any explanation or addition in writing, and that design consists of several parts not

(*a*) The author of any new and original design is to be considered its proprietor, unless he has executed the work for another person for a good or a valuable consideration; in which case such person is to be considered the proprietor, and is entitled to be registered in place of the author. Every person acquiring for a good or a valuable consideration a new and original design or the right to its application to the above-mentioned articles or substances, either exclusively of any one else or otherwise, and every person upon whom the property in a design or the right to its application may devolve, shall be considered the proprietor of the design in the respect in and to the extent to which such property may have been acquired, but not otherwise (s. 5). App. xxxix.

(*b*) *Heywood* v. *Potter*, 1 E. & B. 439; 22 L. J. (N.S.) Q.B. 133. And see 21 & 22 Vict. c. 70, s. 4.

necessarily united in configuration, but capable of being severed into independent integral parts, then the design registered is the entire thing, exactly as it is described in the pattern furnished to the registrar; and such registration is therefore not open to the objection of uncertainty, but is valid according to the 21 & 22 Vict. c. 70, s. 5 (*a*).

It is not sufficient registration, however, under the 17th section, of an article comprised in class 8 of section 3, to leave with the registrar an article manufactured according to the combinations relied upon, with an intimation that it is to be applied to class 8, though it might be sufficient as regards articles comprised in class 5.

Thus, in a case where the plaintiff had registered a shawl, the component parts of the composition of which were all old, but the combination itself new, by leaving with the registrar one of his shawls, Lord Campbell said, "Take the example of paper hangings, class 5. A section of the paper having the design impressed upon it would clearly disclose the claim of the inventor, and would fully put the registrar in possession of all the information he ought to have to enable him to perform the duties imposed upon him. But the plaintiff, by leaving one of his shawls with the registrar, gives no information of the nature of his claim, and cannot, we think, be said to have registered his 'design'" (*b*).

Copies of a registered design published in a book for sale need no registration mark, nor is such publication a licence to the purchaser of the book to apply the designs to articles for sale (*c*).

A design may be registered in respect of one or more of the classes, according as it is intended to be employed in one or more species of manufacture, but a separate fee must be paid on account of each separate class, and all such registrations must be made at the same time.

(*a*) *Holdsworth* v. *McCrae*, 16 W. R. 226; L. R. 2 H. L. 380; 36 L. J. (Q.B.) 297; App. lxxxv.

(*b*) *Norton* v. *Nicholls*, 28 L. J. (Q.B.) 225, 227; 5 Jur. (N.S.) 1203; 7 W. R. 420. But see 21 & 22 Vict. c. 70, s. 5.

(*c*) *Riego de la Branchardière* v. *Elvery*, 18 L. J. (Ex.) 381; 4 Ex. 380.

The periods and prices of the classes vary, and it is the ultimate result that is looked to in selecting among them; thus in *Lowndes* v. *Browne* (*a*), a pattern first *printed* on the ground and then *worked* with a needle, was held to be well registered under class 10.

In *West's Case* a Mr. Barfourd had registered a design under class 2, for the application of an ornamental border of the Brazilian pine leaf to straw hats, which the defendant having, as the plaintiff alleged, pirated, he laid an information before justices against him, whereupon the defendant was convicted. It was subsequently contended that the conviction was bad, inasmuch as there had been no legal registration of the design, it being registered under a wrong class, namely, under class 2, and not 13, and there being a much shorter term of protection for the latter than for the former. The question, however, was not decided.

It might sometimes be worth while to register an ornamental design in more than one class to prevent vulgarization, such as the printing on calico a design registered for silks (*b*); but as publication in one class would be so in all, this must be done before any form of the pattern be in circulation.

By the 14th section of the 5 & 6 Vict. c. 100, for the purpose of registering designs under that Act, the Board of Trade was empowered to appoint a registrar, and if necessary a deputy-registrar, clerks, and other officers and servants, and, subject to the provision of the Act, was authorized to make rules for regulating the execution of the duties of the office (*c*).

Accordingly, the Board of Trade has issued directions for registering and for facilitating searches.

Mode of registration.

Persons proposing to register a design for ornamenting an article of manufacture must deliver at the Designs Office: two exactly similar copies, drawings (or tracings),

(*a*) 12 Ir. L. R. 293.

(*b*) A registered pattern for a paper-hanging it will be competent for a carpet manufacturer to apply to carpets, unless the paper-stainer register for class 6, as well as class 5.

(*c*) App. xlv.

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photographs, or prints thereof, with the proper fees; the name and address of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode or place of carrying on business, distinctly written or printed; and the number of the class in respect of which such registration is intended to be made, except it be for sculpture.

By the 21 & 22 Vict. c. 70 (*a*) it was declared that the registration of any *pattern* or *portion* of any article of manufacture to which a design is applied, instead or in lieu of a copy, drawing, print, specification, or description in writing, should be as valid and effectual to all intents and purposes as if such copy, drawing, print, specification, or description in writing had been furnished to the registrar under "The Copyright of Designs Acts."

The appointment and duties of the registrar.

The appointment and duties of the registrar are set forth in the 5 & 6 Vict. c. 100, ss. 14, 15, and the 6 & 7 Vict. c. 65, ss. 7–9 (*b*). Under this last section a discretionary power is conferred upon him of refusing to register under the latter Act if it should appear to him that the design brought to him for that purpose would more properly be registered under the former; and further, he is at liberty to exercise his discretion in refusing to register any design which is not intended to be applied to any article of manufacture, but only to some label, wrapper, or other covering in which such article might be exposed for sale, or any design which is contrary to public morality or order; subject, however, to an appeal to the Privy Council.

After the design has been registered, one of the two copies, drawings (or tracings), or prints, will be filed at the office, and the other returned to the proprietor with a certificate annexed, on which will appear the *mark to be placed* on each article of manufacture to which the design shall have been applied (*c*).

Certificate of registration.

This certificate, in the absence of evidence to the contrary, shall be sufficient proof of the design, and of the

(*a*) App. lxxxiv.

(*b*) See App. xlv. xlvi. and lii. liii.

(*c*) 5 & 6 Vict. c. 100, ss. 15, 16.

name of the proprietor therein mentioned, having been duly registered; of the commencement of the period of registry; of the person named therein as proprietor being the proprietor; of the originality of the design, and of the provisions of the Copyright Designs Act, and of any rule under which the certificate appears to be made having been complied with. And such certificate may be received in evidence without proof of the handwriting of the signature thereof, or of the seal of the office affixed thereto, or of the person signing the same being the registrar or deputy registrar (*a*).

The registration mark.

If the design is for an article registered under class 10, no mark is required, but there must be printed on such article, at each end of the original piece thereof, the name and address of the proprietor, and the word "Registered," together with the years for which the design is registered (*b*).

If the design is for sculpture, no mark is required to be placed thereon after registration, but merely the word "Registered" and the date of registration.

If the design is for provisional registration, no mark is required to be placed thereon after registration, but merely the words "Provisionally registered" and the date.

Penalty for wrongful usage of the registration mark.

Any person putting the registration mark on a design not registered, or after the copyright thereof has expired, or when the design has not been applied within the United Kingdom, is liable to forfeit for every offence £5. (*c*)

The registration books open to inspection.

All designs of which the copyright has expired may be inspected at the Designs Office (*d*) on the payment of the proper fee; but *no* design, the copyright of which is existing, is, in general, open to inspection. Any person, however, may, by application at the office, and on production of the registration mark of any particular design, be

(*a*) 5 & 6 Vict. c. 100, s. 16; App. xlvi. See 13 & 14 Vict. c. 104, ss. 12–14, App. lxxii. And an action lies for false representation as to the registry of a design: *Barley* v. *Walford*, 9 Q. B. 197.

(*b*) *Harrison* v. *Taylor*, 3 H. & N. 301, reversed (Ex. Ch.) 4 H. & N. 815; 29 L. J. (Ex.) 3; 5 Jur. (N.S.) 1219.

(*c*) 5 & 6 Vict. c. 100, s. 11; *Barley* v. *Walford*, 9 Q. B. 197. See *Rodgers* v. *Nowell*, 5 C. B. 109. £10, by 21 & 22 Vict. c. 70, s. 7.

(*d*) No. 1, Whitehall, S.W.

furnished with a certificate of search, stating whether the copyright be in existence, and in respect of what particular article of manufacture it exists; also the term of such copyright, the date of registration, and the name and address of the registered proprietor thereof (*a*).

Any person may also, on the production of a piece of the manufactured article with the pattern thereon, together with the registration mark, be informed whether such pattern, supposed to be registered, is really so or not.

As this mark is not applied to a provisional registered design, or to articles registered under class 10, certificates of search for such designs will be given on production of the design, or a copy or drawing thereof, or other necessary information, with the date of registration.

The transfer, and authority to register same.

In case of transfer of a registered design, whether provisionally or completely, a copy of the certified copy thereof must be transmitted to the registrar, together with the form of application properly filled up and signed. The transfer will then be registered, and the certified copy returned.

The following may be the form of transfer and authority to register:—

"I, *A. B.*, author [*or proprietor*] of designs No. , having transferred my right thereto [*or, if such transfer be partial*], so far as regards the ornamenting of [*describe the articles of manufacture or substances, or the locality, with respect to which the right is transferred*], to *B. C.*, of , do hereby authorize you to insert his name on the register of designs accordingly" (*b*).

The following may be the form of request to the registrar:—

"I, *B. C.*, the person mentioned in the above transfer, do request you to register my name and property in the said design as entitled [*if to the entire use*]

(*a*) 5 & 6 Vict. c. 100, s. 17. *Et vide* 6 & 7 Vict. c. 65, s. 10; App. xlvii. liv.
(*b*) The form of transfer may be varied at pleasure; no particular form is imperative.

to the entire use of such design [*or, if to the partial use*], to the partial use of such design, as far as regards the application thereof [*describe the articles of manufacture, or the locality, in relation to which the right is transferred*]."

No time should be allowed to elapse between a transfer and its registration; for, in case of the bankruptcy of the registered proprietor of a design, after the execution of a transfer and before registration of such transfer, the copyright of the design would probably be considered in the order and disposition of the bankrupt, and would therefore pass to his assignees (*a*).

An original combination a proper subject of registration.

A new combination of old patterns may be a new and original design, and as such would be a proper subject of registration.

This was determined in the Exchequer Chamber, on appeal from the Court of Exchequer, in the case of *Harrison* v. *Taylor* (*b*). The plaintiff registered, under the 5 & 6 Vict. c. 100, a design for ornamenting woven fabrics. The design was applied to a fabric woven in cells, called "The Honeycomb Pattern," and it consisted of a combination of the large and small honeycomb, so as to form a large honeycomb stripe on a small honeycomb ground. Neither the large honeycomb nor the small honeycomb was new, but they had never been used in combination before the plaintiff registered his design. Other fabrics had been woven with a similar combination of a large and small pattern. In an action against the defendant for infringing the plaintiff's copyright it was held that the plaintiff's design was a "new and original design" within the meaning of the 5 & 6 Vict. c. 100.

But where four old designs were respectively applied to three ribbons and to a button, and the three ribbons were then united by the button so as to form a badge, it was

(*a*) See *Longman* v. *Tripp*, 2 Bos. & Pul. New R. 67; *Hesse* v. *Stevenson*, 3 Bos. & Pul. 565; *Re Dilworth*, 1 Dea. & Chitt. 411.

(*b*) 3 H. & N. 301, reversed (Ex. Ch.) 4 H. & N. 815; 29 L. J. (Exch.) 3; 5 Jur. (N.S.) 1219.

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held that such union did not amount to a new design within the above statute (*a*).

In the *Queen* v. *Firman* it was decided that the result of simultaneously applying two old and known designs to the ornamenting of a button might be a new and original combination to be protected as a design; but the result of the combination to be protected as a "design" must be one design and not a multiplicity of designs.

Remedies for piracy of the right in designs for ornamental purposes.

The 7th section of the 5 & 6 Vict. c. 100 (*b*) enacts, for preventing the piracy of registered designs, "that during the period of any such right to the entire or partial use of any such design, no person shall either do or cause to be done any of the following acts, with regard to any articles of manufacture or substance, in respect of which the copyright of such design shall be in force, without the licence or consent in writing of the registered proprietor thereof" (that is to say):—

No person is to apply any registered design, or any fraudulent imitation thereof, for the purpose of sale, to the ornamenting of any article. No person is to publish, sell, or expose for sale, any article to which a pirated design, or any fraudulent imitation of a registered design, shall have been applied, after the person has received verbally or in writing, or otherwise, from any source other than the proprietor, notice that his consent has not been given to such application, nor after the person has been served with or had left at his premises a written notice signed by the proprietor or his agent.

The words of the old Act rendered it necessary that the proprietor should prove that the offending party exposed

(*a*) *Mulloney* v. *Stevens*, 10 L. T. (N.S.) 190. A claim to a design for the shape or configuration of the body of a four-wheel dog-cart was rejected, because the design consisted only of an arch in the fore part of the carriage, made a little higher than that in ordinary use, to permit the convenience of larger fore wheels; *Windover* v. *Smith*, 11 W. R. 323; 32 Beav. 200; 32 L. J. (Ch.) 561; 9 Jur. (N.S.) 397; 7 L. T. (N.S.) 776.

(*b*) App. xl.

the pirated goods for sale, knowing that the proprietor had not given his consent; and the proof by the proprietor of this knowledge on the part of the offending party was more than the proprietor could, in general, adduce. The objectionable words are omitted in the above clause, and in their stead are substituted the words relative to notice.

A notice under this section is not sufficient unless it expressly state that the proprietor of the design has not given his consent to the application of the design; and whether he intends to sue either for the application of the design to an article of manufacture or for the sale of such article with the design applied. It should also specify the real claim intended to be made.

In order to establish a case of piracy under these provisions, the plaintiff must prove that the alleged piracy is an application or a fraudulent imitation of his registered design.

Ignorance of the registration of the design does not excuse the piracy (*a*).

The above section is extended by 6 & 7 Vict. c. 65, s. 2 (*b*), to designs for articles of manufacture having reference *to some purposes of utility*, so far as the design shall be for the *shape* and *configuration* of such article.

As to what is a subject proper for registration under the Designs Act.

Where the design was of a new ventilator, consisting of an oblong pane of glass fixed in a frame, which was inserted into an ordinary window-frame, and was hinged at the top, so as to open and admit the air, by means of a screw acted upon by cords passing over its head, and having a half-pane of glass fixed in the lower portion of the frame in which the ventilating frame ended, so as to prevent a downward draught, the claim of the inventor was said to be for the general configuration and combination of the parts, some of which were not original. This was held not to be a design for the shape and configuration of an article of manufacture within the 6 & 7 Vict. c. 65, and therefore not the subject of registration; and a conviction for the infringement of such a registered design was

(*a*) *McRae* v. *Holdsworth*, 2 De G. & Sm. 497; 12 Jur. 820. (*b*) App. 1.

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quashed for want of jurisdiction (*a*). Erle, J., in giving his opinion that the invention was not within the meaning of the statute, said: "It is a combination of means for the purpose of easily admitting air and avoiding a downward draught, and there is a skilful combination of means to produce this result. But the particular shape or configuration is accidental and wholly unimportant, and unconnected with the purpose to be attained. An oblique pane is of no particular use; a square or circular pane, and a straight or curved screen, would produce the same result. If the prosecutor relies on the shape or configuration as producing a useful result, he fails in making out that the defendant has infringed his right, because there is no doubt that the shape of the defendant's invention varies materially from that registered by the prosecutor: in the one the pane being nearly square and in the other oblong, and the screw being straight in the one, and crooked in the other. The prosecutor intended to protect a combination of means producing a useful result, and that is within the law relating to patents, and not within statute 6 & 7 Vict. c. 65." (*b*)

Again, the design of a "protector label," which consisted in making in the label an eyelet-hole, and lining it with a ring of metallic substance, through which a string attaching the label to packages passed, was held not to be within the protection of this statute (*c*). But the design of a newly-invented brick, the utility of which consisted in its being so shaped that when several bricks were laid together in building a series of apertures were left in the wall through which the air might circulate, and a saving in the

(*a*) *Reg.* v. *Bessell*, 15 Jur. 773; 20 L. J. M. C. 177; 16 Q. B. 810.

(*b*) The contrary was held in *Heywood* v. *Potter*, 1 E. & B. 439; 17 Jur. 528; 22 L. J. (Q.B.) 133; but subsequently the 21 & 22 Vict. c. 70, s. 4, enacted that nothing in the 4th section of the 5 & 6 Vict. c. 100 should extend, or be construed to extend, to deprive the proprietor of any new and original design applied to ornamenting any article of manufacture contained in the said 10th class of the benefits of the Copyright of Designs Act or of this Act; provided there shall have been printed on such articles at each end of the original piece thereof the name and address of such proprietor, and the word "Registered," together with the year for which such design was registered.

(*c*) *Margetson* v. *Wright*, 2 De G. & Sm. 420.

number of bricks effected, was held to form the proper subject of registration under this Act (*a*).

The subject of registration must not be an article of manufacture, but a design; that is, a combination of lines producing pattern, shape, or configuration, by whatever means such design may be applicable to the manufacture. The "design" is always considered different from the "article of manufacture, or the substance to which it is to be applied."

This is particularly to be observed in section 3 of the Act (*b*) in course of examination, where the articles of manufacture are enumerated to which the design is to be applied. Among these are "shawls." The "shawl" is not the "design," but the article of manufacture to which the design is to be applied. An ornament for a lady's gown may well be a "design" to be protected, although the ornament be the result of a new combination of lace and ribbon; but the whole gown itself would hardly be such a "design."

Mr. Carpmael, of the Repertory of Patent Inventions, Lincoln's Inn, has thus endeavoured to make the distinction clear: "In registering any new design for a table lamp, all which could be secured under such registration would be some peculiarity of form of an ornamental character in the stem or oil vessel, or in the glass shade, or some ornament applied thereto, if under the first mentioned statute, or some novelty in the shape or configuration, without reference to ornament, if under the second statute;—no new mode of supplying oil to the wick, nor any new mode of raising the wick, nor any new apparatus for supplying air to support combustion, could become the subject-matter of a registration. The simple configuration, or contour, or ornament of the lamp, or some particular part of the lamp, would be the only subject for registration; and any person might, without infringing the registration, make the same description of lamp, all parts acting mechanically in the same manner to produce the same end, so long as the outer configurations were not

(*a*) *Rogers* v. *Driver*, 20 L. J. (Q.B.) 31; 16 Q. B. 102. See *Millingen* v. *Picken*, 1 Com. Ben. Rep. 799; 14 L. J. (N.S.) (C.P.) 254; 9 Jur. 714.

(*b*) App. xxxvii.

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imitated. A patent, on the contrary, can scarcely ever be said to depend on shape; supposing a patent be taken for any improved construction of lamp—such, for instance, as an improved means of raising the oil from the stem or pillar of a table lamp,—the patent would be equally infringed whether the external figure or design be retained or not, so long as the means of raising the oil were preserved."

Penalty for infringement.

In case of infringement the offender is liable to forfeit a sum not less than 5*l.*, nor exceeding 30*l.*, to the proprietor of the design, who may recover the same either by action on the case, or by summary proceeding before justices (*a*).

Proceedings may be taken in the county court.

By the 8th section of the 21 & 22 Vict. c. 70 (*b*), proceedings for the recovery of damages for infringement may be brought in the county court, provided in any such proceeding the plaintiff shall deliver with his plaint a statement of particulars as to the date and title or other description of the registration whereof the copyright is alleged to be pirated, and as to the alleged piracy; and the defendant, if he intends to rely as a defence on any objection to such copyright, or to the title of the proprietor therein, shall give notice in the manner provided in the 76th section of the 9 & 10 Vict. c. 95, of his intention to rely on such special defence, and shall state in such notice the date of publication and other particulars of any designs whereof prior publication is alleged, or of any objection to such copyright, or to the title of the proprietor to such copyright; and it shall be lawful for the judge of the county court, at the instance of the defendant or plaintiff respectively, to require any statement or notice so delivered by the plaintiff or by the defendant respectively to be amended in such manner as the said judge may think fit.

And further, the proceedings in any plaint, and those in appeal and in writs of prohibition, provided by the 9 & 10 Vict. c. 95, and the 12 & 13 Vict. c. 100 (*c*), shall

(*a*) 5 & 6 Vict. c. 100, s. 8. See *Bessell* v. *Wilson*, 1 E. & B. 489.
(*b*) App. lxxxvi.
(*c*) So printed by the Queen's printers, but it is clearly a mistake. It is evidently intended for 12 & 13 Vict. c. 101, which amends the County Court Act, 9 & 10 Vict. c. 95.