be applicable to any proceedings for piracy of copyright of designs under the Copyright of Designs Acts.

The articles alleged to be piracies should be produced to the court, in order that they may be compared with the original design and the articles to which it has been applied by the proprietor (*a*). But where the alleged piracies were proved to have been stolen out of the possession of the plaintiff, the uncontradicted testimony of a witness as to their nature has been held sufficient (*b*).

The court, or a jury, will then be able to pronounce, on the comparison, whether the registered design has been applied or not. But if what is complained of is a fraudulent imitation, and not an application of the exact design, it will be convenient, if possible, to shew by direct evidence that the defendant's design has been taken from the plaintiff's (*c*).

The form of a declaration, in a case where a pattern for printed calico had been pirated, contrary to the provisions of 34 Geo. 3, c. 23, may be seen in *Macmurdo* v. *Smith* (*d*). With some variations this will serve as a precedent for a declaration in an action on the case under 5 & 6 Vict. c. 100, s. 3, or statute 6 & 7 Vict. c. 65, s. 2.

The following pleas may be found convenient: That the design was not an original design (*e*): That the plaintiff's design was a fraudulent imitation of one previously registered: That the plaintiff was not the proprietor of the design (*f*): That every article to which the design was applied had not the registration mark (*g*).

Copyright in designs of utility.

With regard to any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that, whether it be for

(*a*) *Sheriff* v. *Coates*, 1 Russ. & My. 159.
(*b*) *Fradella* v. *Weller*, 2 Russ. & My. 247.
(*c*) *Lowndes* v. *Browne*, 12 Ir. L. Rep. 293; cited Norman on 'Designs,' p. 51.
(*d*) 7 T. R. 518.
(*e*) *Rogers* v. *Driver*, 20 L. J. (N.S.) (Q.B.) 31; 16 Q. B. 102.
(*f*) *Millingen* v. *Picken*, 1 C. B. 799, 805; 9 Jur. 714; 14 L. J. (N.S.) (C.P.) 254.
(*g*) *De la Branchardière* v. *Elvery*, 4 Ex. 380; 18 L. J. (Ex.) 381; cited Norman on 'Designs,' p. 69.

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the whole of such shape or configuration or only for a part thereof, it has been enacted by the 6 & 7 Vict. c. 65, that the proprietor of such design not previously published in the United Kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to this Act. But it is provided that this enactment shall not extend to such designs as are within the 5 & 6 Vict. c. 100, 38 Geo. 3, c. 71, or the 54 Geo. 3, c. 56 (*a*).

What necessary in order to obtain protection.

It appears to be the received opinion that under this clause may be registered designs, the subjects of which could, in many cases, have obtained a patent (*b*).

To obtain the protection of the Act it is necessary:—

1st. That the design should not have been published, either within the United Kingdom or elsewhere, previous to registration (*c*).

2nd. That after registration every article of manufacture made according to such design, or to which such design is applied, should have upon it the word "Registered," with the date of registration.

Persons proposing to register a design for purposes of utility must furnish the registrar with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible, according to the judgment of the registrar, together with the title of the said design, and the name of every person claiming to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address. But by the 5th section of the Copyright of Designs Act, 1858 (*d*), it is declared that the registration of any *pattern* or *portion* of an article of manufacture to which a design is applied, instead or in lieu of a copy,

(*a*) App. xii. and xxxvi. (*b*) 16 Q. B. 108; see 1 C. B. 812.
(*c*) 6 & 7 Vict. c 65, s. 3. (*d*) App. lxxxv.

drawing, print, specification, or description in writing, shall be 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 above Act.

As this Act affords protection only to the shape or configuration of articles of utility, and not to any mechanical action, principle, contrivance, application, or adaptation (except in so far as these may be dependent upon and inseparable from the shape or configuration), or to the material of which the article may be composed; no design will be registered the description of or statement respecting which shall contain any expressions suggestive of the registration being for any such mechanical action, principle, contrivance, application, or adaptation, or for the material of which the article may be composed (*a*).

A discretionary power is vested in the registrar, either to register any design under the 5 & 6 Vict. c. 100 or the 6 & 7 Vict. c. 65; and a further power is given him to reject such designs as are simply labels, wrappers, or other coverings in which any article of manufacture may be exposed for sale, or such designs as may appear to him to be contrary to public morality or order. From the exercise of this latter power there is an appeal to the Privy Council.

All the clauses and provisions contained in the 5 & 6 Vict. c. 100, with reference to the transfer of designs, to their piracy, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees for registration, and to the penalty for extortion, are extended and applied to this Act (*b*).

In addition to the penalties imposed by virtue of the incorporation of the penal clauses of the 5 & 6 Vict. c. 100, is imposed a penalty of not more than £5 nor less than £1,

(*a*) See *Millingen* v. *Picken*, 1 C. B. 799; 14 L. J. (N.S.) (C.P.) 254; 9 Jur. 714.

(*b*) Sect. 6; App. li.

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upon all persons marking, selling, or advertising for sale any article as "registered," unless the design for such article has been registered under one of the above-mentioned Acts (*a*).

Provisional registration of designs.

Provisional registration is permitted by the 13 & 14 Vict. c. 104, the 1st section of which provides that any design registered in accordance with that Act shall be deemed "Provisionally registered," and the registration shall continue in force for the term of one year (which may be further extended for six months by the Board of Trade) from the time of such registration, during which period the proprietor shall have the sole right and property in such design, and be protected in the enjoyment of this right by the penalties and provisions enumerated in the Designs Act, 1842. During the term for which protection is afforded by this provisional registration, the proprietor of any design may sell or transfer the right to apply the same to an article of manufacture, but should he sell, expose, or offer for sale, any article to which the design has been applied until after complete registration, the provisional registration shall be deemed null and void (*b*).

Neither the exhibition nor the exposure of any design provisionally registered, or of any article to which such design may have been applied, in any place, whether public or private, in which articles are not sold, or exposed, or exhibited for sale, and to which the public are not admitted gratuitously, or in any place which shall have been previously certified by the Board of Trade to be a place of public exhibition within the meaning of the 13 & 14 Vict. c. 104, shall prevent the proprietor thereof from registering such design: provided that every article to which such design shall be applied and which shall be exhibited or exposed by or with the consent of the proprietor of such design, shall have thereon or attached thereto the words "Provisionally registered," with the date of the registration (*c*).

(*a*) Sect. 4; App. li.

(*b*) 13 & 14 Vict. c. 104, s. 4; App. lxix.

(*c*) *Ibid.* s. 3.

By the 14 Vict. c. 8, provision was made for the protection of those exhibiting in the Exhibition of 1851, the 8th section of that Act declaring that, notwithstanding anything contained in the Designs Act, 1850, and those of 1842 and 1843, the protection intended to be by them extended to the proprietors of new and original designs should be extended to the proprietors of all new and original designs which should be provisionally registered and exhibited in such place of public exhibition as aforesaid, notwithstanding that such designs might have been previously published or applied elsewhere than in the United Kingdom of Great Britain and Ireland: provided such design or any article to which the same had been applied had not been publicly sold or exposed for sale previously to such exhibition thereof (*a*).

The 24 & 25 Vict. c. 73 declares that the various Acts on the subject of copyright of designs shall be construed as if the words "provided the same be done within the United Kingdom of Great Britain and Ireland" had not been contained in the said Acts; and that they shall apply to every design as therein referred to, whether the application thereof be within the United Kingdom or elsewhere, and whether the inventor or proprietor be or be not a subject of Her Majesty. And that the said Acts shall not be construed to apply to the subjects of Her Majesty only (*b*).

(*a*) Since extended by 15 Vict. c. 6.
(*b*) 24 & 25 Vict. c. 73, s. 2; App. lxxxviii.

CHAPTER XVI.

NEWSPAPERS.

Newspapers.

THE Acts of Parliament on the subject of the press are 36 Geo. 3, c. 8; 39 Geo. 3, c. 79; 51 Geo. 3, c. 65; 55 Geo. 3, c. 65; 55 Geo. 3. c. 101; 60 Geo. 3 and 1 Geo. 4, c. 9; 11 Geo. 4 and 1 Wm. 4, c. 73; 6 & 7 Wm. 4, c. 76; 2 & 3 Vict. c. 12; 5 & 6 Vict. c. 82; 9 & 10 Vict. c. 33; 16 & 17 Vict. c. 59. They were, with the exceptions hereafter enumerated, repealed by "The Newspapers, Printers, and Reading Rooms Repeal Act, 1869" (the 32 & 33 Vict. c. 24) (*a*).

Name and abode of printer to appear.

Every person printing any paper, except bills, bank notes, bonds, deeds, agreements, receipts, &c., or any paper printed by the authority of any public board or public office (*b*), for profit, must keep one copy at least of such paper, and write or print thereon the name (*c*) and abode of his employer, and, if required, produce and shew the same to any justice of the peace within six months next after the printing, on penalty, in case of neglect or refusal, of the sum of £20 (*d*).

If any person file a bill for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting

(*a*) App. xciv. (*b*) 51 Geo. 3, c. 65, s. 3.
(*c*) See *Bensley* v. *Bignold*, 5 B. & Ald. 335.
(*d*) 39 Geo. 3, c. 79, s. 29; 32 & 33 Vict. c. 24.

such person, it is provided by the 19th section of the 6 & 7 Wm. 4, c. 76 (*a*), that it shall not be lawful for the defendant to plead or demur to such bill. He may be compelled to make the discovery required, which discovery, however, cannot be used in any proceeding against the defendant except in that for which the discovery is made.

By the 2 & 3 Vict. c. 12, s. 2, it is provided that every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book consisting of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall, for every copy of such paper so printed by him or her, forfeit a sum of not more than £5.

In the case of books or papers printed at the University Press of Oxford or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, is to print the following words: "Printed at the University Press, Oxford," or, "The Pitt Press, Cambridge," as the case may be (*b*).

These enactments do not extend to impressions of engravings, or the printing of the name and address or business or profession of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise (*c*).

Prosecutions must be commenced within three months after the penalty is incurred; and where the penalty incurred does not exceed £20 it may be recovered before any justice of the peace for the county or place where the same may have been incurred, or where the offending

Prosecutions to be commenced within three months.

(*a*) App. xcviii. (*b*) 2 & 3 Vict. c. 12, s. 3.
(*c*) 39 Geo. 3, c. 79, s. 31; App. xcvii.

party may happen to be (*a*); one moiety of such penalty to the informer and the other to Her Majesty.

All proceedings to be conducted in the name of the attorney or solicitor-general.

By the 4th section of the 2 & 3 Vict. c. 12, and 9 & 10 Vict. c. 33, s. 2 (*b*), no action for penalties may be commenced except in the name of the attorney or solicitor-general in England, or the Queen's advocate in Scotland; and every action, bill, plaint, or information which may be commenced or prosecuted in the name or names of any other person or persons, and any proceeding thereon, are thereby declared null and void to all intents and purposes (*c*).

Copyright in newspaper, though registration unnecessary.

In *Cox* v. *The Land and Water Company* (*d*) it was contended that newspapers being but ephemeral productions, seldom, if ever, reprinted, could not properly be the subject of copyright. But the Vice-Chancellor decided otherwise, remarking that the idea of there being no copyright at all in newspaper articles was repugnant to common sense and common honesty.

It is not necessary for newspapers to register under the 5 & 6 Vict. c. 45. The object of that Act in requiring registration was to let the public know when the copyright in a work would expire. Registration was clearly unnecessary for this purpose in the case of a newspaper, which, therefore, was not within the policy of the Act; neither was it within the words. By the 2nd section "book" was to include "every volume, part, or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published." Now a newspaper is not within any one of these words; it is a well-known species of publication, and would have been inserted by name if intended to be included (*e*).

(*a*) 39 Geo. 3, c. 79, ss. 35, 36.
(*b*) App. xcviii. xcix. (*c*) 32 & 33 Vict. c. 24.
(*d*) *Cox* v. *Land & Water Co.* 18 W. R. 206. (*e*) *Ibid.*

CHAPTER XVII.

INTERNATIONAL COPYRIGHT.

Non erit alia lex Romæ, alia Athenis; alia nunc alia posthac, sed et apud omnes gentes et omnia tempora una eademque lex obtinebit.—CICERO.

International copyright the offspring of modern civilization.

INTERNATIONAL law is entirely the offspring of modern civilization, and is the latest important discovery in political science.

The origin and progress of international law is itself a remarkable step in the march of civilization. Nations now begin to acknowledge their subjection to laws in conformity with natural justice and reason, as in the very origin of society individuals acknowledged themselves so bound. And the development of international law will proceed amongst the civilized nations of the earth, until citizens can enjoy, in foreign countries, all the rights which they enjoy in their own. Commerce, the influence of which unites the human family by one of its strongest ties, the desire of supplying mutual wants, demands an international code for the civilized nations of the earth. Art demands that the property in its inventions should be secured by an international law of patents. Literature, that the property in its works should be secured by international copyright.

International copyright regulated by 7 Vict. c. 12, and 15 Vict. c. 12.

International copyright is regulated by the 7 Vict. c. 12, explained by the 15 Vict. c. 12 (*a*).

The former repealed the 1 & 2 Vict. c. 59, which had been found "insufficient to enable Her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which were conferred and pro-

(*a*) App. liv. lxxv.

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vided by the said Copyright Amendment Act (5 & 6 Vict. c. 45), with respect to authors of books first published in the British dominions."

Formerly, if a book were written by a foreigner and published abroad, a person who purchased the right to publish here could not enjoy the right exclusively (*a*).

To remedy this, and to afford protection in this country to the authors of books first published in foreign countries, in cases where protection should be afforded in such foreign countries to the authors of books first published here, the International Copyright Act, 1837, was passed.

The Act of 1837 has reference solely to books.

This Act, however, did not empower Her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; it merely had reference to books.

Enlargement of the power conferred on Her Majesty of concluding international copyright conventions.

In order to confer such power an Act of Parliament was passed in 1844 to amend the law. By this Act (*b*) Her Majesty was empowered by any order in council to grant the privilege of copyright for such period as should 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 should, after a future time to be specified in such order, be first published in any foreign country, to be named in such order. And Her Majesty was also empowered by any order in council to direct that the authors of dramatic pieces and musical compositions, which should, after a future time to be specified in such order, be first publicly represented or performed in any foreign country, to be named in such order, should have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as should be defined in such order, not exceeding the period allowed

(*a*) *Guichard* v. *Mori*, 9 L. J. (Ch.) 227.
(*b*) 7 Vict. c. 12; App. liv.

in this country. Provision, moreover, was made for the entry of proper particulars of the subjects for which copyrights should be granted in the register book of the Stationers' Company in London, within a time to be prescribed in each such order in council. And all copies of books wherein there should be any subsisting copyright by virtue of the Act, or of any order in council made in pursuance thereof, printed or reprinted in any foreign country, except that in which such books were first published, were absolutely prohibited to be imported into any part of the British dominions, except with the consent of the registered proprietor of the copyright thereof, or his agent, authorized in writing. But it was provided that no such order in council should have any effect unless it should be therein stated as the ground for issuing the same, that due protection had been secured by the foreign power named in such order for the benefit of parties interested in works first published in the dominions of Her Majesty, similar to those comprised in such order. And that every such order should be published in the *London Gazette* as soon as might be after the making thereof, and from the time of such publication should have the same effect as if every part thereof were included in the Act. And that no copyright could be acquired in any book, dramatic piece, musical composition, print, article of sculpture, or other work of art, first published abroad, otherwise than under the said Act.

Convention between England and France.

This Act was followed by a convention between this country and France, which was concluded at Paris the 3rd of November, 1851, and subsequently ratified by Act of Parliament (*a*).

The convention provides that the authors of works of literature and art published in England shall have the same protection in France as French authors have there, and *vice versâ*. Works of literature and art are understood to comprehend books, dramatic works, musical compositions, drawings, paintings, sculptures, engravings,

(*a*) 15 & 16 Vict. c. 12; App. lxxv.

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lithographs, and any other production whatsoever of literature or the fine arts.

The protection granted to original works is extended to translations; it being, however, clearly understood that protection is afforded simply to a translator in respect of his own translation, and not to confer the exclusive right of translating upon the first translator of any work.

If the author of any work published in either country wishes to reserve to himself the exclusive right of translating his work in the other country, he may do so for five years from the first publication of the translation authorized by him, on complying with the following conditions:—

1st. The original work must be registered and deposited in the one country within three months after the publication in the other.

2nd. The author must notify on the title-page of his work his intention to reserve the right of translation.

3rd. At least a part of the authorized translation must appear within a year after the registration and deposit of the original, and the whole must be published within three years after the date of such deposit.

4th. The authorized translation must appear in one of the two countries, and be registered and deposited in the same way and within the same time as an original book.

With reference to works published in parts: each part is to be treated as a separate work, and registered and deposited in the one country within the three months after its first publication in the other, and a declaration by the author to the effect that he reserves the right of translation in the first part will be sufficient. Dramatic works and musical compositions are protected in France to the same extent as in England. The translation of a dramatic work, however, must appear within

three months after the registration and deposit of the original.

This protection is not intended to prohibit fair imitations or adaptations of dramatic works to the stage in England and France respectively, but is only designed to prevent piratical translations. And the question what is an imitation or a piracy is in all cases to be decided by the courts of justice of the respective countries, according to the laws in force in each.

Extracts from newspapers and periodicals may be freely taken from either country, and republished or translated in the other, if the source whence they are taken be acknowledged; unless the authors of the articles shall have notified in a conspicuous manner in the journal or periodical in which such articles have appeared that they interdicted the republication thereof.

Importation of pirated copies is prohibited, and in the event of an infraction of this prohibition the pirated works may be seized and destroyed.

Registration.

In order to obtain protection in either country the work must be registered in the following manner:—

If the work first appear in France it must be registered at Stationers' Hall, London.

If it appear first in England, at the Bureau de la Libraire of the Ministry of the Interior at Paris, within three months after the first publication in England. As to works published in parts, they must be registered within three months after the publication of the last part; but in order to preserve the right of translation each part must be registered within three months after its publication. A copy of the work must also be deposited within the same time as registration is to be made either at the British Museum in London, or in the National Library at Paris, as the case may be.

Fees for registration.

The charge for registration is in France one franc twenty-five centimes, and in England one shilling; and the further

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charge for a certificate of such registration must not exceed the sum of five shillings in England nor six francs twenty-five centimes in France; and the certified copy of the entry in either case is evidence of the exclusive right of publication in both countries, until the contrary is proved.

With regard to articles other than books, maps, prints, and musical compositions, in which protection may be claimed, any other mode of registration which may be applicable by law in one of the two countries to any work or article first published in such country for the purpose of affording protection to copyright in such article, is extended on equal terms to any similar article first published in the other country.

The convention ratified by the 7 & 8 Vict. c. 12 (*a*).

By an Act of Parliament passed in the following May, the French Treaty became law in this country, so far as it did not clash with anything in the Act that made it law. Little difference is discernible between the treaty and the Act, with the exception that the latter explains clearly one or two passages in the former that might otherwise have been disputed. It further empowered Her Majesty to make similar stipulations in any treaty on the subject of copyright with other foreign powers.

Authors of works in France claiming copyright in this country are not exempt from the conditions affecting authors of works in this country (*b*).

By analogy it follows that to obtain the benefit of the International Copyright Act, the proprietor of a foreign print must comply with the provisions of the Engraving Acts and the proprietor's name must be printed on it (*c*).

The 19th clause of the 7 & 8 Vict. c. 12 (*d*), which enacts that no author of any book or dramatic piece, which shall be first published out of Her Majesty's dominions, shall have copyright therein, otherwise than under the provisions of that Act, applies to British subjects first publish-

(*a*) App. liv.
(*b*) *Cassell* v. *Stiff*, 2 K & J. 279.
(*c*) *Avanzo* v. *Mudie*, 10 Ex. 203.
(*d*) App. lxiv.

ing in a country with which no international convention exists (*a*).

In *Cassell* v. *Stiff* (*b*) a motion was made to restrain the infringement of an alleged copyright in a French newspaper, but the Vice-Chancellor doubted whether the case came within the provisions of the order in council.

Translations and imitations of foreign works.

The recent case of *Wood* v. *Chart* (*c*) illustrates the principles by which the court will be guided in questions respecting translations and imitations of foreign works under the above Act.

The provisions of the International Copyright Act, so far as they came in question in this case, were these: the authors of foreign plays (*i.e.*, plays first published abroad) may prevent the representation in the British dominions of any unauthorized translation, for a period not exceeding four years from the first publication or representation of an authorized translation, but nothing in that Act, as we have already seen, was to prevent "fair imitations or adaptations to the English stage" of a foreign play. The facts of the case are as follows:—"Frou-frou," a French comedy, was registered in England; an English version was made, published, and registered. Mr. Wood, the plaintiff, became assignee of all English rights, both of the authors and translators. An unauthorized version was made and publicly acted by the defendants. Thereupon the plaintiff filed his bill for an injunction and an account. The authorized English version of the plaintiff was entitled "Like to Like," the scene transferred to England, the names of the characters changed to English names, and certain alterations and omissions made in the dialogue, but the plot and the main incidents continued the same. The Vice-Chancellor dismissed the bill, holding that the requisitions to entitle the plaintiff to the benefit of the Act had not been complied with, for "Like to Like" was not a

(*a*) *Boucicault* v. *Delafield*, 9 Jur. (N S.) 1282; 33 L. J. Ch. 38; 12 W. R. 101; *Wood* v. *Boosey*, 15 W. R. 309; 15 L. T. (N.S.) 530; Law Rep. 2 Q. B. 340, affirmed on appeal; 9 B. & S. 175; Law Rep. 3 Q.B. 223; 37 L. J. (Q.B.) 84; 16 W. R. 485; 18 L. T. (N.S.) 105.

(*b*) 2 K. & J. 279. (*c*) 22 L. T. (N.S.) 432; 39 L. J. (N.S.) Ch. 641.

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"translation" within the meaning of the Act, but rather "an imitation or adaptation to the English stage."

"With respect to the representation of the English play," said Sir W. M. James, when Vice-Chancellor, "the plaintiff has got to make out his title, which depends upon the convention, and upon the Act. Now the Act of Parliament for some reason or other—I suppose a sufficient reason, but I do not know what it may be—has required, in order to give an author, or the assignee of that author, the particular copyright in question, that the original work shall be deposited in the United Kingdom; and then with regard to works other than dramatic works, it says, 'The translation sanctioned by the author, or part thereof, must be published in the British dominions not later than one year after the registration and deposit in the United Kingdom of the original work.' That is, the translation of part thereof; and the whole of such translation must be published within three years of such registration and deposit. It contemplates and requires that the whole work shall be translated. But it would not be a compliance with that to translate a quarter, or half, or three-quarters of a work that is protected, and then say, 'That is all I want protected, that is my authorized translation; and I have published the whole of that part which I have thought right to have translated.' The whole work must be translated, and the translation must be published in this country. Then, for some other sufficient reason, it is provided that in the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work. Now, I do not think it is possible to say that this means that anything which the author shall sanction as a translation must be published within three calendar months; but that the translation, which has been authorized and sanctioned by the author, must be published within that time. It appears to me that the plaintiff has gone out of his course to dig a pitfall for himself; for that which he says he has done is, the

original thing being called 'Frou-frou,' he has published in England a comedy called 'Like to Like' . . . he has introduced English characters; he has transferred the scene to England; he has made the alterations necessary for making it an English comedy, and not a translation of a French comedy; and he has left out a great number of speeches and passages, especially in the first act, which would seem to imply at first he was merely making an imitation or adaptation, and afterwards was minded more completely to make a translation.

"The first two acts seem particularly to be what is referred to in the Act of Parliament itself as 'an imitation or adaptation.' Whether it be a fair adaptation is another question; but if one wanted to have an example of what is an imitation or adaptation to the English stage, I should have said that this is exactly the thing. This is an imitation and adaptation to the English stage; that is, you transfer the scene to England, you make the characters English, you introduce English manners, when our manners differ from French manners, and you leave out things which you say would not be suitable for representation on the English stage. But what the Act required for some sufficient reason, as I have said before, when it required that a translation should be made accessible to the English people, was that the English people should have the opportunity of knowing the French work as accurately as it was possible to know a French work by the medium of a version in English. That seems to me to be what was intended, and having come to the conclusion that this is not a translation, I am of opinion that the plaintiff has failed to comply with the condition precedent which the Act has imposed upon him to entitle him to sustain this suit. It is said that one ought to give a liberal interpretation, that one ought not to strain the meaning of the word 'translation' or any other word, for the purpose of depriving a foreign author of the benefit of the Act. Of course not. Of course, one ought to take a liberal view, and one ought not to strain any word, but

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one must at the same time give a real and natural meaning to those words, and, according to my view of the case, there never would have been the slightest difficulty whatever in the plaintiff's obtaining the full benefit of his assignment, and putting himself in a position to prevent any representation of the French play, or of any English translation of it, if he had simply employed Mr. Sutherland Edwards to do what he could very well have done, namely, have made a translation. If he had said to him, 'Now make a translation of this; do not be thinking of an adaptation to the English stage, but make me a translation,' he could have made a translation which could have been published in this country; and then it would have been quite open to the author, or the person claiming under the author, to have represented that, with any excision, with any alteration, with any adaptation he might have thought fit for the purpose of making it more suitable for the English stage. I have no doubt whatever, if he had published a translation, he could then have acted the thing which Mr. Sutherland Edwards has called a version, and that nobody could have acted anything like that—anything approaching to it, because (although I say this is not a translation, but an imitation and adaptation to the English stage) I have no hesitation in saying that if the authors, or any other persons claiming under them, had complied with the condition required by the Act of Parliament, I should at once have restrained the acting of this very thing as not being a fair imitation or adaptation, but as being a piratical translation of the original work. That would have been the proper thing for me to have done in that case; but the plaintiff having brought his suit, and not having a title, must fail, with the usual consequences —he must pay the costs."

Colonial copyright.

By the 5 & 6 Vict. c. 45 the copyright of books, &c., printed in the United Kingdom, is extended to all the British dominions; the words "British dominions" meaning "all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the

East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired;" and the 8 & 9 Vict. c. 93, concerning the trade of the colonies, absolutely prohibited these dependencies from importing pirated editions of copyright works. Practically, this last enactment was unavailing. Large quantities of cheap reprints of British copyright books continued to be imported from the United States into the British American possessions. Remonstrances against these irregularities at length led to some special legislation.

In 1847 the 10 & 11 Vict. c. 95 (*a*), was passed for enabling Her Majesty by order in council to suspend the enactment contained in the Copyright Act, 1842, against the importation into any part of Her Majesty's colonies, &c., of "foreign reprints" of English copyright works. But such order in council was not to be made as to any colony, &c., unless by local legislation such colony had in the opinion of Her Majesty, so far as foreign reprints were concerned, "made due provision for protecting the rights of British authors there." Every such order in council to be published in the *London Gazette*, and orders in council and the colonial Acts or ordinances to be laid before Parliament within a certain specified time. Accordingly, the following colonies have placed themselves within its provisions, viz.: Canada, December 12, 1850; St. Vincent, August 18, 1852; Jamaica, December 29 and June 25, 1857; Mauritius, April 1, 1853; Nevis, Grenada, Newfoundland, July 30, 1849; St. Christopher, November 6, 1849; St. Lucia, November 13, 1850; New Brunswick, August 11, 1848; St. Kitts, British Guiana, October 23, 1851; Prince Edward's Island, October 31, 1848; Barbadoes, December 16, 1848; Bermuda, February 13, 1849; the Bahamas, May 21, 1849; Cape of Good Hope, March 10, 1851; Nova Scotia, August 11, 1848; Antigua, June 19, 1850; and Natal, May 16, 1857 (*a*). In fact, all the important colonies with the exception of Australia. The understood arrangement is, that English publishers shall

(*a*) App. lxvi.

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furnish catalogues of their copyrights to the custom-house authorities in the different colonies, as a guide for exacting what is termed the protective duties (amounting in Canada to 12½ per cent. *ad valorem*). These measures are next to inoperative, and the whole thing is little better than a delusion; so little is collected, that publishers generally have ceased to give themselves any concern in the matter. In short, unauthorized cheap reprints of British copyright works may be said to be freely imported into and sold in the colonies; this kind of trade in itself tending to indispose the United States to enter into an international treaty with the United Kingdom.

These statements are confirmed by a letter dated the 11th of June, 1868, from Mr. John Lovell (a Montreal publisher) to Mr. Rose, which appears in the correspondence carried on between the Canadian Government and the Imperial authorities upon the subject of "Copyright Law in Canada," and lately published. Mr. Lovell says: "At present only a few hundred copies pay duty, but many thousands pass into the country without registration, and pay nothing at all; thus having the effect of seriously injuring the publishers of Great Britain, to the consequent advantage of the United States. I may add that, on looking over the custom-house entries to-day, I have found that not a single entry of an American reprint of an English copyright (except the reviews and one or two magazines) has been made since the 3rd day of April last, though it is notorious that an edition of 1000 of a popular work coming under this description, has been received and sold within the last few days by one bookseller in this city."

In the late case of *Routledge* v. *Low*, Lords Cairns, Cranworth, Chelmsford, Westbury, and Colonsay, unanimously held that to acquire a copyright under the 5 & 6 Vict. c. 45, the work must be first published in the *United Kingdom*. The law now, therefore, is, that if a literary or musical work be first published in the *United Kingdom*, it

(*a*) 'Parliamentary Return,' obtained by Mr. Headlam, in August, 1857.

may be protected from infringement in any part of the *British dominions;* but if, on the other hand, any such work be first published in India, Canada, Jamaica, or any other British possession not included in the *United Kingdom*, no copyright can be acquired in that work, excepting only such (if any) as the local laws of the colony, &c., where it is first published may afford.

This opinion has caused great and general dissatisfaction in the colonies and India; it has either destroyed all copyright property in the numerous works since 1842, which have been first published there, or rendered such property comparatively worthless; and this hardship is increased by the fact that, since 1842, it has been, and still is, compulsory upon all publishers in the British dominions, gratuitously to send one copy of every book published by them to the British Museum, and four to the libraries of Oxford, Cambridge, &c. (*a*)

International copyright conventions.

The German Diet introduced a convention on the subject of international copyright between the different members of the Confederation in 1837. Austria and Prussia gave in their adherence on behalf of those portions of their territories which did not belong to the Confederation. Austria and Sardinia had a convention in 1840, to which the other states of Italy, and one of the cantons, adhered. In 1837, Prussia passed a law of reciprocity in this matter with all foreign states. In 1846, a convention was concluded between Great Britain and Prussia, to which Brunswick, Saxony, the Thuringian Union, and Anhalt, gave their adhesion (*b*). We also concluded one with Hanover and Oldenburg in 1847; with the Hanse Towns and with Belgium in 1854; with Prussia, additional to the convention of 1846, in 1856, and with Spain in 1857.

(*a*) See an able article in the *Athenæum*, Nov. 20, 1869. (*b*) App. c.

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COPYRIGHT IN FOREIGN COUNTRIES.

France.

Copyright in France.

THE infringement of copyright was formerly visited with far heavier penalties in France than in this country. The printing a work, the sole right to which belonged to another, was regarded as little better than theft; indeed, it was said that such conduct was worse than to enter a neighbour's house and steal his goods; for, in the latter case, negligence might be imputed to him for permitting the thief to enter, whereas in the former, it was stealing a thing confided to the public honour (*a*).

The protection afforded by the various edicts of the French kings to the authors of literary works was however taken away by the famous decree of the National Assembly, by which all privileges of whatever kind were abolished (*b*).

Duration of right in literary works.

In July, 1793, a decree was passed by which it was declared that authors should enjoy exclusively during their lives the emoluments and profits of their works, and that their heirs or assigns should enjoy the same for the term of ten years after their death. The penalty imposed upon any infringement of the right bestowed by this decree was a fine equivalent in value to 3000 copies of the original edition (*c*).

The imperial decree of the 5th of February, 1810, made some modifications of that law. It gives to the author of

(*a*) Lowndes on Copy.
(*b*) 4th of August, 1789; Lowndes on Copy., App. 116.
(*c*) *Lois de la Presse, Décret* 19 *juillet*, 1793, *art.* 4.

all kinds of literary productions a copyright for his life, and until twenty years after his death, or the death of the author's wife or husband, if secured to either by marriage settlement; if the author and his wife have no children, then for an additional ten years after their deaths for their heirs or their assigns. It accrues for the benefit of the widow, if the marriage was one *sous le régime de la communauté*, a mode of settlement which establishes complete community of property between husband and wife.

Duration of right in dramatic and musical compositions.

The copyright of dramatic or musical compositions, which gives to the proprietor the right of representing or performing all species of dramatic and musical pieces, endures for the life of the author, and for five years after his death for the benefit of his heirs or assigns. In case, however, he leaves a widow or children, the widow will have during her lifetime the right of authorizing the representation; after her, her children for thirty years. The copyright in painting, drawing, engraving, and sculpture endures for the life of the author, and for ten years after his death for his heirs or assigns.

The copyright of a work arises on publication, performance, or representation, as the case may be, without any previous registration or formality, though a deposit of two copies of the work, one at The Bibliothèque Impériale, or Imperial Library, and the other at the office of the minister of the interior, Paris, is necessary, especially before any proceedings at law can be instituted by the injured party. No distinction is made between foreigners and French subjects as to copyright, provided they make the necessary deposit. All kinds of unpublished works, lectures, &c., are the exclusive property of their authors (*a*).

Piracy in France a misdemeanour.

Piracy is, according to the law of France, a misdemeanour. The Penal Code, lib. iii. tit. ii. art. 425, provides as follows: "*Toute édition d'écrits, de composition musicale, de dessin, de peinture, ou de toute autre production, imprimée ou gravée en entier ou en partie, au mépris des*

(*a*) Levi's 'Commercial Law,' vol. ii. p. 581.

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" Le débit d'ouvrages contrefaits, l'introduction sur le territoire français d'ouvrages qui, après avoir été imprimés en France, ont été contrefaits chez l'étranger, sont un délit de la même espèce.

" La peine contre le contrefacteur ou contre l'introducteur sera une amende de cent francs au moins et de deux mille francs au plus ; et contre le débitant, une amende de vingt-cinq francs au moins et de cinq cents francs au plus. La confiscation de l'édition contrefaite sera prononcée tant contre le contrefacteur que contre l'introducteur et le débitant. Les planches, moules, ou matrices des objets contrefaits, seront aussi confisqués.

" Tout directeur, tout entrepreneur de spectacle, toute association d'artistes, qui aura fait représenter sur son théâtre des ouvrages dramatiques au mépris des lois et réglemens relatifs à la propriété des auteurs, sera puni d'une amende de cinquante francs au moins, de cinq cents francs au plus, et de la confiscation des recettes.

" Dans les cas prévus par les quatre articles précédens, le produit des confiscations, ou les recettes confisqués, seront remis au propriétaire, pour l'indemniser d'autant du préjudice qu'il aura souffert ; le surplus de son indemnité, ou l'entière indemnité, s'il n'y a eu ni vente d'objets confisqués ni saisie de recettes, sera réglé par les voies ordinaires (a)."

A number of interesting cases have been decided in the French tribunals on the subject of copyright, and they are reported in the *Répertoire de Jurisprudence, par Merlin, tit. contrefaçon*, sec. 1–15 ; and in his *Questions de Droit, tit. Propriété Littéraire*, secs. 1, 2.

It is unlawful under the French law, without the permission of the author, to publish a work already published in a foreign country with which no copyright convention exists.

There has been a desire on the part of the French nation to enlarge the time during which an author has the

(*b*) *Code Pénal*, lib. iii. tit. ii. art. 425–429.

sole property in his works. A commission was appointed in 1826, with M. le Vicomte de la Rochefoucauld at its head, to examine and report upon the question. They submitted a report proposing to give to authors and artists of works of all kinds property in their works for life, and to their legal representatives for fifty years from their deaths. In 1837 a commission was again appointed under the presidency of M. le Comte de Ségur, but no report has yet passed into law.

Prussia.

Copyright in Prussia.

Copyright endures for the author's life, and his heirs have a term of thirty years from his decease. In this country when an author assigns a copyright to a publisher without any special stipulation, the publisher is entitled to issue only one edition, the extent of which he may determine. This principle is adopted both in Saxony and Bavaria, the edition in the latter country, in the absence of stipulation, being limited to 1000 copies. But a distinction is made in Prussia between reprints or new issues (*auflagen*) and new editions (*ausgaben*). In the case of the former, the publisher is left free, on condition that he shall pay to the author, on the occasion of each new issue, half the sum which he paid him for the first. New editions, on the contrary, can be published only with the permission of the author, which must be given in writing. This privilege is limited to the author's life, though his children have a claim for an *honorarium* for each edition issued after his death.

Austria,

Copyright in Austria.

By treaty with Sardinia, Tuscany, and the Papal States, gives a copyright to the heirs for thirty years after the author's decease, in the Italian States of the empire. It also allows forty years for posthumous publications.

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Holland and Belgium.

Copyright in Holland and Belgium.

Previously to the French Revolution, Holland acknowledged the author's right as a perpetual one, capable of transmission to heirs or assigns for ever. By the law of the 25th of January, 1817, literary copyright was limited to the author for his life, and to his heirs or representatives for twenty years after his death. The penalty inflicted for infringement of copyright was confiscation of all the unsold pirated copies in the kingdom; also a fine, equivalent in value to 2000 copies of the original edition, to the use of the proprietor; besides a fine of not more than 1000, nor less than 100 florins, to be given to the poor of the district where the offender resides; and in case of a second offence, the offender was to be disabled from the exercise of his trade of printer or bookseller, the whole without prejudice to the provisions and penalties imposed, or to be imposed, by the general laws respecting piratical printing (*a*).

Denmark and Sweden.

Copyright in Denmark and Sweden.

The copyright was till lately perpetual (*b*); now, however, in the former country copyright exists for thirty years, but it lapses if the work in which it exists be out of print during five years; and in the latter, copyright endures for a term of twenty years, with the proviso that should the author, or his representative, neglect to continue the publication, the copyright falls to the state.

The 38th section of the ordinance of the 11th of July, 1837, extends the protection of the Danish law to works first published in a foreign state, in the same proportion as works first published in Prussia are protected in that foreign state.

Spain.

Copyright in Spain.

Copyright in this country is for the author's life, and for fifty years after his death.

(*a*) Lowndes on Copy., App. 121.
(*b*) Amer. Juris. vol. x. 69, until the 11th of July, 1837.

Russia.

Copyright in Russia.

Copyright endures for life, and after the death of the author devolves to his heirs and assigns for twenty-five years; and for a further term of ten years, if they shall publish an edition within five years before the expiration of the first term.

In every case the party guilty of piracy must pay to the proprietor of the work the difference between the actual cost of the pirated edition and the selling price of the original edition, besides forfeiting to the use of the proprietor all the copies of such unlawful reprint. And until definite judgment be pronounced, the edition accused of being pirated will be restrained from being sold. The judgment must determine the amount of damages resulting from the offence (*a*).

Germany.

Copyright in Germany.

Copyright in this country has been regulated as respects its duration by the Confederation, a resolution of which in 1837 fixed the duration of literary property at ten years; but copyright for a longer period was granted for voluminous and costly works, and for the works of the great German poets. The following works were thus protected for twenty years from the date of the decree: on the 23rd of November, 1838, Schiller's works; the 4th of April, 1840, Goethe's works; the 22nd of October, 1840, Jean Paul's works; the 11th of February, 1841, Wieland's works; the 23rd of July, 1840, Herder's works. In the course of time, however, a copyright for ten years proved insufficient even for inferior works; it was therefore extended by a decree of the Diet, dated the 10th of June, 1845, to the term of the author's life, and for thirty years after his death. With respect to the works of all authors deceased before the 9th of November, 1837, including the works of the poets enumerated above, the Diet decided that they should all be protected until the 9th of November, 1867.

(*a*) Lowndes on Copy., App. 130.

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The Two Sicilies, &c.

Copyright in the Two Sicilies.

In May, 1840, a treaty was entered into by the Sardinian and Austrian Lombardy governments, providing for the security of literary property within their respective dominions; and the King of the Two Sicilies, the Grand Duke of Tuscany, and the Dukes of Lucca and Modena, have acceded to the treaty. The copyright, or right of property in works of science, literature, and art, appearing within their respective Italian States, is secured to the author and his assigns for life, and for thirty years after his death. If published after his death, it is protected for forty years from the time of publication. Every article of an encyclopædia or periodical work, exceeding three printed sheets, is to be held a separate work, and all allowable extracts are to be confined to three pages of the original (*a*).

Greece.

Copyright in Greece.

Copyright is for fifteen years from the date of publication.

United States.

Copyright and its extent in the United States.

Authors of books, maps, charts, and musical compositions, and the inventors and designers of prints, cuts, and engravings, being citizens of the United States, or resident therein (*b*), are entitled to the exclusive right of printing, reprinting, publishing, and vending them, for the term of twenty-eight years from the time of recording the title thereof; and if the author, inventor, or designer, or any of them, where the work was originally composed and made by more than one person, be living, and a citizen of the United States, or resident therein, at the end of the term, or being dead, shall have left a widow, or child, or children, either or all of them living, she or they are entitled to the same exclusive right for the further term

(*a*) *Vide* 2 Kent Com. pt. v. lect. xxxvi. 378, n.
(*b*) *Keane* v. *Wheatley*, 9 Amer. Law Reg. 33, 45; *Boucicault* v. *Wood*, 16 Amer. Law Rep. 539.

of fourteen years, on complying with the terms prescribed by the Act of Congress. In order to acquire a copyright a person must be a resident in the country. A temporary residence there, even though with a declared intention of becoming a citizen, is not sufficient. Captain Maryatt, the well-known novelist, a subject of Great Britain, and an officer under our Government, being temporarily in the United States, took the required oath of his intention to become a citizen, and then took out a copyright for one of his books and assigned the same to the plaintiff; but it was nevertheless held, that the author was not a "resident" within the meaning of the Act of 1831, so as to be entitled to a copyright in his book (*a*).

To acquire a copyright in the States a person must be a citizen.

The person to whom the copyright is granted, is required to cause to be inserted in the several copies of each and every edition published, during the term secured, on the title-page, or on the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music, or engravings, upon the title or frontispiece thereof, the following words, viz., "Entered according to Act of Congress, in the year —— by A. B. in the clerk's office of the district court of ——" (as the case may be).

Method of acquiring a copyright.

The author or proprietor of such book, &c., shall, within three months from the publication, deliver or cause to be delivered a copy of the same to the clerk of the district court, who is annually to transmit a certified list of all such records of copyright, and the several books or other works deposited as aforesaid, to the secretary of state, to be preserved in his office (*b*). The violation of the copyright thus duly secured is guarded against by adequate penalties and forfeitures (*a*). Fifty cents. for every sheet printed, published, imported, or exposed

The infringement of copyright.

(*a*) *Corey* v. *Collier*, 56 Niles Reg. 262; Betts, J.
(*b*) *Daboll's Case*, 1 Opin. 532, Wirt Attorn-Gen. 1822; *Dwight* v. *Appletons*, 1 N. Y. Leg. Obs. 195, 199, Thompson, J., N. Y. 1843.
(*c*) *Dwight* v. *Appletons*, *supra*; *Backus* v. *Gould*, 7 How. (Amer.) 798, 811.

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for sale, besides a forfeiture of the books; and in case of cuts, prints, or engravings, a forfeiture of the plates and $1 for every sheet found in the possession of the party prosecuted, together with full costs. A penalty of $100 is incurred by publishing in a book or other work that a copyright has been secured when the same has not been secured. Injunctions may also be obtained to prevent the publication of manuscripts where the author's right would be violated by the publication. The Act to establish the Smithsonian Institution for the Increase and Diffusion of Knowledge enacted that the author or proprietor of any book, map, chart, musical composition, print, cut, or engraving, for which a copyright should be secured under the existing Acts of Congress, or those which should thereafter be enacted respecting copyrights, should, within three months from the publication of the said book, &c., deliver, or cause to be delivered, one copy of the same to the librarian of the Smithsonian Institution, and one copy of the same to the librarian of the Congress Library, for the use of the said libraries (*a*).

On the renewal of the copyright, the title of the work must again be recorded, and a copy of the work delivered to the clerk of the district, and the entry of the record noted as aforesaid, at the beginning of the work. All these regulations must be complied with within six months before the expiration of the first term. In addition to these regulations, the author or proprietor must, within two months from the date of the renewal, cause a copy of the record thereof to be published in one or more of the public newspapers printed in the United States, for the space of four weeks (*b*).

This, however, is merely directory, and constitutes no part of the essential requisites for securing the copyright (*c*).

(*a*) Repealed by sect. 6 of the Act of 1859, c. 22.
(*b*) Act of Congress, 3rd Feb. 1831, c. 16.
(*c*) *Nichols* v. *Ruggles*, 3 Day (Amer.) 158; see *Ewer* v. *Coxe*, 4 Wash. (Amer.) 487, 490; *Baker* v. *Taylor*, 2 Blatch. (Amer.) 83, 84; *Jollie* v. *Jaques*, 1 Blatch. (Amer.) 618, 620; *Struve* v. *Schwedler* 4 Blatch., *ibid.* 23; *Pulte* v. *Derby*, 5 McLean, *ibid.* 332.