COPYRIGHT COMMISSION.

THE

ROYAL COMMISSIONS

AND THE

REPORT OF THE COMMISSIONERS.

Presented to both Houses of Parliament by Command of Her Majesty.

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THE COMMISSIONS.

VICTORIA, R.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Our Right Trusty and Right Wellbeloved Cousin, Philip Henry, Earl Stanhope, —Our Right Trusty and Right Wellbeloved Cousin, Archibald Philip, Earl of Rosebery,—Our Trusty and Wellbeloved Robert Bourke, Esquire, (commonly called the Honourable Robert Bourke,)—Our Trusty and Wellbeloved Sir Charles Lawrence Young, Baronet,—Our Trusty and Wellbeloved Sir Henry Thurstan Holland, Baronet, Companion of Our Most Distinguished Order of Saint Michael and Saint George,—Our Trusty and Wellbeloved Sir John Rose, Baronet, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George,—Our Trusty and Wellbeloved Sir Henry Drummond Wolff, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George,—Our Trusty and Wellbeloved Sir Louis Mallet, Knight Companion of Our Most Honourable Order of the Bath,—Our Trusty and Wellbeloved Sir Julius Benedict, Knight,—Our Trusty and Wellbeloved Thomas Henry Farrer, Esquire,—Our Trusty and Wellbeloved James Fitzjames Stephen, Esquire, One of Our Counsel Learned in the Law,—Our Trusty and Wellbeloved Farrer Herschell, Esquire, One of Our Counsel Learned in the Law,—Our Trusty and Wellbeloved William Smith, Esquire, Doctor of Civil Law,—Our Trusty and Wellbeloved Henry Jenkins, Esquire,—and Our Trusty and Wellbeloved Frederic Richard Daldy, Esquire, Greeting:

Whereas We have deemed it expedient, for divers good causes and considerations, that a Commission should forthwith issue, to make Inquiry with regard to the Laws and Regulations relating to Home, Colonial, and International Copyright.

Now know Ye that We reposing great Trust and Confidence in your Ability and Discretion have nominated, constituted, and appointed and do by these Presents nominate, constitute, and appoint you the said Philip Henry, Earl Stanhope—Archibald Philip, Earl of Rosebery—Robert Bourke—Sir Charles Lawrence Young—Sir Henry Thurstan Holland—Sir John Rose—Sir Henry Drummond Wolff—Sir Louis Mallet —Sir Julius Benedict—Thomas Henry Farrer—James Fitzjames Stephen—Farrer Herschell—William Smith—Henry Jenkins—and Frederick Richard Daldy—to be Our Commissioners for the purposes of the said Inquiry.

And for the better enabling you to carry Our Royal Intentions into effect, We do by these Presents authorise and empower you, or any five or more of you, to call before you, or any five or more of you, such persons as you may judge necessary, by whom you may be the better informed of the matters herein submitted for your consideration, and also to call for and examine all such Books, Documents, Papers, or Records as you shall judge likely to afford you the fullest information on the subject of this Our Commission, and to Inquire of and concerning the Premises by all other lawful ways and means whatsoever.

And Our further Will and Pleasure is, that you, or any five or more of you, do Report to Us, under your Hands and Seals (with as little delay as may be consistent with a due discharge of the duties hereby imposed upon you) your opinion on the several matters herein submitted for your consideration, with power to certify unto Us from time to time your several proceedings in respect of any of the matters aforesaid, if it may seem expedient for you so to do.

And We do further Will and Command, and by these Presents ordain, that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any five or more of you, shall and may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And for your assistance in the execution of these Presents, We do hereby authorise and empower you to appoint a Secretary to this Our Commission to attend you, whose services and assistance we require you to use from time to time as occasion may require.

Given at Our Court at Saint James's, the Sixth day of October 1875, in the Thirty-ninth year of Our Reign.

By Her Majesty's Command,

(Signed) RICHD. ASSHETON CROSS.

VICTORIA, R.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Our Right Trusty and Wellbeloved Councillor, John James Robert Manners (commonly called Lord John James Robert Manners)—Our Right Trusty and Right Wellbeloved Cousin and Councillor, William Reginald, Earl of Devon,—Our Trusty and Wellbeloved Sir Charles Lawrence Young, Baronet,—Our Trusty and Wellbeloved Sir Henry Thurstan Holland, Baronet, Companion of Our Most Distinguished Order of Saint Michael and Saint George,—Our Trusty and Wellbeloved Sir John Rose Baronet, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George,—Our Trusty and Wellbeloved Sir Henry Drummond Wolff, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George,—Our Trusty and Wellbeloved Sir Louis Mallet, Knight Commander of Our Most Honourable Order of the Bath,—Our Trusty and Wellbeloved Sir Julius Benedict, Knight—Our Trusty and Wellbeloved Farrer Herschell, Esquire, One of Our Counsel Learned in the Law,—Our Trusty and Wellbeloved Edward Jenkins, Esquire,—Our Trusty and Wellbeloved James Fitzjames Stephen, Esquire, One of Our Counsel Learned in the Law,—Our Trusty and Wellbeloved William Smith, Esquire, Doctor of Civil Law,—Our Trusty and Wellbeloved James Anthony Froude, Esquire,—Our Trusty and Wellbeloved Anthony Trollope, Esquire,—and Our Trusty and Wellbeloved Frederick Richard Daldy, Esquire, Greeting:

Whereas We did by Warrant under Our Royal Sign Manual, bearing date the Sixth day of October One thousand eight hundred and seventy-five, appoint Our Right Trusty and Right Wellbeloved Cousin, Philip Henry, Earl Stanhope (since deceased), together with Our Right Trusty and Right Wellbeloved Cousin Archibald Philip, Earl of Rosebery, and the several Gentlemen therein named, to be Our Commissioners to make Inquiry with regard to the Laws and Regulations relating to Home, Colonial, and International Copyright.

Now know Ye that We have Revoked and Determined, and do by these Presents Revoke and Determine, the said Warrant, and every Matter and Thing therein contained.

And whereas We have deemed it expedient that a new Commission should issue to make Inquiry with regard to the Laws and Regulations relating to Home, Colonial, and International Copyright.

And further know ye, that We, reposing great Trust and Confidence in your Knowledge and Ability, have authorised and appointed, and do by these Presents authorise and appoint you the said John James Robert Manners (commonly called Lord John James Robert Manners)—William Reginald, Earl of Devon,—Sir Charles Lawrence Young—Sir Henry Thurstan Holland—Sir John Rose—Sir Henry Drummond Wolff—Sir Louis Mallet—Sir Julius Benedict—Farrer Herschell—Edward Jenkins—James Fitzjames Stephen—William Smith—James Anthony Froude—Anthony Trollope—and Frederick Richard Daldy, to be Our Commissioners for the purposes of the said Inquiry.

And for the better enabling you to carry Our Royal Intentions into effect, We do by these Presents authorise and empower you, or any five or more of you, to call before you such persons as you may judge necessary, by whom you may be better informed of the matters herein submitted for your consideration, and also to call for and examine all such Books, Documents, Papers, or Records as you shall judge likely to afford you the fullest information on the subject of this Our Commission, and to Inquire of and concerning the Premises by all other lawful ways and means whatsoever.

And Our further Will and Pleasure is, that you, or any five or more of you, do report to Us, under your Hands and Seals (with as little delay as may be consistent with a due discharge of the Duties hereby imposed upon you) your opinion on the several matters herein submitted for your consideration, with power to certify unto Us from time to time your several proceedings in respect of any of the matters aforesaid, if it may seem expedient for you so to do.

And We do further Will and Command, and by these Presents Ordain, that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any five or more of you, shall and may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment.

And for your assistance in the execution of these Presents, We do hereby authorise and empower you to appoint a Secretary to this Our Commission to attend you, whose services and assistance We require you to use from time to time as occasion may require.

Given at Our Court at Saint James's, the Seventeenth day of April 1876, in the Thirty-ninth Year of Our Reign.

By Her Majesty's Command,
(Signed) RICHD. ASSHETON CROSS.

REPORT OF THE COMMISSIONERS.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners, appointed to make inquiry with regard to the laws and regulations relating to Home, Colonial, and International Copyright, humbly submit to Your Majesty this our Report—

1. We deem it expedient to consider the Home, Colonial, and International divisions of the subject, in the order in which they are mentioned in Your Majesty's Commission, and thus first to notice

HOME COPYRIGHT.

2. The first object to which we directed our attention in relation to Home Copyright, was to obtain a clear and systematic view of the law in force upon the subject in this country.

3. We find that it relates to copyright in seven distinct classes of works, namely,—

(1.) Books;
(2.) Musical compositions;
(3.) Dramatic pieces;
(4.) Lectures;
(5.) Engravings and other works of the same kind;
(6.) Paintings, drawings, and photographs; and
(7.) Sculpture.

4. The law as to copyright in designs did not appear to us to fall within the terms of Your Majesty's Commission. It differs in many important particulars from the other matters which we have mentioned, and it has been recently made the subject of legislation.

5. The law of England, as to copyright in the matters above enumerated, consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of common law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports.

6. Our colleague, Sir James Stephen, has reduced this matter to the form of a Digest, which we have annexed to our Report, and which we believe to be a correct statement of the law as it stands. *See post.*

7. The first observation which a study of the existing law suggests is that its form, as distinguished from its substance, seems to us bad. The law is wholly destitute of any sort of arrangement, incomplete, often obscure, and even when it is intelligible upon long study, it is in many parts so ill-expressed that no one who does not give such study to it can expect to understand it.

8. The common law principles which lie at the root of the law have never been settled. The well-known cases of *Millar* v. *Taylor*, *Donaldson* v. *Becket*, and *Jeffries* v. *Boosey*, ended in a difference of opinion amongst many of the most eminent judges who have ever sat upon the Bench.

Millar v. *Taylor*, 4 Burr 2303. *Donaldson* v. *Becket*, 2 Bro. Parl. Ca. 129; 4 Burr. p. 2408 *Jeffries* v. *Boosey*, 4 H.L. C. 815.

9. The fourteen Acts of Parliament which deal with the subject were passed at different times between 1735 and 1875. They are drawn in different styles, and some are drawn so as to be hardly intelligible. Obscurity of style, however, is only one of the defects of these Acts. Their arrangement is often worse than their style. Of this the Copyright Act of 1842 is a conspicuous instance.

5 & 6 Vict. c. 4

10. The piecemeal way in which the subject has been dealt with affords the only possible explanation of a number of apparently arbitrary distinctions between the provisions made upon matters which would seem to be of the same nature. Thus—

5 & 6 Vict. c. 45. s. 3.

(*a.*) The term of copyright in books, and in printed and published dramatic pieces and music, is the life of the author and seven years after his death, or 42 years from the date of publication, whichever is the longer.

3 Wm. IV. c. 15. s. 1, and 5 & 6 Vict. c. 45. s. 20. 5 & 6 Wm. IV. c. 65.

(*b.*) The term of copyright in music not printed and published but publicly performed is doubtful, and may perhaps be perpetual.

(*c.*) The term of copyright in a lecture not printed and published but publicly delivered is wholly uncertain. The term of copyright in a lecture printed and published is the longer of the two periods of 28 years and the life of the author. It may perhaps be doubted whether the term of copyright in a book consisting of a collection of lectures would differ from the term of copyright in other books.

Engravings, 7 Geo. III. c. 38. s. 6; Paintings, 25 & 26 Vict. c. 68. s. 1; Sculpture, 54 Geo. III. c. 56.

(*d.*) The term of copyright in engravings, &c. is 28 years from publication; in paintings, &c., the artist's life and seven years; in sculpture, 14 years from the first "putting forth or publishing" of the work (an indefinite phrase), 14 years more being given to the sculptor if he is living at the end of the first term.

11. Other singular distinctions exist as to the law relating to registration of copyrights. No system of registration is provided for dramatic copyright, or for copyright in lectures or engravings. Such a system is provided for copyright in books and paintings, but its effect varies. Registration must in either case precede the taking of legal proceedings for an infringement of copyright, but after registration the owner of copyright in a book may, while the owner of copyright in a painting may not, sue the persons who infringed his copyright before registration.

Books, 5 & 6 Vict. c. 45. ss. 13, 24; Paintings, 25 & 26 Vict. c. 68. s. 4.

12. The law is not only arbitrary in some points, but is incomplete and obscure in others. The question whether there is such a thing as copyright at common law, apart from statute, has never been decided, and has several times led to litigation. Some sort of copyright has been recognized in newspapers, but it is impossible to say what it is. It has been decided on the one hand that a newspaper is not a "book," within the meaning of the Copyright Act of 1842, and on the other hand that there is some sort of copyright in newspapers, yet the courts have always leant to the opinion that there is no copyright independent of statute;—at all events they have never positively decided that there is.

Cox v. Land and Water Company, L.R. 9 Eq. 324.

13. Upon all these grounds we recommend that the law on this subject should be reduced to an intelligible and systematic form. This may be effected by codifying the law, either in the shape in which it appears in Sir James Stephen's Digest, or in any other which may be preferred; and our first, and, we think, one of our most important, recommendations is that this should be done. Such a process would, amongst other things, afford an opportunity for making such amendments in the substance of the law as may be required.

14. We now proceed to discuss the subject in detail, following the order of the Digest, and with reference to it. In the margin of the Digest we have, wherever it was practicable, noted the alterations which we recommend, so that it shows both what the law in our opinion is, and what in our opinion it ought to be.

Unpublished Works.

15. With respect to unpublished documents or works of art, we do not suggest any alteration in the law.

Necessity for Copyright.—The Royalty System.

16. With reference to copyright generally, we do not propose to enter upon the history of the Copyright Laws, nor to discuss the various questions that have from time to time been raised in connexion with the principle involved in those laws. It is sufficient for the present purpose to refer to the above-mentioned cases of *Millar* v. *Taylor*, *Donaldson* v. *Becket*, and *Jeffries* v. *Boosey*, and to the debates that have taken place in Parliament, in which the arguments on one side and the other are fully set forth. Taking the law as it stands, we entertain no doubt that the interest of

authors and of the public alike requires that some specific protection should be afforded by legislation to owners of copyright; and we have arrived at the conclusion that copyright should continue to be treated by law as a proprietary right, and that it is not expedient to substitute a right to a royalty defined by statute, or any other right of a similar kind.

17. We make special reference to a system of royalty, because, in the course of our inquiry, it has been suggested that it would be expedient in the interest of the public, and possibly not disadvantageous to authors, to adopt such a system in lieu of the existing law of copyright; and although the change has hardly been seriously urged upon us as a practical measure, except by one witness, it is of so important a character that we desire to offer a few observations upon it. Questions 2706–2777.

18. The royalty system may be briefly described as a system under which the author of a work of literature or art, or his assignee, would not have the exclusive right of publication, but any person would be entitled to copy or republish the work on paying or securing to the owner a remuneration, taking the form of a royalty or definite sum prescribed by law, payable to the owner for each copy published.

19. The principal reason urged for the adoption of this system is the benefit that it is supposed would arise to the public from the early publication of cheap editions. It is now the usual practice of publishers of the best class of literary works to publish first an expensive edition, then, after a period of greater or less duration, according to the sale of the work, an edition at a medium price, and finally, but often a good many years later, what are called popular editions at low prices. The advocates of the royalty system say that, if it were adopted, the competition that would arise would compel the original publishers to publish at cheap prices;—that thus the public would be able to procure books at once which, under the present system, are kept beyond their reach by high prices;—and that the advantage to authors would be as great or greater than it now is, since an extended sale might be expected to follow publication at lower prices, and the royalty would be paid them even though their works proved failures in a commercial point of view. Questions 2714 and 3933, p. 210.

20. The opponents of the system say that it is notorious that where one book pays the publisher for his outlay and risk, many are complete failures and never pay even the cost of publishing;—that, if the royalty system were established, no publisher would take the risk of the first publication, knowing that, if the work proved successful, he would immediately have his reward snatched from his grasp by the numerous publishers who would republish and undersell him;—that it would be impossible for publishers to remunerate authors at the rate they do now;—that authors would lose the fair remuneration they now obtain, and would often be deterred from writing;—and that many works, especially those involving long preparation and large cost to the author or publisher, which would be published under the present system, could never be brought out, on account of the increased risk that would ensue from the royalty system. Questions 4799, 4447, 4730–9, 4833–4866, 5557–5559. 4424, 4732–5, 5221, and 5608. 4742, 5257, and 5608.

21. To meet these objections it has been suggested that there should be a limited period from first publication, and that during such period republication by any person, other than the author and publisher, should not be allowed. Question 2725.

22. We have thus briefly noted some of the arguments for and against the royalty system, but we think it unnecessary to discuss the subject in greater detail, or to point out the practical difficulties which the introduction of such a scheme would necessarily involve, or how those difficulties might possibly be more or less obviated, because we are unable, after carefully considering the subject, to recommend for adoption this change in the existing law. We venture to add, in confirmation of our view, that while the principle of copyright has been recognized in almost every foreign State, in no one country has the system of royalty been adopted, except in a modified form in Italy, as pointed out in paragraph 39.

The Term of Copyright.—Books.

23. The term of copyright is the next subject to which our attention has been called. We have already used this as an illustration of the anomalies and distinctions which have grown up in the law of copyright. The term of copyright in books is for the life of the author and seven years after his death, or for 42 years from the date of publication, whichever period may happen to expire last. 5 & 6 Vict. c. 45. s. 3.

24. We purpose for the present to confine our remarks to copyright in books and other literary works comprehended under that term—that is to say, "every volume, 5 & 6 Vict. c. 45. s. 2.

" part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, " chart, or plan, separately published."

25. It has been urged against the present regulations for the term of copyright in books—1st. That the period is not long enough:—2ndly. That copyrights in works by the same author generally expire at different dates:—3rdly. That, owing to the difficulty of verifying the date of publication, it is scarcely possible to ascertain the termination of the copyright. In addition to these objections, others have been stated which it is needless for us to specify in this place.

26. We have already stated that we consider some kind of protection in the nature of copyright desirable; and it appears to us that the existing terms are not more than sufficient, if indeed they are sufficient, to secure that adequate encouragement and protection to authors which the interests of literature, and therefore of the public, alike demand from the State. We proceed, therefore, to call attention to the three objections, above mentioned, to the present duration of copyright.

Questions 227, 274, 809–811, 4833–4857.

27. First, the period is said not to be long enough. The chief reasons for this assertion are that many works, and particularly those of permanent value, are frequently but little known or appreciated for many years after they are published, and that they do not command a sale sufficient to remunerate the authors until a considerable part of the term of copyright has expired. Some works, as, for instance, novels by popular authors, command an extensive sale and bring to the authors a large remuneration at once, but the case is altogether different with others, such as works of history, books of a philosophical or classical character, and volumes of poems. In some instances works of these kinds have been known to produce scarcely any remuneration, until the authors have died and the copyrights have nearly expired. It is also urged that in the case of many authors who make their living by their pens, their families are left without provision shortly after their deaths, unless their works become profitable very soon after they are written.

28. These arguments and others of a like kind, which will be found not only in the evidence we have taken, but in the debates in Parliament, are in our opinion of great weight, but on the other hand we do not lose sight of the public interest, which, it has been urged upon us, would be prejudiced by prolongation of copyright. Greater freedom of trade and competition are said to be desirable, that books may be more abundant in supply and cheaper in price.

Questions 2882–2884, 5561–5566.

29. The second objection to the present duration of copyright is, that copyrights belonging to the same author generally expire at different dates. That it is well founded is manifest, for if an author writes several works, or one work in several volumes which are published at different times, as is frequently the case, the copyrights will expire forty-two years from the respective dates of publication, unless the author happens to live so long that the period of seven years after his death is beyond forty-two years from the publication of his latest work or volume.

Question 277.

30. Under the present system, moreover, copyright in an earlier edition expires before copyright in the amendments in a later edition of the same work. We have had evidence that in one case the first and uncorrected edition of an important work was republished before the expiration of the copyright in the later and improved editions. But if the alteration in the existing term of copyright, which we suggest hereafter, were adopted, namely, that it should be for the life of the author and a fixed number of years after his death, all the copyrights of the same author would expire at the same date, and it would then be open to any publisher to put out a complete edition of all the author's works, with all the improvements and emendations which have appeared in the last edition, in a uniform shape and at a uniform price.

Questions 634–637, 661, and 799.

31. The third objection to the present duration of copyright is that it is frequently difficult, if not impossible, to ascertain its termination, owing to the fact that the expiration of the period depends upon the time of publication. It is in most cases easy to ascertain the date of a man's death, but frequently impossible to fix with any certainty the date of the publication of a book. Under the present law it is uncertain what constitutes publication; but whatever may be a publication sufficient in law to set the period of copyright running, it generally takes place in such a manner that the precise date is not noted even if known. It is sometimes said that the date printed in the title page of a book should be considered the date of publication, but books are frequently post-dated, and in many cases bear no date at all. This objection is one which, in our opinion, should be removed.

32. The remedy which suggests itself to us as the most likely to effect all the desired objects is, that instead of the period of copyright being, as at present, a certain number of years from publication, it should last for the life of the author and a fixed number of years after his death.

33. We have been influenced in advising this change in the law by the consideration that it will have the effect of assimilating the term of copyright in books to that of copyright in works of fine art, the duration of which, for reasons to be hereafter stated, is for the life of the author and a certain number of years after his death. And further, as this mode of computing the duration of copyright has been adopted by the great majority of foreign countries, the change in our law may facilitate the making of international copyright arrangements with other States.

34. Before proceeding further on this point we think it right to notice a suggestion that has been made to us, on the assumption that the duration of copyright would continue to be for a fixed period of years. It has been proposed that, instead of the present term of 42 years from publication, the original right should last for 28 years only, but that it should be renewable for a further period of 14 or 28 years by re-registration by the author or his personal representatives; and this is, we learn, the law in the United States and Canada. The reasons advanced for this proposal are, that if copyrights are sold, publishers, as a rule, will not give more for the whole of the present term of 42 years than they would if there were only 28 years that they could purchase; that authors could thus, without any pecuniary loss, sell their copyrights for the first period only, and, if their works proved of great and lasting value, would not have finally parted with all their interest, but would be entitled to the second term of 14 years, by which they or their families would receive a due reward for their labours. Questions 974–996, 1523–1592 2907–2922

35. There is, no doubt, considerable force in the argument, but we would observe that the advantages held out by the change of law would not be secured unless, first, the copyright is sold, and secondly, the author is debarred by law, not only from selling, in the first instance, more than the copyright in the term of 28 years, but even from giving any binding undertaking to secure to the purchaser, either by re-registration or otherwise, the advantages of the subsequent term of 14 years.

36. Now, whatever may be the practice in the United States and Canada, we are satisfied from the evidence that in this country many authors do not sell their copyrights, and in such cases no advantage would arise from the proposed change. And, with respect to the second point, we are not satisfied that the advantages expected from the scheme counterbalance the disadvantage of interfering by law with freedom of contract. Questions 313–316, 2777, and 5555.

37. Should our suggestion, that copyright in future should endure for the life of the author and a fixed number of years after his death, be adopted, the proposal to divide the present, or any other fixed term is of course inapplicable.

38. Assuming, therefore, that the duration of copyright is to be for the life of the author and a certain number of years after his death, we have next to consider what the number of years should be. According to the existing law, the period in the case of books is life and seven years or 42 years from publication, if that period is the last to expire; and the period for copyright in paintings, drawings, and photographs has been fixed at life and seven years.

39. We find considerable variety in the terms fixed in other countries, but putting aside the United States, which seem to have adopted our existing term with modifications, we find that the more important nations have adopted terms longer than our own. Thus, the term in France is the life of the author and 50 years; in Belgium, life and 20 years; in Germany, life and 30 years; in Italy, life and 40 years, with a second term of 40 years, during which other persons than the proprietor may publish a work on payment of a royalty to him; in Russia, life and 50 years; in Spain, life and 50 years; in Portugal, life and 50 years; and in Holland, life and 20 years. These terms are subject to sundry modifications and conditions which it is unnecessary for us to enter into, but while we consider it expedient that the existing term of copyright should be altered, we think that the terms fixed by the nations we have referred to are in some cases excessive and unnecessary.

40. Upon the whole we suggest the term adopted by Germany, viz., life and 30 years, as most suitable for Your Majesty's dominions. We are, however, of opinion that, in the event of an international agreement being concluded, by which a common term Questions 286–288 and 810.

is fixed for copyright in all countries, power should be given to Your Majesty to adopt, by Order in Council, in lieu of the above term of life and 30 years, the term fixed by such international arrangement.

41. We further suggest that in the case of posthumous and anonymous works and of encyclopædias, the period should be 30 years from the date of deposit for the use of the British Museum. In the case of anonymous works the author should be allowed, during the period of 30 years, by printing an edition with his name attached, to secure the full term of life and 30 years.

42. Should these suggestions be adopted, we think that it would be desirable that copyrights in existence at the time of the passing of the Act should be extended, subject to a proviso like the one contained in section 4 of the Copyright Act of 1842, guarding against the alteration of existing contracts between authors and publishers. In no case should the duration of existing copyrights be abbreviated.

5 & 6 Vict. c. 45.

43. One other point relating to the term of copyright remains, to which we wish to call attention. It has been provided that in the case of encyclopædias, reviews, magazines, periodical works, and works published in a series of books, or parts, for which various persons are employed by the proprietor to write articles,—if the articles are written and paid for on the terms that the copyright therein shall belong to the proprietor of the work, the same rights shall belong to him as to the author of a book, except in one particular, in which particular a difference is made between essays, articles, or portions of reviews, magazines, or other periodical works of a like nature and articles in encyclopædias. In the case of the former (but not of encyclopædias) a right of separate publication of the articles reverts to the author after 28 years for the remainder of the period of copyright, and during the 28 years the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns. Authors can, however, by contract reserve to themselves during the 28 years a right of separate publication of the articles they write, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical. We think some modification in this provision is required as regards the time when the right of separate publication should revert to the authors of the articles, and that three years should be substituted for twenty-eight. As we have reason to believe that proprietors of periodicals have not, as a rule, insisted on the right given them by the existing law, we think there would be no objection to making this provision retrospective.

5 & 6 Vict. c. 45. s. 18.

Question 2865.

44. It has been pointed out to us that, under the existing law, the author of an article in a magazine or periodical cannot, until the right of separate publication reverts to him, take proceedings to prevent piracy of his work; so that, unless the proprietor of the magazine or periodical be willing to take such proceedings (which may very likely not be the case when the right of the author is about to revive), the result would practically be to deprive the author of the benefit of the right reserved to him. We recommend, therefore, that during the period before the right of separate publication reverts to the author, he should be entitled, as well as the proprietor of the magazine or periodical, to prevent an unauthorised separate publication.

University Copyright.

45. In connexion with the subject of the term of copyright we have to notice the perpetual copyrights possessed by certain universities and schools, which form exceptions to the general law by which copyright is limited to a definite number of years.

Steph. Dig., Arts. 11&12.

46. We find that the Universities of Oxford, Cambridge, Edinburgh, Glasgow, St. Andrews, and Aberdeen, each college or house of learning at the Universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester have for ever the sole liberty of printing and reprinting all such books as have been, or hereafter may be bequeathed or given to them, or in trust for them by the authors thereof, or by their representatives, unless they were given or bequeathed for a limited term.

47. To ascertain the value of this exceptional right to the institutions interested, we communicated with the authorities at the Universities of Oxford and Cambridge, and asked the number of copyrights possessed by them in perpetuity under this provision of the law. We found that the University of Oxford possesses six copyrights and that the University of Cambridge has none.

48. This fact shows that the privilege, which is by no means of recent origin, is of very little real value, and as it is undesirable to continue any special and unusual kinds of copyright, we are of opinion that this exceptional privilege should be omitted from the future law. We do not, however, think it would be right to deprive the institutions above named of the copyrights they already possess, without their consent, but should they be retained, we suggest that the universities and other institutions should be placed upon the same footing as regards the protection of their copyrights as other copyright owners, and that the exceptional penalties and remedies given by the Act which was passed in the 15th year of the reign of his late Majesty King George III. should be repealed. Steph. Dig. Art. 31.

Place of Publication.

49. We now desire to call attention to the place of publication, as it affects the obtaining of copyright in the United Kingdom.

50. And first we have to notice publication in the colonies, as to which it appears the present state of the law is anomalous and unsatisfactory.

51. Copyright in the United Kingdom extends to every part of the British dominions, but if a book be published first in any part of the British dominions other than the United Kingdom, the author cannot obtain copyright, either in the United Kingdom or in any of the colonies, unless there is some local law in the colony of publication under which he can obtain it within the limits of that colony. Steph. Dig Art. 7. Questions 100–115 and 398–401.

52. It is obvious that if by Imperial Law copyright is to be enforced in the colonies, while at the same time first publication in the United Kingdom is a condition of obtaining it, the colonies are not treated on fair and equal terms, and that there is just ground of complaint on the part of colonial authors and publishers.

53. In truth a colonial author is placed even in a worse position than a foreign author who is the subject of a country with which we have an international copyright convention. For example, a French author can publish in France, and subsequently, upon the performance of certain conditions, such as registration, secure himself against piracy of his work throughout the British Empire, while the colonial author can neither secure his property in the United Kingdom nor France, unless he first publishes in the United Kingdom. Steph. Dig Chap. VI.

54. Three ways of remedying this inequality present themselves: either, (1) the Imperial Act, and the rights under it, may be limited to the United Kingdom; or, (2) the same rights throughout Your Majesty's dominions may be given to British subjects, whether the work is first published in the United Kingdom or in any colony; or, (3) the benefits of Imperial copyright may be freely thrown open to all authors, without regard to nationality or prior publication elsewhere, who publish within the British dominions.

55. Upon consideration we are not disposed to recommend the first alternative. If the subject had now to be approached for the first time, it might be thought desirable, looking to the existing relations between the greater colonies and the mother country, to confine the right of property in a work to the country where it is first published, leaving the different colonies to legislate on the subject, and the copyright proprietor to secure, should he think fit, copyright in any other part of Your Majesty's dominions, by complying with the requirements of the law of such place.

56. It has been suggested further, that if copyright were thus limited, conventions might be made with the colonies similar to those made with foreign nations, providing in effect that publication in a colony should secure the same right to the proprietor of copyright as publication in the mother country. This would not, however, give a colonial author copyright elsewhere than in the United Kingdom, and in such other colonies as might agree to be bound by such conventions; and it may be questioned whether some of the colonies would not decline to enter into such conventions. The temptation to publish cheap copies of English copyright works without payment to the author would be very great, as it has proved to be in the United States. Upon this point we need only refer to Mr. Morrill's Official Report to the Senate of the United States, which will be found at page 10 of the Parliamentary Paper of July 1874 upon Colonial Copyright. Parl. Paper, July 1874, p. 10.

57. But we conceive that the existing anomalies may be removed, and the interests of the colonists preserved, without restricting the existing rights of British authors; and we submit further that the subject is one of such importance that it may fairly

Question 416.

continue to be treated, in some of its aspects, from an imperial, rather than from a local point of view, and that the colonies should be dealt with as integral parts of the empire, rather than placed on the footing of foreign nations. It may be added that foreign nations with whom we have made conventions might possibly have ground of complaint, if this limitation of the Imperial Act were made without their assent.

58. We recommend, therefore, generally, that where a work has been first published in any one of Your Majesty's possessions, the proprietor of such work shall be entitled to the same copyright, and to the same benefits, remedies, and privileges in respect of such work, as he would have been entitled to under the existing Imperial Act, if the work had been first published in the United Kingdom.

Steph.Dig, Art. 7. Questions 99-115.

59. With regard to publication in foreign states the law now is that, except under treaty, no copyright can be obtained if a book has been published in any foreign country before being published in the United Kingdom, but it is doubtful whether contemporaneous publication in this and a foreign country would prevent the acquisition of copyright here.

Questions 171, 172, 3933, p. 209, and 5049.

60. It is a grave question whether it is desirable that the condition requiring first publication in this country should continue, and whether the reason advanced for this condition, namely, that it is advantageous to this country that works should be first published here, outweighs the hardship that may be inflicted upon British authors by preventing them from availing themselves of arrangements which they might otherwise make with foreign or colonial publishers.

7 & 8 Vict. c. 12. Question 2093.

61. We have come to the conclusion that a British author, who publishes a work out of the British dominions, should not be prevented thereby from obtaining copyright within them by a subsequent publication therein. Yet we think that such republication ought to take place within three years of the first publication. And we may add, that we think the law should be the same with reference to dramatic pieces and musical compositions first performed out of Your Majesty's dominions, even though they are not printed and published;—in other words, that first performance in a foreign country should not injure the dramatic right in this country. It has been decided under the 19th section of the International Copyright Act, that the writer of a drama loses his exclusive right to the performance of his drama here in England, if it has been first performed abroad; that is to say, representation has been held to be a publication. We see no reason why the rule which may be finally determined upon in reference to first publication of books should not apply to first representation of dramatic pieces. The evidence shows how hardly the present law presses upon British dramatic authors.

Questions 2506, 2558, and 2639.

62. As to aliens, although we would give them the same rights as British subjects if they first publish their works in the British dominions, it is obvious that the same reason does not exist for giving them copyright if they do not bring their books first to our market; and we therefore recommend that aliens, unless domiciled in Your Majesty's dominions, should only be entitled to copyright for works first published in those dominions. It is to be borne in mind that, even though aliens may be deprived of British copyright by first publication abroad, they may still obtain it in many cases by means of treaties.

Persons capable of obtaining Copyright.

Steph. Dig., Art. 6.

63. With regard to the persons who are capable of obtaining imperial copyright in Your Majesty's dominions, as distinguished from international copyright under treaty, we find that, according to the existing law, the author in order to obtain copyright must be either—

(*a.*) A natural-born or naturalized subject of Your Majesty, in which case the place of residence at the time of the publication of the book is immaterial; or

(*b.*) A person who, at the time of the publication of the book in which copyright is to be obtained, owes local or temporary allegiance to Your Majesty, by residing at that time in some part of Your Majesty's dominions.

Question 114.

64. Besides these it is probable, but not certain, that an alien friend who first publishes a book in the United Kingdom, even though resident out of Your Majesty's dominions, acquires copyright therein. We think this doubt should be set at rest, and that, subject to our previous recommendation as to place of publication by aliens not domiciled in Your Majesty's dominions, the benefit of the copyright laws should extend to all British subjects and aliens alike.

Immoral, Irreligious, Seditious, and Libellous Works.

65. Our attention has, during the course of our inquiry, been called to the case of books which are of an immoral, irreligious, seditious, or libellous character. The present law is that no copyright exists in such works, or in any book which professes to be what it is not, in such a manner as to be a fraud upon the purchasers thereof. Questions 3014–3022 and 3065. Steph. Dig. Art. 8.

66. The difficulty that arises in such cases is, that as the author is deprived of copyright, he cannot stop republication by other persons; and thus, unless there be a prosecution upon public grounds the evil is allowed to extend, instead of being checked by the only person who has any private interest in stopping its extension by others. To grant copyright, however, in such works is out of the question, as this would be to sanction and protect immorality, irreligion, libels, and other matters which it is against the policy of the law to encourage. The subject, however, really belongs more properly to the criminal law than to the law relating to copyright: and we therefore do not make any suggestion with regard to it.

Abridgments of Books.

67. Questions frequently arise, with regard to literary works, as to what is a fair use of the works of other authors in the compilation of books. In the majority of cases these are questions that can only be decided, when they arise, by the proper legal tribunals, and no principle which we can lay down, or which could be defined by the Legislature, could govern all cases that occur. There is one form of user of the works of others, however, to which we wish specially to draw attention, as being capable of some legislative control in a direction we think desirable. We refer to abridgments. Question 3001.

68. At present an abridgment may or may not be an infringement of copyright, according to the use made of the original work and the extent to which the latter is merely copied into the abridgment; but even though an abridgment may be so framed as to escape being a piracy, still it is capable of doing great harm to the author of the original work by interfering with his market; and it is the more likely to interfere with that market and injure the sale of the original work if, as is frequently the case, it bears in its title the name of the original author. Questions 269–273, 970, 1228–1237, and 2991–3002

69. We think this should be prevented, and, upon the whole we recommend, that no abridgments of copyright works should be allowed during the term of copyright, without the consent of the owner of the copyright.

Dramatic Pieces and Musical Compositions.

70. Dramatic pieces and musical compositions, though in some respects differing, are yet so similar that we may couple them together for the purposes of this Report.

71. We have carefully considered the statute law now in force with reference to music and the drama; but from the way in which certain Acts of Parliament have been framed and incorporated by reference, considerable doubt arises in our minds on various important points connected with these subjects.

72. It may be convenient, however, before referring to them more particularly, to notice a difference that exists between books and musical and dramatic works. While in books there is only one copyright, in musical and dramatic works there are two, namely, the right of printed publication and the right of public performance.

73. These rights are essentially different and distinct, and we find that many plays and musical pieces are publicly performed without being published in the form of books, and thus the acting or dramatic copyright is in force, while as to literary copyright such plays and pieces retain the character of unpublished manuscripts. Music printed and published becomes a book for the purpose of the literary copyright, and so, we presume, does a play; but it is a question what becomes of the performing copyright on the publication of the work as a book; and there is a further question, whether the performing copyright can be gained at all, if the piece is printed and published as a book before being publicly performed. Steph. Dig., Arts. 13–16 and 16.

74. With regard to the duration of copyright in dramatic pieces, and musical compositions, we recommend that both the performing right and the literary right should be the same as for books.

75. We further propose, in order to avoid the disunion between the literary and the performing rights in musical compositions and dramatic pieces, that the printed publication of such works should give dramatic or performing rights, and that public performance should give literary copyright. For a similar reason it would be desirable that the author of the words of songs, as distinguished from the music, should have no copyright in representation or publication with the music, except by special agreement.

Dramatisation of Novels.

Questions 2450–2473, 2596–2620.

76. With reference to the drama, our attention has been directed to a practice, now very common, of taking a novel and turning its contents into a play for stage purposes, without the consent of the author or owner of the copyright. The same thing may be done with works of other kinds if adapted for the purpose, but inasmuch as novels are more suitable for this practice than other works, the practice has acquired the designation of dramatisation of novels. The extent to which novels may be used for this purpose varies. Stories have been written in a form adapted to stage representation almost without change; sometimes certain parts and passages of novels are put bodily into the play, while the bulk of the play is original matter; and at other times the plot of the novel is taken as the basis of a play, the dialogue being altogether original.

Questions 2596 and 2601.

77. Whatever may be the precise form of the dramatisation, the practice has given rise to much complaint, and considerable loss, both in money and reputation, is alleged to have been inflicted upon novelists. The author's pecuniary injury consists in his failing to obtain the profit he might receive if dramatisation could not take place without his consent. He may be injured in reputation if an erroneous impression is given of his book.

Questions 2463, 2610, 2611.

Question 2604.

78. In addition to these complaints it has been pressed upon us that it is only just that an author should be entitled to the full amount of profit which he can derive from his own creation;—that the product of a man's brain ought to be his own for all purposes;—and that it is unjust, when he has expended his invention and labour in the composition of a story, that another man should be able to reap part of the harvest.

79. On the other hand, it has been argued that the principle of copyright does not prevent the free use of the ideas contained in the original work, though it protects the special form in which those ideas are embodied;—that a change in the existing law would lead to endless litigation;—and that it would work to the disadvantage both of the author and the public. Upon these grounds, or some of them, a bill, introduced by Lord Lyttleton in 1866 and supported by Lord Stanhope, was defeated.

Question 3023.

80. We have fully considered all these points, and have come to the conclusion that the right of dramatising a novel or other work should be reserved to the author. This change would assimilate our law to that of France and the United States, where the author's right in this respect is fully protected.

Questions 2473 and 2596.

81. Were this recommendation adopted, a further question would arise, as to the time during which this right should be vested in the author, and, in the event of his not choosing to dramatise his novel, whether other persons should be debarred from making use of the story he has given to the world. We are disposed to think that the right of dramatisation should be co-extensive with the copyright. It has been suggested, in the interest of the public, that a term, say of three or five years, or even more, should be allowed to the author within which he should have the sole right to dramatise his novel, and that it should be then open to anyone to dramatise it. The benefit, however, to the public in having a story represented on the stage does not appear to us to be sufficient to outweigh the convenience of making the right of dramatising uniform in its incidents with other copyright.

Questions 3023 and 3032–3040.

Questions 2606–2609, and 2650.

Lectures.

82. Lectures are peculiar in their character, and differ from books, inasmuch as, though they are made public by delivery, they have not necessarily a visible form capable of being copied. Nevertheless it has been thought right by the legislature in recent years to afford them the protection of copyright, and, considering the valuable character of many lectures, it is our opinion that such protection should not only be continued, subject to certain changes in the law, but extended. Although lectures

are not always capable of being copied, because not reduced to writing, many lectures written for the purpose of delivery are not published, and many are written that the matter of them may be preserved, or that they may be capable of delivery in the same form on other occasions. Moreover, lectures, though not put in writing by the author, may be taken down in shorthand, and thus published or re-delivered by other persons. The present Act of Parliament, which gives copyright in lectures, seems only to contemplate one kind of copyright, namely, that of printed publication, whereas it is obvious that for their entire protection lectures require copyright of two kinds, the one to protect them from printed publication by unauthorised persons, the other to protect them from re-delivery.

5 & 6 Wm. IV. c. 65.

Questions 5568–5573, and 5628.

83. The present law is that the author of any lecture, or his assignee, may reserve to himself the sole right of publishing it, by giving two days notice of the intended delivery to two justices of the peace living within five miles from the place where the lecture is to be delivered, unless the lecture is delivered in any university, public school, or college, or on any public foundation, or by any person in virtue of or according to any gift, endowment, or foundation, in which cases no copyright is given on any condition. If any person obtains a copy of a protected lecture by taking it down, and publishes it without the leave of the author, or sells copies, he is to forfeit the copies, and 1*d.* for every sheet found in his custody. This law is designed merely to prevent unauthorised publication of lectures by printing, but as has been observed it does not prohibit unauthorised re-delivery.

Steph. Dig., Art. 19.

84. We think that the author's copyright should extend to prevent re-delivery of a lecture without leave as well as publication by printing, though this prohibition, as to re-delivery, should not extend to lectures which have been printed and published. We also recommend that the term of copyright in lectures should be the same as in books, namely, the life of the author and 30 years after his death.

85. In the course of our inquiry it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will become unlawful. It does not seem to us desirable that this practice should be prevented, but on the other hand the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control so as to prevent such publication if he wishes to do so; and we therefore suggest that though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless, before or at the time when the lecture is delivered, he gives notice that he prohibits reporting.

Questions 5631 and 5632.

Questions 3100 and 5633–5636.

86. By the present law, as above stated, a condition is imposed of giving notice to two justices. Without entering into the origin of this provision we find that it is little known and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest, that this provision should be omitted from any future law.

Questions 3121 and 5632–5633.

87. We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere, wherein no statutory copyright can be acquired.

Newspapers.

88. Much doubt appears to exist in consequence of several conflicting legal decisions whether there is any copyright in newspapers. We think it right to draw Your Majesty's attention to the defect, and to suggest that in any future legislation, it may be remedied by defining what parts of a newspaper may be considered copyright, by distinguishing between announcements of facts and communications of a literary character.

Ante, para. 12.

Fine Arts.

89. The next subjects for our consideration were the various branches of the fine arts, consisting of engravings and works of that class, paintings, drawings, and photographs, and lastly, sculpture.

90. It might be supposed that the law relating to engravings, etchings, prints, lithographs, paintings, drawings, and photographs would be the same so far as those matters are capable of being regulated by the same law; but such is not the case. Until the

25th and 26th years of Your Majesty's reign there was no Act of Parliament by which copyright was given for paintings, drawings, and photographs, while engravings, etchings, and prints were protected so long ago as the eighth year of the reign of His late Majesty King George II. Though engravings, etchings, and prints were thus provided for, a doubt arose in process of time whether the Acts then in force would apply to lithographs and other recently invented modes of printing pictures, and it was therefore declared, by an Act passed in the 15th and 16th years of Your Majesty's reign, that the earlier Acts were intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely. It might be questioned whether the language of this Act would not embrace photography, but it seems to have been assumed that it would not, for in the 25th and 26th years of Your Majesty's reign an Act was passed to give copyright in paintings, drawings, and photographs, and the right thus given was placed on an entirely different footing and made subject to different conditions from those to which engravings, etchings, lithographs, and prints are subject.

91. There is at present great diversity in the law as to the duration of copyright in works of fine art. For engravings and similar works the term is 28 years from publication; for paintings, drawings, and photographs, the life of the artist and seven years; and for sculpture 14 years from the first putting forth or publication of the work, and if the sculptor is living at the end of that time, for a second term of 14 years. We do not think it desirable that these distinctions should continue.

92. We understand that the reason for making the term in the case of paintings the life of the artist and seven years, was to avoid the necessity of proving the date of publication, which is, it is said, in the case of a painting frequently impossible. There would be equal difficulty, it is reasonable to suppose, in proving the date of publication of sculpture, and we have already shown that it exists, to a minor degree, in the case of all literary works. We think it desirable as far as possible to get rid of this difficulty. By adopting as the term the life of the artist and a certain time after death, the result will be attained.

93. Sculpture, though a branch of the fine arts, is essentially different in many points from paintings, engravings, and works of that class; nevertheless we purpose to deal with them concurrently, so far as the subjects permit.

94. It will have been observed that wherever it is possible to place on the same footing the various subjects of copyright of which we have treated in the earlier part of this Report, we have recommended that the law should be assimilated; we propose that all the subjects of fine art shall be dealt with on the same principle so far as they are capable of that treatment.

95. We therefore propose that the term of copyright for all works of fine art, other than photographs, shall be the same as for books, music, and the drama, namely, the life of the artist and 30 years after his death.

96. We further recommend that it should be open equally to subjects of Your Majesty and aliens to obtain copyright in works of fine art, but aliens, unless domiciled in Your Majesty's dominions, should only be entitled to copyright for works first published in those dominions.

Sculpture.

97. As to sculpture we have had to consider by what acts the sculptor's copyright ought to be deemed to have been infringed. Sculpture may be copied in various ways, not only by sculpture and casting, but by engraving, drawing, and photography; and since the rise of photography the copying of sculpture by that means has become a considerable business. The question has therefore been brought before us whether copying by other means than sculpture or casting ought not to be considered piracy.

Questions 4056–4058, 4077–4080, 4096–4097.

98. A material item in the consideration of this question is the injury likely to be inflicted on the sculptor. The principal witness on this point, Mr. Woolner, R.A., though he thought that the photographing of sculpture would probably operate rather as an advertisement in the sculptor's favour than to his detriment, expressed a wish that the law should give a sculptor protection against copying by means of drawing or engraving; and he was of opinion that incorrect copying by drawing or engraving might be very prejudicial to the sculptor's reputation. But besides this there is the question whether a sculptor ought not to be entitled to any profit to be made by allowing his works to be photographed or otherwise copied.

99. Upon the whole we are disposed to think that every form of copy, whether by sculpture, modelling, photography, drawing, engraving, or otherwise, hould be included in the protection of copyright. It might be provided that the copying of a scene in which a piece of sculpture happened to form an object should not be deemed an infringement, unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture.

100. It was also suggested that copyists of antique works ought to be protected by copyright so far as their own copies are concerned. Many persons spend months in copying ancient statues, and the copies become as valuable to the sculptors as if they were original works. It may be doubted whether the case does not already fall within the Sculpture Act, but we recommend that such doubts should be removed, and, that sculptors who copy from statues in which no copyright exists should have copyright in their own copies. Such copyright should not, of course, extend to prevent other persons making copies of the original work. Question 4087.

Paintings.—Assignment of Copyright on Sale of Pictures.

101. The most difficult question with relation to fine arts which we have had to consider, is to whom the copyright should belong on sale of a painting; whether to the artist or to the purchaser of the picture.

102. The present law on the subject is as follows:—The author of every original painting, drawing, and photograph, and his assigns, have the sole right of copying, engraving, and reproducing it, unless it be sold or made for a good or valuable consideration, in which case the artist cannot retain the copyright, unless it be expressly reserved to him by agreement in writing, signed by the vendee, or by the person for whom the work was executed; but the copyright, in the absence of such agreement, belongs to the vendee or such other person; but it is also provided that a vendee or assignee cannot get the copyright unless at the time of the sale an agreement in writing signed by the artist or person selling is made to that effect. The result is, that if an artist sells a picture without having the copyright reserved to him by written agreement he loses it, but it does not vest in the purchaser unless there is an agreement signed in his favour. If, therefore, there is no agreement in writing—a very frequent occurrence—the copyright is altogether lost on a sale, but if the picture is painted on commission, instead of being sold after being painted, the copyright in the absence of any agreement vests in the person for whom the picture is painted. Stat. 25 & 26 Vict. c. 68. s. 1. Steph. Dig., Art. 21.

103. We have taken a good deal of evidence with regard to this matter. It appears that the provision as to pictures painted on commission was made to prevent the unauthorised copying of portraits. Some difficulty, however, is said to have arisen in determing whether an order or a purchase is a commission, so as to bring the picture within such provision. Questions 2781–2785, 3622–3684,

104. With regard to the general question whether the copyright in a picture should in every case remain with the artist unless expressly sold, or whether it should follow the picture unless expressly retained, the artists as a body are unanimous in their desire to have the copyright reserved to them by law. Questions 3431–3435, 3445–3462.

105. It is true that if under the present law an artist wishes to retain the copyright he can do so by an express stipulation embodied in an agreement signed by the purchaser. Artists, however, say that this is practically useless, since the purchaser would look upon a proposal for such an agreement as intended to deprive him of part of the value of his purchase. They therefore seldom ask for agreements, preferring that the copyright shall drop. In that case any person who can gain access to a valuable picture may make and sell copies of it in defiance of both artist and owner. Questions 3457–3461, and 3625.

106. It is clearly undesirable that copyrights, which are in many cases of great value, should be in this way left free to piracy. The law, therefore, should distinctly define to whom, in the absence of an agreement, the copyright should belong.

107. In dealing with these questions we have had regard not only to the artist's claims which have been strongly advocated before us, but also to the interests of the public, and to the consideration whether any distinction should be made between pictures sold after being painted and pictures painted on commission, or between portraits and other pictures.

108. First, as to portraits as distinguished from other pictures. Although artists contend that the copyright in pictures should belong to them notwithstanding a sale, it is admitted by some that an exception to the general rule might be made in the case Question 3496.

of portraits, and that copyright in them might properly belong to the purchaser or person giving a commission The evidence appears to us to prove, first, that the reasons why the copyright in portraits should belong to the person ordering the painting apply equally to other pictures; and, secondly, that it is by no means easy to say what a portrait is. Thus it is open to question whether the word would include the portrait of an animal, a dog for instance, and if so, whether it would include a number of dogs, or a pack of hounds; or a picture of a house or a room, or any object without life; and further whether it is to include pictures of persons taken in character, not so much for the sake of the portrait of the person, as for the sake of the scene; and, lastly, whether it is to include pictures of persons forming large groups, where the scene is the object of the work, though the pictures of the persons present are portraits.

Questions 3648–3652.

109 These difficulties lead us on the whole to doubt the expediency of drawing any distinction between portraits and other pictures.

110. Secondly, as to making a distinction between pictures painted on commission and others. We are here met with the difficulty of defining what is a commission; and looking to the evidence upon this point we have arrived at the conclusion that no distinction can practically be made.

Question 3639.

111. The only question that remains, therefore, on this branch of our inquiry is, whether the copyright in a picture when sold, should still be vested in the artist, independently of the property in the picture, or whether, unless expressly reserved, it should follow the ownership of the picture.

112. The evidence shows that persons buying pictures do not in general think about the copyright, but that if the subject happens to be mentioned, they are generally under the impression that the copyright is included in the purchase, and are astonished if they are told that it is not. It is said that owing to this fact an artist, however eminent, when he is selling a picture, shrinks from mentioning the copyright and asking for an agreement to enable him to retain it; he usually prefers that the copyright should be absolutely lost to both parties, as in the absence of any written agreement it would be, under the first section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68), than that the purchaser should think that he is losing a valuable part of his bargain, and consequently should decline to complete the purchase.

Questions 3445, 3446, and 3625.

113. The principal reason why artists wish to retain the copyright is to keep control over the engraver and photographer. To artists no doubt this control is a matter of considerable pecuniary value, but they urge that they not only wish to control engraving in order to get the payment from the engraver, but chiefly to prevent inferior engraving, which they consider prejudicial to their reputation. It is admitted that if a picture is sold, the artist would have no power to get it engraved when it is in the possession of the purchaser, except by his consent, and artists are willing that this should continue to be the case; but if this power of preventing engraving is so valuable, it is not easy to see why they should hesitate to explain the law to the purchaser and offer to let him have the copyright if he will preserve the picture from inferior engraving, rather than let the copyright be lost both to artist and purchaser.

Questions 3630–3637.

114. This difficulty does not, we may observe, arise in sales to publishers, who, as a rule, purchase for the purpose of engraving, and therefore buy the copyright.

Question 3457.

115. Upon the whole, then, the majority of us have arrived at the conclusion, that, in the absence of a written agreement to the contrary, the copyright in a picture should belong to the purchaser, or the person for whom it is painted, and follow the ownership of the picture. We may observe that this conclusion, though differing from the Bill of 1862 as originally drawn, and from a draft Bill of 1864, is in accordance with the provisions of the Fine Arts Bill of 1869, which we learn from Mr. Blaine's report was "prepared by direction of the Council of the Society of Arts, Manufactures, "and Commerce, in consequence of a memorial having been presented to the Council "by a considerable number of the most eminent artists and publishers resident in "London." It is further substantially the same as the first section of the existing Act of 1862, except as to the concluding provision in that section, which enacts that the vendee cannot have the copyright unless an agreement to that effect is made in writing. This proviso was apparently added to the Bill without sufficient consideration, during its progress through Parliament.

Questions 3619 and 3620.

Appendix, p. 364.

Question 2782.

116. Upon this part of the case we may here refer to a question that has been brought under our notice, namely, whether an artist who has sold a picture should be allowed,

without the consent of the owner, to make replicas of it, or whether, as has been suggested, a distinction should be made between replicas made by the artist and copies made by others than the artist. We are not, however, inclined to recognise any distinction; nor indeed, so far at all events as replicas in the same material are concerned, does it appear to be supported by artists. Questions 3686-9, and 5892, p. 323

117. Though in the preceding paragraphs we have spoken only of paintings, the law is the same as to drawings and photographs; and we think that, whatever changes may be made in the law as to paintings, the same should be made with regard to drawings.

118. Photographs, however, present some difficulty. At the present time they are coupled by Act of Parliament with paintings and drawings, and are subject to the same law, but, as we have before pointed out, we believe this circumstance arose merely from the fact that before the year 1862, when the Act was passed, there was no copyright protection afforded by the law for either of these subjects, and it was then thought right that photographs should be protected as well as other works of art. On consideration, however, it will be seen that photographs are essentially different from paintings and drawings, inasmuch as they more nearly resemble engravings and works of a mechanical nature, by which copies of pictures are multiplied indefinitely.

119. We propose that the term of copyright in photographs should be 30 years from the date of publication, except when originally published as part of a book. In the latter case it should be for the term of copyright in the book.

120. But the point upon which we feel difficulty is, whether the copyright should be assimilated to that in paintings and pass to a purchaser, or whether it should remain with the photographer. When photographs are taken with a view to copies being sold in large numbers, it is practically impossible that the copyright in the negative should pass to each purchaser of a copy, and it must remain with the photographer, or cease to exist. On the other hand the same reasons exist for vesting the copyright of portraits in the purchaser or person for whom they are taken, as in the case of a painting. Indeed, considering the facility of multiplying copies, and the tendency among photographers to exhibit the portraits of distinguished persons in shop windows, it may be thought that there is even greater reason for giving the persons whose portraits are taken the control over the multiplication of copies than there is in the case of a painting. It therefore becomes a question whether it is not necessary to make that distinction between photographs that are portraits and those that are not, and between photographs taken on commission and those taken otherwise, which we have deprecated in the case of paintings.

121. We suggest that the copyright in a photograph should belong to the proprietor of the negative, but, in the case of photographs taken on commission, we recommend that no copies be sold or exhibited without the sanction of the person who ordered them.

122. The same questions arise with respect to engravings, lithographs, prints, and similar works. These arts, like photography, may be employed for the purpose of issuing a large number of copies of a picture, or merely for the purpose of executing a commission and printing a few copies, of a portrait for instance, for private distribution by the person giving a commission among his friends. We think, therefore, that so far as regards the transfer and vesting of the copyright these arts should be placed upon the same basis as photography.

123. Before leaving the subject of the fine arts, we wish to notice one other matter as to which artists say the law is disadvantageous to them. Before an artist paints a picture, he frequently finds it necessary to make a number of sketches or studies, which, grouped together, make up the picture in its finished state. These works may be studies expressly made for the picture about to be painted, or they may be sketches which have been made at various times, and kept as materials for future pictures. If, after a picture is so composed, the copyright is sold, the artists are afraid that they are prevented from again using or selling the same studies and sketches, as they have been advised that such user or sale would be an infringement of the copyright they have sold. Questions 3697–3705. Question 3939.

124. It may be doubted whether this fear is well founded, but as the use of such studies and sketches as we have described could not, in our opinion, result in any real injury to the copyright owner, who has copies of them in his picture in a more or less altered shape, and combined with other independent work, we think the doubt should be removed, and that the author of any work of fine art, even though he may have parted with the copyright therein, should be allowed to sell or use again his *bonâ fide* sketches and studies for such works and compositions, provided that he does not repeat Question 3941.

Question 3938.

or colourably imitate the design of the original work. We may observe that a provision to this effect was inserted in the Copyright Bill which was introduced by Lord Westbury in 1869.

Architecture.

125. In the course of our inquiry we received an application from the Royal Institute of British Architects, that a representative of the Institute might bring before us a grievance under which architects considered themselves to suffer. Mr. Charles Barry, the president, attended, and after reading to us a copy of a petition on the subject, which had been presented to the House of Lords in the year 1869, and some other papers which will be found in the evidence, contended that architects were subjected to great injustice and injury through their designs not having the protection of copyright, so as to prevent them being used by other persons than the author for building purposes; and some instances of hardship were given.

Questions 4291 and 4292.

Questions 4334 and 4355.

126. He suggested that the right to reproduce a building should be reserved to the architect for 20 years, and this whether reproduction were desired on the same scale or a different one, or in whole or in part, and whether by the person who gave the commission or any other; and further that copyright in architectural designs should be reserved to the author from the date of erection of a building or the sale of the design.

127. We are satisfied, as regards the former suggestion, that it would be impracticable to reserve this right to reproduce a building. With regard to the latter suggestion, we may observe that though architectural designs have no protection as designs, they are, in our opinion, protected as drawings by the Fine Arts Act, passed in the 25th and 26th years of Your Majesty's reign, so that they may not be copied on paper; and we think that such protection should be preserved.

Registration of Copyright and Deposit of Copies.

128. In the early part of our Report we referred to the existing law respecting registration. It affords one of the most striking instances of those anomalies and distinctions which have grown up in the law of copyright, because the various subjects of the copyright law have been dealt with by the legislature at different times, and because there has been no attempt made to bring them into harmony.

129. We would first draw attention to the deposit, or presentation of copies of books to various public libraries.

Steph. Dig. Art. 30.

130. By the present law a copy of the first edition, and of every subsequent edition containing additions and alterations, of every book published in any part of Your Majesty's dominions, must be delivered at the British Museum gratuitously, within a certain time after publication; and in default of such delivery the publisher is subject to penalties. There are four other libraries which have a right, on demand, to receive copies of every edition of every book, but to these special cases we shall hereafter have occasion to refer. No such deposit or presentation is required in the case of musical compositions or dramatic pieces publicly performed, unless printed and published, or in the case of lectures publicly delivered unless printed and published, or in the case of engravings and similar works, or of paintings, drawings, or photographs.

Questions 622, 1944–2050, 4611–4725, and 5479–5551.

131. In every case for which registration is provided, except that of sculpture, it is effected at the Hall of the Stationers' Company, by an officer of the company called the Registrar of Copyright. Sculpture is not registered at Stationers' Hall, but, under the Copyright in Designs Acts, was, until recently, registered, if at all, by the Registrar of Designs. Since the abolition of the office for registration of designs as a separate paid office, sculpture has been registered under arrangements made by the Commissioners of Patents. We ought here to mention that under the International Copyright Act, to which we shall hereafter more particularly allude, copyright in foreign works is in all cases, including sculpture, registered at Stationers' Hall, and that by the same Act registration is made compulsory for works of those classes which, if British, are not required to be registered, and for which no domestic provision for registration exists.

132. By the present law, registration of books and works included by Act of Parliament in that term, is optional, but no action can be maintained for infringement of copyright until they have been registered. After registration, however, actions will lie for antecedent infringement. The principle of the law, therefore, is, that copyright

attaches upon production and publication, and that registration is only a legal preliminary to the enforcement of the right against a wrongdoer. The law, as will hereafter be seen, differs in regard to other works; but at present we confine our remarks to books.

133. We do not consider this state of the law satisfactory. We find that, as a matter of fact, few books are registered until the copyright has been infringed, and though the words "Entered at Stationers' Hall" are frequently to be seen on the title pages of books, or on the outer sheets of music, entries are not generally made. Questions 340, 388–392, 459, 503, 2357, and 3829–3831.

134. Several objections have been urged to this state of things. One is, that if it be the object of registration to define the extent and the duration of a right, as well as to ascertain to whom the right belongs, a law which leaves it open to all concerned to avoid that very definiteness which the law seeks to impose, is clearly unsatisfactory. Under the present system it is impossible to ascertain when the term of copyright in a particular book commenced, and therefore to know when it ends. And lastly, it is rendered uncertain whether an author intends to insist upon his copyright at all.

135. The remedies which have been proposed to us are either the total abolition of registration, or that it should be made compulsory, systematic, and efficient.

136. Those persons who suggest the abolition of registration have argued that it is of no practical utility;—that it cannot, as in the case of shares, ships, or land, be conclusive evidence of title;—that it cannot prove that the book registered was written by the person who registers it, or that it is not a piracy;—and that the owner can assert and prove his right quite as well by extrinsic evidence as by means of a register. Those, on the other hand, who advocate registration, say that it is a useful system, because copyright is a species of incorporeal property, of which some visible evidence of existence is desirable;—that it may on occasions be a matter of public utility to know to whom certain books belong, and that by means of registration the public are enabled to ascertain the fact, and whether copyright in a book does exist. They argue further that another advantage which can and ought to be derived from registration is that the register might be made conclusive evidence of transfer or devolution of title;—and that it would afford to the country a complete list of all literary works brought out in this country. It is also said to be very probable that in the absence of registration English authors might find it difficult to enforce their rights in other countries. It is admitted to be a convenience to an author to be able, under an international copyright convention, to produce as evidence a copy of the register, instead of being obliged to prove by witnesses his authorship and right. Questions 511–520, 696–734, 2923. Questions 123, 157, 181, 203–6, 705, 713, 718, 784, 2923, and 2938.

137. We are satisfied that registration under the present system is practically useless, if not deceptive. Great annoyance is caused to persons who are obliged to resort to the register, whether for the purpose of registering works or of searching for entries, by the mode in which the register is kept. In stating this we do not desire to express any censure upon the gentleman who holds the office of registrar. Our censure is intended to apply to the system in force, and the law which orders, or at least sanctions it. Moreover, in our opinion the fees are unnecessarily high. Questions 459, 620, 1958*–1962* 2091, and 4611–4725.

138. We have been satisfied by the arguments in favour of registration that it is advisable to insist upon it, and that it should be made more effective and complete. To this end it should be made compulsory.

139. Before we refer to the several modes by which it has been suggested to us that registration may be made compulsory, it will be convenient to call attention to the system of registration now in force.

140. The existing regulations as to registration at Stationers' Hall are contained in the Copyright Act which was passed in the 5th and 6th years of Your Majesty's reign. By that Act a book of registry, wherein may be registered the proprietorship in the copyright of books and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses affecting such copyright, is to be kept at the Hall of the Stationers' Company by an officer appointed by the company for that purpose. The register is to be open at all convenient times for inspection on payment of 1*s.* for every entry searched for or inspected, and certified copies of entries may be obtained on payment of 5*s.*, such copies being made *primâ facie* evidence of certain specified matters in all courts. To make a false entry, or to tender in evidence a fictitious copy, is a misdemeanor. Any proprietor of copyright in a book may enter in the register, in a specified form the title of the book, the time of 5 & 6 Vict. c. 45. ss. 11, 12, 13, 14, and 19.

first publication, the names and places of abode of the publisher and proprietor of the copyright, or of any portion of the copyright: a fee of 5*s.* is payable on registering a book, and on payment of a similar sum any copyright may be assigned by the proprietor by making an entry of the assignment in the register. In case of error in the register, power is vested in Your Majesty's High Court of Justice to order a correction to be made. With regard to the registrar, he, by the terms of the Act, is appointed by the Stationers' Company. There is no power of dismissal given, but possibly the Company have a power of dismissal for reasonable cause. It seems doubtful whether the appointment is for life, or whether it is annual, but renewed as a matter of course; but for all practical purposes the appointment may be regarded as a life appointment. The remuneration of the registrar is by means of the fees payable for entries, certificates, assignments, and searches for entries of copyrights in the register. These fees wholly belong to the registrar, and the Stationers' Company does not participate in them.

Question 5485.

Questions 2050, 4611, and 5484–5486.

Question 459, 1958*, 2091, 2298, 2329, 2811, 2954.

141. In the course of our inquiry we received many complaints of a serious character from a number of witnesses against the present system of registration, and the mode in which the register is managed and the business conducted at Stationers' Hall. Great dissatisfaction has also been expressed at the amount of the fees, but these it will be remembered are fixed by the Act of Parliament. With regard to the complaints relating to the conduct of the registration, we feel bound to say that the registrar (whom we invited to come before us a second time, if he desired to say anything in answer to the charges made by the other witnesses) was able to give satisfactory answers to many of the charges. Among others, complaints were made of the ignorance displayed in the office by the officials there, and their inability to answer questions put to them relating to copyright and registration. These questions, however, in many cases appeared to be of a legal and intricate character, and of such a kind that the registrar and clerks could scarcely be expected to answer them, even if it had been their duty to do so, upon which point we entertain considerable doubt.

Questions 4611–4725.

Question 520.

142. Complaints were also made of the inconvenience of the Registration Office and the insufficiency of the space. After a careful examination into these points, and a personal inspection of the office by some of Your Majesty's Commissioners, we are satisfied that the building is very inadequate for the purpose of the business conducted there, and that it would become more so upon the introduction of compulsory registration. Nor can there be any doubt that the register itself is capable of considerable improvement.

Question 5545.

143. With regard to the insufficiency of the office accommodation, we were informed by the clerk to the Stationers' Company, that should the legislature continue to entrust to them the duty of registration they would be willing in three or four years' time, when some of their property adjacent to the present office will be pulled down, to erect at their own expense suitable offices on an increased scale and with proper accommodation.

Questions 5521–5525.

144. It is only fair to the Stationers' Company to point out that they have no power under the Act to make any regulations respecting registration. If, therefore, registration be continued at Stationers' Hall, it would appear to be right that some power of control should be vested in the Company by Parliament, and we believe that they are ready to accept that power.

145. In order to provide an improved system of registration in substitution for that now in use, it appears to us that the two acts of registration and deposit of the copy of a book at or for the British Museum should be combined; or, in other words, that, so far as the author is concerned, registration should be complete on the deposit of the copy and on obtaining an official receipt. One advantage of this would be a diminution of labour and expense, and the British Museum would probably receive all copyright books without the labour of hunting for them in booksellers' catalogues and advertisements, as we are informed the officials are obliged to do under the present system. Another advantage would be that the fees to be paid for registration might be materially diminished.

Questions 1694–1696.

146. The registration should be effected by the registrar appointed for that purpose, whose duty it should be to receive the copy of the book, to register the official receipt, and to give a copy thereof, certified by him, to the person depositing the book. This certified copy should be a substitute for the certificate at present obtained, and it

should be *primâ facie* evidence in courts of law of the publication and due registration of the work, and of the title to the copyright of the person named therein.

147. A fee of 1*s*. would in our opinion be ample, if registration be made compulsory, to render the office of registration self-supporting. This is shown by the statistics as to the number of books and other publications received at the British Museum, which will be found in the Appendix to the Evidence of Mr. J. Winter Jones. There might also be a fee of 1*s*. for searches. This, besides providing a large revenue, would enable authors to obtain for 1*s*. both registration and a certificate of registration of copyright, for each of which 5*s*. is now charged. Evidence pp. 349, 350.

148. We regard it as a mistake that the appointment of an officer for so important a duty as that of registering rights affecting a vast number of persons, and the evidence of which ought to be under the control of the Government, should be vested in a private society. The registers ought to be placed in such keeping that they may at all times be treated as part of the public records, and the registrar ought to be a person amenable to a Government department. The necessity for this would be increased by the acceptance of our suggestion that registration should be made compulsory. In any case the registry and the registrar should be under Government direction and responsible to Government.

149. Considering that a copy of each book has to be deposited at the British Museum,—that at present the authorities of the Museum have to give receipts for the works deposited and to keep certain registers,—and that it is a part of our plan that the deposit of the book and registration of the copyright should be combined, —it appeared to us that the most appropriate place for the Registry Office would be the British Museum, and that the officers of the registry, whilst under the general control of the trustees of the Museum, should be answerable to Government for the proper discharge of their duties. We, therefore, put ourselves into communication with the trustees, with a view of ascertaining their opinion on the point, but they stated that they deemed it undesirable for the British Museum to undertake the duty, on the ground that registration of copyright is an executive function, and did not come within the sphere of their duties as trustees of the British Museum. A copy of the correspondence will be found in the Appendix and we cannot but express our regret that the trustees declined to accede to our request that one of their body should appear before us. It is probable that a full explanation of our views and a personal discussion might have removed the difficulties which they felt upon this point. Appendix to Evidence. p. 407.

150. If registration of copyright should not be established at the British Museum, it might be either retained at Stationers' Hall, or removed to some Government office established for the purpose. It is proper to state that the Stationers' Company seem desirous of retaining the office, because their Hall has been the place for registration ever since registration was instituted; and further that it has been recognized as the place of registration in several international conventions. In our opinion, however, the reasons in favour of transferring registration to a Government office preponderate. In either case arrangements will have to be made for transferring to the British Museum the works which are deposited and registered elsewhere. Questions 631–634 and 2937. 5537.

151. It only remains for us to notice the means by which registration may be most easily rendered compulsory. Three ways have been suggested to us in which this may be done:—1. By making registration on the date of publication a condition of an effective copyright. 2. By inflicting a pecuniary penalty. 3. By giving the owner a direct interest in registering his copyright. With reference to the second suggestion, there is at present a pecuniary penalty for failure to present books to the library of the British Museum, and it is urged that it would be found sufficient for the purpose of compelling registration; but to this it is replied that little effect can be expected in such a case as registration of copyright from a mere penalty; and also that a penalty would have to be enforced through the medium of some Government office; and that, independently of the difficulty there would be in finding out books that had not been registered, no Government office would willingly execute the task of suing for penalties. With regard to the presentation of books to the British Museum, the Museum has an interest in procuring the books distinct from the matter of the penalty. Questions 2928–2932.

152. With the third suggestion we are inclined to agree; and although we are not disposed to advise the abolition of a penalty for not delivering for the use of the British Museum a copy of every book which has not been delivered and registered at Stationers' Hall, or some Government place of registration, we think that compulsory registration would be sufficiently secured by the third course that has been suggested,

namely,—that a copyright owner should not be entitled to take or maintain any proceedings, or to recover any penalty in respect of his copyright until he has registered, and that he should in no case be able to proceed after registration for preceding acts of piracy. This is the present law in the case of paintings, drawings, and photographs, and we see no reason why the same law should not be applied to copyright in every other work that has to be registered.

153. If this plan should be adopted, it becomes a question what should happen after registration with regard to copies made before registration. Were the copyright owner entitled upon registration to suppress all such copies, the compulsory provisions of the law would to a certain extent be neutralised, because it would be unnecessary for copyright owners to register until their works had been copied. It has been urged, on the other hand, that if an unscrupulous person should, after the expiration of the time allowed for registration, and before registration, publish a large number of copies, the copyright owner would practically lose all the benefit of his copyright if these copies were allowed to be sold and circulated after registration. We think, however, that in practice this would not occur. As a rule, registration would be effected immediately on publication, and before the work could be copied.

154. We therefore recommend that proprietors of copyright should not be entitled to maintain any proceedings in respect of anything made or done before registration, nor in respect of any dealings subsequent to registration with things so made or done before registration. But as this provision might in some cases operate harshly, we think it should not apply if registration is effected within a limited time, say one month, after publication.

155. In making these remarks on the subject of registration, we have referred only to books and works of a similar character, but we intend them equally to apply, with one exception, to dramatic pieces and musical compositions which are publicly performed but are not printed and published. We have suggested that the acts of registration and deposit of a copy of the book should be combined, and it is manifest that there could not conveniently be any deposit of a copy of a work not printed; we propose, therefore, that in these cases it should be sufficient that the title of every drama or musical composition, with the name of the author or composer, and the date and place of its first public performance, should be registered.

156. For the sake of uniformity we are of opinion that it is desirable that the law of registration should, as far as possible, be the same for works of fine art as for books, music, and the drama.

Questions 3957–4035, 3453–3481, 3200–3211, 5457.

157. It has, however, been strongly urged upon us that compulsory registration in the case of paintings and drawings is practically impossible; and it would seem that the same arguments that are used against compulsory registration in the case of paintings and drawings apply equally to sculpture. There is no doubt a great difficulty in the way of compulsory registration of paintings and drawings. This arises from the fact that the class of pictures to be registered cannot be limited, and that if copyright in an important work is only to be secured by registration, copyright in the smallest sketch or study could only be preserved by the same means. Some difficulty also arises from the fact that paintings, drawings, and sketches are so frequently subjected to alteration that it would be almost impossible to say when a work is finished so as to be capable of registration as a completed work.

158. On these grounds, therefore, we recommend that registration of paintings and drawings should not be insisted on so long as the property in the picture and the copyright are vested in the same person, but that if the copyright be separated by agreement from the property in the picture, there should be compulsory registration, and that the register should show,—

(*a.*) The date of the agreement.
(*b.*) The names of the parties thereto.
(*c.*) The names and places of abode of the artist and of the person in whom the copyright is vested.
(*d.*) A short description of the nature and subject of the work, and, if the person registering so desires, a sketch outline or photograph of the work in addition thereto.

159. With regard to such works as engravings, prints, and photographs, there would not be the same difficulty, and we think that they should be subject to compulsory registration in the same way as books.

Forfeiture of Copies.

160. Before proceeding farther we may notice a provision of the law which we consider of great value as a protection for owners of copyright, and which we consider it desirable to retain. By the Act which was passed in the 5th and 6th years of Your Majesty's reign it is provided that all copies of any book in which there is copyright, unlawfully printed or imported without the consent in writing under his hand of the registered proprietor of the copyright, are to be deemed to be the property of the registered proprietor of such copyright, and he may sue for and recover the same, with damages for the detention thereof, from any person who detains them after a demand thereof in writing. We recommend that this provision, *mutatis mutandis*, should be extended to works of fine art. We think it would, however, be an improvement to provide that these copies and damages might be summarily recovered by application to a magistrate.

Public Libraries.

161. The subject which we have next to notice is the obligation that now exists to present gratuitously copies of every book published to certain public libraries. This obligation dates from the reign of his Majesty King Charles II., and since that date it has varied from time to time as regards the number of copies required to be presented and the libraries entitled to them, the number of the latter having at one time been as high as eleven. The Act by which the present obligation was imposed is that which was passed in the 5th and 6th years of Your Majesty's reign. By that Act one copy of every book published, and of every second or subsequent edition, if any alterations or additions are contained therein, has to be delivered gratuitously by the publisher at the British Museum, and if a demand be made in writing one copy has also to be delivered gratuitously for the Bodleian Library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, and the library of Trinity College, Dublin. Thus authors and publishers have now generally to provide five copies of each work, as well as of second and subsequent editions, at their own cost for public use. A slight difference is made between the cases of the copies given to the British Museum and of those given to the other libraries. In the former the copies have to be of the best kind published, and in the latter the copies are to be upon the paper of which the largest number of copies of the book or edition is printed for sale; and in the former the delivery is obligatory in every instance, while in the latter it is only required if a demand be made. As a matter of fact, however, copies of nearly every work of any importance are presented to all five libraries.

Question 460.

5 & 6 Vict. c. 45. s. 6.

Sec. 8.

162. Many of the witnesses who have given evidence before us have complained of this obligation as a heavy and unjust tax. The weight of it, however, is hardly felt in the case of low-priced books, or books of large circulation, though the gratuitous presentation of a number of books of even small value involves a double loss to authors and publishers, assuming that the libraries would each buy a copy, were one not to be obtained without payment. The grievance is of course most felt in the case of expensive works. Publishers complain of the injustice of taxing them or the authors for the maintenance of public libraries, and ask why the public, or the bodies to be benefited, should not pay for the books they require.

163. When this complaint was made to us we communicated with the authorities at the libraries other than the British Museum, in order to ascertain the number of books obtained by them under the Act, and the value they attached to their privilege. We obtained replies from which it appears that a large number of the books published are sent to these libraries, and that they are generally sent without any demand being made for their delivery; also that the authorities regard the privilege as one of considerable value, which they are not willing to part with. We have placed a copy of this correspondence in the Appendix to the Evidence.

Appendix to Evidence, p. 408.

164. Having to decide between the authors and publishers on the one hand, and the libraries on the other, we on the whole consider that the complaint of the authors and publishers is well founded, and we have come to the conclusion that so much of the existing law relative to gratuitous presentation of books to libraries, as requires copies of books to be given to libraries other than that of the British Museum, should be repealed. In making this recommendation we have taken into consideration the facts that the bodies to whom the libraries belong are possessed of considerable means and are well able to purchase any books which they may require; and also that the repeal of the clause

giving the privilege, will not deprive the libraries of any property already acquired, but merely of a right to obtain property herein-after to be created.

165. It will have been seen that we do not propose to interfere with the obligation to deliver at the library of the British Museum a copy of every book published, as it is a part of our scheme that registration should be effected and copyright secured by the deposit of a copy of the work for the public use. To this we think no reasonable objection can be made.

166. We will only add that the importance of securing a national collection of every literary work has been recognised in most of the countries where there are copyright laws. And with a view to make the collection in this country more perfect, we are disposed to think that it would be desirable to require the deposit at the British Museum of a copy of every newspaper published in the United Kingdom. As a matter of fact, such newspapers are, we believe, now deposited there, but a doubt has been raised whether that deposit could be enforced under the existing law.

Questions 1750–61.

Music and the Drama.—Penalties.

167. We have next to refer to a provision of the law which has of late occasioned some dissatisfaction, and which, in our opinion, needs revision.

168. By an Act of Parliament which was passed in the third year of the reign of His late Majesty King William IV. (c. 15), it was enacted, with reference to dramatic copyright, that if any person should, during the continuance of the sole liberty of representation and contrary to the right of the author, or his assignee, represent or cause to be represented, without the consent in writing of the proprietor of the copyright first had and obtained, at any place of dramatic entertainment within the British dominions, any dramatic piece, the offender should be liable, for each and every representation, to the payment of an amount not less than 40*s*., or to the full amount of the benefit or advantage arising from the representation, or the injury or loss sustained by the proprietor of the copyright, whichever should be the greater damages; such sum to be recovered together with double costs of suit by the proprietor. In the 20th section of the Act, which was passed in the 5th and 6th years of Your Majesty's reign (c. 45), it was recited that it was expedient to extend to musical compositions the benefits of the earlier Act, and it was enacted that the provisions of the earlier Act should apply to musical compositions.

169. This provision for the 40*s*. penalty has lately been much abused. Copyrights in favourite songs from operas and in other works have been bought, and powers of attorney have been obtained to act apparently for the owners of the copyright in such works, and to claim immediate payment of 2*l*. for the performance of each song. These songs are frequently selected by ladies and others for singing at penny readings and village or charitable entertainments, and they sing them not for their own gain, but for benevolent objects. In such cases there is manifestly no intention to infringe the rights of any person; the performers are unconscious that they are infringing such rights; and no injury whatever can be inflicted on the proprietors of the copyrights. In many cases of this kind, and under a threat of legal proceedings in default of payment, the penalty has been demanded, and we have reason to believe that the money so demanded has been generally paid. Many instances of this proceeding have been brought to our notice from various parts of the country, and some will be found in the evidence.

Questions 1984*-1990* 2029*–2093, 2132, 2262–2292, 3778.

170. We have inquired whether the abolition of the right to take proceedings for the performance of these single songs would inflict injury on composers. The opinion seemed to be that though public performance is generally advantageous to composers, since it operates as an advertisement of their works, it is necessary that copyright owners should retain sufficient control to enable them to save their music from inferior or unsuitable performance, which might give the public an unfavourable opinion of their compositions.

Questions 2220 and 2225–2228.

171. The amendment in the law which we propose as most likely to preserve control for the composers, and at the same time to check the existing abuse, is that every musical composition should bear on its title page a note stating whether the right of public performance is reserved, and the name and address of the person to whom application for permission to perform is to be made. The owner of such composition should only be entitled to recover damages for public performance when such a statement has been made; and instead of the minimum penalty of not less than 40*s*. at present recoverable for any infringement of musical copyright by representation, the court should have power to award compensation according to the damage sustained.

172. This abuse of the powers given by the Act does not seem to have arisen in the case of dramatic copyright, nor does it seem likely to arise so long as the present law of licensing places of dramatic performance exists. We do not therefore suggest any alteration in the law so far as it applies to that copyright.

Fine Arts.—Infringement.

173. Two matters relating to infringement of copyright in works of fine art, but particularly of paintings, have been brought to our notice in which, it is alleged, the law affords an inadequate remedy.

174. First, by the 6th section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68) it was enacted that if any person should infringe copyright in any painting, drawing, or photograph, he should be liable to a penalty of 10*l*., and all the piratical copies should be forfeited to the proprietor of the copyright. Artists and engravers, who are frequently proprietors of copyright in paintings and drawings, consider the provision enabling them to seize piratical copies to be of great value, but they say that it is rendered inefficient by the fact that no power is given to enter a house and search for copies. An instance was given to us where, a conviction for selling piratical copies having been obtained, the magistrate had made an order that the copies should be delivered up, but it was found that the order could not be enforced. Questions 3295–3366. Question 3295.

175. The only remedy suggested to meet the evil, is that proposed in the Bill introduced into Parliament in the year 1869, but withdrawn before it became law, and which runs as follows:— Appendix to Evidence, p. 356.

"Upon proof on the oath of one credible person before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act that there is reasonable cause to suspect that any person has in his possession, or in any house, shop, or other place for sale, hire, distribution or public exhibition any copy, repetition or imitation of any work of fine art, in which or in the design whereof there shall be subsisting and registered copyright under the Act, and that such copy, repetition, or imitation has been made without the consent in writing of the registered proprietor of such copyright, it shall be lawful for such justice, court, sheriff, or other person as aforesaid before whom any such proceeding is taken, and he or they is and are hereby required to grant his or their warrant to search in the daytime such house, shop, or other place, and if any such copy, repetition, or imitation, or any work which may be reasonably suspected to be such shall be found therein, to cause the same to be brought before him or them, or before some other justice of the peace, court, sheriff, or person as aforesaid, and upon proof that any or every such copy, repetition, or imitation was unlawfully made, the same shall thereupon be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property." Though we should be glad to see some remedy adopted, we entertain doubts whether that proposed is not of a more stringent character than the circumstances justify.

176. The other matter relative to copyright in the fine arts, with regard to which it is said the law is defective, arises out of the now very common practice of hawking about the country piratical copies, and particularly piratical photographs of copyright paintings and engravings. This is spoken of as a serious injury to the copyright proprietors, and a practice which the existing law is powerless to stop. Questions 3291–3295, 3329–3380, and 3483–4.

177. At present all penalties and all copies forfeited can be recovered in England and Ireland only by action or by summary proceedings before justices, that is by summoning the offending person before the justices, and in Scotland by action before the Court of Session, or by summary action before the sheriff. The complaint made to us is that there is no power to seize piratical copies where they are seen and when they might be taken. The power to proceed by summons is, it is said, generally ineffectual, because persons selling these copies go round from house to house and refuse to give either a name or address, and are altogether lost sight of before a summons can be procured. Stat. 25 & 26 Vict. c. 68. s. 8.

178. A remedy by seizure was proposed in the Bill of 1869, and we think that the evil can best be met by the introduction in any future Act of a clause similar to the 15th of that Bill. The 15th clause was as follows:—

"If any person elsewhere than at his own house, shop, or place of business, shall hawk, carry about, offer, utter, distribute, or sell, or keep for sale, hire, or distribution,

any unlawful copy, repetition, or colourable imitation of any work of fine art, in which, or in the design whereof, there shall be subsisting and registered copyright under this Act, all such unlawful articles may be seized without warrant by any peace officer, or the proprietor of the copyright, or any person authorised by him, and forthwith taken before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act, and upon proof that such copies, repetitions, or imitations were unlawfully made, they shall be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property."

Questions 4283–4, 5473.

We think, however, that the words "carry about" might be properly omitted, as the other words are sufficiently large; and further, that it should not be in the power of the proprietor of the copyright, or any person authorised by him, to seize, but that the clause should run: "without warrant by any peace officer under the orders and "responsibility of the proprietor of the copyright or of any person authorised," &c., or to that effect.

Questions 3381–3400, 3486–3494.

179. Besides providing penalties for various acts of infringement of copyright, and for fraudulently marking pictures with the names or marks of artists who are not the authors of them, which penalties we think are sufficient for the purpose, the present law prohibits the importation into the United Kingdom, except with the consent of the proprietor, of all repetitions, copies, or imitations of paintings, drawings, or photographs in which there is copyright, which have been made in any foreign state or in any other part of the British dominions than the United Kingdom. We think it is desirable to retain this prohibition, and that a somewhat similar prohibition might properly be extended to the exportation of unlawful repetitions, copies, and imitations.

Question 3276.

180. Whatever powers may be given to search for and seize piratical copies of paintings, and whatever penalties may be established, the same should be extended to sculpture and other works of fine art.

Piracy of Lectures.

181. We have already suggested some alterations in the law with respect to lectures. In case of piracy either by publication or re-delivery without the author's consent, we think there should be penalties recoverable by summary process, and that the author should be capable of recovering damages by action in case of serious injury, and of obtaining an injunction to prevent printed publication or re-delivery. If the piracy is committed by printed publication, we think the author should also have power to seize copies.

COLONIAL COPYRIGHT.

Ante, paragraphs 49–58.

182. We have already shown that in some important respects the state of the present copyright law, as regards the colonies, is anomalous and unsatisfactory, and we have suggested that a remedy may be found by providing that publication in any part of Your Majesty's dominions shall secure copyright throughout those dominions. It is unnecessary to recapitulate our reasons for making this suggestion, and we will only add that the difficulties which may arise in arranging the details of this change in the law, will not, we anticipate, be of a serious character.

183. There remain, however, other questions of some difficulty affecting the general body of readers in the colonies, with which we now proceed to deal.

184. It must be admitted that it is highly desirable that the literature of this country should be placed within easy reach of the colonies, and that with this view the Imperial Act should be modified, so as to meet the requirements of colonial readers.

185. In this country the disadvantage arising from the custom of publishing books in the first instance at a high price, is greatly lessened by the facilities afforded by means of clubs, book societies, and circulating libraries.

186. These means are not available, and indeed are impracticable, owing to the great distances and scattered population, in many of the colonies, and until the cheaper English editions have been published, the colonial reader can only obtain English copyright books by purchasing them at the high publishing prices, increased as those prices necessarily are by the expense of carriage and other charges incidental to the importation of the books from the United Kingdom.

187. Complaints of the operation of the Copyright Act of 1842 were heard soon after it was passed, and from the North American provinces urgent representations were made in favour of admitting into those provinces the cheap United States reprints of English works. In 1846 the Colonial Office and the Board of Trade admitted the justice and force of the considerations which had been pressed upon the Home Government, "as tending to show the injurious effects produced upon " our more distant colonists by the operation of the Imperial law of copyright." And in 1847 an Act was passed "To amend the law relating to the protection in " the colonies of works entitled to copyright in the United Kingdom." Parl. Paper Colonial Copyright, [29 July 1872]. 10 & 11 Vict. c. 95.

188. The principle of this Act, commonly known as the Foreign Reprints Act, is to enable the colonies to take advantage of reprints of English copyright books made in foreign states, and at the same time to protect the interests of British authors.

189. It is provided, " that in case the legislature, or proper legislative authorities " in any British possession, shall be disposed to make due provision for securing or " protecting the rights of British authors in such possession, and shall pass an Act or " make an ordinance for that purpose, and shall transmit the same in the proper " manner to the Secretary of State, in order that it may be submitted to Her " Majesty, and in case Her Majesty shall be of opinion that such Act or ordinance " is sufficient for the purpose of securing to British authors reasonable protection " within such possession, it shall be lawful for Her Majesty, if she think fit so to do, " to express Her royal approval of such Act or ordinance, and thereupon to issue an " Order in Council, declaring that so long as the provisions of such Act or ordinance " continue in force within such colony, the prohibitions contained in the aforesaid " Acts (*i.e.*, the Copyright Act of 1842, and a certain Customs Act), and herein- " before recited, and any prohibitions contained in the said Acts, or in any other " Acts, against the importing, selling, letting out to hire, exposing for sale or hire, " or possessing foreign reprints of books first composed, written, printed, or pub- " lished in the United Kingdom, and entitled to copyright therein shall be suspended " so far as regards such colony."

190. Although the Act is general in its terms, the British possessions in North America were specially in view when it was passed, and for the following reason :— Between this country and the United States there was no existing copyright treaty, and it was the practice of the United States publishers to reprint in their own country English works at very cheap rates. These cheap copies, owing to various difficulties in giving practical effect to the provisions of the law prohibiting the importation, were largely introduced into Your Majesty's North American possessions.

191. Certain colonies, among others Canada, made what was at the time accepted by your Majesty in Council as sufficient provision for securing the rights of British authors, and thus brought themselves under the Act.

192. The provision made by the Canadian legislature was, that American reprints of English copyright works might be imported into the colony on payment of a customs duty of 12½ per cent., which was to be collected by the Canadian Government and paid to the British Government for the benefit of the authors interested. Like provisions were made in other colonies.

193. So far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada, but no returns, or returns of an absurdly small amount, have been made to the authors and owners. It appears from official reports that during the 10 years ending in 1876, the amount received from the whole of the 19 colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2½*d.*, of which 1,084*l.* 13*s.* 3½*d.* was received from Canada; and that of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings.

194. These very unsatisfactory results of the Foreign Reprints Act, and the knowledge that the works of British authors, in which there was copyright not only in the United Kingdom but also in the colonies, were openly reprinted in the United States, and imported into Canada without payment of duty, led to complaints from British authors and publishers; and strong efforts were made to obtain the repeal of the Act.

195. A counter-complaint was advanced by the Canadians. They contended that although they might import and sell American reprints on paying the duty, they were not allowed to re-publish British works, and to have the advantage of the trade, the sole benefit of which was, in effect, secured for the Americans. In defence