

SCHEDULE OF STATUTES CONSOLIDATED.

[This Schedule shows how the effect of every section of each of the Acts consolidated is given in the Digest. The Acts in the Schedule are given in the order of their date.]

Reference to Acts and Sections.	Reference to Articles of Digest, and Remarks.	Reference to Acts and Sections.	Reference to Articles of Digest, and Remarks.
I. 8 Geo. 2. c. 13 (1735) (Engravings.)		IX. 5 & 6 Vict. c. 45. (Copyright Act, 1843.)	
Section 1	22, 37.	Section 1	Repealing clause.
2	Omitted, superfluous.	2	5.
3	Limitation of suits and pleadings, omitted.	3	5.
4	Do. do.	4	5.
5	Repealed.	5	5.
6	Superfluous.	6	30.
II. 7 Geo. 3. c. 38. (Amends I.)		7	30.
Section 1	22, 37.	8	30.
2	22, 37.	9	30.
3	Repealed.	10	30.
4	Do.	11	23.
5	Pleading, omitted.	12	23.
6	22.	13	23.
7	Limitation of actions, omitted.	14	24.
III. 15 Geo. 3. c. 53. (University Act.)		15	27.
Section 1	11.	16	Provisions as to pleading, omitted.
2	31.	17	28.
3	12.	18	5.
4	31.	19	23.
5	31.	20	13.
6	} Repealed.	21	32.
7		22	15.
8	Superfluous.	23	29.
IV. 17 Geo. 3. c. 57. (Amends I. & II.)		24	24, 25.
Section 1	37.	25	5.
V. 54 Geo. 3. c. 56. (Copyright in Sculptures).		26	Provisions as to pleading, omitted.
Section 1	20.	27	12, and note.
2	20.	28	Saving existing rights, omitted.
3	36.	29	5 and 6.
4	36.	30	Spent.
5	Limitation of actions, omitted.	X. 7 & 8 Vict. c. 12. (The International Copyright Act, 1844.)	
6	20.	Section 1	Recitals and repeals, omitted.
VI. 3 & 4 Will. 4. c. 15. (Dramatic Copyright.)		2	38, 39.
Section 1	13 (Latter part of the section must be spent).	3	40.
2	31.	4	40.
3	Limitation.	5	40.
4	Superfluous.	6	40, and schedule in note.
VII. 5 & 6 Will. 4. c. 65. (Copyright in Lectures.)		7	3rd column of schedule in note.
Section 1	19, 35.	8	41.
2	35.	9	Do. note (omitted, as too special).
3	Superfluous.	10	42, note.
4	35.	11	41.
5	19.	12	41.
VIII. 6 & 7 Will. 4. c. 59. (Engravings.)		13	38, 39.
Section 1	22.	14	38, 39.
2	34, note.	15	} Omitted as too special.
		16	
		17	} Repealed and superseded by 15 & 16 Vict. c. 12.
		18	
		19	7, 14.
		20	Interpretation clause, omitted as superfluous.
		21	Spent.

Reference to Acts and Sections.	Reference to Articles of Digest, and Remarks.	Reference to Acts and Sections.	Reference to Articles of Digest, and Remarks.
XI. 10 & 11 Vict. c. 95. (Colonial Copyright, 1847.)		XIII. 25 & 26 Vict. c. 68. (Fine Arts, 1862.)	
Sections 1	} Proviso at end of 28.	Sections 1	21.
2		2	21.
3		3	21.
XII. 15 & 16 Vict. c. 12. (Amends X. 1852.)		4	26.
Sections 1	Repealing section.	5	26.
2	43.	6	33.
3	43.	7	33.
4	43.	8	Procedure, omitted.
5	43.	9	Do. do.
6	43.	10	34.
7	42.	11	33.
8	44.	12	41, note to schedule.
9	45.		
10		XIV. 38 Vict. c. 12. (Amends 15 Vict. c. 12. s. 6.)	
11	} Not material.	Section 1	43.
12			
13			
14	22.		

TABLE OF CASES REFERRED TO.

[The Figures refer to the number of the Article.]

Abernethy v. Hutchinson, 2.
 Albert (Prince) v. Strange, 1.
 Boucicault v. Delafield, 14.
 ——— v. Chatterton, 14.
 Brown v. Cook, 5.
 Campbell v. Scott, 9.
 Cary v. Kearsley, 9.
 D'Almaine v. Boosey, 9, 18.
 Du Bost v. Beresford, 8.
 Folsom v. Marsh, 3.
 Fores v. Johnson, 8.
 Gambart v. Ball, 22.
 Gee v. Pritchard, 3.
 Graves v. Ashford, 22.
 Jarrold v. Houlston, 9.
 Jefferys v. Boosey, 1, 46.
 Kelly v. Morris, 9.
 Lawrence v. Smith, 8.

Mayall v. Higbey, 2.
 Murray v. Elliston, 16.
 Oliver v. Oliver, 3.
 Palin v. Gathercole, 3.
 Perceval v. Phipps, 3.
 Pike v. Nicholas, 9.
 Queensberry (Duke) v. Shebbeare, 1.
 Reade v. Conquest (9 C. B., N.S.), 4, 14.
 ——— (11 C. B., N.S.), 14.
 Routledge v. Low, 6, 7.
 Russell v. Smith, 12.
 Saunders v. Smith, 9.
 Spiers v. Brown, 9.
 Stockdale v. Onwhyn, 8.
 Sweet v. Benning, 9.
 Tinsley v. Lacy, 17.
 Toole v. Young, 17.
 Wright v. Tallis, 8.

27

A Digest of the Law of Copyright.

CHAPTER I.

COPYRIGHT AT COMMON LAW IN UNPUBLISHED DOCUMENTS AND WORKS OF ART.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

* ARTICLE 1.

* Report, para. 15.

Copyright in Private Documents.

¹ The author or owner of any literary composition or work of art has a right, so long as it remains unpublished, to prevent the publication of any copy of it by any other person.

ILLUSTRATIONS.

1.² A. has etchings made by himself for his own satisfaction, but never published; B. obtains copies of them; A. has a right to prevent B. from publishing such copies.

2.³ A., the personal representative of Lord Clarendon, the historian, had a right, nearly a hundred years after Lord Clarendon's death, to prevent the representative of B., to whom Lord Clarendon lent unpublished historical MSS., from publishing those MSS.

ARTICLE 2.

Effects of Limited Publication of Private Documents.

The publication of any such thing as is mentioned in the last article for a special and limited purpose, under any contract, or upon any trust express or implied, does not authorise the person to whom such thing is published to copy or reproduce it, except to the extent and for the purposes for which it has been lent or intrusted to him.

ILLUSTRATIONS.

1.⁴ A. lends photographs to B. for a particular purpose. B. fails, and his assignees sell the photographs; A. can restrain the purchaser from making and selling copies of them.

2.⁵ A. delivers a written lecture to B. and other students who pay fees for attendance; B. has a right to take notes for purpose of study, but not in order to publish them for profit.

ARTICLE 3.

Letters.

⁶ A person who writes and sends a letter to another retains his copyright in such letter,

¹ This proposition is affirmed in different forms by all the judges in *Jefferys v. Boosey*, and also by all the Law Lords. See 4 H. L. C. 846, 867, 893, 903, 919, 944, 962, 978.

² *Prince Albert v. Strange*, 1 Mac. & Gor. 25.

³ *Duke of Queensberry v. Shebbeare*, 2 Eden, 329.

⁴ *Mayall v. Highbey*, 1 H. & C. 148.

⁵ *Abernethy v. Hutchinson*, 1 Hall & Tw. 28.

⁶ *Gee v. Pritchard*, 2 Swanst. 402; *Story, Equity Jurisdiction, sects. 947-9*; *Oliver v. Oliver*, 11 C. B. N. S. 139. A distinction was supposed to exist between literary letters and common letters, which is elaborately refuted in *Story, s. 946-7*. I think the supposed distinction proceeds on a misapprehension of the language of Sir T. Plumer in *Perceval v. Phipps*, 2 Ve. & B. 24-8. The law is stated very fully in the American case of *Folsom v. Marsh*, 2 Story, 111-12. The circumstances which would justify the publication of a private letter are illustrated by the case of *Palin v. Gathercole*, Coll. 565.

except in so far as the particular circumstances of the case may give a right to publish such letter to the person addressed, or to his representatives, but the property in the material on which the letter is written passes to the person to whom it is sent, so as to entitle him to destroy or transfer it.

ARTICLE 4.

No other Copyright except by Statute.

¹There is (probably) no copyright after publication in any of the things mentioned in Article 1, except such copyright as is given by the express words of the statutes herein-after referred to.

Publication in this article means in reference to books (as defined in the next article) publication for sale. It is doubtful whether in relation to works of art it has any other meaning. There is (it seems) no copyright in dramatic performances except by statute.

ILLUSTRATIONS.

1.² A. (an Italian) publishes in Italy a musical composition, and in Italy assigns to B. his copyright in it; B. republishes the same musical composition in England. B. has no copyright in the composition in England.

CHAPTER II.

COPYRIGHT IN BOOKS.

^a ARTICLE 5.

^a Report, paras. 23-44.

Book defined.—Law of Copyright in Books.

⁴In this chapter the word "book" means and includes every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan, separately published.

⁴The word "copyright" means the sole and exclusive liberty of printing, or otherwise multiplying copies of any subject to which the word is applied.

When a book is published in the lifetime of its author, the copyright therein is the personal property of the author and he assigns from the date of such publication, for whichever may be the longer of the two following terms, that is to say:—

- ^a (1.) A term of 42 years from publication;
- (2.) The life of the author, and a term of seven years, beginning from his death.

^a For "A term of 42 years,"—"its first publication," read—

- (1.) A term of 30 years from the death of the author in the

¹ See APPENDIX, Note A.

² Jefferys v. Boosey, 4 H. L. C. 920.

³ The question was also much discussed in Reade v. Conquest, 9 C. B. (N. S.) 755.

⁴ 5 & 6 Vict. c. 45. s. 2. The section contains no definition of "publish." It is obviously used, however, in the sense of publishing in the way of trade, and not in the more general sense in which it is used, in such an expression as "publishing a libel."

⁵ 5 & 6 Vict. c. 45. s. 3 (re-drawn). The words "personal property" consolidate s. 25 with s. 3.

If the publication takes place after the author's death, the proprietor of the author's manuscript and his assigns have copyright in his book for a term of 42 years from its first publication.

¹ If one person employs and pays another to write a book on the terms that the copyright therein shall belong to the employer, the employer has the same copyright therein as if he had been the author.

² If the publisher or proprietor of any encyclopædia, review, magazine, or periodical work, or work published in parts or series, employs and³ pays persons to compose any volume, part, essay, article, or portion thereof, on the terms that the copyright therein⁴ shall belong to such publisher or proprietor, such publisher or proprietor has upon publication the same rights as if he were the author of the whole work (with the following exceptions):—

1. After ^b 28 years from the first publication of any essay, article, or portion in any review, magazine, or other periodical work of a like nature ⁵[not being an encyclopædia],^c the right of publishing the same in a separate form reverts to the author for the remainder of the term for which his copyright would have endured if the same had been originally published by him elsewhere.
2. During the said term of 28 years ^d the publisher or proprietor may not publish any such essay, article, or portion, separately or singly, without the consent of the author or his assigns.

The author of any such magazine as aforesaid may, by contract with any such publisher or proprietor, reserve the right of publishing any work, his composition, in a separate form, and if he does so he is entitled to copyright in such composition when so published for the same term as if such publication were the first publication, but without prejudice to the right of the publisher or proprietor to publish the same as part of such periodical work.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

case of books published in the author's lifetime and with his name.

- (2.) A term of 30 years from the date of the deposit of the book for the use of the British Museum, in the case of works published anonymously or after the death of their authors, and of cyclopædias; provided that, if the author of an anonymous work publishes in his lifetime an edition bearing his name, he shall be entitled to copyright therein for his life, and 30 years after his death.

This term is referred to in the alterations herein-after contained as "the term of copyright."

If a book is published after the author's death, the copyright therein belongs to the proprietor of the manuscript and his assigns.

^b For "28" read "3." Report, para. 43.

^c Report, paras. 40-41.

^d For "28" read "3" and for "the publisher or proprietor may not" read "neither the publisher nor the proprietor nor any other person may." (Report, para. 44.)

¹ This seems to be part of the meaning of the first part 5 & 6 Vict. c. 45. s. 18, but the language is not absolutely clear. Part of that section as it stands is bad grammar. The words "and paid for," should probably be "and should be paid for."

² 4 & 5 Vict. c. 45. s. 18.

³ An actual payment, as distinguished from a contract to pay, by the proprietor to the contributor is necessary. Payment by the editor to the contributor is not sufficient to give the proprietor who pays the editor copyright, *Brown v. Cook*, 16 L. J., Ch. 142-3.

⁴ *i.e.*, in the periodical work containing all the articles, *Brown v. Cook*, 16 Law Journ., Ch. 143.

⁵ This parenthesis gives what is presumed to be the effect of the omission in the latter part of the article of the reference to encyclopædias contained in the former part.

¹In order to provide against the suppression of books of importance to the public, the Judicial Committee of the Privy Council are empowered, on complaint that the proprietor of the copyright in any book after the death of its author has refused to republish or allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner and subject to such conditions as they think fit, and the complainant may publish such book accordingly.

The whole of this article is subject to the limitations contained in the subsequent articles of this chapter.

² It applies—

- ^e (1.) To all books published after 1st July 1842.
- (2.) To all books published before that day in which copyright was then subsisting, unless such copyright was vested in any publisher or other person who acquired it for any consideration other than that of natural love or affection, in which case such copyright endures for the term then provided for by law, unless the author, if living on that day, or if he were then dead his personal representative, and (in either case) the proprietor of the copyright, registered before the expiration of the term of copyright to which they were then entitled, consent to accept the benefits of the Act 5 & 6 Vict. c. 45. in a form provided in a schedule therein.

^e A provision corresponding to this would be made with reference to the date of any new Act. (Report, para. 42).

ARTICLE 6.

Who may obtain Copyright in Books.

³In order that copyright in a published book may be obtained under the provisions of Article 5 the book must in all cases be published in 'the United Kingdom. The author or other person seeking to entitle himself to copyright may be either—

- (a.) A natural born or naturalized subject of the Queen, in which case his 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 and temporary allegiance to Her Majesty by residing at that time in some part of Her Majesty's dominions.

¹ For "the United Kingdom," read "Her Majesty's dominions" (para. 58).

² Substitute for the rest of this article the following:—

"a subject of Her Majesty or an alien, and the place of his residence at the time of publication, shall in all cases be immaterial."

¹ 5 & 6 Vict. c. 45. s. 5.

² 5 & 6 Vict. c. 45. s. 4.

³ Routledge v. Low, L. R., 3 E. & J. A. 100. See, too, Jefferys v. Boosey, 4 H. L. C. 815.

¹ It is probable, but not certain, that an alien friend who publishes a book in the United Kingdom whilst resident out of Her Majesty's dominions, acquires copyright throughout Her Majesty's dominions by such publication.

ARTICLE 7.

Previous and Contemporary Publication out of the United Kingdom.

² No copyright in a book published in the United Kingdom can be obtained under Article 5, if the book has been previously published by the author in any foreign country, but the contemporaneous publication of a book in a foreign country and in the United Kingdom does not prevent the author from obtaining copyright in the United Kingdom.

³ It is uncertain whether an author obtains copyright by publishing a book in the United Kingdom, after a previous publication thereof in parts of Her Majesty's dominions out of the United Kingdom.

It is uncertain whether an author acquires copyright under Article 5 in any part of Her Majesty's dominions out of the United Kingdom (apart from any local law as to copyright which may be in force there) by the publication of a book in such part of Her Majesty's dominions.

ILLUSTRATIONS.

A. publishes a book in the United States and afterwards publishes it in England. A. gains no copyright in England.

A. publishes a book substantially at the same time in England and in America. The publication in America does not prevent A. from gaining copyright in England.

A. publishes a book at the Cape of Good Hope. It is uncertain whether by that publication he obtains copyright in the Cape of Good Hope under 5 & 6 Vict. c. 45. and apart from any local law in force at the Cape of Good Hope. It is also uncertain whether by that publication he obtains or debars himself from obtaining copyright for the book by a subsequent publication in England.

¹ ARTICLE 8.*No Copyright in immoral Publications.*

⁴ No copyright can exist in anything in which copyright would otherwise exist if it is immoral, irreligious, seditious, or libellous, or if it professes to be what it is not, in such a manner as to be a fraud upon the purchasers thereof.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

^h For Article 7 substitute:—

“ Copyright in a book published in Her Majesty's dominions may be obtained under Article 5, although the book has been previously published by the author in a foreign country, if the subsequent publication takes place within three years of the previous publication, and if at the time of the previous publication the author or person seeking to entitle himself to copyright is either a natural born or naturalized subject of Her Majesty, or an alien domiciled in Her Majesty's dominions; but if such author or person is at the time of such previous publication an alien not domiciled in any part of Her Majesty's dominions, he shall not obtain copyright by any subsequent publication in Her Majesty's dominions, except under the provisions of some copyright treaty; provided that this shall not affect the provisions of any local law which may be in force in any part of Her Majesty's dominions.”

N.B.—The second and third paragraphs of Article 7 would be superseded by the alterations and suggestions in the margin of Article 6 (*see Report, 49-64.*)

ⁱ Report, paras. 65, 66.

¹ This was the opinion of Lord Cairns and Lord Westbury in *Routledge v. Low*, but the case does not decide the point. Their view seems to be favoured by the Naturalization Act, 33 Vict. c. 14. s. 2, which enacts that personal property of every description may be taken, acquired, held, and disposed of in every respect by an alien in the same manner in all respects as by a natural born British subject.

² 7 & 8 Vict. c. 12. s. 19. As to the earlier law, see *Clements v. Walker*, 2 B. & C. 861. As to contemporaneous publication in a foreign country, see *Cocks v. Purday*, 2 C. & K. 269, 5 C. B. 860.

³ These doubts arise from the language of the Law Lords in *Routledge v. Low*, all of whom declare in the most explicit terms that the first publication must be in the United Kingdom in order that copyright may be gained. The case, however, cannot be said exactly to decide this point.

⁴ *Walcot v. Walker*, 7 Ves. 1. *Lawrence v. Smith*, 1 Jac. 471. *Stockdale v. Onwhyn*, 5 B. & C. 173. *Wright v. Tallis*, 1 C. B. 893. In this case it was held that there could be no copyright in a book which falsely and fraudulently purported to be a translation of a German work of devotion. These cases all refer to books, but the principle would obviously apply to pictures and sculptures. As to engravings, see *Forbes v. Johnes*, 4 Esp. 97, *Du Bost v. Beresford*, 2 Camp. 511.

¹ ARTICLE 9.ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

What is Infringement of Copyright in a Book, and what not.—Fair Use of Books.

The owner of the copyright in a book is not entitled to prevent other persons from publishing the matter contained in it if they invent or collect it independently, nor to prevent them from making a fair use of its contents in the composition of other books.

The question, what is a fair use of a book, depends upon the circumstances of each particular case, but the following ways of using a book have been decided to be fair:—

- (a.) Using the information or the ideas contained in it without copying its words or imitating them so as to produce what is substantially a copy.
- (b.) Making extracts (even if they are not acknowledged as such) appearing, under all the circumstances of the case, reasonable in quality, number, and length, regard being had to the object with which the extracts are made and to the subjects to which they relate.
- (c.) Using one book on a given subject as a guide to authorities afterwards independently consulted by the author of another book on the same subject.
- (d.) Using one book on a given subject for the purpose of checking the results independently arrived at by the author of another book on the same subject.

An abridgment may be an original work if it is produced by a fair use of the original or originals from which it is abridged, but the republication of a considerable part of a book is an infringement of the copyright existing in it, although it may be called an abridgment, and although the order in which the republished parts are arranged may be altered.¹

ILLUSTRATIONS.

(1.) ² A. publishes a directory containing the names and addresses of a large number of persons. A. cannot prevent B. from publishing the same names and addresses if he collects them for himself, but A. can prevent B. from reprinting A.'s directory (with or without corrections) without collecting the information contained in it for himself.

(2.) ³ A. publishes a French dictionary. B., taking A.'s dictionary as a starting point, but adopting a different vocabulary, abridges A.'s statements in many instances and supplements and corrects them in many others by matter taken from other writers. This is not an unfair use of A.'s dictionary.

(3.) ⁴ B. publishes a road-book containing certain passages taken without acknowledgment from a similar road-book by A., the quantity of matter shown to be taken being small, and no substantial part of the one book being a transcript of the other. This is not an unfair use of A.'s road-book.

¹ *Add at end of Article 9:—*

“No abridgment of a work in which copyright exists shall be published during the term of copyright without the consent of the person entitled to such copyright.” (Report, para. 69.)

¹ See APPENDIX, Note B.

² *Kelly v. Morris*, L. R. 1 Eq. 697.

³ *Spiers v. Brown*, 6 W. R. 352.

⁴ *Cary v. Kearsley*, 4 Esp. 168. This case shows the distinction between plagiarism, a literary impropriety, and piracy, a legal wrong.

(4.) ¹ A. owns the copyright of 50 volumes of law reports. B. publishes two volumes of leading cases containing 27 cases, each illustrated by elaborate and laborious notes on the subjects to which the case refers. The 27 cases are extracted verbatim from different parts of the 50 volumes. Probably this is not an unfair use of the 50 volumes.

(5.) ² A. publishes two volumes of poems. B. publishes a collection of poetry, and inserts in it six of the best of A.'s poems. This is an infringement of A.'s copyright.

(6.) ³ A. publishes a treatise on fencing of 118 pages. B. copies into an article in a cyclopædia on the same subject 75 pages of A.'s treatise. This is an infringement of A.'s copyright.

(7.) ⁴ A. publishes a book on the descent of the modern English from the ancient Britons, quoting many authorities for the opinions which he maintains. B. refers to the authorities quoted by A., makes the same quotations, and arrives at similar results. This is not an unfair use of A.'s book.

(8.) ⁵ A. publishes a table of logarithms. B. goes through the same calculations and works out the same results. B. checks his results by A.'s book. This is not an unfair use of A.'s book.

(9.) ⁶ Viner's Abridgment and Comyn's Digest are books in which copyright may exist, although they consist entirely of matter compiled from other books.

(10.) ⁷ A. publishes a series of law reports, with a short head-note prefixed to the report of each case. B. republishes the head-notes, arranged in the order of their subject matter, under the title of the Monthly Digest. B. infringes A.'s copyright.

ARTICLE 10.

Crown Copyright.

⁸ It is said that Her Majesty and her successors have the right of granting by patent from time to time to their printers an exclusive right to print the text of the authorised version of the Bible, of the Book of Common Prayer, and possibly the text of Acts of Parliament.

ARTICLE 11.

University Copyright.

^{k 9} The Universities of Oxford, Cambridge, Edinburgh, Glasgow, St. Andrew's, 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

^k *Articles 11 and 12 to be repealed.*
(Report, paras. 45-48.)

¹ Saunders v. Smith, 3 Myl. Cr. 711. The injunction in this case was refused on grounds unconnected with piracy, but no action was ever brought, and leading cases upon many subjects have since been published, I believe, without interruption.

² Campbell v. Scott, 11 Sim. 31. The difference between this case and the last is that no independent labour at all, except that of copying, was employed in the one case, whereas in the other the extracts, though considerable in length and number, were mere texts to an elaborate commentary.

³ Roworth v. Wilkes, 1 Camp. 94.

⁴ Founded on Pike v. Nicholas, L. R., 5 Ch. 251. The case involves the illustration, though the facts are not precisely the same.

⁵ Per Vice-Chancellor Page Wood in Jarrold v. Houlston, 3 K. & J. 715-6.

⁶ Per Lord Lyndhurst in D'Almaine v. Boosey, 1 Y. & C. 296. The books mentioned are laborious works of reference for legal purposes.

⁷ Sweet v. Benning, 16 C. B. 459.

⁸ See Copinger on Copyright, ch. ix.

⁹ 15 Geo. 3. c. 53.; 41 Geo. 3. c. 107.; 5 & 6 Vict. c. 45. s. 27. 41 Geo. 3. c. 107. s. 3 extended the privilege to Dublin. This section must, I think, have been kept alive by 5 & 6 Vict. c. 45. s. 27, though s. 1 repeals the whole Act, and though it is totally omitted from the revised edition of the statutes.

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 any limited term.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

ARTICLE 12.

How such Right forfeited.

The exclusive right mentioned in the last article lasts so long only as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage.

If any university or college delegates, grants, leases, or sells its copyright or exclusive right of printing books granted by 15 Geo. 3. c. 53., or any part¹ thereof, or allows or authorises any person to print or reprint the same, the privilege granted by the said Act becomes void and of no effect, but the universities or colleges may sell the copyrights bequeathed to them as for the terms secured to authors by the 8 Anne c. 19.

CHAPTER III.

COPYRIGHT IN DRAMATIC PIECES, LECTURES, AND WORKS OF ART.

¹ ARTICLE 13.

¹ Report, paras. 70-75.

Term of Copyright in Dramatic Pieces.

^{m 2} The author, or the assignee of the author, of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment or musical composition not printed and published by such author or assignee, has, as his own property, the sole liberty of representing or causing to be represented or performed, any such dramatic piece or musical composition at any place of dramatic entertainment whatever in Her Majesty's dominions (possibly in perpetuity, but more probably for) whichever is the longer of the two following terms, viz. :—

(1.) Forty-two years from the first public representation of such dramatic piece or musical composition.

(2.) The life of the author and a further term of seven years beginning from his death.

³ The singing of a single song of a dramatic character in a dramatic manner may amount to a dramatic entertainment within the meaning of this article.

³ Any place at which a dramatic entertain-

^m *Substitute for Articles 13 and 14 the following :—*

The author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment or musical composition, shall have—

(a.) The sole liberty of representing, or causing it to be represented, or performed; and

(b.) The sole liberty of publishing it as a book,

for the term of copyright, such term commencing at the first public representation or performance, or at the publication of such dramatic piece as a book, whichever may first happen.

If such first representation, performance, or publication takes place out of the United Kingdom, such

¹ It is not quite clear whether this means any part of the books or any part of the right of printing them.

² 3 & 4 Will. 4. c. 15. s. 1, as amended by 5 & 6 Vict. c. 45. s. 20. The doubt expressed in the text arises thus: By 3 & 4 Will. 4. c. 15. s. 1, the author has "as his own property the sole right of representation, &c." no term being specified. If the piece is published as a book, he has copyright for 28 years from representation. If this stood alone, it would seem as if the right of publication was perpetual, but the language of 5 & 6 Vict. c. 42. s. 20, shows that the Legislature does not so understand the Act. The words are "Whereas it is expedient to extend the sole liberty of representing dramatic pieces to the full time provided by this Act for the continuance of copyright" . . . "Be it enacted" . . . "that the sole liberty of representing, &c. any dramatic piece . . . shall endure . . . for the term in this Act provided for the duration of copyright in books." It thus appears that the Legislature in 1842, understood the Act of 1833 in a term different from that which the bare words appear to impart. A court of law would probably hold that if the wider term was granted by the earlier Act it was cut down by the later Act.

³ Both these points were decided in *Russell v. Smith*, 12 Q. B. 217.

ment is given [? for profit] on any particular occasion is a place of dramatic entertainment within the meaning of this article.

ARTICLE 14.

Condition of Copyright in Dramatic Pieces.

¹The exclusive right of representing or performing a dramatic piece or musical composition cannot be gained if such dramatic piece or musical composition has been printed and published as a book before the first representation thereof.

²Or, if it has been publicly represented or caused to be represented by the author or his assigns in any place out of Her Majesty's dominions before it was publicly represented in them, except under the International Copyright Act.

ARTICLE 15.

Copyright in and Representation of Dramas.

³Copyright in a book containing or consisting of a dramatic piece or musical composition is a right distinct from the right to represent such dramatic piece or musical composition on the stage, and ⁴no assignment of the copyright of any such book conveys to the assignee the right of representing or performing such dramatic piece or musical composition unless an entry of such assignment is made in the registry book mentioned in Article 23, expressing the intention of the parties that such right should pass.

ARTICLE 16.

Representation of a Drama no Infringement of Copyright.

⁵A dramatic piece or musical composition published as a book may (it seems probable) be publicly represented without the consent of the author or his assigns.

¹*This article to be repealed. See alterations suggested to Article 13.*

¹ This seems to be involved in 3 & 4 Will. 4. c. 15. s. 1, the effect of which is given in the last article.

² 7 & 8 Vict. c. 12. s. 19. As explained by V. C. Page Wood in *Boucicault v. Delafield*, 1 Hem. & Miller, 597. This decision has been followed very lately in the case of *Boucicault v. Chatterton*, Weekly Notes for Nov. 25, 1876, before Malins, V. C. The contention for the plaintiff was that the International Copyright Act did not apply to British subjects, and that the words "first published" in 7 & 8 Vict. c. 12. s. 19. did not mean as regarded a dramatic piece "first publicly represented," but "first published as a book," (so at least I understand the report of Lord (then Sir Hugh) Cairns' argument, which is compressed into a very few lines). The decisions referred to (the last of which is I believe under appeal) have warranted this contention.

³ The general proposition is an inference from what follows, but it is necessary to make what follows clear.

⁴ 5 & 6 Vict. c. 45. s. 22.

⁵ The only authority I have been able to find on this point is the case of *Murray v. Elliston*, 5 B. & Ald. 657, which appears to imply the proposition contained in the article. Elliston brought out Lord Byron's tragedy of *Marino Faliero*, in a state adapted for the stage by considerable omissions. Abbott Bayley and Holroyd, J. J., reported to the Lord Chancellor that in their opinion no action would lie against him for so doing. I do not know how far the alterations necessary to adapt the piece to the stage might make it a new work, and I have therefore introduced the "it seems" into the article. The case of a dramatized novel affords a very close analogy.

ARTICLE 17.

° *Dramatization of Novels.*

¹ The public representation of a dramatic piece constructed out of a novel is not an infringement of the copyright of the author of the novel or his assigns,² but the printing³ and publication as a book of such dramatic piece so represented may be such an infringement.

² If two persons independently of each other convert a novel into a dramatic piece, each has an exclusive right of representing his own dramatic piece, though one of them may be the author of the novel so dealt with and though the two pieces may have parts in common.

ARTICLE 18.

Infringement of Copyright in a Musical Composition.

⁴ Copyright in a musical composition is infringed when a substantial portion of the music in which copyright exists is reproduced either without any alteration or with such alterations as are required to adapt it to a different purpose or instrument, the alterations being of such a character that the substantial identity between the original and the altered version can be recognised by the ear.

ARTICLE 19.

° *Copyright in Lectures.*

⁵ The author of any lecture, or his assign, has by statute the sole right of publishing any lecture, of the delivery of which notice in writing has been given to two justices living within five miles from the place where such lecture is delivered two days at least before it is delivered, unless such 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.

The author of any lecture has [probably] at common law the same right as by statute, without giving such notice as is required by statute, but he cannot recover the penalties provided by the Act and specified in Article 35, for an infringement of his copyright.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

° Report, paras. 76–81.

° *Omit* “not.” (Report, para. 80.)

° *For* “but” *read* “and.” (Report, para. 81.)

° *Omit this paragraph.*

° Report, paras. 82–87.

° *Substitute for this article the following:—*

“The author of any lecture and his assigns shall have,—

(a.) The exclusive right of delivering such lecture for the term of copyright commencing from the first delivery thereof, provided that if he publishes such lecture as a book his exclusive right of delivering it shall thereupon determine.

(b.) The exclusive right of publishing such lecture as a book, provided that no report of any lecture published in a newspaper shall be deemed to be an infringement of such right unless at the time of delivering such lecture the lecturer gives public notice that he prohibits the publication thereof in newspapers.

¹ *Reade v. Conquest*, 9 C. B. (N. S.) 755. There is another case of *Reade v. Conquest*, 11 C. B. (N. S.) 479, which decides that when an author turns his own play into a novel the reconversion of the novel into a play containing scenes imported into the novel from the first play is an infringement of the author's copyright in the original play, but this is rather an illustration of the law than a distinct item in it. There is an odd contrast between the circumstances of this case and that of *Toole v. Young* (*see next note*), but they are quite consistent when carefully considered.

² *Tinsley v. Lacy*; 1 Hem. and Mill. 747.

³ *Toole v. Young*, L. R. 9, Q. B. 523.

⁵ 5 & 6 Will. 4. c. 65. ss. 1 and 5. The last paragraph appears probable, but it cannot be called certain.

⁴ *D'Almaine v. Boosey*, 1 Y. & C. 288.

ARTICLE 20.

u Copyright in Sculpture.

¹ Every person who makes or causes to be made any new and original sculpture, or model, or copy, or cast of any of the things mentioned in the footnote,² has the sole right

therein for the term of 14 years from first putting forth or publishing the same, provided that the proprietor causes his name, with the date, to be put on every such thing before it is published. If the proprietor be living at the end of the term of 14 years, his right returns to him for a further term of 14 years, unless he has divested himself thereof.

ARTICLE 21.

x Copyright in Paintings and Photographs.

³ The author,³ being a British subject or resident within the dominions of Her Majesty, of any original painting, drawing, or photograph, not having been sold before the 29th July 1862, has the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph and the negative thereof, by any means or of any size, whether made in the Queen's dominions or not, for the term² of his life and seven years after his death,⁴ but this right does not affect the right of any other person to represent any scene or object represented by any such painting.

⁵ If any painting or drawing, or the negative of any photograph, herein-before mentioned, is

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

^u Report, paras. 97-100.

^v Add here "or any copy or cast of any sculpture in which there is no copyright existing at the time when such copy or cast is made." (Report, para. 100.)

^w Substitute "copyright" for "14 years—the same," and omit the last sentence of this article as it stands, and add the following:—

"Every imitation of any such thing, whether by sculpture, modelling, photography, drawing, or otherwise, shall be deemed to be an infringement of such rights." (Report, paras. 95-99.)

^x Report, paras. 101-124.

^y Omit "being a British subject—Her Majesty." (Report, para. 96, and the addition to Article 22.)

^z Substitute for "of his life," &c.—
"in the case of paintings and drawings, for the term of copyright, and in the case of photographs, for 30 years from the date of the publication thereof, unless such photographs were

¹ 54 Geo. III. c. 56. ss. 1 & 6.

² (1.) The human figure.

(2.) Any bust.

(3.) Any part of the human figure clothed in drapery or otherwise.

(4.) Any animal.

(5.) Any part of any animal combined with the human figure, or otherwise.

(6.) Any subject being matter of invention in sculpture.

(7.) Any alto or basso relievo representing any of the matters aforesaid.

(8.) Any cast from nature.

(i.) Of the human figure.

(ii.) Of any part or parts of the human figure.

(iii.) Of any animal.

(iv.) Of any part of any animal.

(v.) Of any such subject (? as referred to in (6)) containing or representing any of the things herein-before mentioned, whether separate or combined.

This section is a miracle of intricacy and verbosity. It also contains an "of," which may be a misprint, as it seems to make nonsense of several lines, and a most puzzling "such" of which I have given a conjectural interpretation. Moreover, every substantive is given both in the singular and plural, "figure or figures," "part or parts," &c., &c. The section forms a sentence of 38 lines, the first half of which is repeated in the second half in so intricate a way that the draftsman appears to have lost himself in the middle of it. It admits of a doubt whether a cast from nature of an animal is the subject of copyright at all, and whether it must not be a cast from a cast from nature.

³ 25 & 26 Vict. c. 68. s. 1.

⁴ s. 2.

⁵ This is my interpretation of the latter part of the section, which is very intricate and involved. The words in the parentheses are not in the Act, but they seem to me to be a legal inference from its provisions, and from the assumption on which the Act is based, that apart from it there is no copyright in paintings, &c. This assumption, however, is not absolutely correct, as appears from Article 1. It can hardly have been intended to abolish the common law principles embodied in that article by this statute, but I am not sure that that is not its effect.

made by the author for or on behalf of any other person for a good or valuable consideration, such person is entitled to copyright therein.

If any such thing is, after the 29th July 1862, for any such consideration transferred for the first time by the owner to any other person, the owner may, by an agreement in writing signed at or before the time of such transfer by the transferee, reserve the copyright to himself,^{a 1} or he may, by an agreement in writing signed by himself or by his agent duly authorised, transfer the copyright to such transferee. (If no such agreement in writing is made, the copyright in such painting ceases to exist.)

ARTICLE 22.

Copyright in Engravings.

¹ Everyone has for ^{b 2} 28 years from the first publishing thereof the sole right and liberty of multiplying, by any means whatever, copies of any print² of whatever subject which he has—

- (a.) Invented or designed, graved, etched, or worked in mezzotinto or chiaro-oscuro; or which he has—
- (b.) From his own work, design, or invention, caused or procured to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro; or which he has—
- (c.) Engraved, etched, or worked in mezzotinto or chiaro-oscuro, or caused to be engraved, etched, or worked from any picture, drawing, model, or sculpture, either ancient or modern :

Provided that such prints are truly engraved with the name of the proprietor on each plate and printed on every print.^{c 3}

³ Prints taken by lithography and other mechanical processes are now upon the same footing as engravings.

ALTERATIONS IN THE EXISTING LAW SUGGESTED BY THE COMMISSION.

first published as part of a book, in which case the copyright in them shall last as long as the copyright in the book.”

^{a 1} Omit “or he may” &c. to the end of the article, and substitute—

“If no such agreement is made the copyright, shall pass, in the case of pictures and drawings, to the owner thereof for the time being, and in the case of photographs, to the owner of the negative, provided that no person who has made the negative of any photograph by the direction and at the expense of any other person shall be entitled to sell or exhibit for sale impressions thereof without such person’s consent.

“Provided also, that when any person has painted any picture or made any drawing by the direction of any other person, the copyright in studies or sketches made for the purpose of such picture or drawing shall not by reason thereof pass from the person who made them.” (Report, paras. 115, 119, 120, 124.)

^{b 2} For “28” read “30.” (Report, para. 122.)

^{c 3} Add: “All the alterations suggested in the last article as to photographs shall apply to engravings also.” (Report, para. 122.)

¹ Effect of 8 G. 2. c. 13. s. 1, as enlarged and altered by 7 G. 3. c. 38. ss. 1, 2, 6. Extended to Ireland by 6 & 7 W. 4. c. 59. s. 1.

² The words are “any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever.”

³ Acts above referred to as explained by 15 & 16 Vict. c. 12. s. 14, and *Graves v. Ashford*, L. R., 2, C. P. 410, and see *Gambart v. Ball*, 14 C. B. (N. S.) 306.

239

CHAPTER IV.

REGISTRATION.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

^d **ARTICLE 23.**

^e *The Registration of Books.*

¹ A book of registry must be kept at Stationers' Hall, in which the proprietor of copyright in any book, or of the right of representation of any dramatic piece or musical composition, whether in manuscript or otherwise, may upon the payment of a fee of 5s. enter in the register the particulars stated in the form given in the footnote.²

³ The proprietor of the copyright in any encyclopædia, review, magazine, or periodical work, or other work published in a series, is entitled to all the benefit of registration on entering in the book of registry the title of such work, the time of publishing the first volume or part, and the name and place of abode of the proprietor and publisher when the publisher is not also the proprietor.

Every such registered proprietor may assign his interest or any portion of his interest by making an entry in the said book of such assignment in the form given in the footnote.⁴

⁵ Licenses affecting any such copyright may also be registered in the said register.

Any person aggrieved by any such entry may apply to the High Court, or any judge thereof, to have such entry expunged or varied, and the court may make such order for that purpose as it thinks just.

It is a misdemeanor to make or cause to be made any false entry in such book wilfully.

The officer in charge of the book is bound to give sealed and certified copies of the entries contained therein on payment of a fee of 5s., and such copies are *prima facie* proof of the matters alleged therein.

^d Report, paras. 128-159.

^e *Substitute for this chapter the following:—*

An officer shall be appointed by the Government, whose duty it shall be to register things in which copyright exists.

In the case of books, engravings, prints, and photographs, registration shall be effected as follows:—The copyright owner shall deliver to the registrar a copy of the thing to be registered. The registrar shall, upon the payment of a fee of one shilling, and no more,—

- (a.) Make in the register a memorandum of the receipt of the thing registered;
- (b.) Deliver a certified copy of such receipt to the person registering;
- (c.) Forward the thing registered to the British Museum.

The certified copy shall be *prima facie* evidence of the publication and due registration of the work, and of the title to the copyright therein.

No owner of copyright shall be entitled to take or maintain any proceedings or to recover any penalty in respect of his copyright until he has registered the thing in which he claims copyright, nor after he has registered it in respect of anything done before registration.

These provisions shall apply to the case of paintings, drawings, and

¹ 5 & 6 Vict. c. 45. ss. 11-14 (a good deal condensed).

² (a) Original Entry of Proprietorship of Copyright of a Book.

Time of making the Entries.	Title of the Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.

³ 5 & 6 Vict. c. 45. s. 19.

⁴ (b) Form of Entry of Assignment of Copyright in any Book previously registered.

Date of Entry.	Title of Book.		Assignor of Copyright.	Assignee of Copyright.
	Set out the Title and refer to the Page of the Registry Book in which the Original Entry of the Copyright thereof is made.			

⁵ No particulars about the registration of licenses are contained in the Act.

¹ The fee for the registration of university copyrights and for copies of them is 6*d.*, and they may be inspected without fee.

ARTICLE 24.

Effect of Registration in case of Books.

² No proprietor of copyright in any book can take any proceedings in respect of any infringement of his copyright unless he has, before commencing such proceedings, caused an entry to be made in the said register under the last article.

The omission to make such entry does not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof.

ARTICLE 25.

Registration in respect of Dramatic Copyright.

³ The remedies which the proprietor of the sole liberty of representing any dramatic piece has under Article 32 are not prejudiced by an omission to make any entry respecting such exclusive right in the said register.

ARTICLE 26.

Registration of Copyright in Paintings, &c.

⁴ A book entitled the Register of Proprietors of Copyright in Paintings, Drawings, and Photographs, must be kept at the Hall of the Stationers' Company.

A memorandum of every copyright to which any person is entitled under Article 21, and of every subsequent assignment of any such copyright, must be entered therein; such memorandum must contain a statement of:—

- (a.) The date of such agreement or assignment;
- (b.) The names of the parties thereto;
- (c.) The name and place of abode of the person in whom such copyright is vested by virtue thereof, and of the author of the work;
- (d.) A short description of the nature and subject of such work, and, if the person registering so desires, a sketch, outline, or photograph of the work in addition thereto.

No proprietor of any such copyright is entitled to the benefit of 25 & 26 Vict. c. 68 until such registration, and no action can be maintained, nor any penalty be recovered, in respect of anything done before registration;⁵ but it is not essential to the validity of a registered assignment that previous assignments should be registered.

⁶ The three paragraphs of Article 23, relating to the correction of errors in the register, the making of false entries, and the giving of certificates, apply also to the book in this article mentioned.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

sculptures, only if the copyright therein is vested in some person other than the owner. In such cases the entry in the register must contain the date of the agreement by which such copyright is so separated, the names of the parties thereto, the names and places of abode of the artist and of the person in whom the copyright is vested, and such a description, sketch, outline, or photograph of the work as will be sufficient to identify it. In the case of dramatic pieces and musical compositions which are publicly performed, but not printed and published, the title of every dramatic or musical composition, with the name of the author or composer, and the date and place of its first public performance, should be registered. (Report, paras. 146, 147, 152, 154–9.)

¹ 15 Geo. 3. c. 53. s. 4.

³ 5 & 6 Vict. c. 45. s. 24., paraphrase of concluding proviso.

⁵ Graves Case, L.R. 4 Q. B. 715.

² 5 & 6 Vict. c. 45. s. 24.

⁴ 25 & 26 Vict. c. 68. s. 4.

⁶ 25 & 26 Vict. c. 68. s. 5.

CHAPTER V.

PENALTIES.

ARTICLE 27.

Penalties for infringing Copyright in Books.

¹ Every one is liable to an action² who, in any part of the British dominions,—

- (a.) Prints or causes to be printed, either for sale or exportation, any book in which there is subsisting copyright, without the consent in writing of the proprietor;
- (b.) Imports for sale or hire any such book so having been unlawfully printed from parts³ beyond the sea;
- (c.) Knowingly sells, publishes, or exposes to sale or hire, or causes to be sold, published, or exposed to sale or hire, or has in his possession for sale or hire any book so unlawfully printed or imported.

⁴ The action must be brought in a Court of Record and within 12 months after the offence.

ARTICLE 28.

Special Penalty for unlawfully importing Copyright Books.

⁵ The following consequences are incurred by every one, except the proprietor of the copyright of any book, or some person authorised by him, who imports or brings, or causes to be imported or brought [for sale or hire], into the United Kingdom, or into any other part of the British dominions, any printed book in which there is copyright, first composed, written, or printed [and published] in any part of the United Kingdom, and reprinted in any country or place out of the British dominions;

Or, who knowingly sells, publishes, or exposes to sale, or lets to hire, or has in his possession for sale or hire any such book, that is to say:—

- (a.) Every such book is forfeited, and must be seized by every officer of Customs or Excise, and in that case must be destroyed by such officer.
- (b.) The person so offending must, upon conviction before two justices, be fined 10*l.* for every such offence, and double the value of every copy of any such book in respect of which he commits any such offence.

⁶ Provided that if the Legislature or proper legislative authorities in any British possession

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

⁶ For amendments as to the *Foreign Reprints Act* proposed by the Commissioners, see Report, paras. 206–216, and for the discussion of the subject, paras. 182–206.

¹ 5 & 6 Vict. c. 45. s. 15. It is singular that the consent of the author should apply only to Case (a.)

² "A special action in the case." Forms of action being abolished, this seems now to be obsolete.

³ ? Would this include importation over a land frontier, as in Canada.

⁴ 5 & 6 Vict. c. 45. s. 26.

⁵ 5 & 6 Vict. c. 45. s. 17. The Customs Act, 39 & 40 Vict. c. 36. ss. 39, 42, 44, 45, 152, 177, contains further provisions on this subject, the effect of which would be shown by omitting the words bracketed in the text; but the consequence marked (b) applies only to offences against the Copyright Act.

⁶ 10 & 11 Vict. c. 95. s. 1. This is the substance of the Act in a condensed form. All these Acts are very wordy. It contains some provisions of minor importance as to publishing the Order in the Gazette, and laying it before Parliament, which I omit for the sake of brevity.

pass an Act or make an Ordinance, which, in the opinion of Her Majesty, is sufficient for the purpose of securing to British authors reasonable protection within such possessions, Her Majesty may approve of such Act, and issue an Order in Council declaring that so long as the provisions of such Act remain in force, the prohibition herein-before contained shall be suspended so far as regards such colony.

ARTICLE 29.

Pirated Copies forfeited to Registered Owner.

¹ All copies of any book^{6 7} in which there is a duly registered copyright unlawfully printed or imported without the consent in writing under his hand of the registered proprietor of the copyright are 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.^{h s}

ARTICLE 30.

^{i 9} *Copies of Books to be delivered for Public Libraries, and Penalties for non-delivery.*

² A copy of the first edition and of every subsequent edition containing additions and alterations of every book published in any part of the British dominions must be delivered at the British Museum between 10 a.m. and 4 p.m. on some week day, other than Ash Wednesday, Good Friday, or Christmas Day, within a month after its publication, if it is published in London, within three months if it is published in the United Kingdom elsewhere than in London, and within 12 months if it is published in any other part of the British dominions.

It may be delivered to any person authorised by the Trustees of the British Museum to receive it, and such person must give a receipt in writing therefor.

^{i 10 3} Copies of every edition of every book published must, if demanded, be delivered to an officer of the Stationers' Company for each of the following libraries: the Bodleian Library, the Cambridge University Library, the Advocates Library at Edinburgh, and the Library of Trinity College, Dublin.

^{i 10} The demand, in writing, must be left at the place of abode of the publisher, within 12 months after the publication of the book, and the copies must be delivered within one month after such demand, either to the Stationers' Company or to the said libraries, or to anyone authorised to receive the copies on their behalf.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

^{6 7} Add "or work of art or thing."
(Report, para. 160.)

^{h s} Add "proceedings for recovering
" the penalties herein-before men-
" tioned may be taken before a
" magistrate in a summary way."

^{i 9} Report, paras. 161-166.

^{i 10} *The paragraphs thus marked to
be repealed. (Report, para. 164.)
See also alterations suggested as to
registration. Article 32 supra.*

¹ 5 & 6 Vict. c. 45, s. 23.

² 5 & 6 Vict. c. 45, ss. 6, 7, 8, 9, & 10 (abridged).

³ ? In the United Kingdom or in the Queen's Dominions. The Act is silent on this.

The copy for the British Museum must be bound, stitched, or sewed together, and upon the best paper on which the book is printed.

^{j 10} The copies for the other libraries mentioned must be upon the paper of which the largest number of copies of the book or edition are printed for sale in the like condition as the copies prepared for sale by the publisher.

The copies must in each case include all maps and prints¹ belonging thereto.

Any publisher making default in such delivery as is herein-before mentioned, is liable to a maximum penalty of 5*l.* and the value of the copy not delivered. This penalty may be recovered upon summary proceeding before two justices of the peace, or a stipendiary magistrate, at the suit of the librarian, or other officer properly authorised, of the library concerned.

ARTICLE 31.

Penalty for Offences against University Copyright.

^{k 11 2} Everyone incurs the penalties herein-after mentioned who does any of the following things with any book of which the copyright is vested in any university or college under Article 11; (that is to say,)

- (a.) Who prints, reprints, or imports, or causes to be printed, reprinted, or imported, any such book.
- (b.) Knowing the same to be so printed or reprinted, sells, publishes, or exposes to sale, or causes to be sold, published, or exposed to sale, any such book.

The penalties for the said offences are:—

- (a.) The forfeiture of every sheet being part of such book to the university or college to which the copyright of such book belongs, which university or college must forthwith damask and make waste paper of them.
- (b.) One penny for every sheet found in the custody of such person printing or printed, published or exposed to sale, half to go to the Queen, and half to the informer.

³ None of the penalties aforesaid can be incurred—

Unless the title to the copyright of the book in respect of which the offence was committed was registered either before 24th June 1775 or within two months after the time when the bequest or gift of the copyright of any book came to the knowledge of the vice-chancellor of any university or the head of any college or house of learning;

Or unless the clerk of the Stationers' Company, being duly required to make the entry, refuses to do so, and the university

ALTERATIONS IN THE EXISTING LAW SUGGESTED BY THE COMMISSION.

^{k 11} *This article to be repealed.* (Report, para. 48.)

Section 6, as to the British Museum, mentions, "engravings" also.
² 15 Geo. 3, c. 53, s. 2. ³ *Ib.*, ss. 4 & 5.

advertises such refusal in the Gazette, in which case the clerk incurs a penalty of 20*l.* to the proprietors of the copyright.

¹ The penalty must be sued for in the High Court.

ARTICLE 32.

¹¹² *Penalty for performing Dramatic Pieces.*

² Every person who, without the consent in writing of the author or other proprietor first obtained, represents or causes to be represented at any place of dramatic entertainment in the British dominions any dramatic piece or musical composition is liable to pay to the author or proprietor for every such representation an amount not less than 40*s.*, or the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever may be the greater damages.

The penalty may be recovered in any court having jurisdiction in such cases.^{m 13}

ARTICLE 33.

¹¹¹ *Penalty for Infringement of Copyright in Works of Art.*

³ Everyone (including the author, when he is not the proprietor) commits an offence who, without the consent of the proprietor of the copyright therein, does any of the following things with regard to any painting, drawing, or photograph in which copyright exists; (that is to say,)

- (a.) Repeats, copies, colourably imitates, or otherwise multiplies, for sale, hire, exhibition, or distribution, any such work; or the design thereof;
- (b.) Causes or procures to be done anything mentioned in (a);
- (c.) Sells, publishes, lets to hire, exhibits, or distributes, offers for any such purposes, imports into the United Kingdom any such repetition, copy, or other imitation of any such work or of the design thereof, knowing that it has been unlawfully made;
- (d.) Causes or procures to be done, any of the things mentioned in (c);
- ⁴ (e.) Fraudulently signs or otherwise affixes or fraudulently causes to be signed or otherwise affixed to or upon any painting, drawing, or photograph or the negative thereof, any name, initials, or monogram.
- (f.) Fraudulently sells, publishes, exhibits, or disposes of, or offers for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or mono-

ALTERATIONS IN THE EXISTING LAW SUGGESTED BY THE COMMISSION.

¹¹² Report, paras. 167-172.

^{m 13} *Add at the end of the article—*

“ Provided that no person shall be entitled to recover damages for any such representation as aforesaid, of any musical composition unless it is stated on the title page of such musical composition, that the right of public performance is reserved, nor unless the name and address of the person authorised to permit such performance is also stated thereon; provided also that in the case of an action for damages by the performance of any such musical composition as aforesaid, the court may in its discretion give or direct the jury to give to the plaintiff such damages as he may have actually incurred in place of the amount herein-before stated of 40*s.* for every such representation.” (Report, para. 171.)

¹¹⁴ Report, paras. 173-180.

¹ Sect. 5.

² 25 & 26 Vict. c. 68. s. 6.

³ 3 & 4 W. 4. c. 15. s. 2, as extended by 5 & 6 Vict. c. 45. ss. 20, 21.

⁴ Sect. 7.

225

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

gram of a person who did not execute or make such work ;

(g.) Fraudulently utters, disposes of, or puts off, or causes to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there is subsisting copyright therein or not, as having been made or executed by the author or makers of the original work from which such copy or imitation has been taken ;

(h.) Makes or knowingly sells, publishes, or offers for sale, any painting, drawing, or photograph which after being sold or parted with by the author or maker thereof, has been altered by any other person by addition or otherwise, or any copy of such work so altered, or of any part thereof, as the unaltered work of such author or maker during his life and without his consent.

¹ Everyone who commits any of the offences (a), (b), (c), or (d) forfeits to the proprietor of the copyright for the time being a sum not exceeding 10*l.*, and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies.

² Everyone who commits any of the offences (e), (f), (g), or (h) forfeits to the person aggrieved a sum not exceeding 10*l.*, or double the price, if any, at which all such copies, engravings, imitations, or altered works were held or offered for sale, and all such copies, engravings, imitations, and altered works are forfeited to the person whose name, initials, or monogram are fraudulently signed or affixed, or to whom such spurious or altered work is fraudulently or falsely ascribed ; provided that none of the last-mentioned penalties are incurred unless the person to whom such spurious or altered work is so fraudulently ascribed, or whose initials, name, or monogram is so fraudulently or falsely ascribed, was living at or within 20 years next before the time when the offence was committed.

The penalties herein-before specified are cumulative, and the person aggrieved by any of the acts before mentioned may recover damages in addition to such penalties, and may in any case recover and enforce the delivery to him of the things specified, and recover damages for their retention or conversion.

³ The penalties may be recovered either by action or before two justices or a stipendiary magistrate.^{o 15}

^{o 15} *Add here:* " Any such copy offered for sale, hire, or distribution elsewhere than in a house may be seized by any peace officer without warrant for the use of the copyright owner." (Report, para. 178.)

¹ 25 & 26 Vict. c. 68. s. 6.

² 25 & 26 Vict. c. 68. s. 7.

³ 25 & 26 Vict. c. 68. s. 8.

ARTICLE 34.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.*Importation of pirated Works of Art
prohibited.*

¹ The importation into¹⁶ the United Kingdom of repetitions, copies, or imitations of paintings, drawings, or photographs wherein, or in the design whereof, there is an existing copyright under 25 & 26 Vict. c. 68., or of the design thereof, or of the negatives of photographs, is absolutely prohibited, except by the consent of the proprietor of the copyright or his agent authorised in writing.

¹⁶ *After* "into" *add* "and exportation from" (Report, para. 179.)

ARTICLE 35.

¹⁷ *Penalty for pirating Lectures.*

¹⁷ Report, para. 181.

² Every person commits an offence who, having obtained or made a copy of any lecture, prints or otherwise copies and publishes the same, or causes it to be so dealt with without the leave of the author or his assigns;

Or, who, knowing it to have been printed or copied or published without such consent, sells, publishes, or exposes it to sale or causes it to be so dealt with;

Every person who commits such offence forfeits such printed or copied lectures, together with one penny for every sheet thereof found in his custody, half to the Queen and half to the informer.

³ The printing and publishing of any lecture in any newspaper without leave is an offence within the meaning of this article.

⁴ This section does not apply to the publication of lectures which have been printed and published as books at the time of such publication.

The penalty must be sued for in the High Court.¹⁸

¹⁸ *Add*: "The penalties herein-
" before mentioned may be recovered
" by summary proceedings before a
" magistrate, and the author is to
" have power to seize printed copies
" in respect of which the offence is
" committed."

ARTICLE 36.

¹⁹ *Penalty for pirating Sculptures.*

¹⁹ Report, paras. 173-180. The same penalties and powers to seize are recommended as in the case of paintings. (See Art. 33, Report para. 180.)

⁵ Every person is liable to an action for damages who makes or imports, or causes to be made or imported, or exposed to sale, or otherwise disposed, anything of which the copyright is protected by the 54 Geo. c. 56.

⁶ This article does not apply to any person who purchases the right or property of anything protected by the said Act of the proprietor by a deed in writing, signed by him with his own hand in the presence of and attested by two credible witnesses.

¹ 25 & 26 Vict. c. 68. s. 10. The Customs Act, 39 & 40 Vict. c. 36. does not apply to this matter.

² 5 & 6 W. 4. c. 65, s. 1.

³ 5 & 6 W. 4. c. 65. s. 2. Under these sections a person who delivered a popular lecture and got it published in the newspapers, after having given notice to the two justices, might by good management seize the whole editions of all the London papers, and get 1*d.* a-piece besides.

⁴ 5 & 6 Will. 4. c. 65. s. 4.

⁵ 54 Geo. 3. c. 56. s. 3.

⁶ 54 Geo. 3. c. 56. s. 4.

ARTICLE 37.

^{1 20} Report, paras. 173, 174.^{1 20} *Penalty for pirating Prints and Engravings.*

¹ Every person commits an offence who, without the consent of the proprietor in writing, signed by him and attested by two witnesses,—

- (a.) In any manner copies and sells, or causes or procures to be copied and sold, in whole or in part, any copyright print; or
- (b.) Prints, reprints, or imports for sale any such print, or causes or procures any such print to be so dealt with; or
- (c.) Knowing the same to be so printed or reprinted without the consent of the proprietors publishes, sells, exposes to sale, or otherwise disposes of any such print, or causes or procures it to be so dealt with.

Every person committing any such offence is liable to an action for damages in respect thereof, and forfeits to the proprietor, who must forthwith destroy and damask the same, the plate on which any such print is copied, and every sheet being part of such print, or whereon such print is copied, and also five shillings for every sheet found in his custody in respect of which any such offence is committed, half to the Queen and half to the informer.

² The penalty must be sued for in the High Court within six months after the offence.

CHAPTER VI.

³ INTERNATIONAL COPYRIGHT.

ARTICLE 38.

^{11 21} Report, paras. 233–294.

^{11 21} *International Copyright may be granted in certain cases.*

⁴ Copyright in books, dramatic pieces and musical compositions,⁵ paintings, drawings, and photographs, sculptures, engravings, and prints, first published in foreign countries, may be granted to the authors of such works, in the

¹ 8 Geo. 2. c. 13. s. 1, as amended by 17 Geo. 3. c. 57. I have compressed very considerably the language of these Acts. Thus, “copies” stands for “engravings, etches, or works in mezzotinto or chiaro-oscuro, or otherwise, or in any other manner copies.”

“The whole or in part” stands for “in the whole or in part by varying, adding to, or diminishing from, the main design.”

The whole effect of 17 Geo. 3. c. 57, as far as I can see, is to add the words “or procures” after “causes,” and to give a right to damages as well as the penalties specified. This is effected in the cumbrous old-fashioned way by re-enacting the whole of the first Act (which however is not repealed) with the addition of the new words. This is inexpressibly puzzling, besides being very cumbrous. I have compared the two Acts line by line, and am by no means sure that I have got the result correctly. The sense escapes in a cloud of words. The 17 Geo. 3. c. 57 is one sentence of 55 lines, and its effect is to qualify a sentence of 61 lines (8 Geo. 2. c. 13. s. 1) in two minute particulars.

These Acts are extended to Ireland by 6 & 7 Will. 4. c. 59. Sect. 2 of this Act re-enacts for the United Kingdom part of the other Acts separately, though sect. 1 extended them generally to Ireland. I cannot guess why this was done.

² Sect. 3 and 7 Geo. 3. c. 38. s. 8.

⁴ 7 & 8 Vict. c. 12. s. 2.

⁵ 25 & 26 Vict. c. 68. s. 12.

³ See APPENDIX, Note C.

manner, to the extent, and on the terms herein-after mentioned, ¹ if what Her Majesty regards as due protection has been secured by the foreign country in which such works are first published for the benefit of persons interested in similar works first published in Her Majesty's dominions.

ARTICLE 39.

Orders in Council as to International Copyright.

² Her Majesty may by Order in Council (stating as the ground for issuing the same that such protection as aforesaid has been secured as aforesaid) direct that the authors³ of all or any of the things mentioned in the last Article, being first published in any such foreign country as is mentioned in that Article, shall have copyright therein in Her Majesty's dominions for a term, to be specified in the Order, not exceeding the term of copyright which authors of things of the same kind first published in the United Kingdom are entitled by law at the date of the Order.

⁴ The terms so to be specified and the terms for registration and delivery of copies of books as herein-after mentioned may be different for works first published in different foreign countries, and for different classes of such works.

ARTICLE 40.

Term of International Copyright.

⁵ The authors of the works specified in the Order are entitled to copyright therein as follows—

Under 5 & 6 Vict. c. 45, and the other Acts relating to copyright in books, except the sections relating to the deposit of copies in certain libraries, if the works specified in the Order are books;

Under the ⁶ Engraving Copyright Acts, the ⁷ Sculpture Copyright Acts, or the ⁸ Paintings Copyright Act respectively, if the works specified in the Order are prints, engravings, articles of sculpture, pictures, drawings, or photographs;

Under the ⁹ Dramatic Copyright Acts, provided that such copyright does not extend to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country, if the works specified in

¹ 7 & 8 Vict. c. 12. s. 14.

² 7 & 8 Vict. c. 12. s. 2.

³ "Authors, inventors, designers, engravers, and makers thereof, respectively, and their respective executors, administrators, and assigns."

⁴ 7 & 8 Vict. c. 12. s. 13.

⁵ 7 & 8 Vict. c. 12. ss. 2, 3, 4, 5.

⁶ 8 Geo. 2. c. 13; 7 Geo. 3. c. 38; 17 Geo. 3. c. 57; 6 & 7 Will. 4. c. 59.

⁷ 54 Geo. 3. c. 56. 38 Geo. 3. c. 71 referred to in the preamble to 7 & 8 Vict. c. 12 is repealed.

⁸ 25 & 26 Vict. c. 68.

⁹ 3 Will. 4. c. 15; 5 & 6 Vict. c. 45. ss. 20-22.

the Order are dramatic pieces or musical compositions,¹ unless the order directs that it shall extend to them.

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

Subject in each case to such limitations as to the duration of the right as may be specified in the Order, and subject also to the provisions herein-after contained.²

ARTICLE 41.

No Work Copyright without Registration.

^{v 22 3} No author of any such work as is referred to in this chapter is entitled to any benefit under the provisions contained in it, unless such work is registered, and a copy of ⁴the first edition and of every subsequent edition containing additions or alterations, but of no other editions of it, is delivered at the Hall of the Stationers Company, within a time to be specified in the Order of Council, and in the manner prescribed in the schedule in the footnote hereto.⁵

^{v 22} Substitute for this article the following:—

“Neither registration in the United Kingdom nor the deposit in the United Kingdom of copies of the works referred to in this chapter shall be required in order to give copyright to the authors of such works, and a copy of any entry in any foreign register, attested by any British diplomatic or consular agent, shall in all legal proceedings be *prima facie* evidence of title to the copyright in such work.”
(Report, paras. 265, 267.)

⁶ The three paragraphs preceding the last paragraph of Article 23 apply to such entries.

⁷ The copy so delivered must within one month of its delivery be deposited in the British Museum by the officer of the Stationers' Company.

ARTICLE 42.

No International Copyright in Newspaper Articles.

⁸ Articles of political discussion published in any newspaper, or periodical, in any foreign

¹ This is the effect of 38 Vict. c. 12.
² 15 & 16 Vict. c. 12. s. 6.
³ 7 & 8 Vict. c. 12. s. 6. This section is very long and I have accordingly exhibited the greater part of it in the form of a schedule. See next note.
⁴ 7 & 8 Vict. c. 12. s. 12.

5 SCHEDULE.

The register must show, if the work is—	The title	Name and place of abode of author (unless the book is anonymous, 7 & 8 Vict. c. 12. s. 7).	Name and place of abode of proprietor of copyright.	Time and place of first publication.
A book - - -	- - -	- - -	- - -	- - -
Dramatic piece or musical composition printed.	Do. - - -	Do. - - -	Do. - - -	Do. and time and place of first representation or performance.
Dramatic piece or musical composition in MS.	Do. - - -	Do. - - -	Do. - - -	Do.
Print - - -	Do. - - -	Do. of inventor, designer, or engraver.	Do. - - -	Do. First publication in foreign country.
Sculpture - - -	Descriptive title - - -	Do. of maker - - -	Do. - - -	Do.
* Painting, drawing, or photograph.	Short description of nature and subject of work, and a sketch outline or photograph thereof, if the person registering pleases.	Name and abode of author.	Do.	

* By 25 & 26 Vict. c. 68. s. 12. it is enacted that 7 & 8 Vict. c. 12. shall be considered to be included in that Act. 25 & 26 Vict. c. 68. contains no provision as to registration of foreign paintings, though s. 4. provides for the registration of English paintings, &c. I have accordingly filled up this bit of the Schedule from 25 & 26 Vict. c. 68. s. 4.
⁶ 7 & 8 Vict. c. 12. ss. 8, 9, provides for some special matters connected with such registration, which I omit for the sake of brevity.
⁷ 7 & 8 Vict. c. 12. s. 11.
⁸ 15 & 16 Vict. c. 12. s. 7.

country may, if the source from which the same are taken is acknowledged, be re-published or translated in any newspaper or periodical in this country, notwithstanding anything herein-before or herein-after contained.

Articles on other subjects so published may be dealt with in the same manner on the same condition, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case such publication is to be regarded as a book within the meaning of Article.

^{w 23} ARTICLE 43.

^{x 24} *Translations of Foreign Books.*

¹ Her Majesty may by Order in Council direct that the authors of books published, and of dramatic pieces² first publicly represented, in the foreign countries referred to in Article 38, may, for a period not exceeding five years from the publication of an authorised translation thereof, prevent the publication in the British dominions of any unauthorised translation thereof, and, in the case of dramatic pieces,³ the public representation of any such translation.

Upon the publication of such Order the law in force for the time being for preventing the infringement of copyright, and the sole right of representing dramatic pieces,³ in the British dominions applies to the prevention of the publication of such unauthorised translation.

⁴ Provided that no such Order prevents fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

⁵ But Her Majesty may by Order in Council direct that this proviso shall not apply to the dramatic pieces protected under the original Order in Council.

If a book is published in parts, each part is regarded, for the purposes of this article, as a separate book.

ARTICLE 44.

Conditions of International Copyright in Translations.

⁶ No author, and no personal representative of any author, is entitled to the benefit of the provisions of the last preceding article unless he complies with the following requisitions:—

1. The original work from which the translation is to be made must be registered, and a copy thereof deposited in the United Kingdom, in the manner required

ALTERATIONS IN THE EXISTING LAW
SUGGESTED BY THE COMMISSION.

^{w 23} *Substitute for this and the next article the following:—*

Every foreign author being a native of a state with which a treaty relating to copyright exists, shall have an exclusive right to publish a translation of any book in which he has copyright in Her Majesty's dominions for three years after he has published it in such foreign state, and if he publishes such translation within three years he shall have copyright therein for ten years. (Report, paras. 279, 281, 283.)

If such work is a dramatic piece the owner of the copyright shall, for three years from its publication or from its first public representation, have the exclusive right of representing it in English, or in his own language, and of adapting it for purposes of theatrical representation in Her Majesty's dominions, and if he exercises such right he shall have copyright in such translation or adaptation for ten years. (Report, para. 290.)

^{x 24} Report, paras. 271–294.

¹ 15 & 16 Vict. c. 12, ss. 2 and 3. The last paragraph is a paraphrase of a very intricate sentence.

² Sect. 4.

³ Sect. 5.

⁴ 15 & 16 Vict. c. 12, s. 6.

⁵ 38 Vict. c. 12.

⁶ 15 & 16 Vict. c. 12, s. 8.

for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country :

2. The author must notify on the title page of the original work, or, if it is published in parts, on the title page of the first part, or, if there is no title page, on some conspicuous part of the work, that it is his intention to reserve the right of translating it :
3. The translation sanctioned by the author, or a part thereof, must be published either in the country mentioned in the Order in Council by virtue of which it is to be protected, or in the British Dominions, not later than one year after the registration and deposit in the United Kingdom of the original work, and the whole of such translation must be published within three years of such registration and deposit :
4. Such translation must be registered, and a copy thereof deposited in the United Kingdom, within a time to be mentioned in that behalf in the Order by which it is protected, and in the manner provided by the said International Copyright Act for the registration and deposit of original works :
5. In the case of books published in parts, each part of the original work must be registered and deposited in this country, in the manner required by the said International Copyright Act, within three months after the first publication thereof in the foreign country :
6. In the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work :
7. The above requisitions apply to articles originally published in newspapers or periodicals, if the same be afterwards published in a separate form, but not to such articles as originally published.

ARTICLE 45.

Importation of Pirated Works.

¹ The importation into any part of the British dominions of copies of any work of literature or art, the copyright in which is protected by the provisions of this chapter, and of unauthorised translations thereof, is absolutely prohibited, unless the registered proprietor of the copyright therein, or his agent authorised in writing, consents, and the provisions of Article 28 apply to the importation of such copies into any part of the British dominions.

¹ 15 & 16 Vict. c. 12. s. 9. The effect of this was to supersede a somewhat narrower provision to the same effect contained in 7 & 8 Vict. c. 12. s. 10.

* * * *As to Colonial and Indian Copyright see APPENDIX, Note C.*

APPENDIX.

NOTE A. to Article 4.

This article represents what I believe to be the law upon this subject as finally settled after a great deal of discussion and controversy, though it must be owned that no distinct and final decision directly in point can be produced.

The controversy whether at common law, and apart from the different statutes (of which 5 & 6 Vict. c. 45. is now in force), an author has a property in the order of words devised by him, and is therefore entitled to a remedy if any one else makes use of that order of words in such a way as to diminish any advantage which he might derive from it, has on several distinct occasions been most elaborately discussed before the highest courts in the country. The three great cases upon the subject are *Millar v. Taylor*, 4 Burr. 2,303; *Donaldson v. Beckett*, 4 Burr. 2,408; and *Jefferys v. Boosey*, 4 H. L. C. 815. Many of our greatest judges, and in particular Lord Mansfield and Lord Chief Justice Erle, have been of opinion that such a right did exist at common law. It will, I think, be found upon examination that their argument comes to this. It is the duty of the judges to declare everything to be part of the common law which appears to them to be analogous to existing law, and to be in itself just and reasonable. The existence of copyright fulfils these conditions; therefore copyright exists at common law.

The other view, which has been favoured by equally eminent authorities, comes, I think, to this. Copyright at common law ceases upon publication, because the general principle that a man has a property in everything which he produces by intellectual labour, and can treat as an injury any use of it without his leave, would lead to absurd results. It would give a man copyright in his conversation. It would enable an author to prevent any one from lending copies of his works to friends. It would make all the works of the human mind private property, vested by the various chances of life in persons utterly unconnected

or only very remotely connected with their authors. The judges who took this view seem to have agreed that it was obviously expedient that some such right should be conferred by law upon authors and artists, but they regarded its proper limitation and definition as a task for the Legislature and not for themselves. Though the cases of *Jefferys v. Boosey* and *Reade v. Conquest* are not direct authorities for the latter view, they are much more favourable to it than to the former, which, indeed, would seem to show that an author might have an injunction to restrain circulating libraries from lending copies of his books on hire.

As to what amounts to a publication of a work of art I know of no precise authority. The case of *Prince Albert v. Strange* shows that at common law the author of a work of art has a right to prevent it from being copied without his leave. I should doubt whether such would be the case (apart from the statutes) if a work of art was exhibited for money. The question, however, is one of no practical importance.

That there is no copyright in dramatic performances apart from statute law is indicated, though not established, by *Coleman v. Wathen*, 5 T. R. 245. There is a dictum to the same effect by the present Lord Chief Justice of England in *Toole v. Young*, L. R. 9 Q. B. 527.

One difficulty is connected with this view of the matter, which I am unable to remove. It has been held in *Cox v. Land and Water Company*, L. R. 9 Eq. 324, that the proprietor of a newspaper has copyright, or at all events a right analogous to copyright, in the articles published in his paper, but that a newspaper is not a "book" within 4 & 5 Vict. c. 45., and that therefore the omission to register the paper is not fatal to the proprietor's right to apply for an injunction to restrain piracy. How this can be consistent with the doctrine that publication destroys copyright, except in cases in which the statutes preserve it, I do not understand. (Report para. 88).

NOTE B. to Article 9.

This article is founded upon a full examination of I should think 20 or 30 cases. I have referred to the most striking of them in the ten illustrations. In all of them the doctrine stated in the text is laid down in a variety of forms, in whole or in part, and of course with special reference to the facts of each particular case. It would serve no purpose to accumulate further references on the subject. I may however observe, that I have considered with special attention the question of the law as to abridgments, and I believe the opinion upon it which I find to be commonly entertained is altogether incorrect. It is impossible to give anything approaching to a definition of an abridgment, nor do I believe that any more definite doctrine on the subject than the one submitted in this article could be laid down. The opinion that abridgments are not an invasion of copyright, would appear to be founded on the marginal note to the case of *Doddesley v. Kinnersley* (Ambler, 403), which is in these words, "A fair abridgment is no piracy." It will be found, however, upon an examination of the case, that the note is far too wide. The

defendant had published in a magazine, part of the narrative of *Rasselas*, "but left out all the reflections." It does not appear from the report whether what he published exceeded the limits of extracts which a reviewer may fairly make, nor whether the extracts were mixed with criticisms or not. The Master of the Rolls observed, "What I materially rely upon is, that it could not tend to prejudice the plaintiffs, when they had before published an abstract of the work in the *London Chronicle*." The later authorities are far narrower and more special, and do not appear to me to warrant any wider statement on the subject than I have made. I may observe that that in *Spiers v. Brown*, Lord Hatherleigh (the Vice-Chancellor) said, "No doubt he had struck out an enormous quantity of the plaintiff's meanings, &c. The mere striking out of a certain quantity of the plaintiff's works would not entitle the defendant to publish such abridgment of the previous work, and if he had stopped there, the piracy would have been made out," &c.

NOTE C.

The law as to Colonial and Indian Copyright is not collected under a separate heading in the Digest, because it does not seem to form a distinct head. To some extent it depends upon 5 & 6 Vict. c. 45., as interpreted by the English courts, and this part of the law on the subject is stated in Articles 5, 6, 7, 28. In India and in some of the Colonies the local legisla-

tures have passed Acts upon the subject which have not been incorporated in this Digest for obvious reasons. The most important of these are the Indian Act (Act XX. of 1847), which enacts, *mutatis mutandis*, the provisions of 5 & 6 Vict. c. 45., and the Canadian Copyright Act, as to which, see Report, pars. 195-205, and 38 & 39 Vict. c. 53.

LONDON:

Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.