SOCIETY FOR THE ENCOURAGEMENT OF ARTS, MANUFACTURES, AND COMMERCE.

ARTISTIC COPYRIGHT.

REPORT

PREPARED AT THE REQUEST OF THE COMMITTEE, APPOINTED BY THE SOCIETY OF ARTS,

BY D. ROBERTON BLAINE, Esq.

BARRISTER AT LAW, REPORTER OF THE COMMITTEE.

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N.B. **See Resolutions of the Committee at end of the Report, p. 32.**

TO THE COMMITTEE ON ARTISTIC COPYRIGHT.

In pursuance of the Resolution passed at the first Meeting of the Committee, I have prepared the following Report as to the existing English Common and Statute-law relating to Artistic Copyright.

I. *As to the Common-law right.*

By the Common-law of England no Copyright or protection exists in favour of Works of Art, except to this limited extent, namely, that while they remain *unpublished*, without the consent of the artist, or owner, no one can lawfully publish them without such consent. This principle has become established by analogy with a long series of decisions, chiefly as to literary productions. Thus where Her Majesty the Queen and the Prince Consort had made several etchings, and impressions thereof were taken for their private use, and not for publication; impressions of these etchings having been obtained by surreptitious means, and the parties in possession thereof being about to publish the same, the Court of Chancery, upon a Bill filed by the Prince, restrained the defendants from publishing the

etchings, or any catalogue thereof. The Lord Chancellor, Lord Cottenham, upon that occasion, said:—"The *property* in an author or composer of any work, "whether of Literature, *Art*, or Science, such work "being *unpublished*, and kept for his private use or "pleasure, cannot be disputed after the many decisions "in which that proposition has been affirmed or assumed." His Lordship at the same time held that the exclusive right of the author in *unpublished* Works depends entirely on the Common-law right of property therein.[1]

In a more recent case, decided in the House of Lords, upon a question of Musical Copyright, Lord St. Leonards also said:—"The Common-law does give a "man who has composed a work a right to that com-"position, just as he has a right to any other part of "his personal property; but the question of the right "of excluding all the world from copying, and of "himself claiming the exclusive right of for ever copy-"ing his own composition, *after he has published it* to "the world, is a totally different thing." His Lordship also held that no Common-law right exists after publication.[2]

It was formerly held by Lord Mansfield, and other eminent Judges, that the authors of literary works had, by the Common-law, a copyright in their works *after* publication, and consequently that such Copyright was perpetual; but that doctrine was long since overruled

[1] *Prince Albert* v. *Strange:* 1 Hall and T. pp. 21, 22.
[2] *Jefferys* v. *Boosey:* 4 Clark's H. L. C. pp. 977, 978.

by the House of Lords in the celebrated case of "*Donaldson* v. *Beckett.*"[1]

The result is that the Common-law affords artists no protection whatever against the piracy of their works *after* the publication thereof by public exhibition, and that they are consequently dependent, for the very slender and imperfect protection they do enjoy for any Copyright in such works, upon

II. *The Statute-laws of Artistic Copyright.*

These laws may be classed in the following divisions:—

1. The Engraving Copyright Acts.
2. The Sculpture Copyright Acts.
3. The British International Copyright Acts.
4. The Conventions and Orders in Council founded thereon.

I shall not notice the Useful and Ornamental Designs Acts, excepting so far as the latter relate to works of sculpture; because the designers of useful and ornamental articles have obtained a reasonable amount of protection in favour of their labours, and also because the objects of this Committee appear to be an investigation of the state of the Laws of England relating to those productions which more strictly come within the definition of "the Fine Arts," such as paintings, engravings, works of sculpture, &c.

[1] See 4 Burr. 2408; 2 Bro. P. C. 129.

The British Engraving Copyright Acts are :—

1. The 8th George II. C. 13. 1735.
2. The 7th George III. C. 38. 1767.
3. The 17th George III. C. 57. 1777.
4. The 6th and 7th William IV. C. 59. 1836.
5. The 15th Victoria, C. 12, Sec. 14. 1852.

It will be observed that the first of these Acts is upwards of 120 years old. It does not in any way protect any picture or drawing, as *such*, from piracy *after* its publication; its object was to protect *engravings* from piracy, including therein, as I believe, the designs for such engravings, and also maps, charts, and plans. For that purpose it gave a term of fourteen years Copyright in engravings which any person should invent and design, engrave, &c., or, from his own works, should cause to be designed and engraved, &c., such term of fourteen years to commence from the day of first publishing any such engraving; and that the public might know when that day was, and consequently when the Copyright would expire, the following *conditions* are imposed upon the proprietors of the Copyright in the engraving :—

1. That the true date of first publication shall be engraved upon the plate.
2. Also the name of the proprietor.
3. And that these particulars shall be printed on every impression taken from the plate.

This antiquated Act was framed upon the statute of Ann relating to Literary Copyright Works, and with slight amendments has remained unaltered down to the present time. It is generally known as *Hogarth's* Act, from the circumstance of that great artist having obtained it by his own endeavours, and almost at his sole expense; facts which he has recorded upon a plate engraved by him in commemoration of that important and interesting event in his life.

Hogarth's Act only protected engravings made by an artist, or caused to be made by him from his *own* designs. This defect was remedied in 1767, by the Act of 7 Geo. 3, cap. 38, and the term of Copyright was extended from fourteen to twenty-eight years, that being the increased term which had then been granted in favour of literary productions. This term of twenty-eight years Copyright in engravings still remains unchanged; and, as before observed, it commences from the day when the engraving is first published.

In 1777 the Act of 17 Geo. 3, cap. 57, was passed, which after reciting the two previous Acts, that they had not effectually answered the purposes for which they were intended; that it was necessary for the encouragement of *Artists*, and for the securing to them the *property* of and in their works, and for the advancement and improvement of the arts of engraving, &c., that further provisions should be made for these purposes, it was enacted that, in addition to any damage the proprietor of the Copyright might recover for any infringement thereof, he should be entitled to *double*

costs of suit. This and other similar enactments as to double costs were, however, repealed in 1842 by the 5 and 6 Vic. cap. 99, sec. 2, which, in lieu of such double costs, gives a full and reasonable indemnity as to all the costs, &c. incurred in and about the action which may be successfully brought by the proprietor in consequence of any infringement of his Copyright.

It was only so recently as 1836 that the English Engraving Copyright Acts were extended to Ireland, by the 6 and 7 William 4, cap. 59. Up to the time of the passing of that Act, engravings first published in England might be and were pirated in Ireland with perfect impunity; and those first published in Ireland were, in like manner, subject to piracy in England.

In consequence of doubts having been entertained whether "lithographs and certain other impressions" were within the protection of our Engraving Acts in 1852, it was declared by the 15 Victoria, cap. 22, sec. 14, that they were intended to include "prints "taken by lithography, or any other mechanical pro- "cess."

Having thus briefly stated the substance of all the existing British Engraving Copyright Acts, I will now point out what appear to be some of the chief defects in these statutes. I shall adopt the same plan with respect to the British Sculpture Copyright Acts; and will conclude with some notice of the British International Copyright Acts, and the Conventions and Orders in Council founded thereon, so far as they relate to Works of the Fine Arts.

The chief defects of the British Engraving Copyright Acts are,

I. That they give artists no Copyright in their pictures, *as such*, but only for the purposes of engraving.

II. They afford no protection to the purchasers of original pictures against the piracy thereof.

III. They afford the public no protection against the purchase of spurious pictures, and thus operate as an encouragement to the grossest acts of fraud.

IV. That architects are quite unprotected in respect of their published designs, unless engraved before publication.

V. That the new art of photography is also entirely unprotected as respects Copyright.

VI. That the existing Acts only extend to Great Britain and Ireland.

VII. That the term of twenty-eight years Copyright is insufficient.

VIII. The expense attendant upon the assignment of Copyright by deed.

IX. And the expense attendant upon proceedings for the protection of Copyrights.

I. That the existing Acts give artists no Copyright in pictures, as such, but only for the purpose of engraving, will be fully understood when it is seen that, according to Hogarth's Act, a picture is only treated as

a *design* for the purpose of engraving from. Both for fame and profit, Hogarth appears to have relied upon his original art, rather than that of a painter; it was his *engravings* that were pirated, and his Act was, therefore, framed to meet the requirements of his own case, and those of other artists similarly placed. Some of the chief mischiefs to which this state of the law exposes an artist are as follow,

1. After he has sold his picture he has no means of preventing its piracy, either as a picture, or for the purposes of engraving, excepting as between himself and the person to whom he has sold it. Contracts are often made by artists with the purchasers of their pictures, by which contracts the Engraving Copyright is secured to the artist. Such contracts are constantly avoided by the purchaser selling the picture to a third person without notice of the artist's contract as to the Copyright. He is thus defrauded of his property, and his fame as an artist is exposed to serious injury.
2. Unless a picture be engraved, and the impressions published as Hogarth's Act directs, before such picture be publicly exhibited, no Copyright can, in my opinion, be acquired even in the *design* of the picture for the purposes of engraving; it is for ever lost to the artist.
3. And by depriving an artist of any Copy-

right in the design of his work, unless it be thus engraved before exhibition, he is denuded of an inducement to devote himself to those higher classes of pictures which require the greatest amount of thought and time in their composition; the best interests of Art are thus damaged.

II. The fact of the Engraving Acts affording no protection against the piracy of pictures is a mischief which affects the purchaser as well as the artist. Much of the *conventional* value of a picture depends upon its being *unique*. If protected against piracy, purchasers of pictures would have a further inducement given them to add to their collections, and they would buy with a confidence which is now impossible.

III. These Acts likewise afford the public no protection against the purchase of *spurious* works, and thus afford direct encouragement to the grossest acts of fraud. This Committee will doubtless be furnished with numerous instances of those frauds which have long been so extensively practised upon artists and the public in respect to pictures. In the mean time, I will only mention the recent decision of *The Queen* v. *Closs*. In that case a picture had been painted by Mr. Linnell, who signed and sold it for £180. The prisoner was a picture dealer, and was indicted for fraudulently selling a copy of Linnell's picture as and for the genuine picture which he had painted. Mr. Linnell's name was likewise painted on such copy, which the prisoner sold for £130. The indictment contained three counts:

the first charged the prisoner with obtaining money under false pretences, but upon this count he was acquitted; the second count charged him with a *cheat* at Common-law, by means of writing Linnell's name upon the copy; and the third count charged the prisoner with a *cheat* by way of forgery of Linnell's name upon the copy. Upon these two last counts the prisoner was convicted; but his counsel objecting that these counts disclosed no indictable offence at Common-law, the judgment was respited in order that the opinion of the Criminal Court of Appeal might be taken upon the objection so raised on the part of the prisoner. The case was afterwards argued before five Judges, who formed such Court of Appeal, and they unanimously held that the conviction of the prisoner was *wrong;* that there was no *forgery:* and that "a for-" gery must be of some document or writing, and " Linnell's name in this case must be looked at merely " as in the nature of an arbitrary mark made by the " master to identify his own work." As to the second count of the indictment the court held that the conviction could not be sustained, because it did not sufficiently show that the prisoner sold the copy *by means* of Linnell's signature being forged upon it.[1]

The consequences of this decision as respects the interests of artists, of the purchasers of works of Art, and the public morality, are too apparent to need any comment.

IV. Architects are entirely unprotected, in respect of their published designs, unless they engrave or litho-

[1] See Weekly Reporter, 12 Dec. 1857, p. 109.

graph, and publish them as Hogarth's Act directs; in which event it would be an act of piracy to copy them for publication without the consent of the proprietor of the Copyright.

V. The new art of photography is likewise entirely unprotected as respects Copyright. Whatever may be the expense which has been incurred, and although the artist's name may be placed upon his works, any one may copy them, at any time *after* their publication, to the serious injury of the fame and profit of the original artist.

VI. The existing Engraving Copyright Acts only extend to Great Britain and Ireland, and do not include the Colonial, or any other portion of the British dominions, not even the Isle of Man, or the Channel Islands; these Acts being expressly confined to such prints as have been "engraved, etched, drawn, or de- "signed in any part of Great Britain[1] or Ireland."[2] If so engraved, &c. out of the United Kingdom, it appears that no Copyright can be acquired under the Acts in question. Thus where a Bill was filed in Chancery to restrain the piracy of certain prints forming part of a book, which prints had been designed and engraved abroad, and only *published* with the book in England, the Court held that the plain object of the legislature was to protect those works only which had been *executed* in Great Britain (or Ireland), and not those which were only published there.[3]

[1] See 17, Geo. 3, cap. 57. [2] 6 and 7 Will. 4, cap. 59, Sec. 1.
[3] Shadwell, V. C. in *Page* v. *Townsend*, 5 Sim. 395.

VII. The term of twenty-eight years Copyright granted by the Engraving Acts is too short. I have already stated that these Acts were framed upon the Statutes relating to literary Copyright works, in which the term was originally fourteen years, but was afterwards increased to twenty-eight. In 1842 that term was by the Literary Copyright Amendment Act extended to a certain term of forty-two years, with the chance of a longer period, according to the author's life. The designers of maps, charts, and plans are included in that protection.[1] As therefore Parliament has conceded the principle, that the *property* in books, music, maps, charts, and plans shall be protected from piracy during a certain period of forty-two years, is it just to exclude the property of artists in their productions from a similar advantage?

VIII. The expense attendant upon the assignment of an artistic Copyright is a serious defect. Under the existing Acts no *valid* transfer of such a right can be made by the owner except by a *deed* signed by him, attested by *two* witnesses, and stamped with the proper *ad valorem* duty on the price of the Copyright, if sold. An assignment by deed was formerly requisite for assigning literary Copyrights, but the Literary Copyright Amendment Act of 1842 remedied that defect as to books, music, maps, charts, and plans, by

[1] It has been held that *woodcuts*, illustrative of the letter-press of a book, and published therewith, are within the protection of this Act, as forming part of the book. Per Parker, V. C. in *Bogue* v. *Houlston*, 12, L. I. Ch. 470.

enabling the proprietor of the Copyright to transfer it by entry in the Register at Stationers Hall, *or* by deed.

The generally received opinion amongst engravers, printsellers, and auctioneers of artistic property, that the *Copyright* in a plate passes with the sale and *delivery* of such plate, is entirely fallacious, as the purchaser would find to his cost if he brought an action in his own name for the infringement of the Copyright, without having obtained an assignment of it by deed, attested by two witnesses.

IX. The expense attendant upon the requisite proceedings for the protection of a Copyright in cases of piracy is a most serious defect under the existing Acts; it is, however, a defect which is alike applicable to the whole body of our Statute-law affecting Copyrights of all descriptions. Even in the most flagrant instances of piracy, the proprietor of the Copyright has no remedy against the pirate except by an action at law for an injunction and damages, or a suit in Chancery for an injunction and account. The power recently given to the Courts of Common-law to grant injunctions is a great boon to the proprietors of Copyright, where their means, or the value of the Copyright at stake, are such as to warrant their embarking in a law-suit in one of the superior Courts.

All the legislation which has taken place upon the subject of Copyright in England has proceeded upon the just theory that an author or artist has a *property* in his work. Where, therefore, a Copyright work is

literally copied, or copied with merely colourable alterations, it seems difficult to distinguish the moral guilt of such a theft from that of picking a pocket, and consequently that such an act of piracy ought to be punishable as a *criminal* offence.

The British Sculpture Copyright Acts are:—

1. The 38th George III. C. 71. 1798.
2. The 54th George III. C. 56. 1814.
3. The 14th Victoria, C. 104. ss. 6, 7. 1850.

These Acts form the sole protection against piracy which a sculptor has in respect of any Copyright in his works *after* their publication.

The first of the above Statutes gave a term of fourteen years Copyright in new works of sculpture. The next recites that the previous Act had been found ineffectual for the purposes thereby intended, and also gave a term of fourteen years Copyright in new works of sculpture, together with a further term of fourteen years if the sculptor should be living at the end of the first term, and should not have divested himself of his Copyright. Both these Acts impose the following *conditions* upon the proprietor of the Copyright in any work of sculpture, and these conditions must be strictly performed, or he forfeits his Copyright therein.

1. That the proprietor of the Copyright shall cause his name to be put on his work before the same shall be published; and—
2. Also the date of such first publication.

The above Acts were amended in favour of sculptors by the Ornamental Designs Act of 15 Vic. cap. 104, ss. 6, 7, which enables sculptors to bring such of their works as are "within the protection of the "Sculpture Copyright Acts," also within the protection of the Designs Act upon *condition* of such works

1. Being registered under the Designs Act.
2. That the word "Registered" shall appear upon every copy or cast of the work published by the sculptor, or his assigns, after its registration; and
3. The date of registration.

The defects of the Acts relating to Copyright in Works of Sculpture.

These defects appear to be almost as important and numerous as those I have mentioned with respect to the Engraving Copyright Acts. The second, third, sixth, eighth, and ninth are applicable as well to the former as to the latter of these Acts, and I will therefore not repeat them. In addition, the following may be noticed:—

I. The *certain* term of fourteen years Copyright is insufficient.

II. A sculptor can acquire no Copyright in his works for purposes of engraving.

III. It seems doubtful whether a work of sculpture can be protected under the Designs Act

without the performance of two sets of conditions.

IV. The works of sculpture are most frequently pirated by a class of persons against whom the existing laws afford a useless remedy.

I. The *certain* term of fourteen years Copyright is insufficient. It is only extended to twenty-eight years if the sculptor outlives the first fourteen after the publication of his work. The interests of his *family* are lost sight of in this arrangement, and that the present term of Copyright allowed for works of sculpture is insufficient surely must be admitted when it is remembered that twenty-eight years are conceded for engravings, and forty-two years *certain* for books, music, maps, charts, and plans.

Sculptors have likewise a strong claim to an extended term of Copyright, from the peculiar nature of their works. It frequently happens that a sketch is made of a statue which is not commissioned for many years afterwards. Now, to insure his Copyright in such sketch, or first model, it seems that the artist must place his name and date upon it when he first publishes or exhibits it. The first fourteen years Copyright runs from that day, and may therefore expire before the work has been executed upon an enlarged scale, and consequently when so executed it would be entitled to no Copyright.

II. A sculptor can acquire no Copyright in his works for the purposes of *engraving ;* a painter may. If well designed and engraved, the Copyright in a sculptor's

works might be profitable to him in various ways; on the other hand, if they are badly designed and engraved, his professional reputation may be injured with those who have not had an opportunity of examining his works.

III. It seems doubtful whether a work of sculpture can be protected under the Designs Act, without the performance of the *conditions* I have noticed as being imposed under the Engraving Copyright Acts; and also those under the Designs Act, because the latter only extends to such works of sculpture as are "within "the protection of the Sculpture Copyright Acts;" and no work can be brought within such protection without the performance of the conditions imposed by those Acts.

IV. The works of sculptors are most frequently pirated by a class of persons against whom the existing laws afford a useless remedy. These persons are generally indigent Italians, and other aliens, wholly unable to pay any costs or penalties which might be recovered against them. How defective the present Sculpture Copyright Acts are in this respect may be judged of by the fact that only *one* reported case arising under these Acts is to be found. The instances of piracy are constant, but sculptors have wisely submitted to the invasion of their rights rather than embark in litigation with men of straw.

Report of the Select Committee on Arts and Manufactures.

In 1836 the House of Commons appointed a Select Committee "to inquire into the best means of extend-" ing a knowledge of the Arts, and of the principles of " design, among the people, (especially the manufac-" turing population) of the country; also to inquire " into the constitution, management, and effects of " institutions connected with the Arts." That Committee, by their Report, stated that they began their labours by dividing the subject of their inquiry into three parts; the two first being as to Art as relating to manufactures; and the third, as to "the state of the " higher branches of Art, and the best mode of advanc-" ing them." The Committee also stated that their investigations had been principally directed to the two first subdivisions of the subject, but they drew attention to the defective state of the law as affecting *Artistic Copyright*, especially as to works of sculpture, at the same time stating that "the expensiveness of a remedy " through the courts of law or equity is a virtual bar " to invention, and almost affords impunity to piracy " in Art;" that a system of *registration* appeared to be indispensable; and concluded their Report thus:—

" It will give your Committee the sincerest gratifica-" tion, if the result of their inquiry (in which they " have been liberally assisted by the artists of this " country) tend in any degree to raise the character

"of a profession which is said to stand much higher "among foreign nations than in our own; to infuse, "even remotely, into an industrious and enterprizing "people a love of Art, *and to teach them to respect* "*and venerate the name of 'Artist.'*" Parts one and two of the Appendix to this Report contain a considerable amount of interesting and important evidence relating to Artistic Copyright. The Useful and Ornamental Designs Acts were subsequently passed; but, with the exception I have already noticed as to works of sculpture, our laws of Artistic Copyright still remain unaltered, except as to international rights, which I shall notice presently.

The passing of the Literary Copyright Amendment Act in 1842 was mainly attributable to the generous and unwearied exertions of the distinguished and noble-hearted author of "Ion," the late Hon. Mr. Justice Talfourd. In a letter I received from him in 1853, after noticing "the necessity of a complete revision of the con-"fused and ineffective statutes" relating to Artistic Copyright, he says, "in the first Bill which I intro-"duced into the House of Commons, I included a series "of clauses on this subject; but I subsequently, by the "advice of Sir Robert Peel, confined the measure to "Literary Copyright, as he thought that the difficulties "attendant on the question between artists and the "patrons of Art would only be solved by a Select "Committee; and as this was a subject on which he "was personally sensitive, I found it necessary to adopt "his advice, or to encounter his opposition, which

"must have been fatal. I always, however, cherished
"the hope of bringing the subject before the Legisla-
"ture until I ceased to be one of its members; and I
"shall rejoice if some one possessed of more influence
"should be induced to move for a Select Committee
"on the Statutes."

I have noticed this letter because it proves that its generous writer did not neglect the interests of artists, as has been supposed, in his long battle in the House of Commons to obtain an amendment of the laws of Copyright. It also proves that he, as well as one of the greatest British statesmen, the late Sir Robert Peel, knew and admitted the necessity for an amendment of our Artistic Copyright laws.

III. *The British International Copyright Laws.*

These laws consist of:

1. The Act of 7 Victoria, C. 12. 1844.
2. The 15 Victoria, C. 12. 1852.
3. And the various Conventions and Orders in Council made under the above Acts.

Before entering upon any notice of these Acts, &c. it seems desirable to state, that by the law of England, as it existed prior to the passing of any International Copyright Act, no Copyright could be acquired in the British dominions in respect of any literary or other work which had not been either *first* published there, or simultaneously with its first publication in any other

State. The consequence of this principle of our laws of Copyright was to deprive *aliens*, as well as British subjects, of any Copyright in their works in every case where they were first published in any foreign State.

1. This injustice to the rights of intellect was at length partially removed for the first time in 1838. The Act then passed was repealed, in 1844, by the 7 Vic. cap. 12, which enables Her Majesty, by Order in Council, to direct, as to books *and works of Art*, which shall be first published in any foreign country, to be named in such Order, that the authors of such books and works of Art, and their assigns, shall have the privilege of Copyright therein to be stated in the Order in Council, not exceeding that to which authors of similar works first published in the United Kingdom are entitled; but no such Order was to have any effect, unless it states that *reciprocal* protection has been secured by the foreign power, to be named in such Order, in favour of British Copyright Works. By this Act the benefits of, amongst others, the British Engraving and Sculpture Copyright Acts are extended and apply to such of the works named in the Orders in Council as such Acts shall be applicable to; but no such International Copyright was to be acquired, unless the work in respect of which it is claimed shall have been *registered* at Stationers' Hall within the period to be specified in the Order in Council.

2. In 1852 the 15 Vic. cap. 12, was passed, which recognizes a Copyright Convention then made by Her

Majesty with France, and extended the Engraving Copyright Acts "to prints taken by lithography, &c."

3. All the International Copyright Conventions which have been entered into by the British Government stipulate "that no person shall be entitled to "such protection as aforesaid, unless he shall have "duly complied with the laws and regulations of the "respective countries in regard to the work in respect "of which such protection may be claimed." This stipulation applies to all descriptions of Copyright Works included in the Conventions.

International Copyright Conventions have been entered into by Her Majesty with the *eleven* following States, and in pursuance of the powers contained in the above-mentioned Acts, Orders in Council have also been issued in accordance with such Acts and Conventions.

		Population.
1. With Prussia, in 1846 and 1855 .		17,202,831
2. Saxony, in 1846		2,039,075
3. Brunswick, in 1847		269,213
4. The Thuringian Union, in 1847 .		958,941
5. Hanover, in 1847		1,819,777
6. Oldenburg, in 1847		187,163
7. France, in 1851 . .	36,039,364	
Colonies	3,506,218	
		39,545,582
8. Anhalt-Dessau-Coethen, and Anhalt-Bernbourg, in 1853 . .		168,325
9. Hamburgh, in 1853		216,831

10. Belgium, in 1854		4,530,228
11. Spain, in 1857 . . .	14,162,219	
Colonies	4,528,633	
		18,690,852
Total population of these States[1]		85,728,818

I have already noticed that the Act of Parliament which authorises Her Majesty by Order in Council to enable *aliens* whose works are first published out of the British dominions to acquire Copyright there, expressly enacts that no such Order shall have any effect, unless it states that *reciprocal* protection has been secured by the foreign power, to be named in such Order, in favour of British Copyright Works.

It is a portion of the Prerogative of the Crown to enter into Conventions with foreign States. All those entered into by Her Majesty, as to International Copyright, expressly stipulate that from the date when such Convention "shall come into operation *the au-*
"*thors of works of Literature or of Art,* to whom the
"laws of either of the two countries do now or may
"hereafter give the right of *property* or Copyright,
"shall be entitled to exercise that right in the terri-
"tories of the other of such countries for the same
"term, and to the same extent, as the authors of
"works of the same nature, if published in such other
"country, would therein be entitled to such right, so

[1] See the *Almanach de Gotha* for 1858.

"that the republication or piracy in either country "of any work of Literature or of Art, published in the "other, shall be dealt with in the same manner as the "republication or piracy of a work of the same nature "first published in such other country; and so that "such authors in the one country shall have the same "remedies before the courts of justice in the other "country, and shall enjoy in that other country the "same protection against piracy and unauthorized re-"publication, as the law now does or may hereafter "grant to authors in that country." Also that the terms "works of Literature *or of Art*," employed as above, "shall be understood to comprise publications "of books, of dramatic works, of musical composi-"tions, *of drawing, of painting, of sculpture, of en-*"*graving, of lithography, and of any other works* "*whatsoever of Literature and of the Fine Arts.*"

All the Orders in Council founded on these Conventions also recite that a treaty has been concluded between Her Majesty and the Sovereign of the foreign State named therein, "whereby due protection has been "secured within (such foreign State) for the benefit "of authors of books, dramatic pieces, musical com-"positions, drawings, paintings, articles of sculpture, "engravings, lithographs, and any other works of "Literature and of the Fine Arts, in which the laws of "Great Britain and of (such foreign State) do now "or may hereafter give their respective subjects the "right of property or of Copyright."

As to the Artistic Copyright Laws of the above-mentioned Foreign States.

Inasmuch as Orders in Council in favour of International Copyright are only legal when *reciprocal* protection is therein stated to be secured in favour of British Copyright Works within the territories of the foreign power mentioned in such Order, it would have been much more satisfactory if the Conventions entered into by Her Majesty had defined what works are the subject of Copyright within the territory of each of the States which is a party to such Convention. What are "works of the Fine Arts" according to the laws of the *Foreign* States in question? Upon this point the Conventions contain no certain information whatever.

By Resolutions of the Diet of the Germanic Confederation literary productions of all kinds, as well as "*works of art*" are protected from multiplication, by any mechanical means whatever, without the consent of the author or his assignee of the *original* work. This general law as to Copyright is binding on all the States composing the Confederation, but does not appear to preclude them as sovereign states from making or altering their own laws of Copyright if not inconsistent with the Resolutions of the Diet.[1] The term of Copyright granted by the Diet is now extended to the artist's life and thirty years afterwards.[2] All the

[1] *Rénouard's Droits d'Auteurs*, vol. 1. p. 280 et seq.

[2] *Blanc et Beaume's Code général de la propriété littéraire et artistique*, p. 222 et seq.

German States who have entered into Copyright Conventions with Her Majesty, are members of the Confederation, and, with the exception of Prussia and Saxony, I cannot ascertain that any of them have any special law of Copyright.

The Prussian Code of Copyright, passed in 1837, has been eulogized by a distinguished French jurist as the most complete in existence on the subject.[1]

As a legislative enactment it appears to be so; but it is by no means so liberal or just as the laws of France in favour of literary and artistic productions. The Prussian Code expressly prohibits the reproduction of *drawings* or *pictures* by engraving or lithography, coloured impressions, &c. &c. It also prohibits the reproduction of *sculptures* of all kinds during the period for which the Copyright is granted, and which remains the property of the artist so long as the original work belongs to him; but when the artist parts with his work, in the absence of any special contract with the artist to the contrary, the right passes with the possession of the original work.[2] The term of Copyright accords with that granted by the Diet of the Germanic Confederation, namely, for the artist's life and thirty years afterwards.[3]

The Saxon laws of Copyright also give a similar term of protection to artists in respect of the reproduction of their works.[4] The French *Code* on the subject

[1] *Rénouard's Droits d'Auteurs*, vol. i. p. 268.

[2] *Ibid.* vol. i. pp. 272, 273.

[3] *Blanc et Beaume's Code général de la propriété littéraire et artistique*, p. 292.

[4] *Ibid.* p. 560.

of Copyright generally, and especially as to that which relates to works of Art, is of a very simple character; but a long series of decisions of the courts have gradually extended the meaning of the language of the Code, until it may be said to include not only drawings, paintings, and sculpture, but also engravings of all descriptions, and in all kinds of materials.[1] M. Rénouard, in treating upon the French laws of Artistic Copyright, says, "*Copyright* (*le droit de copie*) belongs "to painters, designers, and sculptors in their produc- "tions, as well as the corporeal property of these pro- "ductions themselves. That an artist may distinguish "between these two rights; that he may sell his ori- "ginal picture, and retain the right to engrave or copy "it; that he may sell the right to engrave and retain "the proprietorship in the original; that he may sell "these divers rights to different persons is what no "one would for an instant doubt."[2] By a decree of 1852, it is declared that the piracy on the French territory of works published abroad, and mentioned in Article 425 of the Code-penal, shall constitute an offence; also the importation and exportation of pirated works generally. *Alien* artists, &c., therefore, now enjoy in France the same protection, in respect of their works, as if they were French subjects, although such works are not first published there. By a decree of 1793, amended in 1854, the term of Copyright granted in France is not only for the artist's life,

[1] *Rénouard's Droits d'Auteurs* vol. ii. pp. 78 et seq.
[2] *Ibid.* pp. 300 et seq.

but that of his widow, and also for the artist's children during thirty years from the death of their surviving parent; if the artist leaves no children, then it vests in his next of kin for ten years.

The Belgian laws of Artistic Copyright appear to extend to the same objects of Art as the French; but the utmost term of Copyright allowed in Belgium is for the author's life, and twenty years afterwards.[1]

The Spanish law affords to painters and sculptors protection in favour of the reproduction of their works by engraving or any other process. This Copyright continues during the artist's life and for fifty years afterwards.[2]

By the Copyright laws of Germany, France, Belgium and Spain, as regards the productions of painters, their *pictures* are wisely made the primary objects of protection:—under the British Engraving Acts the *engravings* from pictures are made the primary objects. This radical defect in our laws can only be remedied by repealing all the existing Acts on the subject, and passing such a new and well-considered measure as will, at least, put our laws upon a footing of equality in justice with those of the foreign States who have entered into Conventions with Her Majesty.

In conclusion, I will only add the following observations upon the existing laws of British Artistic Copyright:—

[1] *Blanc et Beaume's Code général de la propriété littéraire et artistique*, p. 214.

[2] *Ibid.* pp. 250, 251.