

ON PIRACY
OF
ARTISTIC COPYRIGHT

BY
ERNEST GAMBART.

LONDON:
PUBLISHED BY WILLIAM TEGG.
1863.

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II. Droit d'auteur.

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NEARLY all those who have written or spoken on the subject of copyright in works of art, have specially turned their attention to the principle of endowing owners with the same, but have neglected the not less important and more practical matter of effectually securing it when given. I am not a lawyer, and will therefore not attempt to treat this subject from a legal point of view, but as a publisher of engravings and owner of copyrights, simply give my experience of the defective state of the law, and suggest what remedies are required. How defective the law is will appear when I state that I have appealed to it for protection, against pirates of artistic copyright, in nearly every Court, and, to my cost, found that none could help me. So far as already-published engravings are concerned, my property has been taken away by persons who make, sell, or buy copies of them without my consent :—for these new laws will come too late. I have, however, other works, as yet in the hands of the engravers, which require protection, amongst these are Mr. Holman Hunt's "Finding of the Saviour in the Temple," and Mr. Phillip's "Marriage of the Princess Royal." How deeply I am interested in the question will be understood, when I state that for this first picture I paid £5,500, the largest sum ever paid for a modern picture.

I shall endeavour to show that the principle of protection for copyright in works of art has been admitted in this country, both in the past and present time; that it is justly due to owners of property in art; and, above all, that under it art has, until quite recently, flourished beyond precedent. For the last point, it will suffice to state that, in this country, art property instantly rose in value and continued to rise, while, by an agreement between publishers of engravings, which was virtually international, copyright was in effect protected against piracy. This elevation cannot be maintained, if that protection be destroyed under attacks of novel enemies.

It must not be forgotten that the question of protection for copyright in works of art is altogether distinct in character from that of protection for natural or manufactured products.

Protection not
required against
competition.

Free trade and unlimited competition will answer well in both. It is not, however, against competition that protection for copyright in art-works is demanded, and has been, in principle, conceded, but for property itself acquired under the conditions of competition—in short, not aid against legitimate competition, but against robbers.

Principle of the law.

In all the laws, not only of England but of foreign countries, and international treaties on the subject, it has been admitted that art property ought to be in the same category with real property, but, as yet, this principle has not obtained in practice that position it deserves and so much needs. Amongst the measures adopted with this object is the Act 25th and 26th of Victoria, chapter 68, passed in the last session of Parliament, giving copyright in paintings, drawings, and photographs, to their inventors and designers, and thus remedying a great injustice under which painters had hitherto laboured in England.

Examples.

That Act is a great boon to the artistic interest, but falls far short of its requirements in giving no efficient remedy where protection is in practice required. *It gives a title, but no means to protect it.* The value of copyright to a painter is, generally speaking, represented by the right of having his picture, drawing, or design, multiplied by engraving, lithography, photography, or any other process. That Act gives satisfactory protection to photography, but none to engraving or lithography, which are precisely the processes most in use and preferred by painters generally. To the hope of obtaining a remedy for this deficiency, the following pages are devoted.

Defect.

Engraving.

Engraving, the most artistic and desirable means of reproducing the designs of artists, and thus giving great value to their copyrights, is an independent art, which derives interest not only from the pictures it translates, but from the originality its own productions acquire, independently of the design translated. Engraving is also valuable from being the most certain and perfect mode by which works, ancient or modern, can be made immortal, and diffused with their full excellence over the world.

The art of engraving has held, in England especially, so high a position, the works of Woollett, Strange, and Hogarth, have obtained for their country such a reputation, well maintained by the engravers of the present day, that in continental Europe the position of England as an art-nation is best known by such works. This position is now threatened, and unless means are speedily adopted to preserve it, the art must collapse in England, so that a number of its professors who have spent the best part of their lives in study will find remuneration fail them, and their talent useless.

Evils to which it is subjected.

Everyone knows that it costs several years of unremitting labour, of the most exquisite quality, to produce an engraved plate, and that remuneration for the skill and time thus expended depends on the gradual sale of impressions taken from that

plate. Everyone, however, does not reflect that the engravers and proprietors of such plates will be ruined, if, as soon as the first impressions make their appearance, it is allowable for disreputable persons by a rapid process to produce imitations—nay, even all but *fac-similes*—of them, such imitations being offered at a tenth of the price required by engravers to repay themselves. Obviously, unless the manufacturers of such things are stopped, they will drive the original engravers out of the market, and reap the harvest. This is what is going on at present, and, as a natural consequence, engravers and those who employ them would cease preparing plates, but for their confidence that effectual protection against infringers of artistic copyrights will soon be given.

So far back as 1735, Parliament legislated to protect the art of engraving; again in 1767, and also in 1777, when the 17th of George III., chap. 57, was passed for more effectually securing the property of prints to inventors and engravers. At that time the only means of copying engravings was by engraving likewise—a work of time and difficulty, requiring capital, costly presses, and skilled workmen,—in fact, the whole machinery of a regular business, carried on by substantial tradesmen, from whom it was possible to recover damages or penalties for piracy. Modern inventions have enabled another class of men to follow this trade. First, LITHOGRAPHY has rendered it easy to produce at small expense copies of engravings, conveying an idea of the subject represented. Such copies, produced with rapidity, caused, at first, great disturbance amongst holders of copyrights, who found their property imperilled and impaired; but, as it still required costly presses and skilled workmen to make such lithographic piracies, their producers could be subjected to the action of the law. By checking the importation of foreign examples, this evil was considerably circumscribed; though, as I will show hereafter, it threatens somehow to reappear in a more active form. The second evil arises from the application of PHOTOGRAPHY to the reproduction of every engraving of interest as soon as it appears, by a host of unprincipled persons who make this a regular pursuit.

For the better understanding of the evil, and that it may be more easy to appreciate what remedies may meet the case, I will describe the course adopted by the manufacturers, importers, and vendors of piracies.

To begin with lithographic piracies. These, I am happy to find, are not any longer made in England: Berlin enjoys the unenviable monopoly of their production, by firms openly dealing in piracies of English and French engravings for the English market. In this trade thousands of persons are engaged. It could be checked by an amendment of the international copyright treaties, such as I will point out hereafter: at present it is limited only by the greater or less facility of importing piracies into England. Although such importations are prohibited, and it is the duty of the officers of Customs to stop

them at the ports of entry, this duty must be very inefficiently performed, since these piracies are found all over London and the provinces. They come in large quantities, mixed up with piracies of French engravings, of which the officers know little, and a few German fancy subjects. The officers, should they open any of the parcels, are easily satisfied with the assurance of the importer's agent that none are copyright infringements, and they pass to the hands of his employer,—some German merchant in Houndsditch or the Minories,—who receives them mixed up with other German produce, such as meerschaum pipes, toys, &c. These Berlin lithographs, piracies and all, are invoiced without designation of subjects, and simply as so many gross of prints plain, and so many gross coloured. The importer, who is generally a merchant of some standing, takes no cognizance of these goods, but delivers them in bulk to men who are in the habit of taking them from him. Against the importer there is, practically, no protection but the officer of Customs, and as both the agent and his employer are usually in respectable positions, paying duties on imports and having large warehouses, they seem unlikely persons for questionable dealings. If, however, the officer should do his duty, and, opening the parcels, point to the prints he deems piracies of English engravings, the importer is ready with explanations. He doubts the officer being correct; he knows nothing of copyrights of West-end artists or publishers; he never goes west of Bishopsgate-street; he is well known, and not likely to do aught that is not right; is ignorant what copyright means; never was asked for such an article; if anything is wrong let it be taken out of the parcel; must have been sent in error; never ordered such a thing; very much astonished, &c., &c. After all, the importer at this stage is not actionable, having never yet had the goods in his possession, and pretending himself innocent of their presence in his cases. The officer perhaps removes a few "Shoeings," "Last Appeals," or other popular engravings after Landseer or Frank Stone, which he has noticed in some print-shop, and the remainder, imitations of the most recent works of Messrs. Faed, Solomon, O'Neil, or Ansdell, pass in thousands.

The parcels thus arrive at the warehouse of the importer. He disposes of them in bulk and ignores their contents, yet is very careful whom he deals with, and would on no condition sell any, nor open a parcel for a stray visitor (however largely he might promise to buy) whom he suspects to be an agent of West-end publishers wanting to clear up the mystery of that import. If these parcels have thus far travelled openly, at this stage they disappear; the retailer for whom they have been imported being alive to the danger he is running, and, as he must possess a capital of at least £5 to pay* for his goods, having something to

* These lithographic copies of engravings published at prices varying from 1 guinea to 5 guineas, cost him about 2s. per dozen plain and 3s. per dozen coloured.

lose if detected. He has hiding-places, and as he also has his regular channels whereby to diffuse his unlawful articles of trade, he takes care that no stranger witnesses his dealings. His customers are mostly German or Polish hawkers, each of whom starts in the morning with a small folio containing these Berlin lithographs; the selling of this lot constitutes a task for the day, and the men go in different directions. Some present their wares in little shops of stationers, newsvendors, tobacconists, toy-sellers, and furniture-brokers; others call from house to house; a few stand at street corners, and offer such popular prints as Mr. Millais's "Order of Release," or "Huguenot," or Mr. Solomon's "First and Second Class," at 1s. each to the public, or 6d. to the shopkeepers. They meet with a ready sale.

One of the mischiefs done to owners of copyright engravings by the sale of these lithographs, and their exhibition in the windows of many little shops, is the discrediting of the original work by making it common, and vulgarising it by such generally wretched reproductions. It has been argued, and with apparent reason, that these things could not replace the fine engravings, since anybody whose taste induced him to buy the latter would never be tempted, be the price ever so low, to endure such vile things as the Berlin piracies often are. In fact, although the sale of engravings was much diminished when the lithographic piracies appeared, it was only so by the loss of the patronage of those who prefer a select article, or who could not appreciate a good one. In some cases, however, the lithographic piracies are very beautiful, and effectually compete with the original engravings at a tenth of their cost. The evil, in this case, acts from the other side by pleasing those who can appreciate good art.

Worse than this has come about since the general application of photography to pirating popular engravings. By Photography.

When it is considered that almost anyone having a camera can reproduce, unassisted, and in the privacy of his "studio," an engraving, especially one in line, of any size, and in so perfect a manner that the generality of the public might take the photographic copy for the original impression from the copper-plate, it will be seen what mischief to the skilled artist, who has executed that plate, and the publisher who commissioned him, a fraudulent photographer can do. Add to this, that an engraving, such, for instance, as Scheffer's "Dante and Beatrice," which costs 30s., can be reproduced by photography in less than an hour, of the same size as the original, with an expenditure of less than 1s., and it will be owned that there is no chance left for the fair trader if his property is inefficiently protected by law.

Now let us inquire into the doings of producers of photographic piracies of copyright engravings.

If, Asmodeus-like, a man, by use of the fabled fern-seed, could introduce himself into the workshop of my printer,

get hold of my copper-plate from the "Derby Day," take a number of impressions from it, walk out and sell them, I should naturally fancy, when they came into the market, that he had caused me an injury, and should not the less strongly feel it from having paid large sums to M. Blanchard for engraving the work, and to Mr. Frith likewise for copyright. The man I should call a thief or "pirate," who, having no disbursements of that sort, and finding only the necessary materials, offers for 10s. each impressions which I deem it necessary to sell for five guineas. I think it would be my duty to overlook his great merit in the discovery or application of "fern-seed," and bring him before a jury for damage done me in taking, without my consent, impressions from my plate, and selling them to those who must have come to me if they had not been supplied by the "pirate." All my friends would encourage me to proceed against him, and the public would believe that an English judge and jury would do me justice.

Inefficiency of
the law.

Such however is the state of the law that I fear, from past experience, to obtain a remedy would not be easy. The pirate might, with money obtained by the sale of copies of my plate, engage the services of eminent Queen's Counsel, who would represent the great merit of the "fern seed" process which had enabled his client to infringe my rights, and aver that the Acts of Parliament on the subject of copyright were passed before the discovery of that process, and consequently did not apply to the case. The Act of George III., it is true, states that it will be unlawful to copy prints, etchings or engravings, by chiaroscuro "or in any other manner." Nevertheless, counsel would argue that there was no meaning in these last words, and, to the amazement of plain folks, declare that I had sustained no injury, because my engraving could not be discredited, since the copies complained of were as good as those issued by me. The jury, simple men, might think that I was entitled to damages, and accordingly give me a verdict; but the judge might deem it in accordance with his duty, as the case came before him for the first time, to send it to the full Court for argument. Rule nisi would, in course of time, intervene, and I should find it incumbent on me to prove the meaning of an Act of Parliament—a very difficult matter, and, in my case, with poor prospects of ever recovering damages from the individual reduced to the questionable industry of gaining access to my plate with the assistance of "fern seed." The above may seem very absurd, and my simile childish—my excuse, however, is that I have found no other parable, and the case is perfectly the same as occurs in practice.

The discovery of photography has rendered the pirate's task easier even than "fern seed" could do. He need not work at my printer's or touch my plate—all he requires is to place his camera before my engraving for a few minutes; in that time he obtains a "negative," from which he may take any number of copies at a trifling cost—he requires no costly presses,

no skilled workmen, as the lithographer does, but can do everything in the privacy of his "studio," while he has the additional advantage that, besides being able to compete with me in the sale of *fac-simile* copies of my engravings, he can produce them of all sizes—small enough to go into a breast-pin, and large enough to cover a wall. He can do all this without the trouble of acquiring any artistic talent or knowledge beyond the power of using his camera and the mixing a few chemicals. His is not even a colourable imitation; it is not even a questionable copy; IT IS MY ENGRAVING ITSELF, PRINTED FROM MY VERY PLATE. In short the progress of science has enabled the pirate to take away my property without breaking into my premises, and in candour I must say that I am surprised the lawyers who have defended vendors of photographic piracies did not boldly express what seems the only real answer to actions against them—namely, that photographic impressions of engravings are not copies within the meaning of the Act, but are taken from the plate itself; and that the producers and vendors of them might be guilty of robbery or selling stolen goods, but not properly of imitating, or of dealing in copies. I seriously believe that, if all other remedies should fail, and no relief be obtained from the legislature, on an action being brought in a court of equity, the process of fraudulently taking impressions of an engraved plate by means of a photographic apparatus, would be treated, as it is in every sense, as a robbery.

In France, where copyright, as in England, is limited to a French law. number of years, it is understood that, when the copyright of an engraving has run out, the picture may be reproduced by either engraving, or the lithographic or any other process; but the party making the copy is not to use as a model another person's engraving: that is to say, supposing an engraver wishes to produce a plate of Horace Vernet's "Mazeppa," he can do so, but must not copy the original engraving line for line. Therefore I apprehend that, according to this view, *a fortiori*, it will never be considered lawful in France to take photographic copies of a plate without consent of the owner, whether the copyright be run out or not, because such photographic copies are *fac-similes*, and even if, by neglect of registration, the copyright has never been secured to the owner, the engraved plate is a property which no person has a right to take away, either in whole, by bodily stealing the work itself, or in part, by taking copies of the same by whatever means.

To return to England. If, as stated above, it is difficult to English law. detect the importer and first retailers of lithographic piracies, how much more is this the case with the producers or printers of photographic piracies!

Importers and wholesale vendors of lithographs have been Secret manu-
facturers of
photographic
piracies. discovered and prosecuted, but never yet in England has it been possible to prove any one to be a *producer* of photographic

piracies. The sale of these is enormous; and many collectors of the works of Landseer, Scheffer, Rosa Bonheur, Millais, and other popular painters, many whose taste and research caused the usual demand for engraving, now supply themselves with photographic piracies, which they obtain at a twentieth part of the cost of the engravings. The photographer, working in privacy, can make any number of copies without exciting suspicion; his productions he can roll up in small compass, and carry a large number unmounted in his pocket, to be unfolded when alone with single customers or those who serve as agents between him and the public. It is easy enough to detect the *vendors* of photographic piracies, but when the characters of manufacturer and seller are united in one person, his detection is only practicable in the latter capacity. No man will convict himself. Such manufacturers, it is true, are the gravest offenders; the principle of their being so is acknowledged by the Act 25th and 26th Vict, c. 68, which makes distinction between manufacturers and vendors of piracies. In the case of photography such distinction is, however, rendered nugatory, simply by the total impossibility of bringing the offence home to the culprit. He does his work in secret, as we said above, and will not, of course, convict himself; therefore, to be efficient, the law must treat both alike, for to make a distinction between the offences is fallacious, and defeats the object of legislation. The retailers are usually small shopkeepers of broken fortunes, who defy prosecution by their very weakness, and at once tell proprietors of copyrights whom they have injured that it is no use suing them, since they are too poor to pay costs. If they are not such as these, they are hawkers going from house to house, making sales at prices varying according to the size of their filched wares, but always considerably below the value of the original engravings.

When any vendors of piracies, either lithographic or photographic, have been brought into court, or an action threatened against them, the answer to the charge almost invariably has been, firstly, that they were in total ignorance of the article they sold being a piracy; and secondly, that, as they never sold more than *the one copy* bought by the plaintiff, he could have sustained no damage, having bought it himself. The first answer, however, avails them nothing, since the Act of George III. does not require that a guilty knowledge should be proved. Juries have generally disbelieved the second plea. I have no hesitation in saying, from experience, that if, in addition to other difficulties, the plaintiff in such cases had been required to prove a guilty knowledge on the part of the defendant, the prosecution must have broken down, as the plaintiff would not have been able to prove this, however morally certain he might be of the fact.

The public can hardly realise the position latterly occupied by owners of copyrights seeking to defend their property. They hear from their agent in a country town that it is im-

Cannot be convicted.

Retailers.

possible to sell impressions of a popular engraving, the whole town being inundated with cheap photographic piracies of the same. The agent is at once requested to obtain the necessary evidence for bringing the vendors of such piracies to justice, but there begins the first difficulty. Although the offenders are known, it is always difficult and often impossible to bring the act home to them; they are on their guard, will sell only to people they know, and are so very shy of strangers that but one offender in a hundred can be detected; and when such a detection is made, the relative position of the parties is little altered, as I shall now show.

The owner of an infringed copyright has a property to defend, which, much impaired as it may be by piracies, will be worth, say from £50 to £100 a year. Suppose he detects 20 people out of 500 who are engaged in circulating piracies of his engraving: such is the state of the law that he cannot obtain a condemnation of one of them under a cost of from £20 to £100. As the culprits are nearly all persons of the lowest position, his chances of recovering either damages or costs are of the most shadowy nature. If he sues one or two only, as examples, he spends the value of the property he would defend, and makes no impression on others, whose strength lies in very weakness. Another case offers a puzzle. The owner may find in the street, perhaps at his own door, some Pole or German openly offering at 1s. a-piece piracies of his engraving. What can he do? The fellow pretends ignorance of the English language, refuses to name a domicile, if even he has one: no man has power to interrupt his proceedings, the only course being to obtain the address of his solicitor, or his own address, in order to send a legal communication. Of course he has neither one nor the other to give, and his poverty is a shield under which he destroys the property of the lawful owner of copyrights, who has not even the satisfaction of bringing him before a Court of Law.

This evil is in process of development; and such cases as the above, as yet only accidental, must in a short time become regularly organised, when the impunity of the offence shall be understood. I can already fancy a fellow standing before Mr. Graves's door holding piracies of Mr. Faed's "Mitherless Bairn," and pointing to the original engraving in the window and shouting, "LOOK ON THAT PICTURE AND ON THIS: THREE GUINEAS WITHIN, THREE SHILLINGS WITHOUT!"

Let it not be supposed that there is any exaggeration in the picture I have drawn. The records of many a prosecution, and the results of all my actions brought to trial in England, have been the same. I have invariably obtained a verdict in my favour, after more or less protracted proceedings, but in not a single instance recovered a farthing of damages or costs.

Here are a few of my experiences, as examples of the difficulties of defending a copyright under the present state of the law.

Majority escape punishment.

Case.

Difficulty of defending copyright.

Case of Louis.

I was successful enough to obtain evidence against a firm of importers of German piracies, the mode of whose proceedings I have described above (*see* page 6). The names of the offenders were Messrs. Louis, of Dowgate Hill, Cannon Street. They had dealt most extensively in these articles; had, in fact, made a fortune by the illegal trade, and, disregarding all complaints, set me at defiance. Here was a case such as had never yet presented itself, of a house rich enough to pay costs and damages. As they continued their dealings, a suit was commenced in the Court of Chancery, to restrain them from importing, selling, &c. They resisted, and having worn out all the defensive weapons given them by the law, after several months of litigation, when the case was finally about to take effect against them, quitted the country with their ill-gotten gains, and left me to pay about £400 of costs. Their trade was taken up by other firms, who, more careful, have not been detected in their doings; and perhaps it is as well for me they have not, since a similar prosecution would most likely end in a similar result.

Of Sumner.

I sued a Mr. Sumner, a printseller, for selling lithographic copies of Solomon's "First and Second Class:" he pleaded that he had no guilty knowledge, and although such was not required to be proved, the Judge, as a matter of course, on being asked to do so, "reserved the point:" a rule *nisi* was subsequently granted, and, when the judges had, with additional expense to me, given their decision in my favour, Sumner went to the Insolvent Court to escape payment of damages and costs, and I never recovered a farthing. I deemed it my duty to oppose his discharge; and the late Commissioner Murphy stated, when suspending his protection for a month, that the defence of my suit was vexatious, and in delivering judgment, declared that he would not again grant the relief of his Court to persons who sought to escape paying costs incurred in defending actions for infringement of copyright.

Of McMichael.

I prosecuted Mr. McMichael, of 5, Adam Street, East, Edgeware Road, who was a well-known wholesale dealer in photographic piracies, and had sold large numbers from Mr. Holman Hunt's "Light of the World." He allowed judgment to go by default. I proceeded to have damages assessed, and then he came before the jury to plead in mitigation of damages. I had all the trouble and expense of going into Court, obtained a verdict against him, but never found him afterwards, so as to recover damages or costs.

Of Ball.

I am now, in the Court of Common Pleas, suing Mr. Ball for selling piracies of the "Horse Fair," and "Light of the World." The jury has given me a verdict with £10 damages, but Mr. Coleridge, having argued that photographic impressions were not copies within the meaning of the Acts of Parliament, asked and obtained leave from the Judges to reserve a "point" for decision by the full bench. I shall give no opinion on this case while it is pending; it cannot, however,

be irregular to point out the extraordinary ground taken by Mr. Coleridge. He maintains that according to the present state of the law, although it is illegal for an engraver to copy the work of a photographer, it is perfectly lawful for a photographer to copy the work of an engraver! If such is really the law, is it not iniquitous, and worse than no law at all? If such is not the law, how evil a thing is it to be so obscure that Mr. Coleridge can consider himself justified in so pleading, and the Court in admitting such arguments! The full bench has since granted a rule *nisi*. I am therefore again obliged to prove the meaning of the Act; and, in this desperate position, am almost led to wish my case may break down, and that Mr. Coleridge, against all reason and common sense, may prove his arguments. The very glaring injustice of such a position would perhaps force on a better state of things for the future. But if, as is expected, I succeed in upsetting the rule, unless a new and more comprehensive Act is passed, the same or other points may be reserved when actions are brought against infringers of copyrights by any of the processes not named in the Act of Geo. III., such as the zincographic, daguerreotype, anastatic, and others. It must be borne in mind that such litigations wear out the energy and means of owners of copyrights.

I brought an action in the Westminster County Court against Mr. Powell, of Chandos Street, for selling piracies of Madlle. R. Bonheur's "Horse Fair," and obtained a verdict for £10 damages, but as I had estimated my damages at a higher sum, I have to pay the greater part of my costs, and, besides, judgment is suspended until the superior Court has decided my case against Mr. Ball.

Case of Powell.

The above are examples of London practice; country experience varies little; to illustrate it I will trace the history of my case against Brighton pirates. Mr. Holman Hunt's picture, "The Light of the World," in its travels through England, was taken to that town. Mr. Ryde, the respectable printseller of Western Road, Brighton, acting as my agent, exhibited it to visitors. He advertised it extensively, placarded the town and neighbourhood, engaged an extra staff of assistants, and, in short, neglected no means of serving my interest as well as his own, to secure a fair amount of immediate patronage, and lay the foundation for a further and more important prospective sale of engravings from this picture, by making it a household word in Brighton and its environs. But Mr. Ryde was not left to reap the fruits of his industry and investment. A small trade in prints is carried on in the same town by two persons named White (husband and wife). These persons were soon alive to the interest created in Brighton by Mr. Holman Hunt's picture; indeed, they are better able to appreciate it from being connected, as pew-openers, with the Rev. —'s Dissenters' Chapel in — Street; of course, they know all the congregation, and soon set on foot a trade to supply

The Whites of Brighton.

Their Proceedings.

the said congregation with photographic piracies of the engraving from the picture all admired, and, through the recommendation of pious ladies and gentlemen, as many more inhabitants and visitors of Brighton as possible.

Mr. Ryde charges two guineas for prints of "The Light of the World," having to pay me, as owner of the plate from which alone impressions can legally be taken, that sum, *minus* the per-centage allowed to my agents. The Whites do not condescend to apply for their impressions to the lawful owner—a single impression suffices to a fraudulent photographer for producing an indefinite number of copies of any engraving: so they, in opposition to Mr. Ryde's regular price of two guineas, raise their flag to the tune of "Five shillings a copy only in this shop, or ten shillings framed!" They, however, knew all along it was not a safe transaction—secrecy was recommended to purchasers; and for some time the piratical trade flourished in peace; but the fame of the 5s. "Light of the World" soon spread, and many inquirers came to Mr. Ryde's shop for impressions at that price. His repeated answer that two guineas is the lowest price at which they are to be obtained, meets with incredulous looks, and, by and by, contradictions! "They know friends who have bought them at five shillings." He gets alarmed, and demands of me "Why I have unfairly supplied other tradesmen in his town at a lower price?" My denial of such a proceeding brings him but small comfort, for every day the fame of the cheaper article spreads, and his sale, diminished at first, is totally destroyed, although the interest in the subject, and inquiries for impressions, are not abated, but nobody will any longer give the price. His inquiries as to who supplies his market, underselling him, remained for some time unsuccessful. Piratical copies are brought to him to frame, he sees them in many houses where he goes to work as a carver and gilder, or carries the drawing materials which he supplies to the fair votaries of art, but the source whence all these copies came remains for some time a mystery; at last, accident reveals to him the name of the guilty parties. A lady made the usual inquiry for a "Five-shilling Light of the World," and on his answering he had none such, another lady, in his presence, while selecting cakes of water colours, good-naturedly gave, to the applicant the address of the Whites, from whom the prints are to be had. Mr. Ryde has now the name of the pirate who had by unlawful means put a stop to a branch of his business and injured me; instead, however, of immediately collecting evidence of the offence, and turning the Whites over to me, to be dealt with according to law, he, good Samaritan, gives them warning of their danger in unlawfully selling such piratical copies; but in lieu of thanks, these people tell him it is no business of his, and he had better not interfere. The business of the Whites has gone on increasing, and is not any longer a mystery in Brighton; but as the people who want a print of "The Light of the World" still

Difficulties of detection.

Except by accident.

come to Mr. Ryde's shop, and his customers grow angry at his refusal to supply them for five shillings with an article which so many of their friends already possess, and at his putting them to the trouble of going some distance for it, he is obliged to explain that the sale of pirated copies is unlawful, and tries to bring his customers to their senses as to the course they are taking, by becoming accessories to such a practice. This had some effect, and certain ladies, on being applied to by the Whites to buy impressions, expressed the misgivings which Mr. Ryde had created in their minds, as to its being just for the Whites to sell, and for themselves to buy, such photographs of "The Light of the World," and they kindly also warned the offenders of the danger they incurred.

Far from taking warning—far from desisting, the Whites ^{Their} now turned round on the impediment to their progress—^{impudence.} they upbraided Mr. Ryde for interfering with their business; he remonstrated, saying that it was they who had unlawfully put a stop to his fair trade. Nothing would pacify them, and they dared him at his peril to repeat that it was wrong to sell pirated copies.

It now became my duty to my agent, as well as myself, to ^{Detected.} interfere, and I sent orders to collect the required evidence to convict the Whites; but this was no easy matter—they were on their guard, and it was only after several fruitless attempts that at last a young gentleman, on asking Mrs. White for a "Light of the World," obtained a copy, with a warning to "*be very careful not to let anyone know in Brighton that he had obtained it at her shop, as it might bring her into trouble.*"

I obtained last week, in the Court of Common Pleas, a ^{Case of Sclater.} verdict giving me £100 damages, against Mr. Sclater, of Canterbury: my friends congratulate me on this apparently happy result—but what is the reality? Mr. Sclater snaps his fingers, and informs me that his landlord will protect his goods, and that the new Bankruptcy Law, which he has studied, enables him to escape punishment.

After all this, my reader will admit it is not too much ^{No existing} to say that there is in reality no remedy against these ^{remedy.} engaged in the manufacture and sale of piracies. To attempt to obtain one must end in the ruin of the artist, or his representative the publisher, who will no longer embark capital in a pursuit where endless and fruitless litigation is the penalty of producing a successful work of art. Where is the engraver who will devote his talent to engrave pictures with no prospect of a fair market for his engravings, knowing that he will be forestalled by the photographer? and what price of copyright can a painter expect to obtain for his pictures when neither engraver nor publisher has safety in such investments?

The question must be tried not only by the above, but by other ^{Unfairness of} equally serious considerations. It must not be forgotten that ^{English law to} England has entered into treaties with France and other coun- ^{French owners.} tries, for the reciprocal protection of copyright property. The

French have acted rightly in this matter, and—when it is brought to the notice of the English Government and people that, whereas in France English copyrights are so fully and efficiently protected that piracy is almost unknown, and should it occur prompt justice is obtainable at small cost—the sense of fairness, which has always distinguished the British public, will prompt it either to give to the French in England the same protection which the English enjoy in France, or to cancel the treaty, which is at present a blot on the fair name of Englishmen, who are accused by all French owners of copyrights of obtaining full protection for themselves, giving nothing in exchange but a shadow.

MM. Goupil.

MM. Goupil, the eminent French publishers, tried to put a stop to the infringement of their copyrights in England, but soon found the true position of things; and after spending above £40 in an action, withdrew from it in disgust, and there is now no impediment thrown in the way of the vendors of piracies of foreign copyrights. To the disgrace of the shopkeepers of London be it stated that piracies of French copyrights are exhibited for sale in almost every street; and while there is a large sale of English engravings on the Continent, the sale of French line engravings, once so extensive in England, has now been entirely superseded here by photographic piracies of them.

In addition to the damage done to the property of copyright owners by these piracies, other fatal effects must follow. These I will now trace.

Piracy fatal to art.

Piracy has always been fatal to art in countries where it has been practised.

If publishers produce prints without any more trouble than that of copying works made in other countries, they will not find it necessary to apply to their own artists, who would naturally expect to be paid for their copyrights, and the demand thus withdrawn must ultimately affect the supply at home, wherever that is. In every country, however low the tone of morality may be brought by constant indulgence in dishonest practices, there will remain some men who shrink from the general contamination. Even should some publishers of this class refrain from a nefarious trade carried on around them, and prefer honestly to publish original works, they will not be able to pay the artist a sufficient price for his copyrights, so as to stimulate his energies; and at whatever low cost they obtain such copyrights, they will not be able to compete with their neighbours, who, not paying copyright at all, produce prints at a lower price. The earliest manufacturers of piracies will soon be in competition with new comers, who, allured by the ease of producing works through the mere picking up of the originals, will again pirate them at such prices that the quality will gradually become so low, and the value so small, that the miserable productions will no longer

remunerate their authors. This will be poor consolation to the honest publisher and the artist, whose property is wasted.

This has happened in Germany. About 10 or 15 years ago ^{As in Germany.} that country stood high amongst those which supplied England with engravings and first-class lithographs, from the works of modern or ancient masters, and Berlin print-publishers held no mean position at the annual gatherings of Leipsic, where the artistic and literary productions of all countries are exchanged. About that time, however, MM. Sala and Co. made copies of English and French prints which they sold at from 3s. to 10s. each, and, having no copyright to pay for, found the traffic at first remunerative—as poachers would if allowed free range of the well-stocked preserves of Windsor Forest. But gradually M. Zawitz and other Berlin publishers joined in the fray, and their prints gradually came down to 2s.—to 1s., until they are now obliged, by their own severe competition, to sell them at 1½d. each, and must deal in tons of goods to obtain poor results. With such severe competition all pretence to quality has vanished, and the prints become viler every year. So again would it be, if the first poacher who found Windsor Forest so productive was, after twelve months of *battue*, surrounded by hundreds of his class, ranging with hungry eyes in search of a stray sparrow, where pheasants once were easy prey.

As might be expected, German copyrights have become matter of history, and Berlin publishers lost their place in the world as producers of original works. Without travelling so far, however, we might have looked to England; and I may perhaps be forgiven for relating my personal experience, since it may prove interesting and instructive.

When, in 1843, I started as a publisher and importer of foreign ^{In England and France.} and exporter of English prints, what was the position of affairs? There was no international treaty between France and England, and many London printsellers supplied their customers with pirated copies of French engravings, French publishers adopting the same course. English engravers reproduced the subjects of the elder Dubufe or the works of Horace Vernet; the French re-engraved or lithographed the works of Wilkie and Landseer; the market being thus supplied partly with piracies in both countries. Very small sums could be commanded in either by artists for their copyrights, since a publisher could always employ his engravers and printers in copying some popular productions of a neighbouring country if he could not obtain the copyright of the native artist at his own price. It must be borne in mind that communications in those days were not so rapid as they now are, and that even piracies still required capital to produce them, so that these practices had not the same effect of totally destroying the legitimate business, as has happened in Germany. Under that state of affairs the French maintained a better position than they do now; there was great patronage for line engravings, and there had not then been

found a means of reproducing them without an almost equal amount of talent and labour. Sharp and Woollett were gone, and although Messrs. Doo, Robinson, etc., worthily represented English art, the English line engravers had almost exclusively given themselves to engraving small plates for the "Keepsakes" then so much in fashion. These, although most exquisitely done, could hardly command a constant attraction or claim a high rank for their performers. The French, who had an efficient copyright law, had given greater encouragement to their line engravers: Desnoyers had been made a baron, Foster and Dupont were members of the Institute, and the works produced by them and by Louis, François, Mercury, Blanchard, and other line engravers, defied competition and piracy. It is true, that mezzotinto about this time had, in the hands of the Messrs. Cousins, Landseer, Ryall, and Lewis, inaugurated a more rapid mode of reproduction, but, being more easily copied, their works could not, as a means of exchange with foreign countries, hold such a high rank as those of their foreign rivals.

I think, from all I can remember, that the whole exports of English engravings at the time did not amount to more than £5,000 or £6,000 per annum, and much of that sum was represented by coloured prints of coaching and racing subjects, of which England had then, as now, the exclusive production. The imports of engravings from the Continent might have amounted to about £10,000 per annum. It was under these circumstances that I formed the idea of a copyright treaty between the publishers of England and France. My intercourse since 1843 had brought me in contact with the whole of those engaged in the trade of both countries. I found them to be men of intelligence and capital, and it was with the most gratifying facility that I succeeded in bringing about a distinct understanding, and, without a single word of writing—simply by taking the verbal promises of London firms to Paris, and *vice versa*—concluded an engagement between the publishers and printsellers of both countries that they would abstain from producing and selling piracies. To this day that engagement has been faithfully kept.

Under the protection thus afforded, publishers of engravings began a career of prosperity unknown before; the value of copyrights and all artistic property rose so rapidly that it astonished everyone—pictures and copyrights, in less than ten years, actually doubled in value.

The importation of French prints, in 1845, by my house alone, amounted to more than £20,000 in value, and our exports of English engravings to about a quarter of that sum; but gradually the energy and capital of English publishers reversed this balance of trade. The mezzotinto plates after Landseer, Ansdell, and others, not being any longer copied in France, obtained everywhere a rapid sale: the demand increasing, publishers increased their ventures.

Not content with giving full employment to all the English

Virtually effective international copyright protection.

Improvement.

engravers of mezzotinto—now become the common mode of reproduction—French engravers and lithographers received commissions from English publishers, and the publishing interest attained a high position, unparalleled by any former experience. This gradually—notwithstanding the crises of 1847 and later, and other such commotions—improved, until the application of photography has brought the trade to the verge of ruin.

Want of justice to the art of engraving, and its being delivered as a prey to unprincipled photographers, has been more destructive to photography than can be generally understood. This course has not destroyed a trade which existed before, but prevented one of great promise from being developed. Photographic copies of engravings, having got possession of the market, are produced by only the lowest practitioners. No photographer of standing or ability will join in such a course. The sale of copies of English engravings is only carried on by hawkers or shopkeepers of broken fortunes, and, their competition being unrestrained by want of capital, such copies, originally sold at from 1s. to 5s. each, are now produced at the lowest possible price—one party actually supplying the trade with small photographic copies of my engraving from "The Light of the World" at three-halfpence a dozen, so that the vendors can make but a slender return out of their nefarious practices. But, the low prices thus established ruling the trade, publishers of photographs in which there would be copyright and consequently capital invested, have no chance—the necessity of charging a corresponding high price limiting their sales to the lowest ebb. And yet what a fine future photographers have before them! Already in France, under an efficient copyright law, the photographer competes successfully with the engraver. Messrs. Bingham are reproducing Meissonnier's pictures in photography with the greatest success. Gérôme's "Gladiators" and "Death of Cæsar," and many other fine works, are published in photography also, and large sums have been paid for copyright to the artists by the publishers of these photographic reproductions.

What is the case in England? Where are the pictures reproduced by English publishers of photographs? What sums have painters received from photographers? I fear the answer is, None! The sole cause of the unprofitableness of photography, as a medium of reproduction in England, is to be found in the trade in photographic transcripts being in the hands of pirates. I do not speak on mere speculation and without proof: I have given photography a trial. I published, in photography, one of Mdlle. Rosa Bonheur's finest pictures, "The Shetland Ponies," and although the picture was most creditably reproduced by Mr. Thurston Thompson, I have, after six months of publication, not sold one hundred copies; the reason is obvious, printsellers will not buy my photographs at the price I am obliged to charge (not having stolen the copy-

Piracy destructive to photography itself.

Otherwise in France.

England.

right, but having paid for it a fair price to Mdlle. Rosa Bonheur as part of the purchase of the picture), in order to recompense myself, by spreading my outlay over a fair edition, besides requiring an additional remuneration for my industry. Of course my experience is of a dead failure and a losing speculation; whereas, if the photographic trade was not affected by the disease of piracy, not only would my publication be successful, but publishers of photographs would compete with publishers of engravings in the purchase of copyrights, and, by further enhancing the value of artistic talent, encourage artists to greater efforts in view of the prizes held out to successful competitors in a race where fortune follows fame.

Popular errors.

It has been attempted, and, I regret to say, with some success, to enlist public sympathy for cheap photographic reproductions of fine engravings. To this end it is argued that these things, addressing another public, could not affect the demand that calls for costly editions; it is added that to stop the sale of such cheap articles is a hardship towards and a disagreeable interference with the wishes of those who prefer photographic copies to the engraved originals. A little thought must satisfy us that it is for the owner of a copyright alone to decide by what process, of what size and price, he will reproduce his property. Take away the liberty to do this, and the very root of production and civil rights is struck at. If a cheap edition can command a large sale and be remunerative, the publisher will surely avail himself of that opening; the natural laws of trade, which always produce a supply when a remunerative demand exists, will here, as elsewhere, act; if one publisher will not satisfy such a demand, another will. The artist's view of this question deserves consideration; a painter may not deem it desirable to his reputation that his work should be reproduced in a secondary or inferior manner, or one he believes ill-adapted to his views. After all, whether a publisher makes a judicious or an injudicious selection of the mode of using his copyright, in fixing too high or too low a price on his productions, that is his business and concerns no one else; none have a right to interfere with him who operates at his own peril. The result will prove his wisdom or his error. The property being his, he has a right to reap from it all the harvest he can obtain, and, in practice, he will most likely, after having satisfied the demand for an expensive edition of his publication, address himself to that larger class which is content with a cheaper and inferior one. The demand for photographic reproductions he will ultimately supply himself, according to the best interests of his property.

Effects of piracy upon copyright.

It must not be forgotten that such reproductions, being issued by pirates, rob the owner of a copyright of part of its value; to that extent the value of the same is reduced, and it is only a question of degree whether it be destroyed altogether or only in part. In the case where a large operation is undertaken—as in dealing with a “sensation picture,” as it might be styled—

where the picture is exhibited before an engraving is issued, the public is induced to subscribe for the print while no piracies can be offered in competition with it, as it is not yet issued, and without a copy of it no photographic pirate can act. The mischief is thus much lessened to the publisher, for he can secure a goodly list of subscribers to the print before a single copy is issued. It is the subscriber who is injured in this case, by piracy and consequent depreciation of the value of his impression. Too often engravings made from such pictures prove valueless, and offer no temptation to the pirate, and therefore remain exempt from his attacks; but if the publisher, faithful to his promise, produces a work of art which comes fully up to public expectation, then the harvest he has gathered before issuing the impressions must content him—little will he reap after the pirate gets hold of the earliest copy. Does it not appear from this that a sense of duty alone could induce a publisher honestly to employ, at a high price, first-rate engraving talent, and fulfil the expectations of his subscribers? His mere money interest urges him to produce a cheap and clap-trap engraving: he would save the cost of talent employed, and the value of his own time, by bringing out a bad work, secure from piratic attacks. He would also avoid the trouble, annoyance, and cost of litigation with those who would hasten to rob him of a well-produced work. The finer an engraving is, the more it is exposed to piracy, and the more effectively photographic piracies can be produced; in the case of a line-engraving it is even possible to make a fac-simile of equal size to the original, so perfect as to leave an unprofessional eye uncertain if it be not the original itself.

Discouragement of publishers.

It results from this state of things that no line-engraving, which cannot be canvassed before publication, can be produced with even a chance of remuneration for the publisher, and, consequently, the branch of art which is devoted to preparing plates in the line manner is rapidly going out of use; the best men in that profession are without commissions of importance. It is now a question for the legislature and the public to decide whether or not the school of English line-engraving, once occupying so high a position, shall perish or be maintained. If a rescue is to be effected, there is not a day to lose, for, the power attained by the labour of many generations of skilled artists once allowed to decay, it will take a long time to make a fresh graft on the old stock, and revive the fame won by a century of traditions and studies.

Before describing the remedies required to check piracy, let me remark that it was comparatively easy to detect importers and dealers in German lithographic piracies. Jealousy and the spirit of competition having caused dissensions amongst them, valuable information was derived from the parties engaged in the trade, who, accusing one another, enabled me to bring the offence home to Louis and others. But photographic pirates are more cunning; it is notorious that some of them

have raised a fund to defend actions brought against its subscribers for infringement of copyrights; it is not stated whether any portion of such fund is applicable to pay the costs of those whom they injure. Fancy a fund raised by pickpockets to take advantage of every legal flaw, in hopes that a person robbed will—knowing it must cost £100 and much time to punish the offender, having also much doubt of succeeding therein—endure the loss and let the thief escape!

I have, in exhibiting the course of piracy in the present day, shown that, with the additional facilities pirates now have, the remedies granted are inefficient.

Strange anomaly.

Let me now point out an anomaly, created by the Act of last Session on this subject, which is so extraordinary as to be beyond belief, had not recent events in different courts of law fully demonstrated its existence. Whereas the engraver has the most precarious protection against the photographer, the photographer can obtain an efficient remedy by summary proceedings in a police court for the infringement of copyright in even so trifling a production as a *carte-de-visite*. Upon such a thing as this he can bring the offender to instant punishment! Messrs. Southwell, publishers of Miss Lydia Thompson's *carte-de-visite*, have stopped the career of several persons who pirated it; yet all my efforts to stop piracy of works of high art have been as yet fruitless. Let us see how much further this anomalous state of things will affect a given case, and thus show the extraordinary state of the law. Supposing Messrs. Colnaghi should commission Mr. George Doo to devote a year of his ability to reproducing Miss Lydia Thompson's *carte-de-visite* by line-engraving—they would, when brought before Mr. Tyrwhitt, receive instant punishment for so infringing Messrs. Southwell's copyright; no plea of the value of the artistic skill employed would shield them from this prosecution: but, should the offence go the other way, and Messrs. Southwell copy in photography Mr. George Doo's magnificent engraving of S. del Piombo's "Raising of Lazarus," upon which he has been already engaged for six years, Messrs. Colnaghi, the proprietors of that plate, would have to endure all the uncertainty and expense attending my proceedings against Mr. Ball and others, and might be compelled to chase Messrs. Southwell from court to court, having to prove the meaning of an Act of Parliament during the process! If there ever was a case of two ways and two measures, here is one.

The process of photography, which cannot be deemed an art, obtains for its practitioners instant and complete protection, whether they have capital or none. Photographers are thus protected, not only against producers of mechanical transcripts, such as their own, but even against artistic re-productions that might be copies or colourable imitations of their most wretched performances; such is the law: while publishers of engravings can obtain no remedy for infringement of copyright in the most perfect works of the art.

To conclude this section of my subject, and before coming to the remedies experience induces me to suggest, let us turn to another and far more numerous class of offenders than that of the pirates, whose guilt, I fear, the law does not reach. I MEAN THE BUYERS OF PIRACIES,—men who ought to know better. In this class I do not so much condemn the poor cottager who buys the German lithograph, that is sold, framed and glazed, for eighteen pence, and therewith decorates his home. When travelling in England, I have often entered small roadside inns, and seen such infringements of my copyright hanging on the walls, but could feel little anger against the people who placed them there; I knew they could not afford better works, and were ignorant of the damage done to my property by the production of these things. When an efficient copyright law shall be passed and bring such small offenders within its operations, I trust the magistrates will treat such cases with indulgence, and dismiss the offenders with a nominal fine or only a warning. There is, however, a much guiltier class,—the amateurs of art, who are neither poor nor ignorant. With any one of them who buys photographic piracies of engravings, I can feel no sympathy; such an one's taste marks him as a man of education; he *must* know that what he buys is a piracy; he *must* be aware of the mischievous tendency of his doings; the least reflection might render him sensible that he is robbing, as well as aiding and encouraging others to rob, publishers and artists of the fair fruit of their capital, industry, and genius.

When I see such piracies in albums lying on the tables of houses I visit, the blush which mantles to their owners' faces, upon my look being turned that way, betrays at once how sensible they are of wrong-doing. Such persons are gentlemen in other cases—they are even incapable of appropriating an umbrella, should I forget one, in their halls. They mentally excuse themselves for the evil they have done, in collecting piracies instead of original engravings, with the plea that the offence is common. Towards such offenders the law ought not to have the least tenderness; neither ignorance nor poverty can plead for them. Blessed with fortune and love of art, it ought to be their pleasure, as it is their duty, to encourage the votaries of art, yet they employ those gifts to aid in its destruction.

Now to the remedies. As I am not versed in the law, nor a legislator, I will not attempt the framing of a Bill, but simply endeavour to point out what is required from the legislature. An amendment in the International Copyright Laws is first wanted. As these stand at present, the owner of a copyright, in order to secure his property in the different countries with which international treaties have been concluded, is compelled to register it in every one of them where he desires protection; in most cases he is obliged to incur the additional expense of depositing a proof impression of each engraving before he can

Buyers of
piracies uncon-
scientious.

Remedies.

receive the security required. This system of registering and depositing, when treaties shall be concluded between all the countries of Europe and America, will become impossible to carry out. Imagine a publisher, having to register in a hundred different countries every one of his publications, and at a cost, for correspondence and agency, of at least ten shillings in each case (it now costs about twenty shillings for registration in Berlin): add to this, that a hundred proof impressions of all his plates will often outvalue the probable remuneration. It should be stipulated, to avoid all this, that when the owner of a copyright *shall have complied with the requirements of his own country's laws, his copyright shall be secured to him in any other country between which and his own international copyright treaties have been made.* Such a provision would at once put a stop to the career of the Berlin publishers of cheap lithographic piracies, and enable foreign owners of copyright to sue them at home.

Many improvements in international treaties on artistic and literary copyright could be suggested, but this one above-named is the most pressing; all other matters can be left for the consideration of a regularly appointed international congress, which could equalise the laws of all civilised countries on this subject.

One of the principal objections to the several older Acts of Parliament on the subject is, that they are not sufficiently clearly expressed, and that their wording leaves room for chicanery and repeated reference to the judges. Section 6 of the Act 25th and 26th of Victoria, chap. 68, appears to be more effectively worded, and its provisions, which at present only apply to the piracy of Pictures, Drawings, and Photographs, should be extended to those of Engravings and Lithographs; but, in addition, it is necessary that a clause in any new Act should strike at the PURCHASER, and that the OWNERSHIP of piracies should not remain unchallenged.

The power of proceeding by summary process before two Justices of the Peace, granted to Publishers of Photographs, should also be given to Publishers of Engravings: it is the greatest evil of the late Act that Engravings are not dealt with so favourably as Photographs are. Lastly, it is necessary to devise some means of bringing to justice offenders who have no domicile, and hawk piracies from house to house, or station themselves in the public thoroughfares.

E. GAMBART.

120, Pall Mall,

11th April, 1863.



