

cess of photographic printing is a "mechanical process," by which designs can be "multiplied indefinitely."

The chief difficulty, then, is the cost of putting in operation the law. Each person concerned naturally feels that what is for the benefit of the aggregate body of photographers, or at least those of them who publish their productions ought not to be secured at the expense of a single individual. We have heard it urged that the steps to protect the art ought to be taken by the Photographic Society. It must be obvious, however, that the funds of the society could not with propriety be expended in undertaking such prosecutions, or indeed in interfering in any way with the commercial interests of photographers.

The legitimate mode of effecting the object in question appears to us to be by the formation of an association for the purpose, consisting of those practically interested in the question. We have ascertained that several of the first photographers are favourable to the adoption of such a measure, and our object now is to elicit from any of our readers concerned in the question an expression of opinion on the subject. That will be easy to any association which would be difficult for an individual to achieve. It is very unlikely, however, that more than one or two prosecutions would be necessary, as the mere existence of a body of gentlemen resolved on the protection of the art and their own interests would operate as a terror to evil-doers, and effectually check the abuse which is now uncontrolled by fear of consequences.

It is unnecessary here to enter into any detail of the steps necessary in forming such an association, or to discuss the extent and limitation of its operations. These will be matters for private action. But there is one subject to which it will be important to allude in this connection. A Bill has again been introduced into the House of Commons for amending the law of copyright as relating to works of fine art. In this bill protection is given to photographers as in that which was lost last year. Several of the obnoxious clauses which occasioned the loss of the Bill last session have been removed. The near approach of the International Exhibition renders some legislation on the subject imperative. These considerations give a greater probability to the passing of the Bill than existed last year. But the measure is very far from safe as yet; and every aid should be given to its supporters. To organize such support amongst photographers would be a very proper duty for such an association, as the passing of the Bill into law would at once simplify all future proceedings, and at the same time render them certain and efficient in securing the protection of the art and its votaries.

#### PHOTOGRAPHY IN THE LAW COURTS.

PHOTOGRAPHY has been making acquaintance with the law courts, and is, we fear, but little understood there. In the French courts it was recently denied protection because it "neither creates nor invents, but servilely reproduces what is placed before the lens." In the case recently in the Court of Exchequer, where a clear right of property was involved, Mr. Mayall obtained but half a victory. And on Friday in the Court of Common Pleas, an action was tried, which brought together a number of photographers sufficient to make the court like a photographic meeting, which resulted in a verdict which cannot fail to be unsatisfactory to both parties concerned.

In the case referred to, *Mason v. Heath*, the plaintiff alleged that Mr. Vernon Heath had contracted to produce for him two negatives of His Royal Highness, the late Prince Consort, suitable for a portrait gallery he published, at a fair and reasonable price. The late Prince had been solicited by Mr. Mason to sit for this gallery as early as April 1860. At that time he declined, giving the manifestly sufficient reason, that he could not lend himself to aid the commercial success of any private undertaking. The applications were repeated, and eventually, the work being better established, His Royal Highness consented to sit, somewhat

reluctantly we have reason to believe; but there being no absolute reason why he should not sit, with the considerate and princely courtesy which always distinguished him he consented. He was about to sit as president of a congress of the Statistical Society and for other portraits, and had selected Mr. Heath as the artist. Mr. Mason was informed that the Prince would sit to Mr. Heath for him, if he arranged with that gentleman as to terms. This Mr. Mason alleges he did; but that although the Prince sat, and the negatives were taken and approved, he never was able to obtain them; that he was put off on one excuse or other, and finally, that one negative only was offered him, at what he conceived to be an exorbitant price. He brought this action therefore to obtain damages for the loss he had suffered through this alleged breach of contract.

Mr. Heath, on the other hand, entirely denies the existence of any contract of any kind, either absolutely made or implied. He alleges that he was angry and insulted, because Mr. Mason came to him with an untruth, implying that he was bringing the patronage of the Prince to him, with a view to influencing his terms. That so far from making a contract, he informed Mr. Mason that his conduct should be reported at Court. He affirms that he could not make a contract which would bind him to deliver any negative at all, as he had to abide solely by the instructions of the Prince; still less could he contract to deliver two negatives, as two only of the size required were taken, one of which was for the Statistical Society absolutely, and the other for Mr. Mason conditionally. When the Prince had decided that one negative was to be given up to Mr. Mason, he was at once prepared to deliver it on receiving fifteen guineas, which he conceived to be a fair and reasonable price. The consideration, on which this question of price was based, was the fact that two days were devoted to the production of four negatives: one day to preparation, so as to secure the highest possible conditions of success, and another day to the sittings and arrangements in connection therewith. Notwithstanding this, however, it appears Mr. Heath had, in a letter, informed Mr. Mason that he would have charged him only five guineas but for his attempt to impose upon him.

So far as the statements of the plaintiff and defendant are concerned, it becomes simply a question of credibility of evidence. Whatever may be our own personal conviction, it is no part of our duty to express an opinion on this part of the subject here. If Mr. Mason's statement be correct, it is unfortunate for him that he is entirely without evidence to corroborate him as to the existence of a contract at all; whilst, as regards the existence of a contract for two negatives, there is evidence which renders it highly improbable, if not impossible. Mr. Heath is confirmed in many particulars by Mr. Ruland, the Prince Consort's secretary, who states that Mr. Heath reported to him the nature of Mr. Mason's first application to him regarding the portrait. He also confirms Mr. Heath regarding the number of negatives taken, and their destination as decided by the Prince.

As to the value of the negative, we apprehend there was really very little difference of opinion, if the question of contract were set aside. All the evidence of the eminent photographers on both sides tended in one direction so far as that was concerned. Those gentlemen called by the plaintiff gave evidence of the existence of an arrangement whereby they had taken negatives for a guinea each. One of them admitted that the publicity thus involved was a more important element than the guinea. It was also stated that in these cases Mr. Mason always introduced the eminent personages, and in addition to the payment of a guinea, permitted the photographer to obtain a negative for himself. We mention these circumstances, because the general impression which might have resulted from much of the evidence would have been, that one guinea was the regular and understood price amongst photographers for the most valuable negatives. As regards this individual negative, we may state further, that we know that in one case a hundred