THE

LAW OF COPYRIGHT,

IN WORKS OF LITERATURE, ART, ARCHITECTURE, PHOTOGRAPHY, MUSIC AND THE DRAMA:

INCLUDING CHAPTERS ON MECHANICAL CONTRIVANCES AND CINEMATOGRAPHS:

TOGETHER WITH

INTERNATIONAL AND FOREIGN COPYRIGHT,

WITH THE STATUTES RELATING THERETO.

BY THE LATE

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"Non equidem hoc studeo, bullatis ut mihi nugis
Pagina turgescat, dare pondus idonea fumo."—*Pers.*

FIFTH EDITION.

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PREFACE.

Owing to the lamented death of the Author in the year 1910, the publishers again entrusted the work of preparing a new edition of "Copinger on Copyright" to the Editor. His task has proved of a severe—perhaps of an unique—character. Nearly a century and a half ago the House of Lords declared copyright in a published work to be entirely a statutory right. Since the publication of the last edition of this work all of the score or so of Statutes upon which the law of copyright depended have, with a few minor exceptions, been repealed and replaced by the Copyright Act, 1911. It is, indeed, no unusual experience for the editor of a legal treatise to find the statute law upon his particular subject repealed and re-enacted, with or without amendment, in a codifying Statute. The Copyright Act, 1911, is not, however, a codifying Statute, but is expressed to be one "to amend and consolidate the law relating to copyright." By section 31 of the Act it is declared that no person is to be "entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force,"

thus making copyright in unpublished, as well as published, works entirely a statutory right. Yet there is hardly a single section of the new Act which preserves the language of any section of the repealed Acts, and therefore the Editor has found himself in the position of having to edit a treatise upon a statutory right based upon different Statutes to those in force at the date of the publication of the last edition of the same treatise, and to determine how far the cases decided upon the repealed Statutes are applicable to the new Statutes or must be "scrapped." Under these circumstances there appeared to be but one course open to him—and that was to re-write practically the whole of the work, and in doing so he can only hope that he has not lowered the standard of the work.

With regard to the old cases, decided under the repealed Acts, the Editor believes that many of them—particularly those relating to infringement of copyright—will be found useful in elucidating the new Act, and he has only omitted—at least intentionally—to refer to such of the old cases as turned upon the peculiar wording of a repealed Statute or related to matters—such as registration of copyright—which find no place in the new Act. A certain number of cases have already been decided under the Act of 1911, and these will all be found to have been duly noted; but, in the absence of any considerable body of case law since that Act came into force, there are many points as to its construction upon which the Editor can only offer a tentative opinion, and he would be unduly optimistic if he thought that his opinion in every case will ultimately prove to be correct. He can only say that, to the best of his ability, he has endeavoured to suggest solutions of such difficulties as have occurred to him.

A revision of the copyright law was long overdue when the Act of 1911 was passed. The revision of the Berne Convention in the year 1908 rendered it imperative for this country to amend her domestic legislation if she was to be in a position to adhere to the Revised Convention, and this was the effective cause of the passing of the new Act. The same cause has affected many foreign countries and led them to modify their domestic legislation. The Editor's task of bringing the foreign law of copyright up to date would have been well-nigh impossible if he had not had the assistance of that invaluable organ of the Copyright Union—"Le Droit d'Auteur"—to which he acknowledges his deep indebtedness.

The previous editions of this work have included the law as to copyright in designs. The law as to designs has, for many years past, parted company with the law as to copyright in literary and artistic works, and—after consultation with the publishers—the Editor decided to omit the portion of the work relating to copyright in designs from the present edition.

J. M. EASTON.

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ADDENDA.

Pp. 24, 125, 206, 209, 210, 287, 289,—*Savory* v. *World of Golf* is now reported (1914) 2 Ch. 566; 83 L. J. Ch. 824; 111 L. T. 269.

P. 38,—At end of first paragraph, add "As to place of publication, see *McFarlane* v. *Hulton*, (1899) 1 Ch. 884. If part of a work only be published in Great Britain, copyright may be claimed for that part (*Low* v. *Ward*, 1868, L. R. 6 Eq. 415)."

Pp. 41, 132,—The case of *Francis, Day & Co.* v. *Feldman & Co.*, has been reversed by the Court of Appeal upon the question of infringement of copyright, but affirmed upon the question of publication (1914, 2 Ch. 728).

P. 126,—At the end of note (*b*), add "As to the meaning of 'London right' in the case of a partial assignment of dramatic rights, see *Taylor* v. *Neville* (1877, 47 L. J. Q. B. 254)."

P. 131,—On line 12, add "It is submitted that the case of *Eaton* v. *Lake* (1888, 20 Q. B. D. 378) is not a decision to the contrary, for the statute which had to be construed in that case expressly provided that the consent should be given 'in writing.'"

Pp. 136, 250,—The case of *Fenning Film Service* v. *Wolverhampton Cinemas* is now reported (1914) 3 K. B. 1171; 83 L. J. K. B. 1860.

P. 173,—At the end of note (*k*), add "The making of a single copy of a pianoforte arrangement may be an infringement of copyright (*Chappell & Co.* v. *Columbia Gramophone Co.*, (1914) 2 Ch. 745)."

P. 200,—To note (*g*), add "See also *Fenning Film Service* v. *Wolverhampton Cinemas*, (1914) 3 K. B. 1171."

P. 207,—On line 9, add "In an action for infringement of copyright in a picture, it is not necessary to produce the original from which the alleged copy has been made: *Lucas* v. *Williams*, (1892) 2 Q. B. 113."

P. 210,—Note (*g*). *Smith* v. *Service, Reeve & Co.*, is now reported (1914) 2 Ch. 576; 83 L. J. Ch. 876.

P. 248,—To note (*c*), add "The case of *London Theatre of Varieties* v. *Evans* was reversed on the facts, but not upon the question of law, by the Court of Appeal (31 T. L. R. 258)."

Pp. 269, 271, 277,—*Chappell & Co.* v. *Columbia Gramophone Co.* has been affirmed by the Court of Appeal, (1914) 2 Ch. 745.

Pp. 325, 450,—On the 23rd September, 1914, Italy gave her adherence to the Revised Berne Convention, 1908, subject to two reservations, viz., (1) as regards translations, she is to remain bound by Article V. of the 1886 Convention, as amended by the Additional Act of Paris; and (2) as regards public performances of translations of dramatic or dramatico-musical works, she is to remain bound by Article IX. of the 1886 Convention. A law of the 4th October, 1914, has given legislative sanction to this adhesion.

P. 380,—To note (*t*), add "The foreshadowed amendment of the law has now been made, and by a law of the 16th October, 1914, the period during which works manufactured before the 1st November, 1912, *or afterwards*, may be sold, &c., has been extended to three years from such date."

Pp. 458, 611,—The Additional Protocol of 1914 was, on the 5th November, 1914, ratified by the Principality of Monaco.

P. 484,—Great Britain has now declared a Protectorate over Egypt, but the question of the abolition of the Capitulations has been expressly held over for the moment. The law as to copyright in Egypt would, therefore, appear at present to be as stated in the text, though possibly the Crown is now in a position to make an Order in Council under sect. 28 of the Copyright Act, 1911, extending the provisions of that Act to Egypt.

NOTE AS TO THE EFFECT OF WAR UPON THE LAW AS TO COPYRIGHT.

At the time when these pages go to press Great Britain is at war with Germany, Austria-Hungary, and Turkey. With Turkey Great Britain has no treaty or convention relating to copyright, but prior to the outbreak of war German works were entitled to copyright protection in England by virtue of the Revised Berne Convention, 1908, and Austrian works were entitled to similar protection by virtue of a special copyright treaty of the 24th April, 1893 (*a*). There seems to be an impression in some quarters that after the outbreak of war German and Austrian works may be lawfully copied or translated in Great Britain. The Editor believes such impression to be entirely erroneous.

The precise effect of the outbreak of war upon treaties previously subsisting between belligerents seems to be in no case very clear (*b*), but the Berne Convention is not a treaty between belligerents alone. By Article I., the contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works, and mutual protection is to be granted to works published in any country of the Union in all other countries of the Union. The Convention, therefore, affects the rights of neutrals as well as of belligerents, and it would seem impossible for any country remaining a party to the Union to take up the position that it will accord protection to works published in some, and not in others, of the countries of the Union. It is, moreover, upon the place of publication, and not the nationality of the author, that the question of protection or non-protection of a particular work depends. The subject of a neutral country first publishing his work in Germany can, under the Convention, claim protection for his work; and, likewise, a German subject first publishing his work in a neutral country can, under the Convention, claim like protection. Whether, therefore, the proposition be that the copyrights of German subjects, or that the copyrights in works first published in Germany, fell into the

(*a*) See p. 622, *post*.
(*b*) See Hall's International Law, pp. 378 *et seq.* (6th ed.).

public domain in Great Britain upon the outbreak of war, either proposition might infringe the rights of neutrals.

The above arguments, it may be admitted, do not apply to the case of Austria-Hungary, but there is another point of view from which the question may be considered. Copyright is a right of property. Whilst it may be conceded that there is a technical right in the Crown to confiscate enemy property situate within its jurisdiction, it has never been suggested that any private citizen is at liberty to do so. By virtue of the Patents, Designs, and Trade Marks (Temporary Rules) Act, 1914 (*c*), power is given to the Comptroller of Patents to avoid or suspend any patent or registration of any trade mark belonging to a belligerent subject. Doubtless, good reasons may be advanced to justify the confiscation of patents and trade marks of enemy subjects, but it is very difficult to suggest any beneficial object, either of a political or military character, that would be secured by confiscating the copyright of an enemy subject in his literary or artistic works.

Again, under sect. 29 of the Copyright Act, 1911, the Crown is authorised by Order in Council to direct that that Act shall apply (a) to works first published in a foreign country to which the Order relates as if they were first published in British territory, (b) to works the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects. Orders in Council have been made under this section extending the benefit of the Act to works first published in both Germany and Austria, and to citizens of those countries in respect of their unpublished works. Under sect. 32 of the Act the Crown has power to alter, revoke, or vary these Orders in Council by other Orders in Council, but no such Order under this section has been made, or, it is believed, is even contemplated, and, unless and until such Orders have been made, both German and Austrian works have a statutory right to protection. Moreover, there is an important limitation to the power of the Crown contained in the section just referred to, because it is thereby expressly provided that "any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests." It would, therefore, appear that an amending Act of Parliament would be necessary before the works of German or Austrian subjects which are already in existence could be legally deprived of copyright protection.

It is, therefore, confidently submitted that the copyright in German and Austrian works is neither abrogated by, nor even suspended

(*c*) 4 & 5 Geo. V. c. 27.

during the continuance of, the war, but it does not follow from this that the remedy for an infringement of copyright is not suspended for the period of the war. As a general proposition, it would seem to be correct to say that an alien enemy is, during the continuance of war, incapable of seeking the protection of the Courts of this country as plaintiff (*d*). But the question as to whether a particular person is, or is not, an "alien enemy" depends not so much upon his nationality as upon the place of his residence or his business at the time of action. Thus, a British subject resident in the enemy country is, for the time being, an alien enemy for the purposes of the rule (*e*); on the other hand, an enemy subject resident in England, and having fulfilled all the formalities required by law in the case of such residents, is not an alien enemy within the meaning of the rule (*f*). It would, therefore, appear that if the owner of the copyright were a German or Austrian subject lawfully residing in England, he could bring an action for infringement, but that if he were resident or carrying on business elsewhere, his right of action would be suspended until the conclusion of peace. Any contract made after the outbreak of war by a British subject with an alien enemy for the publication of his works would, of course, be illegal, and so would the payment of royalties upon agreements made prior to the outbreak of war, under the Trading with the Enemy Act, 1914 (*g*).

(*d*) As to whether he may be sued as defendant, see *Robinson v. Continental Insurance Co.*, (1915) 1 K. B. 155.

(*e*) *Janson v. Driefontein Consolidated Mines*, (1902) A. C. 484, at p. 505.

(*f*) *Princess Thurn and Taxis v. Moffitt*, (1915) 1 Ch. 58.

(*g*) 4 & 5 Geo. V. c. 87.

THE LAW OF COPYRIGHT.

PART I.

INTRODUCTORY AND HISTORICAL.

CHAPTER I.

NATURE OF COPYRIGHT.

Definition of copyright.

COPYRIGHT, in general, may be defined as the sole and exclusive liberty of printing or otherwise multiplying copies of an original work or composition (*a*).

In process of time, however, the expression has come to include another and analogous right, namely, the sole and exclusive right of performing a work in public.

The definition of copyright contained in the Copyright Act, 1911, combines these two ideas, and is as follows: "for the purposes of this Act, 'copyright' means the sole right to produce or reproduce the work in any material form whatsoever, to perform, or, in the case of a lecture, to deliver, the work or any substantial part thereof in public: if the work is unpublished, to publish the work or any substantial part thereof, and shall include," &c. (*b*).

(*a*) *Per* Pollock, C. B., *Chappell* v. *Purday* (1845), 14 M. & W. 316. The term "copyright" may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it, or publish it, he has a right to enforce that undertaking. The other sense of the word is, the exclusive right of multiplying copies; the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word. (*Per* Baron Parke, in *Jefferys* v. *Boosey* (1854), 4 H. L. C. 920.) It is in the second sense of the word that copyright is defined by Davey, L. J., as "the right of multiplying copies of a published writing," *Walter* v. *Lane*, (1900) A. C. at p. 550.

(*b*) Sect. 1 (2).

CAP. I.

The right of an author to the productions of his mental exertions may be classed among the species of property acquired by occupancy; being founded on labour and invention (*c*).

No copyright in ideas.

Historically, "books" were the first works to which copyright applied, and extensions of the law of copyright have all consisted in bringing works other than "books" within the principle of the same law. The copyright laws, therefore, accord protection not to ideas, but to the particular expression of ideas (*d*): the protection of ideas falls not within the laws as to copyright, but within the patent laws. It is not infrequently urged as an objection to granting copyright protection for a long term that the effect is to create a monopoly, but, at least, it is not a monopoly of knowledge. The grant of a patent does prevent full use being made of knowledge, but the reader of a book is not by the copyright laws prevented from making full use of any information he may acquire from his reading. He is only prohibited from disseminating that information or knowledge by multiplying copies of the book or of material portions of it: or, possibly, by reading the book aloud in public. As Lord Justice Buckley remarked in a recent case (*e*): "there never has existed, and does not exist at common law, a right in a person who has composed a poem, a story, a speech, or a tune, and who has, let me say, by word of mouth, uttered or published it to the public, to restrain the hearer or persons who hear it derivatively from the hearer, from carrying it away in their memory and orally repeating or reproducing it."

Copyright is, in fact, only a negative right to prevent the appropriation of the labours of an author by another. If it could be shown that two precisely similar works were in fact produced wholly independently of one another, the author of the work that was published first would have no right to restrain the publication by the other author of that author's independent and original work (*f*). A patentee, on the other hand, has the right to prevent another from using his invention if it in fact infringes the former's patent, notwithstanding that the latter's invention was the subject of independent investigation on his part.

A literary composition, so long as it lies dormant in the author's

(*c*) Hoffman's Legal Outlines, sect. iii.

(*d*) *Hollinrake* v. *Truswell*, (1894) 3 Ch. 420; *Libraco, Ltd.* v. *Shaw Walker* (1913), 30 T. L. R. 22.

(*e*) *Monckton* v. *Gramophone Co.* (1912), 106 L. T. 84. He cannot even obtain copyright in the "plot" of a play: *Rees* v. *Robbins*, Times, 4th July, 1914.

(*f*) *Per* Sargant, J., *Corelli* v. *Gray* (1913), 29 T. L. R. 570; *per* Warrington, J., *Rees* v. *Robbins*, Times, 6th Feb., 1914.

mind, is absolutely in his own possession. Ideas drawn from external objects may be communicated by external signs, but words demonstrate the genuine operations of the intellect. The former are so identical with himself, that when by the author resolved into the latter, they lose not their original characteristic; and whether or not they be regarded as of pecuniary value in the way of recital or sale, he ought to be the sole arbiter to authorise or to prohibit their publication, and have full control over them, before they are actually submitted to public inspection.

Copyright however in the material that has embodied the ideas.

When, however, any material has embodied those ideas, then the ideas, through that corporiety, can be recognised as a species of property by the common law. The claim is not to ideas, but to the order of words, and this order has a marked identity and a permanent endurance. The order of each man's words is as singular as his countenance, and although, if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances that could not be discriminated. The permanent endurance of words is obvious by comparing the works of ancient authors with other works of their day; the vigour of the words is unabated, though other works have mostly perished. It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property; for instance, the property in a stream of water, which is not in any of the atoms of the water, but only in the flow of the stream. The right to the stream is not the less a right of property, either because it generally belongs to the riparian proprietor, or because the remedy for a violation of the right was by action on the case, instead of detinue or trover.

Copyright rightfully called property.

Nothing can with greater propriety be called a man's property than the fruit of his brains. The property in any article or substance accruing to him by reason of his own mechanical labour is never denied him: the labour of his mind is no less arduous and consequently no less worthy of the protection of the law. It has, nevertheless, been a matter of frequent controversy whether copyright is a natural right or one entirely dependent upon statute. If it was a natural right, then the period of protection ought logically to have been unlimited.

This question came before the House of Lords in the famous case of *Donaldson* v. *Becket* (*g*). The judges were directed to

(*g*) (1774), 4 Burr. 2408.

CAP. I.

attend, and the following questions, amongst others, were put to them by the House of Lords:—

1st. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent?

2nd. If the author had such right originally, did the law take it away upon his printing and publishing such book or literary composition? And might any person afterwards reprint and sell, for his own benefit, such book or literary composition, against the will of the author?

3rd. Whether the author of any literary composition, and his assigns, had the sole right of printing and publishing the same in perpetuity by the common law?

Copyright at common law merged in statutory copyright.

The first question was decided in the affirmative by ten judges, against one in favour of the negative: the second was decided in the negative by eight to three: and the third in the affirmative by seven to four. It was, however, held by the majority of the judges that the common law right which an author had to copyright in his works became merged in the statutory right conferred by the Copyright Act then in force (8 Anne, c. 19), upon publication.

Although, from time to time, there have been cases in which the contrary has been strenuously argued (*h*), this case must be taken to have finally decided that publication put an end to the common law perpetual right, and that after publication an author had to base his claim for protection upon his statutory right, if any. But, prior to the Copyright Act, 1911, a common law copyright in unpublished works was constantly admitted (*i*). It is now, however, expressly enacted by the Act of 1911 that no person shall be entitled to copyright, or any similar right, in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of that Act, or of any other statutory enactment for the time being in force (*k*). Copyright, therefore, at the present day is, in England, purely a statutory right.

(*h*) *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815; *Reade* v. *Conquest* (1861), 9 C. B. N. S. 768.

(*i*) *Prince Albert* v. *Strange* (1849), 1 Macn. & G. 25; *Caird* v. *Sime* (1887), 12 A. C. 326; *Exchange Telegraph* v. *Gregory*, (1896) 1 Q. B. 147; *Exchange Telegraph* v. *Central News*, (1897) 2 Ch. 48; *Philip* v. *Pennel*, (1907) 2 Ch. 577; *Mansell* v. *Valley Printing Co.*, (1908) 2 Ch. 441.

(*k*) Sect. 31.

CHAPTER II.

HISTORICAL VIEW OF THE COPYRIGHT LAWS IN ENGLAND.

It was only after the introduction of printing that any serious question as to the copyright in literary works could be expected to arise. An early statute of Richard III. (*a*) encouraged the printing of books, and permitted their importation, but this statute was repealed fifty years later on protectionist grounds, it being alleged in the preamble of the repealing statute (*b*) that such a "marvellous number of printed books" were imported into the realm to the prejudice of the "King's natural subjects," who "have given themselves so diligently to learn and exercise the said craft of printing, that at this day there be within this realm a great number cunning and expert in the said science or craft of printing, as able to exercise the said craft in all points as any stranger in any other realm or country." A similar plea is urged on behalf of the bookbinders, who, "having no other faculty wherewith to get their living, be destitute of work and like to be undone, except some reformation herein be had" (*c*).

As the number of printers increased in England, the King assumed a prerogative of granting printing privileges, and the earliest copyright protection took the form of printers' licences, and became a source of considerable profit to the King and his favourites.

Original charter of the Stationers' Company.

In the year 1556 the original charter of the Stationers' Company was granted by Philip and Mary. It was the declared object of the Crown at that time to prevent the propagation of the reformed religion, and it seems to have been thought that this could most effectually be brought about by imposing the severest restrictions on the press. About this period there are several decrees and ordinances of the Star Chamber regulating the manner of printing, the number of presses throughout the kingdom, and

(*a*) 1 Ric. III. c. 9 (1483).
(*b*) 25 Hen. VIII. c. 15.
(*c*) We recognise in this statute the prototype of the American "manufacturing clause."

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prohibiting all printing against the force and meaning of any of the statutes or laws of the realm. Until the year 1640 the Crown, through the instrumentality of the Star Chamber, exercised this restrictive jurisdiction without limit, enforcing by the summary powers of search, confiscation and imprisonment, its decrees, without the least obstruction from Westminster Hall or the Parliament in any instance.

Decrees of Star Chamber.

In 1556, by a decree of the Star Chamber, it was forbidden, amongst other things, to print contrary to any ordinance, prohibition, or commandment in any of the statutes or laws of the realm, or any injunction, letters patent, or ordinances set forth, or to be set forth by the Queen's grant, commission, or authority.

By another decree, dated June 23rd, 1585, every book was required to be licensed, and all persons were prohibited from printing "any book, work, or copy against the form or meaning of any restraint contained in any statute or laws of this realm, or in any injunction made by her Majesty, or her Privy Council; or against the true intent and meaning of any letters patent, commissions, or prohibitions under the great seal, or contrary to any allowed ordinance set down for the good government of the Stationers' Company."

In 1623, a proclamation was issued to enforce this decree; reciting that it had been evaded, among other ways "by printing beyond sea such allowed books, works, or writings as have been imprinted within the realm, by such to whom the sole printing thereof by letters patent or lawful ordinance or authority doth appertain."

In 1637, the Star Chamber again decreed that "no person is to print or import (if printed abroad) any book or copy which the Company of Stationers, or any other person, hath or shall, by any letters patent, order or entrance in their register book, or otherwise, have the right, privilege, authority, or allowance, solely to print" (*d*).

On abolition of Star Chamber all restraints on printing deemed illegal.

In 1640, however, the Star Chamber was abolished; the King's authority was set at nought; all the regulations of the press, and restraints previously imposed upon unlicensed printers by proclamations, decrees of the Star Chamber, and charter powers given to the Stationers' Company, were deemed and certainly were illegal. The licentiousness of libels induced Parliament to make an ordinance which prohibited printing, unless the book was first licensed. The ordinance prohibited printing without the consent

(*d*) 4 Burr. 2312.

of the owner, or importing (if printed abroad), upon pain of forfeiting the same to the *owner or owners of the copies* of the said books, &c. The provision necessarily presupposed the property to exist; it would have been nugatory if there had been no admitted owner. An owner could not at that time have existed otherwise than by common law. In 1649 the Long Parliament made another ordinance; and in 1662 was passed the Licensing Act (13 & 14 Car. II. c. 33), which interdicted the printing of any book unless first licensed and entered in the registry of the Stationers' Company. It ordered that no person should presume to print "any heretical, seditious, schismatical, or offensive books or pamphlets, wherein any doctrine or opinion shall be asserted or maintained which is contrary to the Christian faith, or the doctrine or discipline of the Church of England, or which shall, or may, tend to be to the scandal of religion or the church, or the government or governors of the church, state, or commonwealth, or of any corporation or particular person or persons whatever." It further prohibited the publication of unlicensed books, prescribed regulations as to printing, and empowered the King's messengers, and the master and wardens of the Stationers' Company, to seize books suspected of containing matters hostile to the Church or Government. It was necessary to print in the beginning of every licensed book the certificate of the licenser to the effect that the books contained nothing "contrary to the Christian faith, or the doctrine or discipline of the Church of England, or against the state and government of this realm, or contrary to good life or good manners, or otherwise, as the nature and subject of the work shall require." To prevent fraudulent changes in a book after it had been licensed, a copy was required to be deposited with the licenser when application was made for a licence.

The Licensing Act of Car. II.

The Act further prohibited any person from printing or importing, without the consent of the owner, any book which any person had the sole right to print by virtue of letters patent, or "by force or virtue of any entry or entries thereof duly made or to be made, in the register book of the said Company of Stationers, or in the register book of either of the universities." The penalty of piracy was forfeiture of the book and six shillings and eightpence for each copy; half to go to the King, and half to the owner.

The sole property of the owner is here acknowledged in express terms as a common law right; and the legislature which passed that Act could never have entertained the most distant idea "that

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the productions of the brain were not a subject-matter of property." To support an action on this statute, ownership had to be proved or the plaintiff could not have recovered, because the action was to be brought by the owner, who was to have a moiety of the penalty. The various provisions of this Act effectually prevented piracies, without actions at law or bills in equity. But cases arose of disputed property. Some of them were between different patentees of the Crown; in some the point was whether the property "belonged to the author, from his invention and labour, or the King, from the subject matter."

The ordinance of 1643 prohibited the printing or importing of any book that had been lawfully licensed and entered in the register of the Stationers' Company, "for any particular member thereof, without the licence and consent of the owner." The penalty prescribed was forfeiture of the book to the owner, "and such further punishment as shall be thought fit." This clause was repeated in the ordinances of 1647, 1649, and 1652.

It has been questioned whether these clauses were applicable to any other than members of the Stationers' Company—in fact, whether they were more than by-laws for the regulation of the members *inter se*, but it is doubtful whether any such restriction can be put upon their scope.

The Licensing Act of Car. II. was continued by several Acts of Parliament, but expired May, 1679; soon after which there is a case in Lilly's 'Entries of Hilary Term,' 31 Car. II. B. R. (*e*). In this case an action was brought for printing 4,000 copies of the "Pilgrim's Progress," of which the plaintiff was the true proprietor, whereby he lost the profit and benefit of his copy. There is no account, however, of the case having been proceeded with.

Ordinance of the Stationers' Company in 1681.

In 1681, all legislative protection having ceased, the Stationers' Company adopted an ordinance or by-law, which recited that several members of the company had *great part of their estates in copies*, that by ancient usage of the company, when any book or copy was duly entered in their register to any member, such person had always been reputed and taken to be the proprietor of such book or copy, and ought to have the sole printing thereof. The ordinance further recited that this privilege and interest had of late been often violated and abused; and it then provided a penalty against such violation by any member or members of the company, where the copy had been duly entered in their register. The true

(*e*) *Ponder* v. *Bradyl*, Lilly's 'Entries,' 67; see Carter, 89; 4 Burr. 2317; Skinner, 234; 1 Mod. 257.

view of this ordinance would seem to be, that the members of the Stationers' Company, finding their estates in copies, which belonged to them by the common law, no longer under the protection of the Licensing Act (the repeal of which had incidentally withdrawn the protection that had always been inserted in it, though it had necessarily no connection with the system of licensing), undertook to provide for the failure of legislation, as far as they could, by an ordinance applicable of course to their own members only. The ordinance is not to be cited as any other proof of what the common law right was, than that it shows, in connection with other historical proof, what it was then supposed to be. It was much the same as if an association of persons were to agree that any one of their number should pay a penalty for violating the acknowledged rights of property of any other person in the association, provided such rights were duly entered in their common records. It would not be an attempt to create the right, but it would justly be regarded as an acknowledgment of the existence of such a right (*f*).

A by-law of the Stationers' Company in 1694.

In another by-law, passed in 1694 (*g*), it was stated that copies were constantly bargained and sold amongst the members of the company as their property, and devised to their children and others for legacies and to their widows for maintenance; and it was ordained, that if any member should, without the consent of the member by whom the entry was made, print or sell the same, he should forfeit for every copy twelve-pence.

For many years successively, attempts were made to obtain a new Licensing Act. Such a Bill once passed the Upper House, but the attempt miscarried upon constitutional objections to a licence. Proprietors of copyright had so long been protected by summary measures, that they regarded an action at law as an inadequate remedy. A Bill in equity was never even thought of: no hope of its success appears at the time to have been entertained.

A petition presented to Parliament in 1709 for protection of copyright.

In one of the petitions presented to the House in support of applications to Parliament in 1709, for a Bill to protect copyright, the last clause or paragraph was as follows: "The liberty now set on foot of breaking through this ancient and reasonable usage is no way to be effectually restrained but by an Act of Parliament. For by common law, a bookseller can recover no more costs than he can prove damage; but it is impossible for him to prove the

(*f*) Curtis on Copyright, p. 38.

(*g*) In this year expired finally the Licensing Act of 13 & 14 Car. II., which had been revived by 1 Jac. c. 7, and continued by 4 W. & M. c. 24.

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tenth, nay, perhaps, the hundredth part of the damage he suffers; because a thousand counterfeit copies may be dispersed into as many hands all over the kingdom, and he not be able to prove the sale of them. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit. (No man of substance has been known to offend in this particular, nor will any ever appear in it.) Therefore, the only remedy by the common law is to confine a beggar to the rules of the King's Bench or Fleet, and there he will continue the evil practice with impunity. We therefore pray that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders" (*h*).

First Copyright Act, 8 Anne, c. 19.

In response to these applications, in the year 1709 the first Copyright Act, the 8 Anne, c. 19, was passed. This Act gave authors of books then printed, the sole right and liberty of printing them for a term of twenty-one years from the 10th of April, 1710, and of books not then printed the sole right of printing for fourteen years, with a proviso that after the expiration of the said term of fourteen years the sole right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years. The titles to books had to be registered in the register book of the Stationers' Company, and nine copies had to be delivered to certain libraries.

Effect of the Act.

This statute, passed with a view to giving a greater protection to copyright, had the unexpected result of curtailing it; for in the case of *Donaldson* v. *Becket* (*i*) the House of Lords finally decided that the effect of the statute was to extinguish the common law copyright in published works, though leaving the common law copyright in unpublished works unaffected.

Universities' copyright.

The universities, alarmed at the consequence of this decision, applied for and obtained an Act of Parliament (*k*) establishing in perpetuity their right to all the copies given or bequeathed to them or which might thereafter be given to or acquired by them theretofore.

54 Geo. III. c. 156.

The period for which copyright was capable of existing was somewhat varied by the 54 Geo. III. c. 156, s. 4, which enacted that instead of enduring for fourteen years, and contingently for fourteen more, authors should have the sole liberty of printing and reprinting their works for the term of twenty-eight years, to commence from the day of the first publication of the same; and

(*h*) 4 Burr. 2318.

(*i*) (1774), 4 Burr. 2408; *Beckford* v. *Hood* (1798), 7 T. R. 620; *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815.

(*k*) 15 Geo. III. c. 53.

further, if the author should be living at the expiration of that period, for the residue of his natural life.

Copyright Act, 1842.

All these Acts were repealed by the Copyright Act, 1842 (*l*). To Mr. Serjeant Talfourd was due the honour of obtaining this piece of legislative justice. From 1837 to 1842, in spite of the opposition of Macaulay, he used his best endeavours and expended his most eloquent strains to accomplish its passing. In contending for an extension of the period during which protection was afforded to literary works, he bursts forth:—"There is something peculiarly unjust in bounding the term of an author's property by his natural life, if he should survive so short a period as twenty-eight years. It denies to age and experience the probable reward it permits to youth—to youth, sufficiently full of hope and joys to slight its promises. It gives a bounty to haste, and informs the laborious student, who would wear away his strength to complete some work which 'the world will not willingly let die,' that the more of his life he devotes to its perfection, the more limited shall be his interest in its fruits. It stops the progress of remuneration at the moment it is most needed; and when the benignity of nature would extract from her last calamity a means of support and comfort to the survivors—at the moment when his name is invested with the solemn interest of the grave—when his eccentricities or frailties excite a smile or a shrug no longer—when the last seal is set upon his earthly course, and his works assume their place among the classics of his country—your law declares that his works shall become your property, and you requite him by seizing the patrimony of his children."

The Act of 1842 extended the period of copyright to the life of the author and seven years after his death, or a term of forty-two years, whichever should be the longer, and in spite of its defects, both in substance and in draftsmanship, it remained the governing statute as to literary copyright, until it was repealed by the recent Copyright Act, 1911 (*m*).

Engravings.

In the realm of artistic copyright, engravings were the first subjects to receive legislative protection. In 1734 the Engraving Copyright Act, 8 Geo. II. c. 13, was passed, conferring copyright upon these for a term of fourteen years.

No provision was made in this Act for the protection of any work of which the engraver was not also the designer; and this has been accounted for by the fact that Hogarth, by whose influence

(*l*) 5 & 6 Vict. c. 45.
(*m*) 1 & 2 Geo. V. c. 46.

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the Act was introduced, was invariably the designer as well as the engraver of his celebrated works.

The 7 Geo. III. c. 38, was made to remedy this oversight, and extended protection to any person making an engraving from the original work of another. It also enlarged the period of protection to twenty-eight years. A further Act of 1777 (*n*) enlarged the remedies for piracy; an Act of 1836 (*o*) extended the provisions of the Engravings Acts to Ireland; and an Act of 1852 (*p*) to prints taken by lithography or other mechanical process.

Sculpture.

Works of sculpture were the next in order to be protected by the Sculpture Copyright Act, 1814 (*q*), the term of protection being fourteen years, with a further reversionary term of fourteen years to the author if then living.

Musical and dramatic performing rights.

Musical and dramatic compositions were held to be "books" within the meaning of the Copyright Acts relating to literary works (*r*); but the performing right was not statutorily protected until the year 1833, when the Act commonly known as Bulwer Lytton's Act (*s*) conferred an exclusive right of public performance for twenty-eight years, with a reversionary period to the author for the residue of his life, provided the work was printed and published; if the work was not printed or published the term of protection was uncertain.

Bulwer Lytton's Act only referred to dramatic pieces, but sect. 20 of the Literary Copyright Act, 1842 (*t*), dealt with the performing rights both in musical and dramatic pieces, and extended protection to the performing rights in both classes of works for a like period to that provided for the duration of copyright in books, namely, a period of forty-two years, or the life of the author and seven years after, whichever should be the longer.

Mischiefs arising by reason of penalties being fixed by law.

Certain abuses arose with respect to the performing rights in musical works. In particular, a man named Wall gained considerable notoriety by purchasing performing rights and enforcing payment of penalties—which penalties were fixed at 40*s*. a performance by Bulwer Lytton's Act—from innocent infringers. The Report of the Copyright Commission of 1878 contains the following paragraphs relating to this practice (*u*):—"This pro-

(*n*) 17 Geo. III. c. 57.
(*o*) 6 & 7 Will. IV. c. 59.
(*p*) 15 & 16 Vict. c. 12, s. 14.
(*q*) 54 Geo. III. c. 56.
(*r*) *Bach* v. *Longman* (1777), Cowp. 623; *Storace* v. *Longman* (1788), 2 Camp. 27, note (*a*).
(*s*) 3 & 4 Will. IV. c. 15.
(*t*) 5 & 6 Vict. c. 45, *ante*, p. 11. Lectures were protected by the 5 & 6 Will. IV. c. 65.
(*u*) Pars. 169, 171, 172.

The Copyright Commissioners' suggestions.

vision for the 40*s.* penalty has lately been much abused. Copyright in favourite songs from operas and in other works has been bought, and powers of attorney have been obtained to act apparently for the owners of the copyright in such works, and to claim immediate payment of £2 for the performance of each song. These songs are frequently selected by ladies and others for singing at penny readings and village or charitable entertainments, and they sing them, not for their own gain, but for benevolent objects. In such cases there is manifestly no intention to infringe the rights of any person; the performers are unconscious that they are infringing such rights, and no injury whatever can be inflicted on the proprietors of the copyrights. In many cases of this kind, and under a threat of legal proceedings, in default of payment, the penalty has been demanded, and we have reason to believe that the money so demanded has been generally paid. Many instances of this proceeding have been brought to our notice from various parts of the country. . . . The amendment in the law which we propose as most likely to preserve control for the composers, and at the same time to check the existing abuse, is that every musical composition should bear on its title-page a note stating whether the right of public performance is reserved, and the name and address of the person to whom application for permission to perform is to be made. The owner of such composition should only be entitled to recover damages for public performance when such a statement has been made; and instead of the minimum penalty of not less than 40*s.* at present recoverable for any infringement of musical copyright by representation, the Court should have power to award compensation according to the damage sustained."

Amendments of the law as regards copyright in musical compositions.

This led to the passing of the Copyright (Musical Compositions) Acts of 1882 and 1888 (*x*), which required that notice of reservation of rights of public performance of any musical composition should be printed on every published copy thereof and left the question of payment of costs and amount of penalties to the discretion of the Court.

Owing to the injury caused to proprietors of the copyright in musical compositions by the practice of selling pirated copies of songs and music through the medium of street hawkers, and the difficulty of ascertaining any substantial person to proceed against for infringement, the Musical (Summary Proceedings) Act, 1902, and the Musical Copyright Act, 1906 (*y*), were passed providing

(*x*) 45 & 46 Vict. c. 40; 51 & 52 Vict. c. 17.
(*y*) 2 Edw. VII. c. 15; 6 Edw. VII. c. 36.

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summary methods of procedure against infringers of musical copyright. Both these last-mentioned Acts remain unrepealed by the Act of 1911, and will call for more detailed explanation later on (*z*).

Paintings, drawings, and photographs.

The last class of works to receive statutory protection were paintings, drawings, and photographs, which were for the first time protected by the Fine Arts Copyright Act, 1862 (*a*). This Act purported to protect paintings, drawings, and photographs for the term of the life of the author and seven years after his death, but the wording of the Act was such as to produce the somewhat remarkable result that the copyright was lost altogether—except in the case of a work executed upon commission—if the artist upon the occasion of the first sale of his work failed to make some agreement in writing reserving the copyright to himself (*b*).

Royal Commission of 1875.

In this state of the law a consolidating statute was urgently required. In 1875 a Royal Commission was appointed to inquire into the working of the Copyright Acts, and the Commissioners presented their Report in 1878. In this Report they stated (*c*): —"The first observation which a study of the existing law suggests is that its form, as distinguished from its substance, seems to us bad. The law is wholly destitute of any sort of arrangement, incomplete, often obscure, and, even when it is intelligible upon long study, it is in many parts so ill-expressed that no one who does not give such study to it can expect to understand it. The common law principles, which lie at the root of the law, have never been settled. The well-known cases of *Millar* v. *Taylor*, *Donaldson* v. *Becket*, and *Jefferys* v. *Boosey* ended in a difference of opinion amongst many of the most eminent judges who have ever sat upon the bench. The fourteen Acts of Parliament which deal with the subject were passed at different times between 1735 and 1875 (*d*). They are drawn in different styles, and some are drawn so as to be hardly intelligible. Obscurity of style, however, is only one of the defects of these Acts. Their arrangement is often worse than their style. Of this the Copyright Act of 1842 is a conspicuous instance."

The Berne Convention.

In spite, however, of the recommendations of the Commissioners no consolidating statute was passed—difficulties with the colonies particularly standing in the way of any settlement which should include any alterations in the existing law. In the year 1885

(*z*) See *post*, Part II. Chapter X.
(*a*) 25 & 26 Vict. c. 68.
(*b*) Copinger, 4th ed. pp. 366, 367.
(*c*) Pars. 7, 8, 9.
(*d*) Several more were added between 1875 and 1910.

Great Britain was represented at the Conference of Powers held at Berne, which resulted in the framing of the Berne Convention, to which Great Britain adhered. Previously to doing so the International Copyright Act, 1886 (*e*), was passed, making the necessary alterations and additions to the International Copyright Act, 1844 (*f*), to enable her to give the required protection to foreign authors.

Revised Convention of 1908.

In the year 1908 the considerable modifications of the original Berne Convention, which were carried at the Conference of the Powers held at Berlin, rendered it imperative that Great Britain should amend her copyright laws, if she was to fall into line with the other Powers, and be in a position to give to foreigners the protection required by the Revised Convention (*g*). In 1909 a committee was appointed "to examine the various points in which the revised International Copyright Convention, signed at Berlin on November 13th, 1908, is not in accordance with the law of the United Kingdom, including those points which are expressly left to the internal legislation of each country, and to consider in each case whether that law should be altered so as to enable His Majesty's Government to give effect to the Revised Convention." This committee, after hearing evidence, reported to Parliament (*h*) generally approving the provisions of the Revised Convention, and recommending the passing of a consolidating and amending Act. In the year 1910 a Bill to give effect to these recommendations was drafted and introduced into the House of Commons, but was dropped for that Session. In 1911, however, another Bill was introduced which, after being modified in several particulars during its passage through Parliament, was at length passed by both Houses, and received the royal sanction on the 16th December, 1911 (*i*). This Act repeals all previous statutes on the subject of literary and artistic copyright with the exception of the Musical Copyright Acts of 1902 and 1906 (*k*), and one section of the Fine Arts Copyright Act, 1862. The Act of 1911 came into force on the 1st July, 1912, and is, therefore, the statute upon which, at the present day, practically the entire law of copyright depends.

(*e*) 49 & 50 Vict. c. 33.
(*f*) 7 & 8 Vict. c. 12.
(*g*) The correct title to this Convention is "The Revised Berne Convention of 1908," but it is sometimes spoken of as the "Berlin Convention." The latter title, though incorrect, receives some sanction from its employment in the Order in Council of the 24th June, 1912, adopting the Revised Convention, and being obviously convenient, will sometimes be used in this work.
(*h*) Report of the Committee on the Law of Copyright, 1909, Cd. 4976.
(*i*) 1 & 2 Geo. V. c. 46.
(*k*) *Ante*, p. 13.

CHAPTER III.

GENERAL SURVEY OF THE LAW OF COPYRIGHT IMMEDIATELY PRIOR TO THE ACT OF 1911.

INASMUCH as no work which was in existence and unprotected on the 1st July, 1912, is entitled to protection under the Copyright Act, 1911 (*a*), some knowledge of the law prior to that Act is essential. It is, therefore, proposed in this chapter to give a general outline of that law (*b*).

Literary copyright under the old law.

First, as to literary copyright. The governing statute was the Literary Copyright Act, 1842 (*c*). This related to "books," which expression included every volume, part, or division of a volume, pamphlet, letterpress sheets, music sheets, maps, charts, and plans (*d*), and the copyright extended throughout the British dominions. A work to be entitled to protection need not have been original (*e*): although a mere copy was not protected (*f*).

Term of copyright.

The term of copyright was the life of the author and seven years, or forty-two years from publication, whichever period was the longer, and in the case of posthumous works was forty-two years from publication (*g*). Copies of books were required to be delivered at the British Museum and certain libraries, and other institutions, but the failure to make delivery did not imperil the copyright (*h*).

Registration.

The Act also made provision for registration at Stationers' Hall (*i*). This, however, was not compulsory, but had to be effected before any action could be brought against infringers (*k*). Nevertheless, once registration was effected, actions might be

(*a*) Sect. 24.

(*b*) It will, of course, be understood that it is only possible to indicate the main features of that law. Those readers who desire further information are referred to the last edition of this work.

(*c*) 5 & 6 Vict. c. 45.

(*d*) Sect. 2.

(*e*) *Walter* v. *Lane*, (1900) A. C. 539.

(*f*) *Per* Lord James, (1900) A. C. at p. 554.

(*g*) Sect. 3.

(*h*) Sects. 6, 7, 8; cf. sect. 15 of Act of 1911, *post*, Part II., Chapter XI.

(*i*) Sects. 11—14.

(*k*) Sect. 24.

brought for infringements made prior to the date of registration (*l*).

To whom the copyright belonged.

The copyright—except in the case of a contribution to a collective work—vested in the author (*m*), provided he first published his work on British soil (*n*). A foreigner was clearly entitled to protection if he was resident within the dominions at the date of first publication, and probably he became so entitled even if he were resident in a foreign country at that date (*o*). With regard to collective works, the Literary Copyright Act of 1842 contained a very ill-drafted and puzzling section (*p*), under which the copyright in articles contributed to such a work vested in the proprietor of the work in certain cases. The proprietor had, however, to prove (i) that he employed the writer to compose the articles; (ii) that the articles were composed on the terms that the copyright should belong to the proprietor (*q*); and (iii) that the articles were paid for by him (*r*). In the case, however, of *periodicals*, the author was at liberty, after a lapse of twenty-eight years from the date of publication, to publish his articles in a "separate form," and during the term of twenty-eight years the proprietor could not publish the articles separately or singly without the author's consent. The general opinion (*s*) was that the section now being dealt with only applied to works of the character of encyclopædias, magazines, and periodicals.

Posthumous works.

In the case of a posthumous work, the copyright vested in the proprietor of the author's manuscript from which the book was first published (*t*).

Assignment.

Every assignment of copyright was required to be in writing (*u*), and if the work had been previously registered at Stationers' Hall it might be assigned by entry in the register (*x*).

(*l*) *Warne* v. *Laurence* (1886), 54 L. T. 371; *Goubard* v. *Wallace*, W. N. (1877) 130.

(*m*) There have been cases in which it has been held that an employer who has had a share in designing, or has solely designed, a work executed by another, is the "author": *Barfield* v. *Nicholson* (1824), 2 Sim. & St. 1; *Hatton* v. *Kean* (1859), 8 W. R. 7; *Nisbet* v. *Golf Agency* (1907), 23 T. L. R. 370.

(*n*) *Routledge* v. *Low* (1865), L. R. 3 H. L. 100.

(*o*) *Routledge* v. *Low*, *ubi sup.*

(*p*) Sect. 18.

(*q*) There was a *primâ facie* presumption that this was so: *Lawrence and Bullen* v. *Aflalo*, (1904) A. C. 17.

(*r*) Actual payment was necessary: *Richardson* v. *Gilbert* (1851), 1 Sim. (N. S.) 336.

(*s*) Kekewich, J., however, in the case of *Ward, Lock & Co.* v. *Long*, (1906) 2 Ch. 550, expressed the opinion that the section extended to books generally.

(*t*) Sect. 3; *Macmillan* v. *Dent*, (1907) 1 Ch. 107.

(*u*) *Leyland* v. *Stewart* (1876), 4 Ch. D. 419.

(*x*) Sect. 13.

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Lectures.

The only statute conferring protection upon lecturers was the Lecturers Copyright Act, 1835 (*y*). The protection was only against printing, and publishing, and no protection was given without two days' previous notice to two magistrates living within five miles of the place of delivery, or to lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation. The period of protection was twenty-eight years (*z*).

Musical and dramatic works.

As regards musical and dramatic works (*a*), the musical scores and book of words were protected as literary works under the 5 & 6 Vict. c. 45 (Literary Copyright Act, 1842). The statutes relating to the performing rights were the 3 & 4 Will. IV. c. 15 —commonly known as "Bulwer Lytton's Act," which only originally applied to dramatic works—and sects. 20 and 21 of the Literary Copyright Act, which apply to both musical and dramatic compositions. The effect of these provisions as regards the performing rights in a musical or dramatic piece were: (a) if the work had been published as a book the author was entitled to protection during his life and for seven years after his death or forty-two years from the date of the first public representation or performance of the work; (b) if the work had not been published as a book, but was in manuscript only, the term of performing right was doubtful, for the 3 & 4 Will. IV. c. 15 did not prescribe any term in such a case, and it is not clear that the 5 & 6 Vict. c. 45 altered this. Possibly, therefore, the right was perpetual, but, more probably, the term was the same as in the case where the work was printed and published. If the dramatic work was first represented in a foreign country (such country not being one within the International Copyright Acts), it lost any right to protection in this country (*b*).

Reservation of performing rights.

In the case of the performing rights in a musical piece, it was required by the Copyright (Musical Compositions) Act, 1882 (*c*), that these should be expressly stated to be reserved on the title page of every published copy of the work. Failure to print

(*y*) 5 & 6 Will. IV. c. 65. This statute relates to *published* lectures. Unpublished lectures were frequently protected from publication upon the ground of breach of confidence: *Caird* v. *Sime* (1887), 12 A. C. 326; and see *post*, "Unpublished Works," Part II., Chapter I.

(*z*) Sect. 4.

(*a*) Performing rights were not recognised under the old law except in the case of dramatic or musical works. Probably no action would lie for reciting or singing the words of a song, unless the song was dramatic.

(*b*) *Boucicault* v. *Delafield* (1863), 1 H. & M. 597; *Boucicault* v. *Chatterton* (1876), 5 Ch. D. 267.

(*c*) 45 & 46 Vict. c. 40.

such notice involved the loss of the performing rights (*d*), but notice in a foreign language was sufficient (*e*).

Registration. Registration was not necessary to protect performing rights (*f*).

Assignment. The assignment of the copyright in a dramatic or musical piece did not convey the performing rights, unless an entry to that effect was made in the register (*g*).

Infringement. It was no infringement of the copyright in a novel to dramatise the same (*h*), provided that the dramatic version was not printed or copied (*i*). Again, mechanical instruments were not infringements of musical copyright (*k*).

Artistic copyright. Turning, next, to artistic copyright, the old law distinguished between three classes of artistic works, to which different statutes applied, namely: (1) engravings, prints, and lithographs; (2) works of sculpture; (3) paintings, drawings, and photographs.

Engravings, prints, and lithographs. As regards engravings and prints, the main statutes in force were the Engraving Copyright Acts of 1734 and 1766 (*l*), and the Prints Copyright Act, 1777 (*m*). Prints taken by lithograph, or any other mechanical process for multiplying prints, were brought under the earlier Acts relating to engravings by sect. 14 of the 15 & 16 Vict. c. 12.

Term and conditions of copyright. The period of protection was twenty-eight years from the date of publication. No registration was necessary, but the copyright was lost unless the name of the proprietor of the copyright and the date of the first publication were engraved on each plate, and printed on each print (*n*). It was, however, held that where engravings formed part of a book, and the copyright in the book and the engravings was vested in the same person, the pictures were protected as part of the book (*o*), but not if the copyrights were separated (*p*). Maps were protected sometimes under the Literary Copyright Act, and sometimes under the Engraving Copyright Acts (*q*), and the latter

(*d*) *Fuller* v. *Blackpool Winter Gardens*, (1895) 1 Q. B. 429.
(*e*) *Surpy* v. *Holland*, (1908) 2 Ch. 198.
(*f*) *Clark* v. *Bishop* (1872), 25 L. T. 908.
(*g*) 5 & 6 Vict. c. 45, s. 22.
(*h*) *Reade* v. *Conquest* (1861), 9 C. B. 755.
(*i*) *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73.
(*k*) *Boosey* v. *Whight*, (1900) 1 Ch. 122; *Mabe* v. *Connor*, (1909) 1 K. B. 515.
(*l*) 8 Geo. II. c. 13; 7 Geo. III. c. 38.
(*m*) 17 Geo. III. c. 57. The Acts were extended to Ireland by the 6 & 7 Will. IV. c. 59.
(*n*) *Newton* v. *Cowie* (1827), 4 Bing. 234; *Rock* v. *Lazarus* (1872), L. R. 15 Eq. 104.
(*o*) *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267; *Maple* v. *Junior Army and Navy Co.* (1882), 21 Ch. D. 369; *Davis* v. *Benjamin*, (1906) 2 Ch. 491.
(*p*) *Petty* v. *Taylor*, (1897) 1 Ch. 465.
(*q*) *Stannard* v. *Lee* (1871), L. R. 6 Ch. 346; *Stannard* v. *Harrison* (1871), 19 W. R. 811.

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Acts extended to designs transferred to articles of manufacture (*r*).

The Engravings Acts made no express provisions as to assignment of the copyright, and it was generally considered advisable to assign in writing in the presence of two witnesses (*s*).

Sculptures.

Works of sculpture were protected under the Sculpture Copyright Act, 1814 (*t*). The term of copyright was fourteen years from first publication, and a further fourteen years if the first proprietor was then living and had not divested himself of the copyright. His name had to be put on the work, together with the date of publication (*u*), but registration was not required. All assignments had to be by deed signed by the proprietor in the presence of and attested by two witnesses (*x*).

Paintings, drawings, and photographs.

By the Fine Arts Copyright Act, 1862 (*y*), a British subject or any person resident in the British dominions, the author of a painting, drawing or photograph made in the British dominions or elsewhere, and his assigns, was granted copyright during his life and for seven years after his death. Copyright under this Act attached upon the creation of the work, not upon publication (*z*), but registration was necessary to obtain the full benefit of the Act (*a*). No action would lie in respect of the making of copies of a published work prior to registration, but if any of such copies were sold after the date of registration, damages could be obtained (*b*). If the work were unpublished, alongside the statutory copyright was a common law copyright (*c*), the term of which, however, would run out with the statutory copyright.

In whom copyright vested.

The first owner of the copyright was the author, except in a case where the work was executed upon commission, in which case the copyright vested without any agreement i' the party for whom the work was executed. A curious proviso to sect. 1 of the Act, however, had the effect of causing the work to fall into the public domain, unless the author took the precaution, upon the occasion of his first selling his painting, drawing or negative, as the case might be, of reserving the copyright to himself by

(*r*) *Dicks* v. *Brooks* (1880), 15 Ch. D. 22.
(*s*) *Jeffcrys* v. *Boosey* (1854), 4 H. L. C. 815, 994, 995.
(*t*) 54 Geo. III. c. 56.
(*u*) *Britain* v. *Hanks* (1902), 86 L. T. 765.
(*x*) Sect. 4.
(*y*) 25 & 26 Vict. c. 68.
(*z*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.
(*a*) Sect. 4.
(*b*) *Tuck* v. *Priester, ubi sup.*; cf. *Savory* v. *World of Golf* (1914), 137 L. T. J. 240.
(*c*) *Mansell* v. *Valley Printing Co.*, (1908) 1 Ch. 567: *Bowden* v. *Amalgamated Pictorials*, (1911) 1 Ch. 386.

writing under the hand of the vendee or assignee of the work, or of granting the same in writing to such vendee or assignee (*d*). The authorship of a photograph was not always an easy matter to determine. Generally speaking, the author was the person who superintended the arrangement of the picture and placed the objects in position (*e*), but the proprietor of the photographic business was held to be the author in some cases (*f*). The sitter obtained the copyright if he gave valuable consideration (*g*)..

Assignment.

Copyright in a painting, drawing or photograph could be assigned by any note or memorandum in writing (*h*).

Protection under the Fine Arts Copyright Act did not extend beyond the United Kingdom, and no action for infringement could have been brought in any other part of the British dominions (*i*).

Architecture.

Works of architecture (except architects' plans, which were protected as artistic works), choregraphic works, pantomimes, and musical and other records were not entitled to any copyright under the old law.

(*d*) It is perhaps strange that there never appears to have been any actual decision to this effect, but this was the generally accepted construction of the proviso: see Copinger, 4th ed. p. 366.

(*e*) *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627.

(*f*) *Melville* v. *Mirror of Life Co.*, (1895) 2 Ch. 531.

(*g*) *Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345; *Boucas* v. *Cooke*, (1903) 2 K. B. 227; *Stackemann* v. *Paton*, (1906) 1 Ch. 774.

(*h*) Sect. 3.

(*i*) *Graves* v. *Gorrie*, (1903) A. C. 496.

PART II.

THE GENERAL LAW OF COPYRIGHT.

CHAPTER I.

UNPUBLISHED WORKS, AND HEREIN OF PUBLICATION.

Author's right to the first publication of his own manuscript.

"IDEAS," says Mr. Justice Yates, "are free. But while the author confines them to his study, they are like birds in a cage, which none but he can have a right to let fly; for, till he thinks proper to emancipate them, they are under his own dominion. It is certain every man has a right to keep his own sentiments, if he pleases; he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends. In that state, the manuscript is, in every sense, his peculiar property, and no man can take it from him or make any use of it which he has not authorised, without being guilty of a violation of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication; and whoever deprives him of that priority is guilty of a manifest wrong, and the Court have a right to stop it" (*a*).

This elementary right of an author is protected under the new Copyright Act in a different way from that in which it was protected under the old law. Except in the cases of pictures, drawings and photographs (*b*), unpublished works received no statutory protection under the old law, but were protected under the common law—a form of protection fully recognized in the case of *Donaldson* v. *Becket* (*c*). The new Act has, however, abolished common law copyright (*d*), and confers statutory copyright upon all works as from the date when the same are made (*e*).

(*a*) *Millar* v. *Taylor* (1769), 4 Burr. 2378.
(*b*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629, *ante*, p. 20.
(*c*) (1774), 4 Burr. 2408, *ante*, p. 4; *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815; *Mayall* v. *Higbey* (1862), 1 H. & C. 148; *Mansell* v. *Valley Printing Co.*, (1908) 1 Ch. 567; on app., (1908) 2 Ch. 441; *Bowden* v. *Amalgamated Pictorials, Ltd.*, (1911) 1 Ch. 386.
(*d*) Sect. 35. (*e*) Sect. 1.

Distinctions to be drawn.

In dealing with unpublished works it is advisable to distinguish between three things, namely: (a) the right to the material thing, such as the manuscript; (b) the right to publish the manuscript by making copies of or extracts therefrom; and (c) the right to make use of the ideas or information conveyed by the manuscript, without copying the actual language employed in the original.

Ownership of manuscript protected.

A manuscript is a chattel, and the proprietor of a manuscript has a right of action against any person who, without title, makes any improper use of his manuscript. As Mr. Justice Erle remarked in the case of *Jefferys* v. *Boosey* (*f*):—"The nature of the right of an author in his works (*g*) is analogous to the rights of ownership in other personal property, and is far more extensive than the control of copyright after publication in print, which is the limited meaning of copyright in its common acceptance, and which is the right of an author to which the statute of Anne relates. Thus, if after composition the author chooses to keep his writings private, he has the remedies for wrongful abstraction of copies analogous to those of an owner of personalty in the like case. He may prevent publication; he may require back the copies wrongfully made; he may sue for damages if any are sustained." It is submitted, therefore, that the owner of a manuscript has a right of action against a thief (*h*) or a borrower (*i*) of his manuscript who publishes copies thereof, not necessarily upon the ground of an infringement of his copyright, but upon the ground of interference with his title to a chattel, namely, the paper of his manuscript. Upon the same ground he can proceed against an innocent person deriving title under the thief or the borrower (*k*), and in an action of trespass or conversion, the proprietor of the manuscript is not limited in damages to the value of the paper (*l*).

Ownership of MS. does not necessarily imply right of publication.

Even the ownership of the manuscript or other material article does not necessarily imply a right in the owner to publish it. Thus, in the case of the *Duke of Queensberry* v. *Shebbeare* (*m*), an injunction was granted against the representatives of a person of the name of Gwynne, restraining them from printing the second part of Lord Clarendon's history, a copy of which had been lent or given to Gwynne, the Court being of opinion that Gwynne

(*f*) (1854), 4 H. L. 815 at p. 867.
(*g*) *I.e.*, his unpublished works.
(*h*) *Webb* v. *Rose* (1732), Ambl. 695.
(*i*) *Forrester* v. *Walker* (1741), Ambl. 695; *Mayall* v. *Higbey* (1862), 1 H. & C. 148.
(*k*) *Mayall* v. *Higbey, sup.*; *Hollins* v. *Fowler* (1875), L. R. 7 H. L. 757; *Mansell* v. *Valley Printing Co.*, (1908) 1 Ch. 567; 2 Ch. 441.
(*l*) *Thurston* v. *Charles* (1905), 21 T. L. R. 659.
(*m*) (1758), 2 Eden, 329; see also *Millar* v. *Taylor* (1769), 4 Burr. at p. 2399; *Sweetman* v. *Bentley* (1871), W. N. 162; but see sect. 17 (2).

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might make every use of it, except the profit of multiplying in print. This point is well illustrated by the case of letters, it having frequently been held that the receiver of a letter has the property in the ink and paper, but not, *primâ facie*, the right of publication (*n*); and it must be remembered that under the new Act no copyright can be assigned merely by delivery of the material thing, but must be assigned in writing (*o*).

Lawful owner of MS. cannot be sued for trespass.

It is obvious that no proceedings for trespass or conversion will lie against a person who publishes a manuscript which is his lawful property, and the person who seeks to restrain such publication must base his claim either upon an infringement of his copyright or upon a breach of confidence.

Provisions of Copyright Act, 1911, as to unpublished works.

We proceed now to consider the provisions of the Copyright Act, 1911, with regard to unpublished works. First of all, it is provided by sect. 31 that "no person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence." The old common law copyright in unpublished works is, therefore, clearly abolished, but, in return, statutory copyright is conferred upon unpublished works by sect. 1 (1) of the Act, which is as follows:—

> "Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if—
>
> "(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and
>
> "(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;
>
> but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries."

Period of protection.

The ordinary period of copyright protection is during the life of the author and fifty years after his death (*p*), but if the author

(*n*) *Post*, p. 44. (*o*) Sect. 5 (2). (*p*) Sect. 3, Chapter V., *post*.

does not publish his work during his lifetime, sect. 17 will apply, which section is as follows:—

"(1) In the case of a literary, dramatic, or musical work, or an engraving, in which copyright subsists at the date of the death of the author (*q*), or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to sect. 3 of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

"(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public, nor delivered in public, shall be *primâ facie* proof of the copyright being with the owner of the manuscript."

Effect of these sections.

The effect of these sections is that literary, dramatic, or musical works, or engravings, are entitled to copyright so long as they remain unpublished; if they are first published during the author's lifetime the copyright will expire fifty years after his death, but if they are first published only after the author's death, copyright will expire fifty years after the date of first publication, the proviso to sect. 3 (which gives a right to all persons to produce a published work twenty-five years after the death of the author upon payment of royalties to the proprietor of the copyright (*r*)) in such last-mentioned case applying as though the author had died at the date of such publication. Exceptions to the general rule are, however, made in the case of photographs, the term of copyright in which, whether published or unpublished, is to be fifty years from the making of the original negative, and in the case of drawings and paintings, for which no express provisions are made, and for which accordingly the copyright ceases fifty

(*q*) The work of a foreigner not resident, at the time of making his work, in a place to which the Act extends would not be a work in which copyright would be subsisting at the date of his death (see *post*, p. 27). If such a work were first published in England after the author's death, would it be unprotected? It is submitted not, but would be protected under sect. 3 during the balance (if any) of fifty years from the author's death.

(*r*) See *post*, Chapter V., "Term of Copyright."

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years after the author's death, whether published or unpublished (*s*).

Proprietor of copyright.

In determining who is the first proprietor of the copyright in an unpublished work the statute draws no distinction between a published and an unpublished work, and for a consideration of this question the reader is referred to the later chapters in this work; but sub-sect. (2) of sect. 17 provides that where an author's unpublished manuscript is acquired "under a testamentary disposition made by the author," the ownership of the manuscript is *primâ facie* proof of ownership of the copyright. That is to say, if the author bequeaths his manuscripts to A. and all the residue of his property to B., he is to be deemed, in the absence of contrary intention, to have included the copyright in his bequest to A. (*t*). In order, however, to raise this presumption the title to the manuscript must be derived from the "author" and under a testamentary disposition. Apparently, therefore, there would be no similar presumption in the case of a person deriving title under an assign of the author (*u*), and it was unnecessary to extend the provisions of the sub-section to a case where the author died intestate, for in such case the manuscript and the copyright would clearly devolve upon the deceased's administrator for the benefit of his next of kin (*x*). Further, the sub-section only applies to "manuscripts" and not to works of art.

Assignment of copyright.

The copyright in unpublished works may be assigned in like manner as that in published works (*y*).

Cases in which the question of publication is of importance.

The question of what amounts to a "publication" of a work was one of greater importance under the old law than it is under the new Act, for under the old law the period of protection frequently expired at a fixed date, reckoned from the date of first publication. Inasmuch as, in the case of published works, under the new law copyright expires fifty years after the author's death (*z*), the precise date of publication will generally be immaterial; but as, in the case of works which have not been published, the period of protection may exceed the period which would have been allowed if they had been published, the question may sometimes be of importance. There is also another reason

(*s*) Sect. 21.
(*t*) *Willis* v. *Curtois* (1838), 1 Beav. 189.
(*u*) *E.g.*, in the case of the receiver of a letter. Under sect. 3 of the Literary Copyright Act, 1842, copyright in any book first published after the author's death belonged to the proprietor of the manuscript. This section received a strict construction in *Macmillan* v. *Dent*, (1906) 1 Ch. 101; (1907) 1 Ch. 107.
(*x*) *Latour* v. *Bland* (1818), 2 Stark. 382.
(*y*) Sect. 5 (2); see *post*, Chapter VII., "Assignment of Copyright."
(*z*) Sect. 3.

for inquiring whether a work has been published or not, because in certain cases a work which, if published, would be entitled to protection may be entitled to no copyright at all if unpublished. This arises from the terms of sect. 1 of the Act (*a*), which provides that British copyright is to subsist in published literary, dramatic, and artistic works if they are first published within such parts of His Majesty's dominions to which the Act extends, but in the case of unpublished works, only "if the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid."

Unpublished works of foreigners.

It consequently follows that a foreigner may be entitled to no copyright in his unpublished works, notwithstanding that he might at any time acquire a British copyright in the same works, by first publication on British soil, and that consequently a work which at one time was in the public domain in Great Britain might subsequently become entitled to copyright there.

The inconveniences of this result are no doubt largely mitigated by sect. 29 (1), which provides that His Majesty may by Order in Council direct that the Copyright Act, 1911, shall apply:—"(b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the works subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects"; and "(c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends." Orders in Council have been made extending the Act to numerous foreign countries (*b*), but there is at least one foreign country of importance—namely, America—which has not obtained any such Order.

Conditions for obtaining copyright in unpublished works.

It will be noticed that one of two conditions must be present before an unpublished work can claim copyright, namely, the author must be either (a) a British subject, or (b) resident in the British dominions at the date of the making of the work. For the fulfilment of these conditions two clauses of sect. 35 must be taken into consideration. Sub-sect. (4) of that section provides that "where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with if the author was, during any substantial part of that period, a British subject or a resident within the parts of His

(*a*) *Ante*, p. 24.
(*b*) See Chapter on "International Copyright," Part IV., Chapter I., *post*.

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Majesty's dominions to which this Act extends." And sub-sect. (5) provides that "for the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be resident in the parts of His Majesty's dominions to which this Act extends, if he is domiciled within any such part." This last sub-section seems practically to give the benefit of British citizenship to a person domiciled in the King's dominions at the time of the making of his work. Of course, this sub-section must not be taken as cutting down the meaning of residence, but rather as enlarging it. Residence will be sufficient without domicile, but equally domicile without residence will be sufficient (*c*).

Meaning of "domicile."

A person is *primâ facie* domiciled where he has his permanent home (*d*). Domicile may be obtained either by birth, operation of law (*e.g.*, by marriage), or by choice. An acquired domicile differs from a domicile of origin, in that the former can be more readily changed than the latter (*e*). An acquired domicile has been defined as follows:—"That place is properly the domicile of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something which is unexpected, or the happening of which is uncertain, shall occur to induce him to adopt some other permanent home" (*f*).

"Residence."

"Residence" is obviously used in the Copyright Act as meaning something less than domicile. Nevertheless, the word "residence" is an ambiguous one (*g*). Where, however, there is nothing to show that it is used in a more extensive sense, it denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep (*h*); but perhaps the fact that sects. 19 and 21 of the Act provide that a corporation is deemed to reside in the place where it has a place of business may be used as an argument in favour of holding the word to have the more extensive meaning in this Act and to include the place where a man conducts his business.

Where is a work "made"?

The Act gives no assistance towards determining what is the place where a work is "made," and questions of some difficulty arise in cases where it is necessary to decide what was an author's nationality or place of residence at the date of his

(*c*) See sects. 19 and 21 as to Corporations.
(*d*) *Whicker* v. *Hume* (1858), 7 H. L. C. 124.
(*e*) *Winans* v. *Att.-Gen.*, (1904) A. C. 290.
(*f*) *Per* Kindersley, V.-C., *Lord* v. *Colvin* (1857), 4 Drew. 376.
(*g*) *Re Bowie* (1880), 16 Ch. D. 484.
(*h*) *Per* Bayley, J., *R.* v. *North Curry*, 1 O'M. & H. 158.

"making" his work. No doubt the provisions of sect. 35 (4), to the effect that where the making of a work has extended over a "considerable period," it is sufficient if the author was, during any "substantial part" of that period, a British subject or resident within the British dominions, are of some assistance, but obviously such expressions, "considerable period" and "substantial part," are not ones to which an exact meaning can be attached.

Meaning of "making."

The "making" of a work is *primâ facie* the production of a material thing—a manuscript, a picture or negative, but it cannot be held to have that meaning with regard to an extempore speech; and in giving protection to a speech (*i*), it can hardly be supposed that protection was intended to be confined to one which has, previously to delivery, been reduced into writing.

The "making" of photographs.

The "making" of books and pictures probably, in the majority of cases, extends over a considerable period, and the provisions of sect. 35 (4) above referred to will consequently apply, but in the case of photographs this can hardly be so, unless the "making" of the photographs extends over the whole period of taking, developing, and fixing the negative, and printing, toning, and fixing the positive. It is submitted that a photograph is "made" at least as soon as the negative is developed, although, probably, not immediately upon exposure of the plate.

The "making" of a dramatic or musical work.

A dramatic work is "made" by the writing of the book, not by its public performance (*k*), so that the foreign author of a play who has not published his *libretto*, cannot acquire performing rights by first performing his play in the United Kingdom, for public performance is not publication of the work (*l*). The same principles apply to a musical work.

Records and photographs.

Sects. 19 and 21 of the Act may produce somewhat strange results with regard to unpublished instruments for mechanically reproducing sounds and unpublished photographs. By the first of the above-mentioned sections it is provided that the copyright in such mechanical instruments is to run from the date of the making of the original plate from which the contrivance was directly or indirectly derived, "and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work"; and, similarly, the last-mentioned section provides that copyright in a photograph is to date from the making of the negative, "and the person who

(*i*) Sect. 1 (2), see *post*, p. 47.
(*k*) *Reichardt* v. *Saptc*, (1893) 2 Q. B. 308.
(*l*) Sect. 1, sub-sect. (3).

was owner of such negative at the time when such negative was made shall be deemed to be the author of the work."

From these sections it would seem to follow that if a British citizen were to employ the citizen of a foreign country, who would not himself be entitled to copyright in England for his unpublished works, to make a record or photograph entirely out of the United Kingdom, but under such circumstances that the plate or negative became the property of the employer, the latter could claim protection for the unpublished work; but that, on the other hand, a foreign citizen employing a person to make a record or photograph in England upon terms that the plate or negative should belong to the employer could not claim protection for the work so long as it remained unpublished, unless the employer was a citizen of or resident in a country to which an Order in Council made under sect. 29 extends. In a case of this sort, therefore, the foreign employer might be wise to make the terms of the employment of the agent such that the plate or negative should belong to the employee, coupled with an agreement by the latter to assign his copyright to his employer.

Upon the whole, it is thought that the provisions of the Act denying, except by international arrangement, copyright in their unpublished works to foreigners not resident in British dominions at the time of the making of the work are a little unfortunate (*m*).

Publication in breach of trust or confidence.

If an author, for any reason, should be unable to claim copyright in his unpublished works, he may sometimes derive assistance from sect. 31, which, in abolishing the old copyright at common law, provides that "nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence." This section, of course, is equally applicable to foreigners as to British subjects.

Cases prior to Act of 1911.

Under the old law, prior to the Copyright Act, 1911, there are many cases in which publication has been restrained upon the ground of breach of confidence, but inasmuch as, under that law, all unpublished works were entitled to common law copyright (*n*), it is often difficult to know how far the injunctions granted were based on a breach of the common law copyright, and how far upon breach of confidence.

The breach of trust or confidence must, it is thought, originate

(*m*) The inconvenience has been chiefly felt by Americans having rights in cinematograph films. In order to protect the performing rights the plan is sometimes adopted of publishing in book form in England short descriptions of the films and the plot represented: see "Cinematographs," Part III., Chapter IV., *post*.

(*n*) *Ante*, p. 4.

There must be a contract for secrecy.

Prince Albert v. *Strange*.

from some contract for secrecy, but such a contract may be either express or implied from the circumstances of the case. A leading case upon the subject is that of *Prince Albert* v. *Strange* (*o*), where it appeared that her late Majesty Queen Victoria and the plaintiff had occasionally, for their amusement, made drawings and etchings, being principally of subjects of private and domestic interest to themselves, and that they had made impressions of those etchings for their own use, and not for publication; that, for greater privacy, such impressions had been, for the most part, made by means of a private press kept for that purpose, and the plates themselves had been ordinarily kept by her Majesty under lock, and the impressions had been placed in some of the private apartments of her Majesty at Windsor, and in such apartments only; that the defendants Strange and Judge had in some manner obtained some of such impressions, which had been surreptitiously taken from some of such plates, and had thereby been enabled to form, and had formed, a gallery or collection of such etchings, of which they intended to make a public exhibition without the permission of her Majesty and the plaintiff, or either of them, and against their will; that the defendants had compiled and prepared a work, which had been printed and published by the defendant Strange, of which the title page or cover was as follows:—"A Descriptive Catalogue of the Royal Victoria and Albert Gallery of Etchings." "Every purchaser of this catalogue will be presented (by permission) with a facsimile of the autograph of either her Majesty or of the Prince Consort engraved from the original, the selection being left to the purchaser, price sixpence"; that this work had been compiled, printed, and published without the consent of her Majesty and the plaintiff, or either of them, and against their will; that, in fact, among the etchings were portraits of the plaintiff, the Prince of Wales, the Princess Royal, and other members of the Royal Family, and personal friends of her Majesty, from life, and afterwards transferred to copper and etched by her Majesty and the plaintiff, and among such etchings were portraits of their favourite dogs, taken by them from life, and etchings from old and rare engravings in the possession of her Majesty, and several from such original designs as in the catalogue mentioned; and among such etchings there were several portraits of the Princess Royal, and such scenes in the Royal nursery as in the said catalogue mentioned; and that the said descriptive catalogue comprised sixty-three several etchings;

(*o*) (1849), 1 Mac. & G. 25.

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related to the publication of the catalogue he moved to dissolve it before Vice-Chancellor Knight-Bruce. It was contended by the defendants that a man acquiring knowledge of another man's property without his consent, is not by any rule or principle which a Court of Justice can apply—however secretly that other man may have kept or endeavour to keep his property—forbidden, without consent, to communicate or publish that knowledge to the world, to inform the world what the property is, or to describe it publicly, whether orally or in print or writing. That there were distinct properties, independent of each other, in the owner of portraits; first, there was the right of property in the canvas; secondly, in the face that adorned the canvas; thirdly, the knowledge of the existence of what he possessed. That supposing that the owner of a collection of pictures allowed the public on certain days to view his collection, and by this means one of the visitors acquired a knowledge of the paintings, the same as the owner, that such person had in the absence of contract to the contrary a right to make use of that knowledge. It was admitted that he might be restrained from using the form, but contended that he could not be restrained from describing the attributes created by the form. That there was no greater right of property in the knowledge, in the owner of the collection, than in any stranger who might have had access to them. But both the Vice-Chancellor Knight-Bruce, in the first instance, and Lord Cottenham, on appeal, refused to give effect to this argument, and an injunction was granted both on the ground of infringement of the plaintiff's proprietary rights in the copyright and upon the ground of breach of confidence.

Other cases.

This case is illustrative of many others. In the case of *Webb* v. *Rose* (*p*) the plaintiff had his "Precedents of Conveyancing" stolen out of his chambers and printed; and in the case of *Forrester* v. *Walker* (*q*) he had his notes copied by a clerk of a gentleman to whom he had lent them, and printed. In *Macklin* v. *Richardson* (*r*) the defendant had employed a shorthand writer to take down the farce of "Love à la mode," upon its performance at the theatre, and inserted one act in a magazine, giving notice that the second act would be published in the magazine of the following month. In all these cases the Court granted injunctions (*s*).

(*p*) (1732), cited Ambl. 695.
(*q*) (1741) *ib.*
(*r*) (1770), Ambl. 694.
(*s*) See also *Turner* v. *Robinson* (1860), 10 Ir. Ch. Rep. 121, 510; *Southey* v. *Sherwood* (1817), 2 Mer. 435; *Gee* v. *Pritchard* (1818), 2 Swans. 402.

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If a person lends his manuscript to another there will generally be implied a contract that the latter shall not publish it (*t*). A servant may not publish information which he has been employed to obtain for his master (*u*), nor use for his own purpose copies of documents belonging to his master (*x*), for to do so would be a breach of the confidence reposed in him. A pupil reading in a barrister's chambers may be allowed to take copies of precedents for his own use, but not for publication (*y*). In the case of *Gilbert* v. *Star Newspaper Co.* (*z*), Mr. W. S. Gilbert obtained an *ex parte* injunction restraining the publication of the plot of his play, "His Excellency," then being rehearsed, but not yet publicly performed, on the ground that the defendants had obtained their information with the knowledge that it was given them in breach of confidence.

Again, if a person sits for his portrait to a photographer, there will usually be implied a contract on the part of the latter that he will not sell or exhibit copies without the sitter's consent (*a*); and a contract may be implied on the part of persons attending private lectures not to take them down and publish them (*b*).

The limits of the doctrine.

In all the above cases it will be found that the defendants either themselves committed a breach of contract or confidence, or were fully aware of all the circumstances. The weakness of the remedy for such a breach lies in the fact that it probably could not be pursued against a purchaser for value without notice. If A. steals B.'s manuscript and sells it as his own work to C. who publishes it innocently (*c*), A. can hardly, it is thought, allege any breach of trust or confidence against C. (*d*), although ignorance is no defence to an action for breach of the proprietary right conferred by *copyright* (*e*).

(*t*) *Duke of Queensberry* v. *Shebbeare* (1758), 2 Eden, 329; and see as to letters, *post*, pp. 44, 45.

(*u*) *Lamb* v. *Evans*, (1893) 1 Ch. 218; *Merryweather* v. *Moore*, (1892) 2 Ch. 518; *Robb* v. *Green*, (1895) 2 Q. B. 315; *Measures, Ltd.* v. *Measures*, (1910) 2 Ch. 248; *Amber Size Co.* v. *Menzel*, (1913) 2 Ch. 239.

(*x*) *Louis* v. *Smellie* (1895), W. N. 115; 11 Times L. R. 515; *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.

(*y*) *Abernethy* v. *Hutchinson* (1825), 3 L. J. (O. S.) Ch. 209; *Lamb* v. *Evans*, (1893) 1 Ch. 218, 231.

(*z*) (1894), 11 T. L. R. 515; cf. *Exchange Telegraph Co.* v. *Central News*, (1897) 2 Ch. 48.

(*a*) *Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345. Circumstances may, of course, rebut this presumption: *Ellis* v. *Marshall* (1895), 64 L. J. Q. B. 757; and see "Artistic Copyright," Chapter IV., *post*.

(*b*) *Caird* v. *Sime* (1887), 12 A. C. 326.

(*c*) *I.e.*, without notice express or implied of the circumstances.

(*d*) *Philip* v. *Pennell*, (1907) 2 Ch. 577.

(*e*) *Mansell* v. *Valley Printing Co.*, (1908) 2 Ch. 441; but A. might sue for trespass, *ante*, p. 23.

Information cannot be used in breach of confidence.

On the other hand, the right to restrain the publication of a work upon the ground that to do so would be a breach of trust or confidence is, it is submitted, a larger right than the proprietary right of copyright. There can be no copyright in ideas or information, and it is no infringement of copyright to adopt the ideas of another or to publish information received from another, provided there is no copying of the language in which those ideas have, or that information has, been previously embodied (*f*); but if the ideas or information have been acquired under such circumstances that it would be a breach of faith to publish them, the Courts will grant an injunction against any person who does so. Thus, in *Exchange Telegraph Co.* v. *Gregory & Co.* (*g*) the plaintiffs, under a contract with the committee of the London Stock Exchange, obtained valuable information as to the prices of stocks and shares from time to time during the day. This information the plaintiffs handed on to their subscribers by means of tape machines, the subscribers expressly agreeing not to sell or communicate to non-subscribers the intelligence thus supplied to them. The defendants had been at one time subscribers of the plaintiffs', but the latter had recently refused to continue them as such, and they had succeeded in surreptitiously obtaining the information from another subscriber, and posted the information thus received in their offices. The Court granted an injunction restraining the defendants from infringing the plaintiffs' copyright and from continuing to induce any subscriber of the plaintiffs to supply them with the information in breach of his contract with the plaintiffs. This is one of those cases in which it is difficult to say how far the decision was based upon infringement of common law copyright, and how far upon the breach of confidence, but the point of distinction between this case and the earlier case of *Chilton* v. *Progress Printing Co.* (*h*) seems to be that in the latter case there were no circumstances of bad faith. There the plaintiff, who was the publisher of a registered weekly periodical, inserted each week, under the title of "One Horse Selections," a list of horses which he expected to win at races in the ensuing week. The defendants published each day at race-meetings a sheet or card giving, under the title, "The Specials, One Horse Finals," a list of horses which the plaintiff and other sporting authorities had selected as likely to win in

(*f*) *Ante*, p. 2; *Hollinrake* v. *Truswell*, (1894) 3 Ch. 420; *Walter* v. *Steinkopff*, (1892) 3 Ch. 489; *Chilton* v. *Progress Printing Co.*, (1895) 2 Ch. 29; *Rees* v. *Robbins*, Times, 4th July, 1914; but see *Corelli* v. *Gray* (1913), 30 T. L. R. 116.

(*g*) (1896) 1 Q. B. 147.

(*h*) (1895) 2 Ch. 29.

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races on that particular day, with the names of those who had selected them. The Court of Appeal held, affirming Kekewich, J., that the announcement of the horses which the plaintiff had selected as winners was not in the nature of a literary composition which could be protected under the Copyright Acts, and that the defendants had not infringed the copyright in the plaintiffs' periodical.

The case of *Exchange Telegraph Co.* v. *Gregory & Co.* was followed in the case of *Exchange Telegraph Co.* v. *Central News* (*i*), where an injunction was sought to restrain the defendants from improperly copying information as to the results of horse races at Manchester, collected by the plaintiffs and communicated to the plaintiffs' subscribers, and for communicating the information so copied to the defendants' subscribers. It was sought to distinguish this case from the case of *Exchange Telegraph Co.* v. *Gregory & Co.*, on the ground that the result of a horse race is public property, but Mr. Justice Stirling refused to acknowledge the distinction. "The information," he said, "was not made known to the whole world; it was, no doubt, known to a large number of persons, but a great many more were ignorant of it. By the expenditure of labour and money the plaintiffs had acquired this information, and it was, in their hands, valuable property in this sense—that persons to whom it was not known were willing to pay, and did pay, money to acquire it. . . . I think that it is established as against the syndicate that they published for their own benefit information acquired from or through some subscriber to the plaintiffs, with knowledge or notice on the part of their manager that it was acquired contrary to the terms imposed on the plaintiffs' subscribers." An injunction was accordingly granted.

Philip v. *Pennell.*

The point now contended for was recognised by Kekewich, J., in the case of *Philip* v. *Pennell* (*k*). There the plaintiffs sought to restrain the defendants from publishing letters written by Mr. Whistler, the artist, or the information contained in them, in a biography of Mr. Whistler proposed to be published by the defendants. Inasmuch as the letters were in the lawful possession of the defendants, Kekewich, J., refused to prohibit them from making use of the information they might derive from a perusal of the letters, although he indicated that he might have arrived at a different conclusion if there had been any circumstances which

(*i*) (1897) 2 Ch. 48; *Exchange Telegraph Co.* v. *Howard* (1906), 22 T. L. R. 374.

(*k*) (1907) 2 Ch. 577.

would have rendered it a breach of confidence on the part of the defendants to make use of that information.

Amber Size Co. v. Menzel.

Finally, in the recent case of *Amber Size Co.* v. *Menzel* (*l*) the Court granted an injunction against a dismissed servant of the plaintiff company, restraining him from making any use of information as to a secret process of manufacture obtained in the course of his confidential employment with the plaintiffs, although the defendant had not abstracted anything tangible, such as a list of customers, and was not proposing to publish the information he had gained, but simply to use the same for the benefit of a rival firm into whose employment he had subsequently entered. Mr. Justice Astbury granted an injunction in general terms restraining the defendant from using the whole or any material part of the plaintiffs' secret method or process of manufacture, the knowledge of which was acquired or obtained by him during his employment by the plaintiffs, and from disclosing to any other person, company, or firm any information with respect thereto (*m*).

What is meant by "publication."

We now propose to consider what is meant by "publication" of a work; in other words, the circumstances under which a work ceases to fall within the class of unpublished works and becomes a published work. By sect. 1, sub-sect. 3 of the Act it is provided that, "for the purposes of this Act, 'publication' in relation to any work means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but (*sic*), for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works." It is also enacted by sect. 35, sub-sect. 2, that, "for the purposes of this Act (other than those relating to infringements of copyright) a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators, or assigns." And, inasmuch as a published work is only entitled to copyright under the Act of 1911 if it is first published within the parts of His Majesty's dominions to which that Act ex-

(*l*) (1913) 2 Ch. 239; see also *Litholite* v. *Travis* (1913), 30 R. P. C. 266, 532.

(*m*) See also *Lord Ashburton* v. *Pape*, (1913) 2 Ch. 469.

tends (*n*), it is provided by sub-sect. 2 of sect. 35, that "for the purposes of this Act a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places, if the time between the publication in one such place and the publication in the other place does not exceed fourteen days or such longer period as may, for the time being, be fixed by Order in Council."

There must be an issue of "copies."

Inasmuch as publication is to mean the issue of "copies" to the public, it follows that a work cannot be orally published (*o*), or that there can be no publication of a work of which there only exists a single example. The writer of a literary work may permit his manuscript to be viewed or read by any number of persons without thereby publishing his work; it is even doubtful whether an artist can "publish" his work by making a single *replica*, for the Act speaks of "copies." The only way, therefore, in which a painting or drawing can, in an ordinary way, be published, would seem to be by the publication of photographs or engravings of the original work, and it is to be noticed that the issue of photographs and engravings of works of sculpture and architectural works of art are not to be deemed publication of such works. The reason for distinguishing in this respect works of sculpture and architecture from other artistic works is not very apparent; and if the distinction lies between works in the round and works in the flat, it is one which is not very convincing (*p*).

Works of sculpture and architecture.

The only way, therefore, in which works of sculpture can be published will probably be by means of castings from the original work. Moreover, it would seem that sculptors and architects can never object to their unpublished works being engraved or photographed, except upon the ground of a breach of confidence, for, although one of the proprietary rights conferred upon authors of

(*n*) Sect. 1 (1); sect. 29 (1) (a).

(*o*) In this respect the law has been altered by the Act of 1911: see *Boucicault* v. *Chatterton* (1878), 5 Ch. D. 267; *Walter* v. *Lane*, (1900) A. C. 539; *Caird* v. *Sime* (1887), 12 A. C. 326. It is submitted, therefore, that although the section only states that performance in public of a "dramatic or musical work" is not publication, public performance of a literary work, if public performance of such a work be possible, is not publication of the work.

(*p*) It may be said that works of sculpture and architecture are generally to be found in public places, but sect. 2 (1) (iii) expressly permits photographs, &c. of such works if "permanently" situate in public places and buildings.

unpublished works is "to publish the work or any substantial part thereof" (*q*), the issue of photographs or engravings of works of sculpture and architecture is not "publication," and therefore the proprietary right referred to is not infringed.

A "copy" for purposes of publication may differ from a "copy" for purposes of infringement.

The question may, perhaps, arise as to whether what would certainly be a "copy" of a work for the purposes of infringement of copyright is a "copy" for the purposes of publication. For instance, if A. were to translate his manuscript work and publish the translation before the original, would this be a publication of the original? Upon the whole, it is submitted that it would be so, upon the same principle that the publication of photographs of a painting would be a publication of the painting itself, but, of course, if, say, specimen pages of a literary work were distributed prior to the entire work being published, this could not be more than a publication of the specimen pages. So, the publication of a pianoforte arrangement of an opera, or that of a few of the orchestral parts, would not be a publication of the opera itself (*r*). Again, although it is now an infringement of the copyright in a work to make any record, perforated roll, or other contrivance by means of which the work may be mechanically performed or delivered (*s*), the publication of records or rolls would not be a publication of the original work, for such records or rolls are not "copies" of that work (*t*).

When a work is "issued" to the public.

In order that there shall be a publication of a work, not only must the copies be made, but copies must be "issued" to the "public." Clearly, issue for the purposes of sale is not essential, although, no doubt, if copies are issued for such a purpose, this would amount to publication (*u*). A presentation of copies on the part of the author to individuals, or to a limited class, or even the sending of advance copies to the press for review would not, it is thought, be publication, but gratuitous circulation generally would seem to be so (*x*). Thus, in *Prince Albert* v. *Strange* (*y*) it appeared that her late Majesty Queen Victoria and the late Prince Consort had given to their intimate friends lithographic copies of drawings and etchings which they had made for their own amusement. This was held to be a private circulation of copies, and hence not a publication.

(*q*) Sect. 1 (2).
(*r*) *Boosey* v. *Fairlie* (1877), 7 Ch. D. 301.
(*s*) Sect. 1 (2) (d).
(*t*) *Boosey* v. *Whight*, (1900) 1 Ch. 122; *Monckton* v. *Gramophone Co.* (1912), 106 L. T. 84.
(*u*) *White* v. *Geroch* (1819), 2 B. & Ald. 298.
(*x*) *Novello* v. *Sudlow* (1852), 12 C. B. 177.
(*y*) (1849), 2 De G. & Sm. 652.

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Circulation among pupils of a system of book-keeping.

In an American case (*z*) it appeared that the plaintiff, who was a teacher of book-keeping, had written his system of instruction on separate cards, for the convenience of giving instruction to his pupils. He had permitted them to copy these cards for their own convenience, and to enable them to instruct others. The defendant published copies of the cards, which he had obtained while a pupil in the school, and maintained that the plaintiff, by permitting his manuscripts to be so copied, had abandoned them to the public. The court, however, held this to be a private circulation of copies, which did not prejudice the owner's common law rights. "The students of Bartlett who made these copies," said Mr. Justice McLean, "have a right to them and their use as originally intended. But they have no right to a use which was not in the contemplation of the complainant and of themselves when the consent was first given . . . . The lecturer designed to instruct his hearers, and not the public at large. Any use, therefore, of the lectures which should operate injuriously to the lecturer would be a fraud upon him for which the law would give him redress."

Publication not a question of number of copies sold.

The question of publication does not depend on the number of copies sold or given away; because the sale of one copy only is as clearly a publication as is the sale of ten thousand. Nor can it be essential that a single copy be disposed of before the work can be said to be published, for the work is published when it is issued to the public. The act of publication is the act of the author, and cannot be dependent upon the act of a purchaser. Printing does not amount to publication, for it is obvious that it may be withheld from the public long after it is in print. To constitute publication it is necessary that the work shall be exposed for sale or offered gratuitously to the general public, so that any person may have an opportunity of enjoying that for which copyright is intended to be secured.

Public performance is not publication.

The performance in public of a dramatic or musical work, and the delivery in public of a lecture, are not publication of the work or lecture (*a*). This would have been reasonably clear without any express provision to that effect, for obviously a performance is not an "issue of copies," but it was perhaps as well to emphasise the point, because in this respect the Act of 1911 effects an alteration in the law, it having been held under the old law that a dramatic work was published by being publicly performed (*b*).

(*z*) *Bartlett* v. *Crittenden* (1849), 4 McLean, 300; 5 *ib.* 32.
(*a*) Sect. 1 (3).
(*b*) *Boucicault* v. *Delafield* (1863), 1 H. & M. 597; *Boucicault* v. *Chatterton* (1878), 5 Ch. D. 267.

Neither is the exhibition in public of an artistic work (*c*), or the construction of an architectural work of art, publication of it. It was held, under the old law, that exhibition of a painting in a public gallery, the rules of which forbade the public to copy, was not a publication of the work (*d*).

Nor public exhibition.

A British subject, by first publishing his work in a foreign country in the absence of international agreement, loses his British copyright, but not if it is "simultaneously" published in Great Britain and the foreign country; and in order that the publication shall be "simultaneous" the difference between the actual dates of publication must not exceed fourteen days, and the publication in Great Britain must not be "colourable only," but "intended to satisfy the reasonable requirements of the public" (*e*). The question as to what is a "colourable" publication arose in the case of *Francis, Day & Co.* v. *Feldman & Co.* (*f*). There the plaintiffs were the owners of the copyright in a song called "You made me love you (I didn't want to do it)," which was composed by an American author, who assigned his copyright in it to a firm in New York. This firm published the song simultaneously in New York and Canada on the 5th May, 1913. In April, 1913, they sent twelve copies of the song to the plaintiffs with instructions to copyright the song in the United Kingdom on the 5th May, 1913. On that day the plaintiffs sent one copy to the British Museum, and one copy they filed at their London office. They also sent four copies to the agent for receiving copies for the University libraries, and the remaining six copies they exposed for sale on the counter in the retail department of their business premises in London. They did not advertise the song, and there was no immediate demand for it, but subsequently it became a great success, made large sales, and the plaintiffs acquired the copyright for the United Kingdom. It was held that the publication in England on the 5th May, 1913, was not "colourable only," and that it was sufficient to show that there was an intention to satisfy the demands of the public if such demand should arise.

Simultaneous publication.

We have already pointed out (*g*) that an unpublished work may for the time being be unprotected in England which might at a subsequent date become entitled to protection. For instance, apart

The effect of subsequent acquisition of copyright for an unprotected work.

(*c*) Or, presumably, a copy of the work. It seems to follow that mere exhibition of an artistic work is not an infringment of copyright.
(*d*) *Turner* v. *Robinson* (1860), 10 Ir. Ch. 121, 510.
(*e*) Sect. 35 (3).
(*f*) (1914) W. N. 258.
(*g*) *Ante*, p. 27.

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from international arrangements a foreign artist does not, by exhibiting his painting in England, become entitled to copyright there. Until he has issued copies to the public, any person is at liberty (unless acting in breach of confidence) to photograph, engrave, or otherwise copy, the original work, and to sell those copies in England. This, again, being done without the consent of the artist, does not "publish" the work (*h*), and, therefore, if the artist subsequently himself issues copies to the public he thereby gains copyright in his original. What, then, is the position of the first copyist? Clearly, he cannot be sued for piracy merely because he has in his possession copies of the work, for those copies were lawfully made, and the subsequent acquisition of copyright by the author cannot, *primâ facie*, have a retrospective effect so as to render an act unlawful which was perfectly lawful at the time it was committed. It is equally clear that the copyist cannot make or print any further copies, but it is not so clear whether he can dispose of copies which he has on hand at the date when the artist acquired his copyright. It is, however, submitted that the first copyist does not infringe the copyright of the artist by selling or otherwise disposing of copies lawfully made by him. It is, no doubt, provided by sect. 2 (2) of the Act that copyright shall be deemed to be infringed by a person who (*inter alia*) sells or exposes for sale any work which to his knowledge infringes copyright, but by sect. 35 (1) an infringing copy is defined as meaning any copy "made or imported in contravention of the provisions of this Act." In the case supposed, the copies were not "made" in contravention of the provisions of this Act, and it is submitted that it follows that the copies lawfully made may be disposed of without exposing the copyist to an action for infringement of copyright. The case seems to be somewhat analogous to the case of a person who has assigned his copyright, or granted a licence to publish for a term which has expired. It was held, under the old law, that an assignor could dispose of copies manufactured before the date of his assignment (*i*), and that a licensee could do the same with regard to copies manufactured before his licence ran out (*j*). In the latter case Vice-Chancellor Wood remarked "the Copyright Acts were directed against unlawful printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed." No doubt, the *dicta* in the recent case of

(*h*) Sect. 35 (2).
(*i*) *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418.
(*j*) *Howitt* v. *Hall* (1862), 6 L. T. 348.

Monckton v. *Pathé Frères* (*k*), in which it was held that gramophone records lawfully made could not be lawfully sold without payment of royalties, are contrary to the view here expressed, but sect. 35 (1) does not appear to have been called to the attention of the Court. It is, no doubt, true, as the Lords Justices stated, that the making of an infringing copy and the selling of an infringing copy are two distinct breaches of the Act, but before a person can be held liable for the second breach it must be shown that the copy he sells is an "infringing copy" within the meaning of the Act (*l*).

Two classes of works which will frequently remain unpublished call for some special observations, namely, letters and lectures.

Copyright in letters.

It is clear that a letter is an "original literary work," and therefore entitled to copyright. It is also clear that the writer of an ordinary private letter does not by sending the same to his correspondent thereby publish the letter, although it would be different if he wrote his letter to a newspaper. Under the old law, it was constantly affirmed that the copyright in a letter under normal circumstances remained in the writer, but that the ownership of the paper upon which the letter was written passed to the receiver (*m*). The fact that the letters are of no literary value is quite immaterial (*n*). From the general statement above made, exceptions might arise in special instances, such as in the case of letters written by an agent to or for his principal, and other cases where the conditions indicated that the property in the form or expression was intended to be in another than the writer. Thus, it was held that the letters which an officer of an insurance company had written in the discharge of his official duties became the property of the company (*o*). "If the solicitor of an assurance company, established in London," said the Master of the Rolls in the case cited, "by the direction of the directors, wrote a letter to one of the shareholders in the country, it is clear that such letter is not the property of the solicitor, and that he cannot

(*k*) (1914) 1 K. B. 395.

(*l*) It is not suggested that the actual decision in this case was wrong, having regard to the special provisions of the Act relating to mechanical contrivances. The case will be more fully considered in the Chapter upon "Mechanical Contrivances," *post*.

(*m*) *Pope* v. *Curl* (1741), 2 Atk. 342; *Oliver* v. *Oliver* (1861), 11 C. B. N. S. 139; *Howard* v. *Gunn* (1863), 32 Beav. 462; *Lytton* v. *Devey* (1884), 54 L. J. Ch. 293; *Labouchere* v. *Hess* (1898), 77 L. T. 559; *Macmillan* v. *Dent*, (1907) 1 Ch. 107; *Philip* v. *Pennell*, (1907) 2 Ch. 577. In *Labouchere* v. *Hess*, Mr. Justice North did not consider it clearly established by the cases that the property in the paper is in the receiver, but it is thought that there really is no doubt upon the point.

(*n*) *Walter* v. *Lane*, (1900) A. C. 539.

(*o*) *Howard* v. *Gunn* (1863), 32 Beav. 462.

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say that the company have not a right to publish it. Take it a step further, and assume that the solicitor wrote a letter, but not by the direction or on behalf of the directors, though it had all the appearance of being written on their behalf and by their direction. Thus, if it were written to a person who proposed to take shares in the company, and it related to the affairs of the company, and contained authoritative information on behalf of the company in answer to an application for shares, and the person who receives it treats it as such, and sends back to the company, objecting to its contents, shall the solicitor be allowed to complain of its publication, and to insist that it is a private letter, though it appears to be written on behalf of the directors? The answer is, if that be so, it ought not to have been written. It has all the appearance of having been written by the plaintiff on their behalf, and Jamieson [the person to whom it was written] so treats it, for he writes to the manager in answer to it. Can the plaintiff be allowed to say that the company have no right to publish it? and if they have, is not the defendant entitled, as regards the plaintiff, to bring it forward? It is obvious that this was not a private letter, and was not intended to be a private letter."

Under the Act of 1911.

The Copyright Act, 1911, has made no alteration in the law as to the proprietorship of the copyright in a letter (*p*), and in the paper upon which the letter is written, except that if a letter is composed by A. on behalf of B., the copyright will only belong to B. if A. is under a contract of service or apprenticeship (*q*). Although a solicitor is not generally under any contract of service with his employer, the actual decision in *Howard* v. *Gunn* would be the same under the new law, for the solicitor could not, under the circumstances, object to the publication by the company—his consent would be implied (*r*).

Relative rights of writer and receiver of a letter.

The relative rights of the writer and the receiver of a letter must, however, vary under different circumstances. If the letter was sent with a request for return of the manuscript, the property in the paper would not pass to the recipient: if the letter were marked "private and confidential," this also would be a matter

(*p*) The composer of the letter is clearly its author (sect. 5 (1)).
(*q*) Sect. 5 (1) (b).
(*r*) Sect. 2 (1). See Chapter "Assignment of Copyright," *post*. The Act of 1911 has also incidentally overruled the case of *Macmillan* v. *Dent* ((1907) 1 Ch. 107), where it was held, upon the peculiar wording of sect. 3 of the Literary Copyright Act, 1842, that the copyright in letters first published after the writer's death vested in the owners of the manuscript, *i.e.*, the paper upon which the letters were written. The case did not decide that the executors of the deceased writer might not, under some circumstances, have restrained the publication on the ground of breach of confidence.

which would have to be regarded. In fact, ordinary correspondence will generally be conducted upon the understanding that it shall not be published, and, if it were published, the writer of the letters would not require to rely upon his copyright at all, but could restrain the publication as a breach of confidence (*s*). There have been many cases in which injunctions have been granted upon this ground (*t*). On the other hand, circumstances may imply a licence to publish. The case of a letter to a newspaper is an extreme example, in which case not only does the newspaper obtain the right to publish the letter, but also the right to alter it, so long as the alterations are not of a nature to affect the credit or literary reputation of the writer (*u*). Again, a licence to publish commercial letters will be more readily implied than in the case of private correspondence (*v*). It would seem that letters may be published if the object of doing so is to vindicate the character of the receiver (*x*); but not for the purpose of representing to the public as true that which the receiver has, in legal proceedings upon that very question, admitted to be false (*y*). Further, the person lawfully in the possession of a letter is entitled to make use of the information obtained from a perusal of it without copying its actual language, unless there are any circumstances which may render it a breach of trust or confidence for him to do so (*z*).

The right of the receiver of a letter to the material upon which it is written.

The position of the receiver of a letter is that, in the absence of some limitations, imposed either by the subject-matter of the letter or the circumstances under which it is sent, he has an unqualified title to the material upon which it is written, and he can deal with it as absolute owner, subject only to the proprietary right retained by the author and his representatives to the publication or non-publication of the ideas in their particular verbal expressions. The receiver is under no obligation to preserve the letter for the benefit of the writer: he is at liberty to destroy it,

(*s*) Sect. 31.

(*t*) *Pope* v. *Curl* (1741), 2 Atk. 342; *Thompson* v. *Stanhope* (1774), Amb. 737; *Granard* v. *Dunkin* (1809), 1 Ball & B. 207; *Gee* v. *Pritchard* (1818), 2 Swans. 418; *Palin* v. *Gathercole* (1844), 1 Coll. C. C. 565; but see *Perceval* v. *Phipps* (1813), 2 V. & B. 19.

(*u*) *Springfield* v. *Thame* (1903), 89 L. T. 242, in which case it was held that the alterations were such as to make the editor the "author" of the communication. Cf. *Lee* v. *Gibbings* (1892), 9 T. L. R. 773; *Hogg* v. *Kirby* (1803), 8 Ves. 215.

(*v*) *Perceval* v. *Phipps* (1813), 2 V. & B. 19.

(*x*) *E. of Lytton* v. *Devey* (1884), 52 L. T. 121; *Labouchere* v. *Hess* (1898), 77 L. T. 559; *Tolsom* v. *Marsh*, 2 Story (Amer.), 100; *Howard* v. *Gunn* (1863), 32 Beav. 462.

(*y*) *Palin* v. *Gathercole* (1844), 1 Coll. C. C. 565.

(*z*) *Philip* v. *Pennell*, (1907) 2 Ch. 577; *Labouchere* v. *Hess*, *supra*.

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or to sell it for waste paper, or for the value of the autograph signature, or for any other purpose, if he pleases (*a*).

Power of government to publish or withhold letters.

The government has a right, upon grounds of public policy, to publish or to withhold all letters addressed to the public offices (*b*). This exception in favour of the government is not supposed to make such communications common property, to be published by any person who may see fit, without the sanction of the government, nor to take away the property of the writers or their representatives. "In respect to official letters addressed to government," observed Mr. Justice Story in *Folsom* v. *Marsh* (*c*), "or any of its departments, by public officers, so far as the right of the government extends from principles of public policy to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful whether any public officer is at liberty to publish them, at least in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be right, and even the duty, of the government, to give them publicity, even against the will of the writers. But this is an exception in favour of the government, and stands upon principles allied to, or nearly similar to the right of private individuals, to whom letters are addressed by their agents, to use them, and publish them, upon fit and justifiable occasions. But assuming the right of the government to publish such official letters and papers, under its own sanction, and for public purposes, I am not prepared to admit that any private persons have a right to publish the same letters and papers without the sanction of the government for their own private profit and advantage. Recently the Duke of Wellington's despatches have, I believe, been published by an able editor, with the consent of the noble duke and under the sanction of the government. It would be a strange thing to say, that a compilation involving so much expense and so much labour to the editor in collecting and arranging the materials, might be pirated and republished by another bookseller, perhaps to the ruin of the original publisher and editor. Before my mind arrives at such a conclusion, I must have clear and positive lights to guide my judgment, or to bind me in point of authority."

(*a*) *Baker* v. *Libbie* (1912), an American case reported in the Annual Report of the Register of Copyrights for the years 1912, 1913 (Letters of the late Mrs. Eddy, founder of Christian Science).

(*b*) Curtis on Copyright (Amer.), 98.

(*c*) 2 Story (Amer.), 100.

Lectures.

The protection accorded to lecturers was under the law prior to the Copyright Act, 1911, of a very unsatisfactory character (*d*), and that Act is not so clear upon the rights of lecturers as might be desired. Lectures are certainly intended to be protected, for sect. 1, sub-sect. (2), of the Act states it to be an infringement of copyright "in the case of a lecture to deliver the work or any substantial part thereof in public," and a "lecture" includes an address, speech, or sermon (*e*). A lecture, therefore, is doubtless intended to fall within the class of "original literary works" upon which copyright is conferred by sect. 1, sub-sect. (1), and it is submitted that there is no difficulty in so classifying the work, even although it be an entirely extempore speech of which no manuscript copy or note exists. For the purposes of acquisition of British copyright a speech is presumably "made" at the place where it is first delivered, for, even although it may have previously been written out in manuscript, it does not exist, *quâ* speech, until it has been delivered (*f*). The copyright in a speech will be infringed by being publicly repeated or by a report being taken of it, for "copyright" means the "sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever" (*g*). The only doubt seems to be as to whether there is any possible way of "publishing" a lecture. As we have seen, "publication" for the purposes of the Act "means the issue of copies of the work to the public, and does not include . . . the delivery in public of a lecture" (*h*). Does, then, a speaker "publish" his lectures by printing them and issuing them in book form?—in other words, is his book a "copy" of his speeches? In the case of *Hanfstaengl* v. *Empire Palace* (*i*), Mr. Justice Stirling expressed an opinion to the effect that if at a public meeting some portion of a copyright work was recited or read from an authorised copy of a work, that would be no infringement of the rights of the owner of the copyright, presumably upon the ground that the recitation would not be a "copying" of the written work. This was a mere dictum, but, if correct, the converse would appear to be equally true, that a written report of a

(*d*) *Ante*, p. 18.

(*e*) Sect. 35 (1).

(*f*) Cf. the converse case of a speech reduced to writing, *Walter* v. *Lane*, (1900) A. C. 539. Upon a question of infringement, therefore, it may be important to consider whether the infringement owes its origin to the manuscript or the oral delivery in public.

(*g*) Sect. 1 (2). In the case of *Walter* v. *Lane*, *supra*, where a *Times* reporter was held to have the copyright in certain speeches of Lord Rosebery, the latter did not, and probably could not, claim any copyright in his speech

(*h*) Sect. 1 (3).

(*i*) (1894) 3 Ch. 109, 116.

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speech is not a "copy" of the speech itself (*k*). It is therefore possible that, apart from international arrangement, a foreigner cannot obtain copyright in an extempore speech delivered in public unless he was resident or domiciled (*l*) in Great Britain at the time when he delivered his speech (*m*). The point, however, will not generally be of any great importance, because the delivery of the speech is not publication of it, and therefore if it be subsequently printed and published in England it will at least acquire copyright as an original literary work (*n*).

Newspaper reports of public lectures.

In favour of newspapers, it is provided (*o*) that the publication in a newspaper of a report of a lecture delivered in public is not to be an infringement of copyright, unless the report is prohibited by a conspicuous written or printed notice, affixed before, and maintained during, the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer. Even if such notice is affixed a newspaper summary may be given (*p*).

Of course, if a speech or lecture is not delivered in public there may be an express or implied obligation on the part of those who hear the speech or lecture not to publish it, in which case publication would—apart altogether from copyright—be restrained by injunction (*q*). If, however, pupils are admitted to a lecture given for their instruction, they may go to the extent, if desirous and capable, of taking down the whole by means of shorthand, for the purposes of their own information; but they may not publish (*r*).

(*k*) And cf. *Reade* v. *Conquest* (1861), 9 C. B. 755 (dramatization of a novel).

(*l*) As to the meaning of these expressions, see *ante*, p. 28.

(*m*) Sect. 1 (1) (b).

(*n*) *Walter* v. *Lane*, (1900) A. C. 539.

(*o*) Sect. 2 (1) (v). See Chapter "Newspapers," *post*.

(*p*) Sect. 2 (1) (i), (v).

(*q*) *Nicols* v. *Pitman* (1884), 26 Ch. D. 374; *Caird* v. *Sime* (1887), 12 A. C. 326.

(*r*) Sect. 2 (1) (i). In an American case, *Keene* v. *Kimball*, 16 Gray (82 Mass.) 551, Hoar, J., said: "The student who attends a medical lecture may have a perfect right to remember as much as he can, and afterwards to use the information thus acquired in his own medical practice, or to communicate it to students or classes of his own, without involving the right to commit the lecture to writing, for the purpose of subsequent publication in print or by oral delivery. So any one of the audience at a concert or opera, may play a tune which his ear has enabled him to catch, or sing a song which he may carry away in his memory, for his own entertainment or that of others, for compensation or gratuitously, while he would have no right to copy or publish the musical composition."

CHAPTER II.

THE SUBJECTS OF LITERARY COPYRIGHT.

Copyright Act, 1911, s. 1.

By sect. 1 of the Copyright Act, 1911, copyright extending throughout the parts of His Majesty's dominions to which the Act extends (*a*) is granted to (*inter alia*) all "original literary works" first published within such parts of His Majesty's dominions as aforesaid (*b*). By sect. 35 literary works are defined as including "maps, charts, plans, tables and compilations."

Originality.

It will be noticed that the Act requires that the work shall be "original." The Literary Copyright Act, 1842 (*c*), did not expressly require any originality, but at the same time it was a debateable point whether, under that Act, any and, if so, what, degree of originality was necessary.

Reports of Lord Rosebery's speeches.

In the case of *Walter* v. *Lane* (*d*), the point arose whether a reporter is entitled to copyright in his verbatim report of a public speech. The plaintiffs were the proprietors of the *Times*, and the defendant published a book called "Appreciations and Addresses delivered by Lord Rosebery," which contained practically verbatim copies of the reports in the *Times* of five speeches delivered by Lord Rosebery during the years 1896 to 1898. The reports of these speeches had been obtained in the usual way by the *Times* sending their reporters to the meetings, the speeches being taken down verbatim in shorthand and transcribed. The defendant admitted that he had used in preparing his work cuttings from the *Times*, and in four cases the speeches appeared in his book

(*a*) The Act extends throughout the King's Dominions with the exception of "self-governing dominions" (sect. 25 (1)). The self-governing dominions include the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and Newfoundland (sect. 35 (2)). As regards the self-governing dominions the Act extends to them if by their legislature they declare the Act to be in force therein (sect. 25 (1)). At the time of writing the Act does not extend to Canada or the Union of South Africa. The Act has also been extended to other possessions of the Crown, including Cyprus, by Order in Council: see *post*, "Colonial Copyright," Part IV., Chapter II.

(*b*) As to what is "publication," see *ante*, p. 37.

(*c*) 5 & 6 Vict. c. 45.

(*d*) (1900) A. C. 539.

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without any alteration whatever. Lord Rosebery made no claim to copyright in any of the speeches, and the *Times* brought their action claiming a declaration that they were entitled to the copyright of the reports in question and an injunction to restrain the defendant from further publishing any book containing copies of them. North, J., granted an injunction, but, upon appeal, the Court of Appeal reversed his decision, holding that the Copyright Act was passed to protect authors, not reporters, and that shorthand reporters are not authors. "If," said Lindley, J., "the reporter of a speech gives the substance of it in his own language: if, although the ideas are not his, his expression of them is his own and not the speaker's, with immaterial differences, the reported speech would be an original composition, of which the reporter would be the author, and he would be entitled to copyright in his own production. . . . But we have not to deal with speeches re-cast by the reporter. He has reproduced to the best of his ability, not only the ideas expressed by the speaker, but the language in which the speaker expressed those ideas. In other words, we are dealing with the most accurate report of the speaker's words which the reporter could make. No doubt it requires considerable education and ability to make a good report of any speech. But an accurate report *is not an original composition*, nor is the reporter of a speech the author of what he reports" (*e*).

The plaintiffs thereupon appealed to the House of Lords, and were successful in obtaining a reversal of the decision of the Court of Appeal. In the course of his judgment in the House of Lords, Lord Halsbury, L. C., made the following remarks: "I observe that the Court of Appeal introduces the words 'original composition' as if those were the words of the statute; and at another part of the judgment it is said that 'the report and the speech reported are, no doubt, different things, but the author or publisher of the report is not the author of the speech reported, which is the only thing which gives any value or interest to the report.' The sentence is a little difficult to construe, but, as I understand it, it means to convey that the thing to which the statute gives protection must be of some value or interest. Again, I am compelled to point out that such words are not to be found in the statute. The producer of this written composition is, to my mind, the person who is the author of the book within the meaning of the statute, and, as I have pointed out, the words 'original composer' are not to be found in the statute at all; and, as I understand, the

(*e*) (1899) 2 Ch. 749, 772.

judgment of the Court of Appeal is entirely based on the thing protected being an original composition in the sense that the person who claims the protection of the statute must not have obtained his words or his ideas from somebody else, but must be himself an original author in the sense in which that word is generally used in respect of literary composition" (*f*). Later on he says: "Though I think in these compositions there is literary merit and intellectual labour, yet the statute seems to me to require neither, nor originality either in thought or in language . . . I do not find the word 'original' in the statute, or any word which imports it, as a condition precedent, or makes originality of thought or idea necessary to the right." In the Lord Chancellor's view copyright "is given by the statute to the first producer of a book, whether that book be wise or foolish, accurate or inaccurate, of literary merit or of no merit whatever" (*g*). Likewise Davey, L. J., did not think "the fact that the subject-matter of the report had been made public property, or that no originality or literary skill was demanded for the composition of the report, have anything to do with the matter, . . . but it is a sound principle that a man shall not avail himself of another's skill, labour, and expense by copying the written product of it" (*h*).

Effect of this decision.

It must be clearly understood that the House of Lords did not decide that the reporter obtained the copyright in Lord Rosebery's speeches, but only in the reports of those speeches. Lord Rosebery did not—and, indeed, could not—claim to prevent the publication of his speeches either in newspaper or pamphlet form (*i*). Any other persons present at Lord Rosebery's meetings were at liberty to take his speeches down in shorthand and each of them to obtain copyright in his original report, but no person was entitled to annex the result of the *Times* reporter's labour. The reporter had added something "original," in that he reduced to writing what previously had only been oral, and that added "something" was considered to be worthy of protection.

Has the Act of 1911 altered the law?

The question arises as to whether the Copyright Act, 1911, has altered this decision. It is submitted that it has not. It is true that some of the Lords Justices, in giving their opinions in the case of *Walter* v. *Lane* (*k*), laid stress upon the fact that the

(*f*) (1900) A. C. 546. 547.
(*g*) *Ib.* p. 549.
(*h*) *Ib.* p. 552. *Collis* v. *Cater* (1898), 78 L. T. 613; see also *Jarrold* v. *Houlston* (1857), 3 K. & J. 708.
(*i*) Under the old law it was very difficult to retain any copyright in a speech publicly delivered, see *ante*, p. 18.
(*k*) *Ubi sup.*

word "original" did not appear in the Literary Copyright Act, 1842, whereas sect. 1 of the Act of 1911 does expressly state that only "original" works are to be entitled to copyright. The Fine Arts Copyright Act, 1842 (*l*), did, however, contain the word, for copyright was thereby conferred upon "original" paintings, drawings and photographs. It was, nevertheless, decided in *Graves' Case* (*m*) that a photograph of an engraving was an "original" photograph. The insertion of the word in the Act of 1911 (*n*) was simply with a view to preventing any claim being made to copyright in a work which was a mere slavish copy of another, and not so as to require that a work shall manifest literary merit or novelty as a condition of becoming entitled to protection. A photograph is not identical with an engraving, and a written report is not identical with a spoken speech. The reports of Lord Rosebery's speeches were not original in the sense that the words and sentiments were new, but they were original in the sense that, without the aid of the reporter, the report would have had no existence. It is only in this sense, it is submitted, that the Act of 1911 requires a work to be original.

No copyright in a copy.

The mere copyist of a written document in which no copyright existed had no right to protection under the old law (*o*); and does not acquire it under the new law.

Copyright in a work which itself infringes copyright.

It is submitted that copyright can be claimed in a work which is a piracy of another copyright work, provided that the piracy is not a mere slavish copy or, possibly, obtained by fraud (*p*). In the case of *Cary* v. *Faden* (*q*), Lord Eldon, in refusing an injunction to restrain an infringement of the copyright in a road book, appears to have been influenced by the fact that the plaintiff's work was an infringement of the copyright in an earlier work, but it is difficult to see why, in principle, this should affect the right to copyright, so long as the infringer has done independent work. Take, for example, the case of a person who translates a copyright work into another language. Why, on principle, should anyone be at liberty to appropriate the translator's independent labour because his translation was not authorised by the author of the original work, who does not see fit to prevent the publication of the translation? Moreover, the un-

(*l*) 5 & 6 Vict. c. 45.
(*m*) (1869), L. R. 4 Q. B. 715.
(*n*) An effort to strike the word out, made in Committee of the House of Commons, was unsuccessful.
(*o*) See *per* James, L. J., *Walter* v. *Lane*, (1900) A. C. at p. 554; *Barfield* v. *Nicholson* (1824), 2 Sim. & St. 1; *Leslie* v. *Young*, (1894) A. C. 335.
(*p*) *Slingsby* v. *Bradford*, (1905) W. N. 122.
(*q*) (1799), 5 Ves. 24.

authorised translation of to-day may become an authorised translation to-morrow. The same argument applies to any unlawful abridgment, collection or compilation, or to an unauthorised photograph of an artistic work.

An argument from the Revised Berne Convention.

The argument that a piracy may be entitled to protection as copyright receives support from Art. 2 of the Revised Convention of Berne (*r*), which provides that "translations" are to be entitled to protection as original works, whereas Art. 6 of the original Berne Convention only accorded such protection to "lawful" translations. By deliberately suppressing the word "lawful" in the Revised Convention, the signatories to the Convention—including Great Britain—have signified their intention to protect unauthorised translations—of course, without prejudice to the rights of the original author.

Slight independent labour will be protected.

Although, as we have seen, there can be no copyright in a work which is simply a copy of another, it would appear that very slight independent labour will be sufficient to gain protection for a work. Thus, in a case of *Parry* v. *Moring* (*s*) the plaintiff published a book entitled "Letters from Dorothy Osborne to Sir William Temple, 1652-54." These letters were, at the time when the plaintiff issued his book, in a private collection, whilst most of them were undated and in old English spelling. The plaintiff had had these letters copied, translated them into modern English spelling, arranged them in the order of date in which he considered they had been written, and published them with notes. Subsequently, the original MSS. were bought by the British Museum authorities, and it was in evidence that they claimed no copyright in these originals. The defendants then published an edition of these same letters, and in their edition the letters were placed in practically the same order as in the plaintiff's. The plaintiff moved for an interlocutory injunction restraining the infringement of his copyright (*t*), and, on the defendants admitting that they had sent the plaintiff's book to their printers, and had the text of the letters printed direct from this, without having taken the trouble to get the letters copied from the originals in the British Museum, the judge expressed such a strong opinion that this method could not be defended, that the defendants sub-

(*r*) Appendix B., *post*.

(*s*) 3rd April, 1903, before Farwell, J.

(*t*) The plaintiff complained of infringement in respect of (1) Notes; (2) Arrangement; (3) Text; and (4) Title. The defendants admitted infringement in the matter of the text and it became unnecessary to go into the other matters.

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mitted to an injunction and an inquiry as to damages, and to treat the motion as the trial of the action (*u*).

Copyright may exist in a new arrangement or in novel additions.

It has been pointed out that the Act of 1911 expressly includes "compilations" amongst literary works.

Copyright may, therefore, be claimed by an author of a book who has taken existing materials, from sources common to all writers, and arranged and combined them in a new form, and given them an application unknown before. For in making the selection, arrangement, and combination, he has exercised skill and discretion, and in producing thereby something that is new and useful he is entitled to the exclusive enjoyment of his production.

Books made and composed in this manner are therefore the proper subjects of copyright; and the author of such a work has as much right in his plan, arrangement, and combination of the materials collected and presented, as he has in his thoughts, sentiments, reflections and opinions, or in the modes in which they are therein expressed and illustrated; but he cannot prevent others from using the old material employed in such combination for a different purpose (*x*).

"Gray's Poems."

In the case of "Gray's Poems," which had been for many years published and were afterwards collected by a Mr. Mason, and reprinted with the addition of several new poems, the Lord Chancellor granted an injunction against a defendant who had copied the whole, though the plaintiff had but a copyright in the additions (*y*).

Accounts of natural curiosities, &c.

If a person compiles an account of natural curiosities or of works of art, or of mere matters of statistical or geographical information, his own description may be the subject of copyright. It is equally competent, however, for any person to compile and publish a similar work: but it must be made substantially new and original, like the first work, by resort to the original sources, and must not be simply a copy or adaptation from the other, under the impression that the subject is common (*z*).

Receipt books.

The composing receipts or arranging them in a book will give copyright to the compiler; but the mere collecting them and

(*u*) Cf. *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697; *Morris* v. *Ashbee* (1868), L. R. 7 Eq. 34; *Lamb* v. *Evans*, (1893) 1 Ch. 218.

(*x*) Clifford, J., *Lawrence* v. *Dana*. 2 Am. L. T. R. (N. S.) 423.

(*y*) *Mason* v. *Murray*, cited 1 East, 360; *Moffatt & Paige* v. *Gill* (1902), 84 L. T. 452; 86 L. T. 465.

(*z*) *Hogg* v. *Kirby* (1803), 8 Ves. 213; *Hotten* v. *Arthur* (1863), 1 H. & M. 603.

handing them over to a publisher will not (*a*). And although the mere copying of the work of another will not confer copyright, if there be some new arrangement or classification of the subject, or the copy be at all varied, then a copyright may exist in it, provided the variation be not merely colourable (*b*).

Similitude between maps.

Thus, where the defendant had used four charts published by the plaintiff in making one large map, but there were very important differences between them, much in favour of the defendant, and the evidence showed the plaintiff's charts to be founded on a wrong principle, Lord Mansfield left it to the jury to say whether the alteration was colourable or not (*c*). And in *Matthewson* v. *Stockdale* (*d*) Lord Eldon said: "I admit that no man can monopolise such subjects as the English Channel, the Island of St. Domingo, or the events of the world; and every man may take what is useful from the original work, improve, add, and give to the public the whole, comprising the original work, with the additions and improvements" (*e*).

Component parts of a compilation not protected apart from the arrangement.

Protection is not given to the component parts of a compilation independently of their arrangement and combination. Of the component parts the compiler is not the author, and he could not acquire an exclusive right to that which is common to all, neither can the arrangement or combination, apart from the materials arranged or combined, be the subject of protection (*f*). The copyright vests in the materials as arranged and combined; not in the form or the substance apart the one from the other, but in the union of the two (*g*).

Mathematical tables.

It follows from what has been said above, that a person may have copyright in mathematical tables *actually calculated by himself*, although on a fresh calculation the same tables would result from the same *data* and the same principles, and although they may have previously been published before his appeared (*h*).

Selections of poems, &c.

Selections of poems or prose compositions, and collections of

(*a*) *Rundal* v. *Murray* (1821), Jac. 314, per Lord Eldon; *Matthewson* v. *Stockdale* (1806), 12 Ves. 270.

(*b*) *Matthewson* v. *Stockdale, supra*; *Barfield* v. *Nicholson* (1824), 2 Sim. & St. 1.

(*c*) *Sayre* v. *Moore* (1785), 1 East, 361, n.

(*d*) (1806), 12 Ves. 275: *Wilkins* v. *Aikin* (1810), 17 Ves. 422.

(*e*) And see Sir L. Shadwell in *Martin* v. *Wright* (1833), 6 Sim. 298. This case can scarcely be reconciled with other decisions; see *Mawman* v. *Tegg* (1826), 2 Russ. 385; 26 R. R. 112; and Mr. Justice Story in *Emerson* v. *Davies*, 2 Story, 768, 797.

(*f*) Thus a subsequent writer cannot be held to have infringed the copyright of a book where he has not borrowed any of the materials of which his book is composed, but has simply adopted the same arrangement.

(*g*) *Lamb* v. *Evans*, (1892) 3 Ch. 462; (1893) 1 Ch. 218; *Moffatt & Paige* v. *Gill* (1902), 86 L. T. 465.

(*h*) *Bailey* v. *Taylor* (1829), 1 Russ. & My. 73.

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proverbs, maxims, quotations, hymns, &c., may be the subjects of copyright (*i*).

There can be no copyright in specifications of patents copied at the Patent Office (*k*), but various other compilations have been held entitled to protection—such as a mining report (*l*); a list of registered bills of sale and deeds of arrangement extracted from official sources (*m*); a list of foxhounds and hunting days (*n*); biographical notes of prominent golfers published in a golf annual (*o*); and a list of brood mares with their sires, and a list of stallions with daughters at the stud (*p*). In *Leslie* v. *Young* (*q*) the appellant had compiled a railway guide affecting the Perth district, and he sought an injunction against the respondents, the publishers of a new Perth railway time-table, to restrain the sale of their time-tables for July, 1891, on the ground of infringement. It appeared that the appellant's time-table consisted of a train service from Perth, selections for this purpose having been made from official time-tables, and also of information as to circular tours convenient to be taken from Perth, which had not merely been selected from official tables, but condensed and arranged. The appellant complained that the respondents, instead of going to the common and public sources for materials, substantially copied both his time-tables and circular tour information, and thus took advantage of his skill and labour in condensing into a small space a huge mass of information. The respondent practically admitted that he had copied the appellant's circular tour information, and in respect of this an injunction was granted, but an injunction was refused in respect of the time-tables, apparently on the ground that the appellant had no copyright therein.

Conclusion from these cases.

From the above cases it seems possible to draw the conclusion that the mere process of selecting passages from works readily accessible to the public is not, but that difficulty in obtaining access to the originals or skill manifested in making or arranging the selection is, sufficient to give the character of an "original literary work" to the selection.

(*i*) *Macmillan* v. *Suresh* (1890), 17 Indian L. R. (Calcutta) 951.

(*k*) *Wyatt* v. *Barnard* (1814), 3 V. & B. 77; there being no difficulty in obtaining these and no research needed.

(*l*) *Kenrick* v. *Danube Collieries* (1891), 39 W. R. 473.

(*m*) *Trade Auxiliary Co.* v. *Middlesbrough* (1880), 40 Ch. D. 425; *Cate* v. *Devon, &c. Newspaper Co.*, *ib.* 500; the Court in these cases being of opinion that the plaintiffs had exercised skill as well as industry.

(*n*) *Cox* v. *Land and Water* (1869), L. R. 9 Ex. 324; *Exchange Telegraph Co.* v. *Gregory*, (1896) 1 Q. B. 147.

(*o*) *Nisbet* v. *Golf Agency* (1907), 23 T. L. R. 370.

(*p*) *Weatherby* v. *International Horse*, (1910) 2 Ch. 297.

(*q*) (1891) A. C. 335.

Tradesmen's catalogues.

The decisions of the Courts have been increasingly favourable to tradesmen's catalogues. In the case of *Hotten* v. *Arthur* (*r*), Sir W. Page Wood, V.-C., restrained the infringement of a bookseller's catalogue containing a description of the books offered for sale, with short anecdotes relating to them.

Grace v. *Newman*.

This case was followed by Sir Charles Hall, V.-C., in *Grace* v. *Newman* (*s*). The plaintiff there was a "cemetery stone and marble mason," and had published a book containing, with some letterpress, lithographic sketches of monumental designs taken from tombstones in cemeteries. The publication was intended to serve as an advertisement of the plaintiff's business, and to enable customers to whom it was given to select designs to be executed by the plaintiff, yet the Court held it to be a proper subject of copyright.

Cobbett v. *Woodward* overruled.

The case of *Cobbett* v. *Woodward* (*t*) to the contrary effect, where the Court refused protection upon the ground that the work in question was a mere advertisement, was definitely overruled by the Court of Appeal in *Maple* v. *Army and Navy Stores* (*u*). In that case the plaintiffs, who were upholsterers, published an illustrated catalogue of furniture, which was duly registered under the Literary Copyright Act as a book. The illustrations were engraved from the original drawings made by artists employed by the plaintiffs, but the work contained no letterpress of such a description as to be the subject of copyright, and it was not published for sale, but was used by the plaintiffs as an advertisement. The defendants published an illustrated catalogue, many of the illustrations in which were copied from those of the plaintiffs' book. It was held by the Court of Appeal (affirming the decision of Vice-Chancellor Hall) that the plaintiffs were entitled to an injunction restraining the defendants from publishing any catalogue containing illustrations copied from the plaintiffs' book, and it was further held that a collection of prints published together in a volume was a book within the meaning of the Literary Copyright Act and the proper subject of copyright, though it contained no such letterpress as could be the subject of copyright, and it made no difference that the book was not published for sale, but only used as an advertisement. "I am not aware," said the Master of the Rolls in his judgment, "that the use to which a proprietor puts his book makes any

(*r*) (1863), 1 H. & M. 603.
(*s*) (1875), L. R. 19 Eq. 623; *Hogg* v. *Scott*, 18 *id.* 444.
(*t*) (1874), L. R. 14 Eq. 407.
(*u*) (1882), 21 Ch. D. 369. *Davis* v. *Benjamin*, (1906) 2 Ch. 491. is a case to the same effect.

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difference in his rights;" and again, "the weight of authority is against the doctrine that there cannot be copyright in a book issued as an advertisement, and I cannot see any principle in support of that doctrine."

Quære whether this decision now holds good.

In the case of *Maple* v. *Army and Navy Stores*, the work was protected under the Literary Copyright Act, 1842, notwithstanding that, as was assumed in the case, the advertisement contained no such letterpress as could be the subject of copyright, and the Court preferred to grant protection under that Act rather than under the Acts relating to artistic copyright. The ground for this was that the Literary Copyright Act conferred protection upon "books," and considerable emphasis was laid upon this fact in the judgments delivered in the case. Under the Act of 1911, however, it is not "books," but "literary works" and "artistic works" that are protected, and it seems very doubtful whether in the case of a catalogue containing no letterpress it ought not to be protected rather as an artistic work than a literary work, but, under whichever category it should be placed, the decision in *Maple* v. *Army and Navy Stores* is important as indicating that a work is not to be refused protection simply because it is put to use as an advertisement.

Other cases on catalogues.

In the case of *Maple* v. *Junior Army and Navy Stores*, as has been pointed out, it seems to have been assumed that there could be no copyright in the letterpress of the catalogue, but it is doubtful whether this assumption was correct. It has since been held that copyright may exist in a mere list of articles for sale (*x*). In the case cited the plaintiff was a chemist and druggist who had prepared a catalogue of medicines and drugs sold by him under various headings and sub-headings, under which were arranged in alphabetical order a list of articles with their prices. The defendants inserted in their catalogue copies of the above-mentioned headings and lists, omitting two preparations only, and an injunction was granted. North, J., in delivering judgment in this case remarked: "It is said this is not the subject of copyright; and a distinction is made between copyright in a large catalogue by a clever author which gives a great deal of information and is interesting to persons who read it, and a catalogue like the plaintiffs', which is nothing whatever but a simple list of certain articles described by their common names, which every one is entitled to use in respect to them, with the addition of the price at which

(*x*) *Collis* v. *Cater* (1898), 78 L. T. 613; *Harpers Ltd.* v. *Barry, Henry & Co.* (1892), 20 Court Sess. Cas. 4th Ser. (Rettie), 133; cf. *Cooper* v. *Stevens*, (1895) 1 Ch. 567; *Marshall* v. *Bull* (1901), 85 L. T. 77.

they are sold." . . . "For the purpose of making such a catalogue [as the plaintiffs'] one man sets to work in a proper manner. He incurs a good deal of trouble. He does what must take a good deal of time in preparing a full catalogue, such as either of these works I have before me. To some extent it might be done by his stocktaking, but there may be a good many articles in his catalogue which are not found in stock—articles which a man does not always keep—which he may be out of, or does not keep in stock, but obtains when he receives an order for them. In one way or another a man engaged in preparing a catalogue of this sort has incurred labour in its preparation, or it may be expense and trouble in its preparation, and has done it for the advantage of having his own catalogue. As compared with his neighbour, he is better off in that he has a catalogue, while his neighbour has not; and if the latter wants to be on a level with him, he must incur the same labour or expense and trouble."

Directories and advertisements.

There may also be copyright in the headings and arrangement of a directory (*y*). In *Lamb* v. *Evans*, the question was raised whether there could be copyright in a collection of advertisements. Chitty, J., held that there could not (*z*), and there was no appeal from his decision upon this point, but in the Court of Appeal, Lindley, L.J., remarked: "As regards copyright, I rather think that Mr. Justice Chitty has not gone quite far enough. I do not myself see the difficulty in a publisher's having copyright in a sheet of advertisements. I do see a difficulty in his having a copyright in one advertisement, because, as Mr. Justice Chitty pointed out, that might prevent the advertiser from republishing his advertisement in another paper, which is absurd. But to say that it follows from that, that the proprietor, say of the *Times*, has no copyright in a sheet of advertisements, so that he cannot restrain anybody from copying that sheet, appears to me a very different proposition. It is not necessary for me to decide it, and I do not decide it, as the plaintiff does not ask for an injunction larger than Mr. Justice Chitty has granted; but I doubt very much whether he has not been a little too cautious. . . . It appears to me that the learned judge has overlooked the difference between the right to publish a whole sheet of the paper and the right to publish a sentence out of the sheet" (*a*). And in this opinion Bowen, L.J., concurred (*b*).

(*y*) *Lamb* v. *Evans*, (1893) 1 Ch. 218; *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697; *Morris* v. *Ashbee* (1868), L. R. 7 Eq. 34.
(*z*) (1892) 3 Ch. 462.
(*a*) (1893) 1 Ch. 228.
(*b*) *Ibid.* 228.

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No copyright in diagrams, &c.

Though, as we have seen, the Courts will not enter into a discussion as to the merits of a literary production, yet that which it is sought to protect must be something which can be fairly described as a literary production of some sort. Thus, the Court has refused to grant copyright in respect of a cardboard pattern sleeve containing upon it scales, figures, and descriptive words for adapting it to sleeves of any dimensions (*c*); in respect of a list of sporting selections (*d*); a scoring sheet or "tablet" used in the game of cricket (*e*); and (under the new Act) a card index system specially adapted for working in connection with the National Health Insurance Act, 1911 (*f*).

So an album for holding photographs with pictorial borders for containing views of castles, with short descriptions attached, was not a "book" within 5 & 6 Vict. c. 4, s. 41 (*g*); and likewise the face of a barometer, displaying special letterpress, was held not to be capable of copyright (*h*).

Gloved hand printed on card with letterpress entitled to copyright.

But a gloved hand printed on a card cut to the exact size, and showing the back and palm of the hand, the card opening bookwise, and having on the inside in the palm of a hand the lines of life of palmistry, and on the back of the hand some original verses, was held to be a sheet of letterpress and the proper subject of copyright (*i*).

No copyright in a mere plan.

There can be no copyright in the mere plan of a work; nor any exclusive property in a general subject or in the particular method of treating it (*k*). Any number of persons may use the same common materials, in a like manner and for a similar purpose. Their productions may contain the same thoughts and ideas: and resemblance to each other is immaterial so long as there is no unlawful copying.

Copyright in words used for telegraphy.

There may be copyright in a system of electric telegraphy in which every letter of the alphabet is expressed by a dot or a dash, or different combinations of dots and dashes, with certain pauses between them, the meaning of these dots and dashes differ-

(*c*) *Hollinrake* v. *Truswell*, (1894) 1 Ch. 420, followed *Boosey* v. *Whight*, (1900) 1 Ch. 122. The contrary appears to have been held in America: *Drury* v. *Ewing*, 1 Bond (Amer.) 540.

(*d*) *Chilton* v. *Progress Printing Co.*, (1895) 2 Ch. 29; *Fournet* v. *Pearson* (1897), 14 T. L. R. 82.

(*e*) *Page* v. *Wisden* (1869), 20 L. T. 435; *Kenrick* v. *Lawrence* (1890), 25 Q. B. D. 99.

(*f*) *Libraco, Ltd.* v. *Shaw Walker* (1913), 30 T. L. R. 22.

(*g*) *Schove* v. *Schmincké* (1886), 33 Ch. D. 546.

(*h*) *Davis & Co.* v. *Comitti* (1885), 54 L. J. Ch. 419.

(*i*) *Hildesheimer & Faulkner* v. *Dunn & Co.* (1891), 64 L. T. 452; but see *Cable* v. *Marks* (1887), 52 L. J. Ch. 107; and *quære* whether it is a "literary work."

(*k*) *Ferris* v. *Hexamer*, 9 Otto Rep. (Amer.) 674; *Wilkins* v. *Aikins* (1810), 17 Ves. 422.

ing according to the place where the pause between them is made, or its duration (*l*). So, again, a shorthand system has been protected (*m*). Newspaper telegrams may also be regarded as literary works, and consequently entitled to protection (*n*).

How far new editions the subject of copyright.

Questions of great nicety and difficulty may arise as to how far a new edition of a work is a proper subject for copyright. A new edition of a book may be a reprint of the original edition, which does not entitle the author to a new term of copyright running from the new edition; or it may be so enlarged and improved as to constitute in reality a new work; for example, a scientific work twenty or thirty years old may be comparatively worthless, owing to the progress of science in the interval; but a new edition, particularly if it be the production of the original author, would be as valuable at a later period as the original edition of the book was at the time it was published. There are many courses which lie between the two extremes, and the difficulty would be to lay down any general rule as to what amount of additions, alterations, or new matter would entitle the second or new edition of a book to the privilege of copyright, or whether the copyright extends to the book as amended or improved, or is confined to the additions and improvements themselves as distinguished from the rest of the book (*o*).

The general rule is, that each successive edition, which is substantially different from the preceding ones, or which contains new matter of substantial amount or value, becomes entitled to copyright as a new work, and it is immaterial whether the new edition is produced by condensing, expanding, correcting, re-writing, or otherwise altering the original work; or by introducing notes, citations, or other additions. Nor is it essential that the new edition should be an improvement on the old, the sole question is whether it is substantially different. A few mere colourable alterations in the text or the addition of a few unimportant notes will not be enough to sustain copyright as in a new work. As Lord Kinloch said in *Black* v. *Murray* (*p*), to create a copyright by alterations of the text, these must be extensive and substantial, practically making a new book. With regard to notes, in like

(*l*) *Ager* v. *P. & O. Steamship* (1884); *Ager* v. *Collingridge* (1886), 2 T. L. R. 291.

(*m*) *Pitman* v. *Hine* (1884), 1 T. L. R. 39.

(*n*) *Walter* v. *Steinkopff*, (1892) 3 Ch. 489; *Exchange Telegraph Co.* v. *Central News*, (1897) 2 Ch. 48, and Chapter "Newspapers," *post*.

(*o*) 9 Sc. Sess. Cas. 3rd Ser. 341; *Hedderwick* v. *Griffin*, 3 Sc. Sess. Cas. 2nd Ser. 383. See *Thomas* v. *Turner* (1886), 33 Ch. D. 292; *Hutchins* v. *Sheard*, W. N. (1881) 20.

(*p*) 9 Sc. Sess. Cas. 3rd Ser. 341; *Hedderwick* v. *Griffin*, 3 Sc. Sess. Cas. 2nd Ser. 383 See *Thomas* v. *Turner* (1886), 33 Ch. D. 292.

manner, they must exhibit an addition to the work which is not superficial or colourable, but imparts to the book a true and real value, over and above that belonging to the text. This value may perhaps be rightly expressed by saying that the book will procure purchasers in the market on special account of these notes. There is involved in such annotation, and often in a very eminent degree, an exercise of intellect and an application of learning which place the annotator in the position and character of author in the proper sense of the word. It will still, of course, remain open to all to publish the text, which *ex hypothesi* is the same as in the original edition. But to take and publish the notes will be a clear infringement of copyright.

An action was raised in the Scotch Court of Session at the instance of Messrs. Black against Messrs. Murray and Son for a breach of copyright, and the infringement was said to be contained in a book published by the defenders in 1869, which purported to be an edition of the "Minstrelsy of the Scottish Border," collected by Sir Walter Scott, and it was stated in the title page to be a reprint of the original edition. The peculiarity of the case was that the original edition of the "Minstrelsy of the Scottish Border" was no longer protected by copyright; and, therefore, if the book was what its title represented it to be, a mere reprint of the original edition, the complaint of the pursuers could not be maintained. But they alleged that this was a false pretence on the face of the title page, and that while all the poems and ballads contained in the original edition of the "Minstrelsy" were reproduced in this volume, there was a considerable amount of other matter borrowed from works the copyright of which had not expired. The Lord President said that in the first complaint the pursuers alleged that the defenders had illegally copied and pirated from the copyright edition of the "Minstrelsy of the Scottish Border" the advertisement, or part thereof, prepared by Mr. John Gibson Lockhart, and that they had printed the same, or part thereof, as a preface to their volume, and, further, that they had copied from the "Minstrelsy" the notes, quotations, illustrations, and references, or the essential parts thereof. The defenders could have no excuse, if this were the case, for it was distinctly stated in that advertisement that this copyright edition contained matter which was not to be found in the original edition. That there might be a copyright of notes, even when the text was not copyright, was a fixed principle in law, and most deservedly so; for there was no doubt that the addition of good notes to a standard work was a task worthy of the highest literary talent

and reputation; and it must be remembered that Mr. Lockhart stood in a position of peculiar advantage as the editor and annotator of Sir Walter Scott's works, being his son-in-law and literary executor, and having opportunities during the lifetime of Sir Walter Scott to collect materials for the performance of such a task. His lordship, after quoting numerous passages, said there was no doubt that the editor of the defenders' book of 1869 had copied these notes of Mr. Lockhart in the most slavish manner, without even verifying or attempting to make them more accurate than Mr. Lockhart's. It was quite clear to his mind that there had been an appropriation of original matter and quotations, and therefore he held that this part of the pursuers' case had been completely made out. In the said complaint it was alleged that the defender had used notes from "Old Mortality" with reference to the skirmish of Drumclog, and a letter written by Claverhouse to the Earl of Linlithgow, and also a description of the Battle of Drumclog, on Loudon Hill. He was of opinion that the note with reference to the Battle of Drumclog stood in the same position as the notes to the "Minstrelsy," and there again he held that piracy had been committed. In regard to the next complaint—that the defender had copied from volume 8 of the poetical works, containing the "Lady of the Lake" and other poems, and an account of the "Massacre of Glencoe"—he was of opinion that there had been the same kind of piracy as in the notes to the "Minstrelsy." The Court granted costs to the plaintiffs (*q*).

Copyright in each edition.

The copyright in each edition will extend from the date of that edition, and will be wholly independent of the copyright in any preceding one (*r*). Copyright may be obtained for any number of editions, and it is immaterial whether copyright has existed or not in any previous one, but, *semble*, copyright in one edition will cover subsequent editions, except as regards new matter (*s*). And though no person but the proprietor of the copyright may bring out a new edition of the work, supposing the copyright to be subsisting, without his consent; yet if the work be not protected there is nothing to prevent any person from bringing out a new edition of the work and obtaining a valid copyright therein.

Copyright in abridgments.

Copyright may likewise exist in a genuine and just abridgment,

(*q*) *Black* v. *Murray*, Sol. J. Dec. 31, 1870; *Moffatt & Paige* v. *Gill* (1902), 86 L. T. 465.

(*r*) See *Murray* v. *Bogue* (1852), 1 Dr. 353, 365.

(*s*) *Hutchins* v. *Sheard*, W. N. (1881), p. 20.

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for it is said that an abridgment may with great propriety be called a new book (*t*), and therefore is an original literary work. Whether an abridgment is, or is not, a piracy of the original work is more doubtful; but this matter will be more appropriately dealt with in the chapter on "Infringement of Copyright" (*u*), and we have seen reasons for holding that the fact that a work is a piracy ought not of itself to disentitle it to copyright (*x*).

What constitutes an abridgment.

To constitute a true and equitable abridgment the entire work must be preserved in its precise import and exact meaning, and then the act of abridgment is an exertion of the understanding, employed in moulding and transfusing a large work into a small compass, thus rendering it less expensive, and more convenient both to the time and use of the reader. Independent labour must be apparent, and the reduction of the size of a work by copying some of its parts and omitting others, confers no title to authorship; and the result will not be an abridgment entitled to protection. To shorten a work by leaving out the unimportant parts is not to abridge it in a legal sense. To abridge in the legal sense of the word is to preserve the substance, the essence of the work, in language suited to such a purpose; language substantially different from that of the original. To make such an abridgment requires the exercise of the mind; labour, skill and judgment are brought into play, and the result is not merely copying.

Translations.

Translations are also original literary works, and consequently entitled to protection; of course, without prejudice to the rights of the owner of the copyright (if any) in the work translated (*y*).

Copyright in digests.

Copyright may also be had in a digest. A digest or a compilation differs from an abridgment. A digest or a compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangement of the works cited; the latter must adopt the arrangement of the work abridged to be a faithful abridgment. The former infringes the copyright if the matter transcribed when published impairs the value of the original book, while a fair abridgment, though it may injure the original, is possibly lawful (*z*).

(*t*) *Per* Lord Hardwick, *Gyles* v. *Wilcox* (1740), 2 Atk. 143.
(*u*) Chapter VIII. *post*.
(*x*) *Ante*, p. 52.
(*y*) *Byrne* v. *Statist Co.*, (1914) 1 K. B. 622. See Revised Convention of Berne, Article VI., *post*, Appendix B.
(*z*) See *post*, Chapter VIII. "Infringement of Copyright."

Head-notes of reports.

The digest of a report, usually included in and known as the head-note, is a species of property which will receive protection. "The head-note, or the side or marginal note of a report," said Mr. Justice Crowder, in *Sweet* v. *Benning* (*a*), "is a thing upon which much skill and exercise of thought is required, to express in clear and concise language the principles of law to be deduced from the decision to which it is prefixed, or the facts and circumstances which bring the case in hand within the same principle or rule of law or of practice." It may indeed be considered, perhaps, as in itself a species of brief and condensed report, the reporter furnishing in each case two reports, in one of which he gives the facts, the arguments, and the judgment at length; and in the other, an abstract of the decision, conveying the principle upon which it is founded and the pith and substance of the case. But whether thus regarded, or viewed in the manner adopted by Mr. Justice Maule, in the above cited case, namely, in the nature of an independent deduction from the report, and a succinct statement of the legal principles involved, or of the doctrine of law established by the decision, there is a sufficient exertion of mental power in the formation to render it substantially a subject of copyright.

Copyright in forms or precedents.

In a Scotch case the validity of the complainant's copyright in a collection of legal forms or "styles" was questioned, on the ground that in preparing them he had simply followed the directions prescribed by the statute; and that under the circumstances the forms prepared by two or more persons must be substantially the same. The Court held that if the statute had contained the forms themselves and the complainant had simply copied them, his copyright would have failed through want of originality. But, as the statute gave simply directions, it was an act of authorship to prepare the forms pursuant to such directions (*b*). Lord Fullerton in the case referred to observed: "It is said that owing to the particular nature of the styles they cannot be the subject of copyright, because they are drawn up precisely after the form prescribed in the statute, and because any styles relating to the same subjects as those given by the complainer must, if the directions of the statutes and phraseology of conveyancers were used, be expressed in the same manner exactly as those proposed by the complainer. Now it may be quite true that if the statute had

(*a*) (1855), 16 C. B. 491. See *D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288, 301, but there Lord Lyndhurst referred to digests such as Viner's "Abridgment" and Comyns' "Digest."

(*b*) *Alexander* v. *Mackenzie*, 9 Sc. Sess. Cas. 2nd Ser. 748.

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supplied certain forms by which the operations intended to be thereby regulated were to be done, if the statute had contained, as such statutes sometimes do, an appendix exhibiting certain schedules of forms which it was only necessary for any one to copy in order to avail himself of the provisions of the Act, then I hold that the reprinting of such forms in a separate publication would not give him a copyright in these forms. But the case here is different, for the statute only gives very general directions and descriptions of the styles that are to be used. The schedules are very general in their terms, and it is no doubt of great practical importance to suit these general directions to each case falling under the statute as it may arise. The preparing and adjusting of such writings require much care and exertion of mind. As to invention, that is a different thing: it does not require the exercise of original or creative genius, but it requires industry and knowledge."

Copyright in a title.

The titles to books, newspapers, and periodicals, though often coming before the Courts on the question of copyright therein, are not in themselves the proper subjects of this right. A title is no doubt, in one sense, a part of the work itself, for one cannot read a book or turn over the title-page without finding that the title is at the commencement of the work and sometimes on every page, yet it is rather the index to the whole than part thereof.

However intimately connected with the copyright in the work to which it is prefixed, the title is more properly a trade mark (*c*). It is not protected on the ground of any intrinsic merit or value possessed by itself, but, like other trade marks, is protected for the purpose of insuring the genuineness of the article to which it is attached.

Titles infringed.

The registered proprietors of "Bell's Life in London and Sporting Chronicle," published weekly, at the price of 5*d*., filed a bill against the proprietors and publishers of a new newspaper, called "The Penny Bell's Life and Sporting News," which was published at the price of a penny. The evidence produced showed that from the similarity of the two names mistakes had occurred, and were likely to occur, on the part of the public, and that inquiries had been made at the office of "Bell's Life in London," for "The Penny Bell's Life." On motion on behalf of the plaintiffs, the Court granted an injunction to restrain the defendants from the use of the words "Bell's Life" in the title of their

(*c*) *Longman* v. *Tripp* (1815), 2 Bos. & P. 67; *Ex parte Foss* (1858), 2 De G. & J. 230; *Bradbury* v. *Dickens* (1859), 27 Beav. 53.

newspaper, though no fraudulent intention was proved (*d*). So also in *Ingram* v. *Stiff* (*e*) an injunction was granted by Sir W. P. Wood, V.-C., to restrain the defendant from printing, publishing, or selling any newspaper or other periodical under the name of "The Daily London Journal," or under any other name or style of which the words "London Journal" should form part, and from doing or committing any act or default which might tend to lessen or diminish the sale or circulation of the plaintiff's periodical called "The London Journal."

In the case of the *Correspondent Newspaper Company* v. *Saunders* (*f*), where the publishers of "The Correspondent" newspaper sought to restrain the defendant from publishing another paper under the name of "The Public Correspondent," Lord Hatherley, when Vice-Chancellor, after holding that registration of a newspaper was of no avail without actual publication, went on to express a doubt whether in any case registration would protect the title of the paper as being included in the copyright, but did not doubt that a title could be acquired as in a trade mark.

And in a later case (*g*) the same judge, when Lord Justice, said that there appeared to him to be nothing analogous to copyright in the name of a newspaper; but that the proprietor had a right to prevent any other person from adopting the same name for any other similar publication (*h*).

Where precisely the same title taken.

There are two cases reported of novels with identical titles. In the case of *Weldon* v. *Dicks* (*i*) the plaintiff was the assignee of the copyright in the "Parlour Library" series consisting partly of original works, and partly of works which had been previously published. Amongst this series was a novel bearing the title "Trial and Triumph," which had been originally published in 1854, in a separate form in three volumes, and re-published in the "Parlour Library" series in 1860. In 1876 the plaintiff commenced to re-issue the series and was preparing for publication a new edition of "Trial and Triumph," which would be shortly published by him at the price of two shillings. The defendant had recently commenced to issue a series of books and novels under the general title of "Dicks' English Novels," and he had published in such series a novel under the title of "Trial and

(*d*) *Clement* v. *Maddick* (1859), 1 Giff. (Ch.) 98.
(*e*) (1859), 5 Jur. N. S. 947.
(*f*) (1865), 13 W. R. 804.
(*g*) *Kelly* v. *Hutton* (1868), L. R. 3 Ch. 703.
(*h*) *Borthwick* v. *The Evening Post* (1888), 37 Ch. 449.
(*i*) (1878), 10 Ch. D. 247.

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Triumph" at the price of sixpence. The plaintiff claimed an injunction to restrain the defendant from publishing or selling any book or publication under that title, and the injunction was granted by Malins, V.-C., though the defendant was in entire ignorance that the title "Trial and Triumph" had been previously used, and though his work was quite distinct in its plot and subject-matter from the plaintiff's book. The learned judge said: "It is plain that every man who publishes a book under a particular name, the name forming part of the book, has a copyright extending to forty-two years or the life of the author, whichever lasts longest: therefore the author of 'Trial and Triumph' when it was published in 1854 acquired title for that period." If, however, the right to the title rested on copyright, it is difficult to see how the defendant had infringed the plaintiff's right, seeing he had never seen or heard of his book; but the judge granted the injunction also on the ground that the public were likely to be deceived.

The second case of novels with identical titles is *Dicks* v. *Yates* (*k*). There the defendant had published a novel in the "World," a sixpenny newspaper, with the title "Splendid Misery," in ignorance that that was the title of a novel which had appeared a few years before in the plaintiff's periodical "Every Week," published at a penny a number. It was, however, proved that, many years before the plaintiff's novel was published, another novel had borne the same title. The Court of Appeal, reversing Bacon, V.-C., refused the plaintiff an injunction, Jessel, M. R., and Lush, L. J., on the ground of lack of originality or likelihood of mistake on the part of the public, and James, L. J., on the ground that there had been no infringement. "I do not say," said the Master of the Rolls, "that there could not be copyright in a title, as, for instance, in a whole page of title, or something of that kind, requiring invention. However, it is not necessary to decide that. But, assuming that there can be copyright in a title, what does this copyright mean? It means the right of multiplying copies of an original work. If you complain that part of your work has been pirated, you must show that that part is original, and if it is not original, you have no copyright. How can the title 'Splendid Misery' be said to be original, when the very same words, for the very same purpose, were used nearly eighty years ago?" Later on, however, he stated that it appeared to him that no authority binding on that Court had

(*k*) (1881), 18 Ch. D. 77.

been produced to show that there could be copyright in such a title as that, and with this opinion Lord Justice James expressed his concurrence, Mr. Justice Lush desiring to keep the point open.

There is, therefore, no express decision that there cannot be copyright in a title, though it must be admitted, the current of authority is in favour of that proposition, at any rate, unless there be ingenuity in the title (*l*). The Courts would, however, without doubt, grant an injunction if one person deliberately appropriated the title of a successful novel for the title of his novel, either on the ground of infringement of copyright, or on the ground that such conduct was evidence of an intention to deceive (*m*).

In the case of *Broemel* v. *Meyer* (*n*) the plaintiff had written a play which she had entitled, "Where there's a Will there's a Way," the plot in which turned upon the fortune of two lovers, whose happiness depended upon a will, and the word "will" in the title of the play meant testamentary disposition. The defendant was the author of a play entitled, "Where there's a Will ——," and in that title the word "will" also meant testamentary disposition. The plaintiff contended that the use of these words as the title of a play with the *double entendre* rendered the title an original one, and claimed copyright in it, but Mr. Justice Warrington held that she could not appropriate the words of a familiar proverb to herself by giving to them a peculiar meaning, and he refused to grant an injunction.

Where exact title not taken.

When the exact title is not copied, an injunction will not be granted unless the title and appearance of the defendant's publication are designed to deceive persons who are ordinarily intelligent and careful. Thus, in a case where the well-known title of "Punch" was taken, with the addition thereto of "Judy," although the Court held that the defendant would not be at liberty to use "Punch" singly as a title, yet it refused to restrain the use of a title made up of the two words, on the ground that in combination they did not form such a title as to deceive persons of ordinary intelligence. "The defendants," said Vice-Chancellor Malins, "clearly have no right to use a name which is calculated to mislead or deceive the public in purchasing; and if

(*l*) *Crotch* v. *Arnold* (1909), 54 Sol. J. 49.

(*m*) In *Menchen* v. *Elite Sales Agency* (*Times*, 17th Dec., 1912), both plaintiff and defendant had given the title of "The Miracle" to a cinematograph production, and upon an application for an interlocutory injunction the defendant, at the judge's suggestion, agreed to alter his title. In *Elkin & Co.* v. *Francis Day* (*Times*, 27th Oct., 1910), the defendants were restrained from publishing the "Blue Bird Valse" as calculated to lead to the belief that it was the music of an opera of that name.

(*n*) (1912), 29 T. L. R. 148.

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I thought, on the whole, that their journal was calculated to mislead persons of ordinary intelligence (for these are the persons I must consider), I should grant the injunction. Now 'Punch' is well known both in name and appearance, and its price is threepence. Could anyone be misled into buying this other paper instead, which has the words 'Punch and Judy' printed on it in distinct letters with a different frontispiece, and its price a penny? I am clearly of opinion that the mass of mankind would not be so misled" (*o*).

In all these cases the plaintiff must prove first that his publication has been in the market long enough to acquire a public reputation (*p*); and secondly, that the title used by the defendant is calculated to deceive the public (*q*). Mere intention to deceive is not sufficient, there must be grounds for apprehending actual deception (*r*). Where there is a close resemblance in general style and arrangement of the contents of the book itself (*s*), or a claim of certain attributes which are known to belong to the original work (*t*), or a sudden change from an unobjectionable title, style of publication, and arrangement of contents to a style more closely resembling the plaintiff's (*u*), an intention to deceive may be established.

Examples.

In *Hogg* v. *Kirby* (*x*) the proprietor of "The Wonderful Magazine" succeeded in stopping the publication of "The Wonderful Magazine, New Series, Improved." So in *Chappell* v. *Sheard* (*y*), and *Chappell* v. *Davidson* (*z*), where the plaintiff's song was entitled "Minnie," and those of the respective defendants "Minnie Dale," and "Minnie, Dear Minnie"; and where the purchaser of "The Britannia" newspaper incorporated it with the "John Bull," under the name of "The John Bull and Britannia," and the former publisher of "The Britannia" began to publish "The True Britannia" (*a*), injunctions were issued. But although, as we have seen, in *Ingram* v. *Stiff* (*b*) the "London Journal" succeeded in preventing a rival paper

(*o*) *Bradbury* v. *Beeton* (1869), 18 W. R. 33.
(*p*) *Licensed Victuallers' Newspaper* v. *Bingham* (1888), 38 Ch. D. 139.
(*q*) See *Hall* v. *Barrow* (1863), 4 De G. J. & S. 150; *Chappell* v. *Davidson* (1855), 2 K. & J. 123; cf. *Warwick Tyre Co.* v. *New Motor Co.*, (1910) 1 Ch. 248.
(*r*) *Borthwick* v. *Evening Post* (1887), 37 Ch. D. 449.
(*s*) *Mack* v. *Petter* (1872), L. R. 14 Eq. 431; *Corns* v. *Griffiths*, W. N. (1873) 93.
(*t*) *Chappell* v. *Sheard* (1855), 2 K. & J. 117.
(*u*) *Corns* v. *Griffiths*, *supra*; *Metzler* v. *Wood* (1878), 8 Ch. D. 606.
(*x*) (1803), 8 Ves. 215.
(*y*) *Supra.*
(*z*) *Supra.*
(*a*) *Prowett* v. *Mortimer* (1856), 4 W. R. 519.
(*b*) (1859), 5 Jur. N. S. 947.

from appearing under the title of the "Daily London Journal," and in *Clement* v. *Maddick* (*c*) "Bell's Life" succeeded in stopping a "Penny Bell's Life," the "Magazine of Fiction" failed to obtain an injunction against the "Monthly Magazine of Fiction" (*d*). In a case in which the proprietor of a book entitled "Post Office Directory of West Riding of Yorkshire," which included the town of Bradford, sought to restrain the intended publication by the defendants of a directory of Bradford with the words "Post Office" forming part of the title, an injunction was refused. It appeared that many years previously an officer of the London Post Office had published, with the assistance of the letter carriers, a directory which he called "Post Office" Directory. Subsequently, a brother of the plaintiff became the publisher and proprietor of the work, which was carried on by him till 1846, with the assistance of the letter carriers as before. After 1846 the plaintiff's brother was prohibited by the Post Office authorities from employing the letter carriers, and he thereupon employed a large staff of private agents to obtain the information necessary for the continuance of his directory, which was still called the "Post Office" Directory. In 1852 the plaintiff began publishing country directories, making use of his brother's staff of agents, and, with his brother's consent, called his directories "Post Office" Directories. The plaintiff alleged that his directories were distinguished and known in the trade and to the public as "Post Office Directories," and that the term "Post Office" was a very valuable trade distinction. The defendants had received assistance of the postmaster at Bradford, and it was not alleged that there had been any copying or colourable imitation of any part of the text of the plaintiff's work, neither was there any similarity in price or appearance between the two directories, and the only question was as to the plaintiff's exclusive right to the use of the word "Post Office" as applied to directories. Vice-Chancellor Bacon was of opinion that to support a claim to restrain the use by another of a name on the ground of it being a *quasi* trade-mark, it was necessary to show that the wares offered for sale were so nearly identical that the use of the particular trade-mark or name might mislead unwary purchasers. He considered that the defendants were clearly entitled to publish a directory of Bradford, and as no person wishing to possess the plaintiff's "Post Office Directory for the West Riding of Yorkshire" could be misled or deceived into

(*c*) (1859), 1 Giff. 98.
(*d*) *William Stevens* v. *Cassell & Co.*, *Times*, 7th Feb., 1913.

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buying the defendant's "Post Office Bradford Directory," judgment must be given for the defendants, and on appeal the Court affirmed the judgment of the Vice-Chancellor (*e*).

Nom de plume.

The Court has also restrained the publisher of a work from advertising it in such a way as was calculated to lead the public into believing that it was another work (*f*); and where a writer had been in the habit of contributing to a newspaper under a *nom de plume*, upon his severing his connection with the paper he was held entitled to his *nom de plume* as against the proprietor of the newspaper (*g*).

No copyright in a libellous, immoral, or obscene work.

Copyright cannot exist in a work of libellous, immoral, obscene, or irreligious tendency (*h*); because in order to establish such a claim the author must, in the first place, show a right to sell; and this he cannot possibly do, he himself not being able to acquire a property therein.

Dr. Priestley's case.

The first case establishing the doctrine that there could not be property in a work of the above description, is that known as Dr. Priestley's (*i*). The plaintiff brought an action against the hundred to recover damages for injury sustained by him in consequence of the riotous proceedings of a mob at Birmingham, and, among other property alleged to have been destroyed, claimed compensation for the loss of certain unpublished manuscripts, offering to produce booksellers as witnesses to prove that they would have given considerable sums for them. On behalf of the hundred it was alleged that the plaintiff was in the habit of publishing works injurious to the government of the State; but no evidence was produced to that effect. Upon this the Lord Chief Justice Eyre remarked, that if any such evidence had been produced, he should have held it was fit to be received as against the claim made by the plaintiff. Several passages were read from the work itself in support of the charge as to its tendency (*i*).

Though Lord Eldon appears to base his decision in *Southey* v. *Sherwood* (*k*) upon this case before Lord Chief Justice Eyre, yet

(*e*) *Kelly* v. *Byles* (1886), 13 Ch. D. 682; *Primrose Press Agency* v. *Knowles* (1885), 2 T. L. R. 404.

(*f*) *Seeley* v. *Fisher* (1841), 11 Sim. 581.

(*g*) *Landa* v. *Greenberg* (1908), 24 T. L. R. 441, apparently decided on the ground that the defendants were using the name in a manner calculated to deceive the public: see *post*, p. 76.

(*h*) *Stockdale* v. *Onwhyn* (1826), 5 B. & C. 173; *Hime* v. *Dale* (1803), cited 2 Camp. 28; *Walcot* v. *Walker* (1802), 7 Ves. 1; *Poplett* v. *Stockdale* (1825), 1 Ryan & M. 337; *Gee* v. *Pritchard* (1818), 2 Swans. 413; *Southey* v. *Sherwood* (1817), 2 Mer. 435; *Murray* v. *Benbow* (1822), 1 Jac. 474; *Lawrence* v. *Smith*, *ib.* 471; *Fores* v. *Johnes* (1802), 4 Esp. 97; *Gale* v. *Leckie* (1817), 2 Stark. N. P. C. 107; *Baschet* v. *London Illustrated*, (1900) 1 Ch. 73.

(*i*) See 2 Mer. 437.

(*k*) (1817), 7 Mer. 435.

it will be at once perceived that there is a material difference between them, for in the case before Lord Eldon, Southey claimed the right to prevent publication, whereas in the case before Lord Chief Justice Eyre, Dr. Priestley sued for the loss of profits, which he alleged he might have realised by publication—a point to which he never could have lawfully proceeded.

No copyright in a work of an irreligious tendency.

The above cases were followed in *Walcot* (*Peter Pindar*) v. *Walker* (*l*), and in *Laurence* v. *Smith* (*m*). In the latter case the doctrine was carried very far. The plaintiff having published a work under the title of "Lectures on Physiology, Zoology, and the Natural History of Man," filed a bill to restrain the defendant from selling a pirated edition, and obtained an injunction upon motion made *ex parte*. The defendants then moved to dissolve the injunction, and argued that the nature and general tendency of the work in question was such that it could not be the subject of copyright, and in support of this argument several passages in it were referred to, which, it was contended, were hostile to natural and revealed religion, and impugned the doctrines of the immateriality and immortality of the soul. Lord Eldon, in dissolving the injunction, said: "Looking at the general tenor of the work, and at many particular parts of it, recollecting that the immortality of the soul is one of the doctrines of the Scripture, considering that the law does not give protection to those who contradict Scripture (*n*), and entertaining a doubt, I think a rational doubt, whether this book does not violate the law, I cannot continue the injunction. The plaintiff may bring an action, and when that is decided, he may apply again." From a note by the editor, we learn that in 1822, in *Murray* v. *Benbow*, Mr. Shadwell, on the part of the plaintiff, moved for an injunction to restrain the defendants from publishing a pirated edition of Lord Byron's poem of "Cain." The Lord Chancellor, after reading the work, refused the motion, on grounds similar to those stated in the above judgment; and in another case, Vice-Chancellor Leach dissolved an injunction which had been granted restraining an infringement of the same poet's work, "Don Juan" (*o*).

(*l*) (1802), 7 Ves. 1; see *Stockdale* v. *Onwhyn* (1826), 5 B. & C. 173; *Poplett* v. *Stockdale* (1825), Ry. & M. 337.

(*m*) (1822), 1 Jac. 471; 23 R. R. 123.

(*n*) "Christianity is part and parcel of the law of the land:" Kelly, C. B., in *Cowan* v. *Milbourn* (1867), L. R. 2 Ex. 230; but at the present day it is generally considered permissible to attack the Christian religion so long as it is not done in an offensive manner. It would probably be held equally objectionable to attack the religious beliefs of any body of persons in an offensive manner.

(*o*) *Murray* v. *Benbow* (1822), 1 Jac. 474 n.

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Referring to Lord Eldon's decisions in the above cases, Mr. Justice Story says: "The soundness of the general principle can hardly admit of question. The chief embarrassment and difficulty lie in the application of it to particular cases. If a Court of equity, under colour of its general authority, is to enter upon all the moral, theological, metaphysical, and political inquiries, which in the past times have given rise to so many controversies, and in the future may well be supposed to provoke many heated discussions, and if it is to decide dogmatically upon the character and bearing of such discussions, and the rights of authors growing out of them; it is obvious that an absolute power is conferred over the subject of literary property, which may sap the very foundations on which it rests, and retard, if not entirely suppress, the means of arriving at physical as well as at metaphysical truths. Thus, for example, a judge who should happen to believe that the immateriality of the soul, as well as its immortality, was a doctrine clearly revealed in the Scriptures (a point upon which very learned and pious minds have been greatly divided), would deem any work anti-Christian which should profess to deny that point, and would refuse an injunction to protect it. So, a judge who should be a Trinitarian might most conscientiously decide against granting an injunction in favour of an author enforcing Unitarian views; when another judge, of opposite opinions, might not hesitate to grant it" (*p*).

"Life of Jesus."

The very case surmised by Mr. Justice Story arose in the year 1874 in the Scotch Courts. A work entitled "The Life of Jesus re-written for Young Disciples," by Mr. Page Hopps, Unitarian minister, Glasgow, was published by Messrs. Trübner & Co., London, at 1*s.* a copy. The defendant, Harry Alfred Long, Protestant missionary, about a year after its appearance, issued a review containing the whole of Mr. Hopps's book, with notes and criticisms attached to each chapter, and this publication was sold at 6*d*. Hopps applied for an interim interdict, which being granted, he subsequently sought to have it declared perpetual. The plea put forward by the defendant was that the pursuer could not claim the protection of the law for the book, as it was blasphemous and heretical, denying tacitly or expressly the divinity of Christ. To this the pursuer replied that apart from the fact that it was written by a Unitarian, and set forth the Unitarian view of the Saviour's life, a more unobjectionable book did not exist. Mr. Sheriff Buntine, of the Sheriff's Court of Lanarkshire,

(*p*) 2 Story's Eq. Jur. p. 936.

declared the interdict perpetual, and found Long liable in expenses, holding that, though the doctrine that Jesus Christ is the second person of the Trinity is statute law, yet the public are entitled to criticise and controvert any part of the statute law, provided they do it in such a way as not to endanger the public peace, safety, or morality. Mr. Hopps, the sheriff considered, violated none of these conditions, and was entitled to the protection of the law.

No copyright in a work of a scandalous nature.

In the case of *Hime* v. *Dale*, referred to in *Clementi* v. *Goulding* (*q*), counsel called attention to the libellous nature of the publication, and contended that it was of such a description that it could not receive the protection of the law. Lord Ellenborough, however, stated that though if the composition had appeared on the face of it to be a libel so gross as to affect the public morals, he should advise the jury to give no damages, as he knew the Court of Chancery on such an occasion would grant no injunction, yet he thought the particular publication ought not to be considered one of that kind. But in another case (*r*) where an action was brought for the purpose of recovering compensation in damages for the loss alleged to have been sustained by the publication of a copy of a book which had been first published by the plaintiff; and at the trial it was proved that the work was the memoir of Harriette Wilson, which professed to be a history of the amours of a courtezan, that it contained in some parts matter highly indecent, and in others matter of a slanderous nature upon persons named in the book, Abbott, C. J., directed a nonsuit, and in refusing a rule *nisi* for a new trial said: "In order to establish such a claim (*i.e.*, to compensation for infringement of his copyright), he must, in the first place, show a right to sell, for if he has not that right, he cannot sustain any loss by an injury to the sale. Now I am certain no lawyer can say that the sale of each copy of this work is not an offence against the law. How then can we hold that by the first publication of such a work a right of action can be given against any person who afterwards publishes it? It is said that there is no decision of a court of law against the plaintiff's claim. But upon the plainest principles of the common law, founded as it is, where there are no authorities, upon

(*q*) (1803), 2 Camp. 27.

(*r*) *Stockdale* v. *Onwhyn* (1826), 5 B. & C. 173; see *Poplett* v. *Stockdale* (1825), Ry. & M. 337, where it was held that the printer of the work, the subject of the last case, could not maintain an action for his bill against the publisher who employed him. Best, C. J., said the defendant was equally guilty with the plaintiff, but that he would not, as Lord Kenyon once said, sit to take an account between two robbers on Hounslow Heath.

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common sense and justice, this action cannot be maintained. It would be a disgrace to the common law could a doubt be entertained upon the subject, but I think that no doubt can be entertained, and I want no authority for pronouncing such a judicial opinion."

No copyright in works intended to deceive the public.

Neither can there be copyright in works intended to deceive purchasers, and therefore, in an action for pirating a work of a devotional character, falsely professing to be a translation from the German, of an author who had a high reputation for writings of this kind, the object being to deceive purchasers, and give the work a value which it would not otherwise have possessed, judgment was given for the defendants. Chief Justice Tindal, in the case referred to (*s*), drew a distinction between such a work and books of instruction or amusement which have been published as translations, whilst they have, in fact, been original works, or which have been published under an assumed instead of a true name. Such, for instance, was the case of "The Castle of Otranto," professing to be translated from the Italian, and of innumerable works published under assumed names—voyages, travels, biographies, works of fiction or romance, and even works of science and instruction; for, in all these instances the misrepresentation is innocent and harmless. But the facts stated in the pleas in the case under consideration imported a serious design on the part of the plaintiff to impose on the credulity of each purchaser, by fixing on the name of an author who had a real existence, and who possessed a large share of weight and estimation in the opinion of the public. The object of the plaintiff was, not merely to conceal the name of the genuine author, and to publish opinions to the world under an innocent disguise, but it was to practise upon some of the best feelings of the public, namely, their religious feelings; and thus to induce them to believe that the work was the original work of the author whom he named, when he knew it not to be so. The transaction, therefore, ranged itself under the head of *crimen falsi*. It was a species of obtaining money under false pretences; and as the very act of publishing the work, and the sale of the copies to each individual purchaser, were each liable to the objection above stated, the Chief Justice thought the plaintiff could not be considered as having a valid and subsisting copyright in the work, the sale of which produced such consequences, or that he was capable of maintaining an action in respect of its infringement. Cases in which

(*s*) *Wright* v. *Tallis* (1845), 1 C. B. 893.

a copyright has been held not to subsist, where the work is one which is subversive of good order, morality, or religion, did not bear, he thought, on the case before him, but they had so far analogy, that the rule which denied the existence of copyright in those cases, was the rule established for the benefit and protection of the public.

So decided on the ground of fraud.

This decision proceeded more on the ground of fraud than invasion of literary property, and to the principle of this decision may also be referred the case of *Seeley* v. *Fisher* (*t*), where an injunction was granted to restrain A. from putting forth his work under advertisements which the Court below thought tended to produce the impression, contrary to the truth, that it contained matter which was in fact the property of B. But if there be no such fraudulent misrepresentation, but only statements which, whether true or false, tend merely to encourage a belief that the matter contained in A.'s work is truly valuable matter, and that contained in B.'s is spurious and of no value, an injunction will not be granted to restrain such representations; and on the ground that such was the true effect of the advertisements, in the last cited case, the Lord Chancellor dissolved the injunction.

Where the plaintiff was the writer and composer of songs and music called "Claribel," the defendants were the music publishers carrying on business under the name of "Sinclair and Co.," and it appeared that four songs named respectively "Under the Willows," "Spinning by her Cottage Door," "I'll cast my Rose on the Waters," and "Spring Carol," the words only of which were written by "Claribel," had been published and sold by the defendants, with the name of "Claribel" appearing on them thus: "'Under the Willows,' song written by Claribel," no mention being made of the name of the composer of the music of the song; and it was contended by the plaintiff that the above mode of publication was intended to deceive, and had deceived, people into the belief that not merely the words, but also the music of these songs was by "Claribel," and he prayed that the defendant might be restrained from so publishing; the Master of the Rolls held that the injunction must be refused, as he was of opinion that the words "written by" referred only to the words of the songs, and did not mean "written and composed," and that ordinary purchasers using ordinary caution could not be deceived into thinking that the music was composed by "Claribel" (*u*).

But where a publisher advertised for sale certain poems, which

(*t*) (1841), 11 Sim. 581.
(*u*) *Barnard* v. *Pillow*, W. N. (1868) 94.

CAP. II. he represented to be the work of Lord Byron, who was abroad, an injunction was granted until answer or further order to restrain the publication, Lord Byron's agents deposing to their belief that the poems were not Lord Byron's work and to circumstances rendering it highly improbable that they were so, and the defendant refusing to swear to his belief that they were written by Lord Byron (*x*).

In a more recent case (*y*), the plaintiff published an illustrated catalogue of trucks, trolleys, and barrows made by him. Many of the odd pages were headed "Inventor, patentee, and sole maker," and many of the even pages were headed "Slingsby's Patent." The plaintiff had no English patent for the various articles represented, though he had certain foreign patents. The catalogue also contained pictures of buildings on which the plaintiff's name was written in large letters, although he did not occupy the whole of them. The defendants had admittedly copied the plaintiff's catalogue, but the latter was refused an injunction upon the ground that his statements as to his being patentee, &c., were calculated to deceive the public, and that he was attempting to get trade regardless of the way in which it was obtained.

From th[illegible]ve cases it will be seen that the Court will refuse protection to a work which is either fraudulent or calculated to seriously mislead the public, but it is submitted that their principle would not be extended so as to disentitle a work to protection simply because that work infringes the copyright of another work (*z*)—that is to say, in the absence of special circumstances, such as fraud.

(*x*) *Ld. Byron* v. *Johnston* (1816), 2 Mer. 29.
(*y*) *Slingsby* v. *Bradford Patent Truck Co.*, (1905) W. N. 122.
(*z*) *Ante*, p. 52.

CHAPTER III.

THE SUBJECTS OF DRAMATIC AND MUSICAL COPYRIGHT.

Copyright and performing right.

THE next class of works referred to in sect. 1 of the Copyright Act, 1911, after literary works, are "original dramatic, and musical works." These works naturally fall to be considered together, because in both cases the authors probably expect to reap at least some portion of their reward from the public performance of their works. The author of a musical or dramatic composition—and, indeed, under the new Act, the author of any work whatsoever—has two distinct rights in his composition: one, that of copyright proper, that is to say, the right to prevent the multiplication of copies of the piece itself; the other, what may be called the acting right or performing right, that is to say, the right to prevent other persons from publicly representing or performing the piece without the author's consent. These two rights are quite distinct, each being a separate property, and each capable of being assigned without the other.

Publication.

As to copyright proper, both musical and dramatic compositions, when written or printed, are protected like other literary works; but public performance of a dramatic or musical work is not, under the new Act, a publication of the work (*a*), and such a work existing only in manuscript must comply with the conditions requisite for protection as an unpublished work (*b*), notwithstanding that it may have been first publicly performed in England.

Performing right now attached to all works.

Under the old law, performing rights could only be claimed in respect of any "tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment" (*c*), or in respect of "any musical composition" (*d*); but under the new Act, the right to perform a work in public is included in the copyright of any work whatsoever (*e*).

(*a*) Sect. 1 (3).
(*b*) See *ante*, p. 27.
(*c*) 3 & 4 Will. IV. c. 15, s. 1.
(*d*) 5 & 6 Vict. c. 45, ss. 20, 21.
(*e*) Sect. 1 (2).

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Importance of distinction between literary and dramatic and musical works.

The distinction, therefore, between a dramatic work or musical work and a literary work is not of the same importance as under the old law, yet it is one that is not wholly immaterial. For instance, it is only in the case of a dramatic work that the conversion of it into a novel or other dramatic work is forbidden (*f*), and only in the case of the like works that performance in public is expressly stated not to be a publication of the work (*g*). Again, short passages may be taken for school books from "literary works," but possibly not from dramatic or musical works (*h*), and it is only "musical works" which may be compulsorily reproduced mechanically upon the terms of payment of a royalty (*i*). Moreover, what is a matter of still greater importance, musical and dramatic pieces may be entitled to protection, notwithstanding that they do not exist as literary works at all.

Definitions.

This last point arises from the definition of a dramatic work contained in sect. 35, which enacts that that expression shall "include" any "piece for recitation, choreographic work, or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise" (*k*). On the other hand, the Act contains no definition of a musical work.

The definition of a dramatic work is adapted from Art. 2 of the Revised Convention of Berne (*l*). Under the old law, possibly, neither a pantomime nor a choreographic work was entitled to protection (*m*). In *Tate* v. *Fulbrook* (*n*) it was stated by the Court of Appeal that a dramatic work was not entitled to be protected against piracy by public performance unless it was capable of being printed and published. "Scenic effects, taken by themselves and apart from the words and incidents of the piece, are not," said Lord Justice Farwell, "the subject of copyright (*o*), because they cannot be the subject of printing and publication. Nor do I say that scenic effects may not be protected as part and parcel of the drama: scenes do, of course, form part of a drama,

Tate v. *Fulbrook*.

(*f*) Sect. 1 (2) (b).
(*g*) Sect. 1 (3), but *quære* whether public performance could be a "publication" of any work. *Ante*, p. 38.
(*h*) Sect. 2 (1) (iv).
(*i*) Sect. 19 (2).
(*k*) Cinematograph productions are also included, but these are dealt with in a separate chapter: see Part III., *post*.
(*l*) Appendix B.
(*m*) *Karno* v. *Pathé Frères* (1908), 99 L. T. 114; (1909), 100 L. T. 260. In *Lee* v. *Simpson* (1847), 3 C. B. 871, the written introduction to a pantomime was protected, but it is not clear that the protection extended to the pantomime itself.
(*n*) (1908) 1 K. B. 821.
(*o*) This is contrary to the dictum of Brett, J., in *Chatterton* v. *Cave* (1877), as reported in 33 L. T. 256.

and it is the dramatic piece, as a whole, that is protected by the Act. It is essential, however, to such protection that there should be something in the nature of a dramatic entertainment, for a mere spectacle standing alone is no more within the Act than a singer who sings in character costume is within it." The facts of that case were that the plaintiff complained of the piracy of his sketch called "Motoring" by the defendant's sketch called "Astronomy." Both sketches were entertainments in the form of comic dialogue grounded on very slight dramatic action. The defendant used different words, but the plaintiff complained that the defendant copied certain incidents, the "make-up" of the actors from his sketch, and also that he used the same "gag." The Court held that the plaintiff could have no copyright in the incidents, the "make-up," or the "gag" (*p*).

How far this decision holds under the new Act.

It is not very clear what the Court meant by holding in this case that "there must be matter capable of being printed and published," for a description of a scenic effect might be printed and published, but their meaning apparently was that some words to be spoken or sung by an actor or actors were necessary before copyright could be claimed. If this be so, it is submitted that the new Act has effected an alteration in the law, for choreographic works or entertainments in dumb show are, as we have seen, expressly included in the class of dramatic works. It is true that "the acting form" must be "fixed in writing or otherwise." A mere description of the movements to be followed would be sufficient to fix the acting form, and this description need not even be in writing; any signs commonly used by the profession to denote certain movements or series of movements, or even any picture, photograph, or cinematograph production consisting of a series of films, would answer the requirements of the Act. At the same time, the actual decision in *Tate* v. *Fulbrook*, to the effect that mere scenic effects are not the subject of protection, seems to be correct, even under the new Act. Under that Act a work must be a dramatic work, pure and simple, or a choreographic work, or a dumb show. A dramatic work, pure and simple, probably predicates words spoken or sung; choreographic works and dumb shows predicate action (*q*). Scenic effects, characters, "get-up," and so forth are not the subjects of protection, apart from either words or defined movements, but, as was admitted by the Lords Justices in

(*p*) In *Rees* v. *Robbins* (*Times*, 4th July, 1914), the Court doubted whether there could be copyright in the plot of a play: see *post*, Chapter VIII., "Infringement of Copyright."

(*q*) Cinematograph productions are expressly protected, but these convey the illusion of motion.

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Tate v. *Fulbrook* (*r*), once you have dialogue, scenic effects become accessory to the dramatic work, and the whole becomes the subject of copyright (*s*). If the scenic effects are fitted to a totally different dialogue complaint apparently cannot be made; but, if the dialogue is not dissimilar, the fact that the scenic effects also correspond with those found in the earlier work may be evidence of plagiarism.

"Gag" not the subject of copyright.

"Gag" was held not to be the subject of copyright in *Tate* v. *Fulbrook* upon the grounds that, generally speaking, the author of the "gag" is not the writer of the play, but the actor who speaks the words, and that, even if the writer of the play and the speaker of the "gag" should happen to be the same person, the "gag" is not a permanent part of the play, but is intended to be changed from time to time. The new Act, it is thought, makes no alteration to the law in this respect.

As regards what is necessary to constitute a "dramatic work," the judges under the old law were somewhat hampered by the definition contained in the Dramatic Copyright Act, 1833 (*t*), which gave to the authors of "any tragedy, comedy, play, opera, farce, or other dramatic piece or entertainment," the sole liberty of performing it. The Literary Copyright Act (*u*) further declared that "the words 'dramatic piece' shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment." The Courts held that the words "other dramatic entertainment" must be construed *ejusdem generis* with the words "tragedy, comedy, play, opera, and farce." It was mainly for this reason that the Lords Justices held, in the case of *Tate* v. *Fulbrook* (*x*), above alluded to, that a dramatic work, in order to become entitled to copyright, must be capable of being printed and published. There is no such hampering definition in the Copyright Act, 1911, and it may be that the expression "dramatic work" in that Act will receive a more liberal interpretation than the expression "dramatic piece" in the earlier Acts.

What is a "musical work"?

It is perhaps unfortunate that there is no definition of a "musical work" in the Act, although there is such a definition in the Musical (Summary Proceedings) Copyright Act, 1902,

(*r*) (1908) 1 K. B. 832; see *Bishop* v. *Viviana* (*Times*, 15th Jan., 1909), where it was held under the old law that there could be no copyright in a dance.

(*s*) In like manner, in the case of an opera, the music and the words together form one dramatic work, and, it is submitted, the writer of the words and the composer of the music are together authors of a single work.

(*t*) 3 & 4 Will. IV. c. 15.

(*u*) 5 & 6 Vict. c. 45.

(*x*) (1908) 1 K. B. 821.

which remains unrepealed (*y*). That Act defines a musical work as meaning "any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced," thus expressly confining musical works to those which are printed or written. The Act of 1902 was passed with a view to protecting music publishers from the depredations of the street hawkers of pirated music, and there seems to be no reason why the definition of a musical work contained therein should be imported into the Copyright Act, 1911. The question is, whether if A. improvises a tune in B.'s presence, which B. carries away in his head, and subsequently publishes, A. has copyright in the tune, which he can sue B. for infringing? Probably A. has no such a copyright in his tune, and, in any case, the difficulties in the way of his proving that B.'s published work is an infringement of his (A.'s) improvised tune will be well-nigh insuperable. It is a musical "work" which the Act protects, and the expression seems rather to imply that the tune shall be written or printed before it becomes entitled to copyright, and this view is confirmed by the provision that in the case of an entertainment in dumb show or a choreographic work the scenic arrangement or acting form must be fixed in writing or otherwise (*z*). Against this may be set the fact that lectures and speeches are clearly the subject of copyright (*a*).

Musical work may also be a dramatic work.

That a musical work may also be a dramatic work has been decided in several cases. An opera, not less than a play without music, is a drama. In *Russell* v. *Smith* (*b*) it was decided that a song which related the burning of a ship at sea, and the escape of those on board, describing their feelings in vehement language, and sometimes expressing them in the supposed words of the suffering parties, was dramatic, even though it was sung by one person only, sitting at a piano, giving effect to the verses by the delivery, but not assisted by scenery or appropriate dress. Again, in *Clark* v. *Bishop* (*c*), the Court held a song, "Come to Peckham Rye," which had little, if any, of the dramatic character, to be a dramatic piece.

Some doubt as to the correctness of these decisions is, however, *Fuller* v. *Blackpool*

(*y*) 2 Edw. VII. c. 15, s. 3, *post*, Chapter on "Remedies for Infringement of Copyright."

(*z*) Sect. 35. Definition "Dramatic Work," cf. *Rees* v. *Robbins* (*Times*, 7th July, 1914).

(*a*) *Ante*, p. 47, and see sects. 1 (2), 2 (v).

(*b*) (1848), 12 Q. B. 217.

(*c*) (1872), 25 L. T. 908; see also *Roberts* v. *Bignell* (1887), 3 T. L. R. 552.

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Winter Gardens.

raised by the case of *Fuller* v. *Blackpool Winter Gardens* (*d*), where it was held that the song "Daisy Bell," sung at the defendants' theatre in costume, and in a dramatic play or burlesque during the run of the piece, was not dramatic. In his judgment in this case Lord Justice A. L. Smith remarked (*e*): "I think that to constitute a song a dramatic piece it must be such a song as, for its proper representation, acting, and possibly scenery, formed a necessary ingredient, and that if neither of these be requisite to the efficient representation of the song, it is not a dramatic piece. It is an entire misnomer to call a mere common ordinary music-hall song, which required neither acting nor scenery for its production, a dramatic piece, for it is, in truth, nothing of the kind."

Musical plays.

In the case of an opera or other musical play it often happens that the words and the music are the works of different authors. If these collaborate to produce a musical play, can they be regarded as joint authors? By sect. 16 (2) a "work of joint authorship" is defined as "a work produced by the collaboration of two or more authors, in which the contribution of one author is not distinct from the contribution of the other author or authors." Clearly the words and music can be distinguished. It may be urged that it would be more correct to class such a play amongst "collective works," which are defined as works "written in distinct parts by different authors" (*f*). It is thought, however, that there are three distinct copyrights in a musical play: (1) in the play as a whole; (2) in the music separated from the words; and (3) in the words separated from the music (*g*). The question in whom the copyright in the play as a whole is vested must depend upon the facts of the particular case; it might be vested in the two composers jointly, or in one of them, or in some third person, and the three distinct copyrights might conceivably expire at three different dates (*h*). The play, as a whole, is presumably a "collective work," and if so, it follows that the copyright in the same is assignable for the entire period of copyright, without being subject to the proviso to sect. 5 (2), whereby absolute assignments are prevented from being made for longer than the life of the author and twenty-five years after his death (*i*). If this be a

(*d*) (1895) 2 Q. B. 429. (*e*) At p. 442.
(*f*) Sect. 35 (1).
(*g*) In the case of a "musical work," it is provided that for the purpose of compulsory acquisition of the right to reproduce the same mechanically, the work "shall be deemed to include any words so closely associated therewith as to form part of the same work": sect. 19 (2) (ii).
(*h*) See further, "First Owner of Copyright," Chapter VI., *post*.
(*i*) See Chapter VII., "Assignment of Copyright," *post*.

correct statement of the law, then, in the absence of any agreement to the contrary, the composer of the music will be entitled to publish the musical score without the libretto, and to make adaptations of the music; the librettist will have the right to publish a book of the words, or extracts therefrom, without the music; but the words and music can only be published or performed together with the sanction of both composer and librettist.

Adaptation of old play.

Copyright may be secured in the adaptation of a play which is itself common property. Thus, in *Hatton* v. *Kean*, where it appeared that the defendant had designed a dramatic representation, consisting of one of Shakespeare's plays, with certain alterations in the text, original music, scenic effects, and other accessories, the Court did not doubt that the production, as a whole, was a proper subject of copyright, although the play itself was, in its original form, common property (*k*).

New arrangement of music.

So in the case of musical compositions, not only an original composition but any substantially new arrangement or adaptation of an old piece of music is a proper subject of copyright; and the man who makes the new arrangement or adaptation is the "author" of it and entitled to the copyright. If A. makes a pianoforte score of the music of B.'s opera (*l*), or if he writes words and accompaniments to an old non-copyright melody (*m*), A. is, in either case, properly described as the author of the new composition.

The pianoforte score of an opera.

The pianoforte score of an already existing opera, whether arranged by the composer himself or by another person, is the subject of copyright; and as such is entitled to protection, subject to the rights of the proprietor of the copyright in the original work. The arrangement of the opera score for the pianoforte, involving as it does labour as well as intelligence and skill, constitutes it a new work (*n*).

In deciding the point in the last cited case, Sir A. Cockburn, C. J., said: "It seems impossible to believe that any musician, however great his talent, whether as a composer or an executant, from the mere circumstance of having the opera *in its entirety before him, that is to say, with all the score* for all the instruments, which neither eye nor mind could take in at the same time, could be able to play the accompaniment while singing the music of the opera at the piano. It requires time,

(*k*) (1859), 7 C. B. 268.
(*l*) *Wood* v. *Boosey* (1868), L. R. 2 Q. B. 340; L. R. 3 Q. B. 223.
(*m*) *Leader* v. *Purday* (1869), 7 C. B. 4.
(*n*) *Wood* v. *Boosey*, *supra*; *Boosey* v. *Fairlie* (1877), 7 Ch. D. 301.

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reflection, skill, and mind so to condense the opera score as to compose the pianoforte accompaniment. . . . . I cannot, therefore, bring myself to think that the pianoforte arrangement of the music of an opera, which originally consisted of vocal music and instrumentation to be executed by some half-hundred instruments, can be said to be anything else than a specific, separate, and distinct work from the opera itself. And it seems to me to hold otherwise would lead to very serious consequences. Operas are very frequently arranged sometimes by the composer of the opera himself, sometimes by other persons, with the consent, or without the consent of the original composer. It may be, if the arrangement be made without the consent of the composer of the opera, such an adaptation would be an infringement of his copyright, which would subject the adapter to an action. It is not necessary to decide that. But it may be that, after the copyright has expired, an arrangement for the pianoforte may be made in the first instance, or some musical composer, thinking that an arrangement that already existed of some well-known and popular opera is not as good as it can be made, might apply his hand to the work and make a new arrangement. Can it be said that such an arrangement, useful as regards the musical world, shall not be the subject of protection under the Copyright Acts?"

Difference between pianoforte score and original score.

And on appeal Sir Fitzroy Kelly, C.B. (*o*), in affirming the decision of the Queen's Bench, clearly pointed out the difference between the pianoforte score and the original score, and the fact that each might be the subject of copyright. "The opera," said he, "is composed and is published in score, and contains in each line of what is called the entire score, the music for some one particular instrument, these instruments being some twenty in number. Now let us come to what the arrangement is for the pianoforte. Undoubtedly there are portions of it which are identical, as in the case before the Exchequer, and might subject, as I have already observed, the author of the adaptation to an action if it had been published without the authority of the author of the opera. But what is the pianoforte arrangement? It is an arrangement of the whole of the music of this opera for the pianoforte, a part of which is the ordinary pianoforte accompaniment, the bass and the treble, played with both hands, and which is independent of the melody. There may be, as it appears, the line of music for one voice, or two or three voices, as the

(*o*) L. R. 3 Q. B. 223, 229.

case may be; and there are separate and distinct lines for the accompaniment for the pianoforte; and no doubt, here and there throughout this accompaniment, and by going line by line through the score of the original opera, there may be found the same notes; but there are other parts of the accompaniment which are merely the pianoforte accompaniment, the notes forming which are nowhere to be found in the score at all. The accompaniment for the pianoforte is a work of greater or less skill. In some cases, perhaps in many cases—it may be in this for aught I know—the operation of adaptation is little more than mechanical, and what any one acquainted with the science of music, any composer of experience, might have been able to do without difficulty; but it may be, and often is, as in the case of the six operas of Mozart, by Mazzinghi, a work—I would hardly use the term of great genius, but a work—of great merit and skill of that eminent composer and pianist, Mazzinghi. If such a work be published as the adaptation to the pianoforte by a composer, other than the composer of the original opera, no doubt it is a piracy of the opera, and the composer may maintain an action against the adapter or the publisher of the adaptation; but, whenever the copyright in the original opera has expired, if after that, and for the first time, another composer composes another adaptation of that opera to the pianoforte, it is a new substantive work, in respect of which he is just as much entitled to the benefit of the copyright in this country, as the original composer of the opera; and if any one had by an adaptation pirated that arrangement, he would be liable to an action for that piracy. I consider that an infallible test to show the difference between the one work and the other—between the original opera and the arrangement of it for the pianoforte. It is perfectly clear, therefore, that in point of fact—for it is rather a matter of fact than anything else—the adaptation to the pianoforte, or the arrangement for the pianoforte, of an opera already published, is itself a new and separate work, and is not one and the same with the original opera" (*p*).

So also with reference to a piece of music called "Pestal," which had been played by the military bands in the style of a

(*p*) In this same case Bramwell, B., said: "It has been said that there is nothing inventive on the part of the person who makes the arrangement. In one sense, there is not—that is to say, he neither invents the tune nor the harmony; but there is invention in another sense, or rather there is composition in the adaptation to the particular instrument. Of that, the adapter is the author, and it is perfectly certain that the man who wanted to arrange this opera for a pianoforte would find it a great deal easier to copy what Brissler had done than to take the score and do it over again."

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Russian Polonaise. The plaintiff, in an action for infringement, had obtained possession of the score, it did not transpire how—set it to words, concocted a thrilling introductory anecdote, and sold the copyright to a music-seller who published it with success. Other publishers arranged new versions of song and verses, for which the proprietor recovered damages. The coincidence between the harmonies and accompaniments in such a case, must be relied on as forming the part alone in which copyright exists. The original composition, if not claimed by any one, becomes public property; and one person has as much right to publish it as another (*q*).

The adaptation of words and accompaniment to an old air.

In *Leader* v. *Purday* (*r*), it was held that one who adapted words to an old air, and procured a friend to compose an accompaniment thereto, acquires a copyright in both words and accompaniment, and he might properly describe himself proprietor of the copyright in the whole composition, notwithstanding that there was no copyright in the air itself.

(*q*) *Leader* v. *Purday* (1849), 7 C. B. 4.
(*r*) (1849), 7 C. B. 4.

CHAPTER IV.

THE SUBJECTS OF ARTISTIC COPYRIGHT (OTHER THAN ARCHITECTURE (*a*)).

PREVIOUSLY to the Copyright Act, 1911, the copyright in artistic works was the subject of various statutes which dealt separately with engravings, paintings, drawings, and photographs, and works of sculpture (*b*). Under the new Act these all fall under one compendious phrase, sect. 1 conferring copyright upon "every original artistic work."

Definitions.

There are, however, certain divisions into which artistic works naturally fall. The work may be one which is wholly or mainly produced by hand, or one entirely or mainly produced by mechanical processes. Again, it may be a class of work which usually exists only in a single example, or one of which many copies can readily be made. The statute includes, amongst artistic works, "works of painting, drawing, sculpture, and architectural works of art, and engravings and photographs" (*c*). These works are all mainly produced by hand, with the exception of photographs, and included in the expression "photographs" are photolithographs and any works produced by any process analogous to photography (*d*), and "works of sculpture" include casts and models. Paintings, drawings, and works of sculpture most frequently exist in single examples: in the case of an engraving the plate itself is of little artistic value, its value lies in the fact that by means of it the picture can be readily reproduced. Included in the expression "engravings" are etchings, lithographs, woodcuts, prints, and other similar works, not being photographs (*e*). Certain "designs" capable of being registered under the Patents and Designs Act, 1907 (*f*), are excluded from the Copyright Act, 1911 (*g*).

(*a*) Works of architecture, being for the first time protected under the Act of 1911, are dealt with in a separate chapter (Part III., Chapter III.).
(*b*) *Ante*, p. 19.
(*c*) Sect. 35 (1).
(*d*) Such as half-tone blocks.
(*e*) Sect. 35 (1).
(*f*) 7 Edw. VII. c. 29.
(*g*) Sect. 22.

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Originality.

The artistic work must be "original"—but this means no more than that the work must not be copied from another artistic work of the same character (*h*). Thus, an engraving copied from another engraving, a photograph copied from another photograph, or possibly a painting which was identical with another painting from which it was copied could not claim copyright, but on the other hand, it is submitted that an engraving of a painting or drawing, like the photograph of a picture, is an original work, and in itself the subject of copyright, subject, of course, to the rights of the proprietor of the copyright in the work from which the derivative work is taken (*i*). The majority of artistic works are, indeed, generally copied from something or other, and the artist cannot claim the monopoly of the subject of his work, but he is entitled to say: Take the trouble of going to the original from which my work is taken, but do not avail yourself of my labour who have been to the original and executed my work therefrom (*k*).

An artist has no monopoly in the subject.

Where a picture is made of an object in nature, as of a particular flower or plant, the artist cannot restrain any one from executing a similar picture of the same flower or plant; but no one is allowed to copy from the work of another person, each must draw from nature. When it was contended before Lord Hardwicke (*l*) that some engravings of plants could not be protected, because every herbal book had prints of those plants in them, he observed: "The defendant, to make out the case he aims at, must show me that these prints of medicinal plants are in any book or herbal whatsoever, in the *same manner and form* as they are represented here; for they are represented in all their several gradations, the flower, the flower-cup, the seed-vessel, and the seed."

So, on the same principle, if two persons should *bonâ fide* make pictures from a perusal of the same text, although there might, and probably would be, a similarity between them, yet each would acquire a copyright in the picture which he had made.

An engraver is almost invariably a copyist, but he produces the resemblance he is desirous of obtaining by means very different from those employed by the painter or draughtsman from whom he copies: means which require great labour and talent. The engraver produces his effects by the management of light and

(*h*) *Ante*, p. 52.
(*i*) *Graves' Case* (1869), L. R. 4 Q. B. 715, *post*, p. 91.
(*k*) *De Berenger* v. *Wheble* (1819), 2 Stark. N. P. 548.
(*l*) *Blackwell* v. *Harper* (1740), 2 Atk. 94.

shade, or, as the term of his art expresses it, the *chiaro-oscuro*. The due degrees of light and shade are produced by different lines and dots; he who is the engraver must decide on the choice of the different lines or dots for himself, and on his choice depends the success of his print. If he were to copy from another engraving, he might see how the person who engraved that had produced the desired effect, and so without skill or attention become a successful rival (*m*).

Photograph is an original production.

In one case (*n*) it was contended that a photograph of an engraving was not an original production within the meaning of the Artistic Copyright Act, 1862 (*o*). In overruling this objection, Mr. Justice Blackburn said: "The distinction between an original painting and its copy is well understood, but it is difficult to say what is meant by an original photograph. All photographs are copies of some object, such as a painting or a statue, and it seems to me that a photograph taken from a picture is an original photograph, in so far that to copy it is an infringement of this statute. As I have already pointed out, by sect. 2, although it is unlawful to copy a photograph or the negative, it is permitted to copy the subject-matter of the photograph by taking another photograph."

Absence of artistic merit.

The question of artistic merit may sometimes be taken into consideration, at least upon a question of infringement. Thus, a plaintiff conceived the idea of printing and publishing cards bearing a representation of a hand holding a pencil in the act of completing a cross within a square, with a view to such cards being used at elections by illiterate voters, and procured an artist to make, under his directions, a drawing of the representation above described. Subsequently the defendants published similar cards with a hand, holding a pencil, in the act of completing a cross in a particular square of a voting paper, but the hand in the defendants' cards was in a slightly different position, though the idea was clearly taken from plaintiff's cards. It appeared that neither the plaintiff's nor the defendants' drawings were of any artistic merit, and it was held that an action for infringement of copyright could not be maintained, on the ground that the plaintiff's drawing was so far not the subject of copyright, that it was not entitled to protection against an imitation which was not an exact reproduction (*p*).

(*m*) *Newton* v. *Cowie* (1827), 4 Bing. 246; *Martin* v. *Wright* (1833), 6 Sim. 297.

(*n*) *Graves' Case* (1869), L. R. 4 Q. B. 723. (*o*) 25 & 26 Vict. c. 68.

(*p*) *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q. B. D. 99; *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627.

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"The mere choice of subject," said Mr. Justice Wills in the case referred to (*q*), "can rarely, if ever, confer upon the author of the drawing an exclusive right to represent the subject; and certainly, where the subject chosen is merely the representation to the eye of a simple operation which must be performed by every person who records a vote, there cannot possibly be an exclusive right to represent in a picture that operation. It may well be that something special in the way of artistic treatment even of this simple operation, if it existed, might be the subject of copyright; but nothing of the kind has been suggested or exists in the present case, and if it does exist without being discovered it has not been imitated, for there is nothing which by any flight of imagination can be called artistic about either the plaintiffs' or the defendants' representation of a hand making the mark of a cross. It may be also that even the coarsest, or the most commonplace, or the most mechanical representation of the commonest object is so far protected in registration that an exact reproduction of it, such as photography, for instance, would produce, would be an infringement of copyright. But in such a case it must surely be nothing short of an exact literal reproduction of the drawing registered that can constitute the infringement, for there seems to be in such a case nothing else that is not the common property of all the world. It is possible that in this case the proprietors of the drawing may have a right to be protected from a reproduction of their picture of a hand drawing a cross, in which every line, dot, measurement, and blank space shall be rendered exactly as in the original, or in which the variations from such minute agreement shall be microscopic. But I cannot possibly see how they can make a higher claim, or say that because they have registered a drawing of a hand pencilling a cross within a square, that no other person in the United Kingdom is at liberty to draw a hand pencilling a cross within a square for perhaps the next half century. The plaintiff, Mr. Jefferson, put his case as high as that proposition, for he said he might wish to claim applications of the picture to subjects other than voting cards. It is obvious that, unless there be a copyright in the *subject*, any other person who wishes to draw a hand pencilling a cross within a square, cannot help producing something so like the plaintiffs' design as to look very like a colourable imitation of it. Now, it may or may not be very shabby conduct on the part of the defendant to wish to represent a hand pencilling *a* cross within a square, notwithstand-

(*q*) 25 Q. B. D. at p. 102.

ing that the plaintiffs were first in the field, and notwithstanding that but for the picture used by the plaintiffs they might never have thought of making theirs; but I cannot see why they should be precluded, for the next fifty years perhaps, from representing in a picture the act which every voter performs when he records his vote, simply because one of the plaintiffs first thought of doing so, any more than if a new article of commerce were introduced of extensive distribution, and very simple and definite shape and proportions, and a drawing of it were made for one firm, all other persons should be precluded from making a drawing which, if it truthfully represented the same thing, must be exceedingly like the first drawing; nor, even though the draughtsman of the second drawing might never have seen the original article, or might have derived his knowledge of its existence and aspect solely from the first drawing. If a new and very simple tea-caddy were represented first by A. in a drawing which he registered, I cannot conceive that he could during his whole life prevent B. from drawing the same tea-caddy, and even from drawing it from his recollection of A.'s picture, nor that A. could claim copyright except in the extremely limited and useless sense in which I have suggested that a copyright might exist for a registered drawing of even such a subject. In the present instance, what the plaintiffs claim is really a right to prevent any one else from drawing the same subject as that of his drawing. If he has a copyright in the *subject* there is a colourable imitation, because the subject is not altered by changing the position of the hand and adding the indications of a shirt-sleeve. But it is clear that there is no copyright in the subject. As for the manner of treating this subject, there can be no copyright in that, for if the thing to be represented be represented at all it is impossible to treat it in any other way. It seems to me, therefore, that although every drawing of whatever kind may be entitled to registration, the degree and kind of protection given must vary greatly with the character of the drawing, and that with such a drawing as we are dealing with, the copyright must be confined to that which is special to the individual drawing over and above the idea—in other words, the copyright is of the extremely limited character which I have endeavoured to describe. A square *can* only be drawn as a square, a cross *can* only be drawn as a cross, and for such purposes as the plaintiffs' drawing was intended to fulfil there are scarcely more ways than one of drawing a pencil or the hand that holds it. If the particular arrangement of square, cross, hand, or pencil be relied upon, it is nothing more than a claim of copyright for the *subject*, which, in my opinion, cannot possibly be supported."

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Toy soldiers.

On the other hand, it was held in another case that toy soldiers were entitled to protection under the Sculpture Copyright Act, 1814 (*r*) (now repealed). In the case referred to, Mr. Justice Wright remarked: "The question is whether this toy representation of a soldier is an artistic thing—an artistic production within the meaning of the Sculpture Copyright Act, 1814. It is tolerably certain that some toys would not fall within the protection of the Act; and the question whether this soldier or mounted yeoman's figure comes within it must be decided upon evidence of its artistic character. The evidence before me is all one way. A war correspondent has been called, who is at the same time an artist and has shown several of these figures to be artistic productions, in that the anatomy is good and that the modelling shows both technical knowledge and skill. I see nothing to quarrel with in this statement. On the whole, therefore, although I have great doubt as to the meaning of the Act, I am prepared to hold that the production of a metal figure of a mounted yeoman such as this is good enough to be protected by the provisions of the Act" (*s*).

Maps, &c.

Under the old law a map might be protected either as a "book," under the Literary Copyright Act, 1842, or as an engraving, under the Engravings Acts, according to whether the owner of the copyright chose to call his work a "map" or an "engraving" (*t*). The Act of 1911—somewhat illogically, perhaps—includes "maps, charts, and plans" in the definition of "literary works" (*u*), so that apparently protection cannot be claimed for them as "engravings." The only importance of this seems to lie in the fact that the copyright in an engraving made to order vests in the person by whom the plate was ordered, whereas in the case of a literary work the copyright would only so vest if the person making the plate were in the employment of the person who ordered the same "under a contract of service or apprenticeship" (*x*).

Book illustrations.

A more important point arises with regard to the illustrations in a book, particularly if these are the result of some photographic process, for not only does the same point arise as to the person in whom the copyright first vests, but the period of protection for a

(*r*) 54 Geo. III. c. 56.

(*s*) *Britain* v. *Hawks* (1902), 86 L. T. 765; cf. *Caproni* v. *Alberti* (1890), 65 L. T. 785.

(*t*) This seems to be the effect of the two somewhat puzzling decisions of *Stannard* v. *Lee* ((1871), L. R. 6 Ch. 346), and *Stannard* v. *Harrison* ((1871), 19 W. R. 811), both relating to maps of the scene of war in 1870.

(*u*) Sect. 35 (2).

(*x*) Sect. 5 (1); *post*, Chapter VI., "First Owner of Copyright."

photograph is less than that for a literary work. The period of copyright in the case of a literary work is for the life of the author and fifty years after his death (*y*); that for a photograph is fifty years from the making of the negative, whether the same be published or unpublished (*z*). It was held in several cases, decided under the Literary Copyright Act, 1842, that, if the owner of the copyright in the letterpress of a book was also the owner of the copyright in the illustrations, he was in a position to sue for infringement of the copyright in the illustrations provided he had complied with the formalities required by that Act, although he had not complied with those required by the Acts relating to artistic copyright (*a*). These cases were so decided upon the ground that it was "books" which were protected under the Act of 1842, and that a "book" might consist of illustrations as well as letterpress. Inasmuch as, under the Act of 1911, it is no longer "books" but "literary works" which are the subjects of protection, it is conceived that the decisions referred to are no longer applicable, in so far as they may be taken to have decided that a book and its illustrations may be the subjects of a single copyright. On the other hand, in the case of *Petty* v. *Taylor* (*b*), it was held that if the proprietor of the copyright in the letterpress of a book was not the proprietor of the copyright in the illustrations, he could not, by registering under the Act of 1842, acquire the right of suing for infringement of the copyright in the illustrations. This case seems to be in favour of the proposition that under the new Act the copyright in the letterpress and the copyright in the illustrations are to be considered as separate and distinct, and that the copyright in the one may run out before the copyright in the other.

Industrial designs.

If an artistic design is intended to be used as a model or pattern to be multiplied by an industrial process, the question arises as to whether it ought to be protected as an "artistic work" under the Copyright Act, 1911, or as a "design" under the Patents and Designs Act, 1907 (*c*). The Copyright Act expressly includes works of "artistic craftsmanship" amongst artistic works entitled to the protection afforded by that Act (*d*), and also

(*y*) Sect. 3.
(*z*) Sect. 21.
(*a*) *Bogue* v. *Houlston* (1852), 23 De G. & S. 267; *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369; *Comyns* v. *Hyde* (1895), 72 L. T. 250; *Marshall* v. *Bull* (1901), 85 L. T. 77; *Davis* v. *Benjamin*, (1906) 2 Ch. 491.
(*b*) (1897) 1 Ch. 465.
(*c*) 7 Edw. VII. c. 29.
(*d*) Sect. 35 (1).

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gives to every proprietor of copyright the right to reproduce his work in "any material form whatsoever" (*e*). It is conceived that, apart from any special legislation to the contrary, such a work might receive protection under both Acts (*f*). Such special legislation is, however, provided by sect. 22 (1) of the Copyright Act, 1911, which enacts that that Act is not to apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process. By sub-sect. (2) of the same section general rules are authorised to be made under sect. 86 of the Patents and Designs Act, 1907, for determining the conditions under which a design is to be deemed to be used for such purposes as aforesaid.

Definition of a design.

By sect. 93 of the Patents and Designs Act, 1907, a "design" is defined as meaning "any design (not being a design for a sculpture or other thing within the protection of the Sculpture Act, 1814 (*g*)) applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatsoever, manual, mechanical, or chemical, separate or combined."

Advantages of protection under the Copyright Act.

The period of protection given to a design under the Designs Act is shorter than that given to artistic works under the Copyright Act, the former Act only giving copyright for a period of five years, renewable for two further periods of five years each, making a maximum period of protection for fifteen years (*h*). Again, there are no formalities to be observed as a condition for obtaining copyright under the Copyright Act, whereas registration and the marking of every article to which the design is applied are requisite under the Designs Act (*i*). The protection accorded by the Copyright Act is, therefore, superior in every respect to that given by the Designs Act, and it is important to consider what are the designs which are excluded from the benefit of the former Act.

(*e*) Sect. 1 (2).
(*f*) *Werner Motor Co.* v. *Gamage*, (1904) 1 Ch. 264; *Miller* v. *Polak*, (1908) 1 Ch. 433; *Smith Bros.* v. *Redfearn* (1911), 131 L. T. J. 318.
(*g*) 54 Geo. III. c. 56. This Act is repealed by the Copyright Act, 1911, s. 36.
(*h*) 7 Edw. VII. c. 29, s. 53.
(*i*) *Ib.* s. 54.

Distinction between a design and an artistic work.

The fundamental distinction between a "design" and a simple "artistic work" lies, it is thought, in the applicability of the former to another article (*k*); that is to say, an artistic work is bought purely and simply for its artistic properties, an article to which a design has been applied is bought not simply because of the artistic qualities of the design, but because of the utility of the article, apart from the design. For example, the plate from which an engraving is to be printed is intended to be applied to a sheet of paper or other material, but an engraving is not usually purchased for the material on which it is printed. Therefore, engravings are *primâ facie* entitled to protection under the Copyright Act. But if it were intended that this engraving should be applied to, say, a wall-paper, then it would be different; for nobody would be likely to purchase an engraving printed upon a wall-paper, unless it was for the purpose of papering a room. In such a case the engraving would fall under the law as to designs. Applying these principles, it is submitted that a drawing or painting intended to be reproduced upon a Christmas card falls under the Copyright Act (*l*), and the same with regard to an advertisement poster, for the object of a person in designing a poster is not to cover the hoarding upon which it is to be pasted, but to produce a picture which will attract the passer-by. Picture postcards possibly present greater difficulty, for it may be contended that a purchaser of a postcard purchases the same as a means for carrying on a correspondence. It is, nevertheless, submitted that these are entitled to the protection of the Copyright Act, the postcard being subsidiary to the picture upon it.

What is a "model or pattern to be multiplied by some industrial process"?

But it is to be noticed that it is not every work capable of being registered as a "design" that is excluded from the benefit of the Copyright Act, it must also be one which is "used or intended to be used as a model or pattern to be multiplied by some industrial process." The Board of Trade have made rules for determining whether a design is "used or intended to be used" for this purpose. By these rules this is to be so: (a) where the design is reproduced or is intended to be reproduced in more than fifty single articles, unless all the articles in which the design is reproduced, or is intended to be reproduced, together form only a single set, as defined by Rule 5 of the Designs Rules, 1908 (*m*): (b) where the design is to be applied to.

(*k*) See the definition of a design stated above.

(*l*) It was so held under the old law, which did not expressly exclude designs from the benefit of the Copyright Acts: *Hildesheimer* v. *Dunn* (1891), 64 L. T. 452; *Miller and Lang* v. *Polak*, (1908) 1 Ch. 433.

(*m*) Under this rule a "'set' means a number of articles of the same

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(1) printed paper hangings; (2) carpets, floorcloths or oilcloths, manufactured or sold in lengths or pieces; (3) textile piece goods, or textile goods manufactured or sold in lengths or pieces; (4) lace, not made by hand (*n*). A drawing or painting, therefore, to be reproduced upon hardware is not excluded from the Copyright Act unless more than fifty articles are intended to be manufactured bearing the same design, but a drawing or painting to be reproduced upon textile goods manufactured in lengths or pieces is so excluded, whatever be the quantity manufactured. A mere geometrical pattern, it is submitted, is not an artistic work at all within the meaning of the Copyright Act—at least, if intended as a pattern for any article.

Designs made prior to the Act of 1911.

A point arises as to the position of the owner of a design made prior to the Copyright Act, 1911, coming into force which would have been capable of being registered under the Designs Act, but which was entitled to protection under the repealed Copyright Acts at the date when the Act of 1911 came into force (*o*). By virtue of sect. 24 (1) of that Act and the First Schedule thereto, a person entitled to copyright under the old law on the 1st July, 1912, became entitled to copyright as defined by the Act of 1911 (*p*). It is submitted that the proprietor of the copyright in such a design as above mentioned became entitled to copyright in such design for the full period allowed by the Act, notwithstanding the prohibition contained in sect. 22 above referred to (*q*). Otherwise, the Act would seem to deprive him of all protection, for he would not appear to be able to register his design under the Designs Act, 1907, for lack of novelty in his design (*r*).

general character ordinarily on sale together, or intended to be used together, all bearing the same design, with or without modification, not sufficient to alter the character, or not substantially affecting the identity thereof." Thus, for example, a dinner service consisting of 76 pieces would be regarded as one article. Where there is any doubt whether given articles do or do not constitute a set, the doubt is to be determined by the Comptroller of Patents.

(*n*) Designs Rules, 1912, Appendix E., *post*.

(*o*) *Miller* v. *Polak*, (1908) 1 Ch. 433; *Smith Bros.* v. *Redfearn* (1911), 131 L. T. J. 318.

(*p*) See Part III., Chapter VII., *post*.

(*q*) *Ante*, p. 96.

(*r*) 7 Edw. VII. c. 29, s. 49.

CHAPTER V.

THE TERM OF COPYRIGHT.

What is a fair term for copyright?

THE proper period of copyright has long been a matter of controversy. Some have contended that the period ought, in the interests of literature, to be a very short one; others urge, in the same interests, that it ought to be perpetual.

Those who argue in favour of a restricted period for copyright, speak of it as a monopoly (*a*): whilst upholders of copyright in perpetuity speak of the author's right to prevent others multiplying copies of his work as a right of property. But those who argue upon the basis of property appear sometimes to overlook the fact that a book is also property and that, by the common law, the owner of a chattel has absolute dominion over it; but the copyright laws, in effect, restrict this absolute dominion in the case of a purchaser of a book, the term of copyright in which has not expired. In truth, the controversy is not one that can be decided by a mere phrase, but by a consideration of what protection an author can reasonably demand to ensure an adequate return for his labours, it being generally admitted that literature cannot, in these days, be expected to flourish in a country possessing lax, or insufficient, copyright laws (*b*).

It is sometimes argued that the existence of the copyright laws militates against cheap literature, but it is exceedingly doubtful whether this argument is sound. Complaint can hardly be made that books are not cheap enough at the present day, and this may be said not only of books the copyright of which has run out, but of those which are still the subject of copyright. Indeed, a publisher may think it worth while to bring out a cheap edition of a work of which he is secure of a monopoly in the market for some considerable period, but could not afford to do so if he ran the risk of other cheap editions of the same work being brought out by other publishers. At the same time, it seems proper that

(*a*) As to how far this is correct, see *ante*, p. 2.
(*b*) Perpetual copyright is, at the present day, only conceded in certain Central American States.

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some period should be put to copyright, for, amongst other reasons, it would be very unfortunate if annotated editions of old works were not to be permitted without the consent of the proprietors of the copyright.

The present period of protection.

At the Conference of the Powers held at Berlin in the year 1907 for the purpose of considering what modifications ought to be made in the Berne Convention (*c*), it was decided that the minimum period of protection accorded to an author should be during his life and for a period of fifty years after his death. This appears to be a reasonable period, and it has now been adopted by the British Copyright Act, 1911, for all published works, with certain minor exceptions (*d*). The present law has, moreover, the very considerable advantage over the old law, that the date of publication has—save in the excepted cases, which will be dealt with later on—no bearing upon the determination of copyright protection. Under the old law, which gave an alternative period of copyright for literary works, either the life of the author and seven years after his death or a gross period of forty-two years, whichever should be the longer (*e*), the works of the same author were liable to fall into the public domain at different times, but under the new Act all the works of the same author will—save in the excepted cases—fall into the public domain at one and the same time, namely, fifty years after his death.

Exceptions.

The cases which are excepted from sect. 3 and are entitled to special periods of copyright protection are: (1) Photographs; (2) mechanical instruments; (3) Government publications; (4) joint works; and (5) posthumous works. Mechanical instruments and joint works will be treated separately hereafter (*f*).

Photographs.

The period of protection for photographs is "fifty years from the making of the original negative from which the photograph was directly or indirectly derived" (*g*). It is immaterial whether the photograph be published or unpublished, but in the case of an unpublished photograph it is thought that infringement might be restrained upon the ground of breach of trust or confidence, notwithstanding that more than 50 years had elapsed since the making of the original negative (*h*). Probably, a negative will be deemed to be "made," not upon exposure, but upon the plate being developed and fixed.

(*c*) See *post*, Chapter "International Copyright," Part IV., Chap. I.
(*d*) Sect. 3. (*e*) *Ante*, p. 16.
(*f*) See *post*, Part III., Chapters II. and V.
(*g*) Sect. 21. Photograph includes photo-lithograph and any work produced by analogous process (sect. 35).
(*h*) Sect. 31.

Government publications.

In the case of works which have been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright is to continue for a period of fifty years from the date of the first publication of the work (*i*).

Posthumous works.

Literary, dramatic and musical works and engravings (*k*) in which copyright subsists at the date of the death of the author and which have not been published, nor in the case of a dramatic or musical work been performed in public, nor in the case of a lecture delivered in public before that date, are entitled to copyright until publication or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter (*l*).

Compulsory licences.

One argument that has sometimes been advanced against granting copyright protection is that it may have the effect of depriving the public of the benefit of an author's works. As an example of this may be cited the case of Wagner with regard to his opera "Parsifal." By the terms of the musician's will it was forbidden that this opera should be publicly performed at any place other than Bayreuth. Germany being a party to the Berne Convention (*m*), the composer's representatives were able to give effect to his wishes so long as the copyright in the work lasted. At the beginning of the year 1914 the copyright ran out, and the opera has recently been heard for the first time not only at other places in Germany, but throughout the civilized world. It is such a case as this that is, perhaps, intended to be met by sect. 4 of the Copyright Act, 1911, which is as follows:—

"If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit."

(*i*) Sect. 18, *post*, Chapter "Crown Copyright," Part III., Chap. VI.

(*k*) Photographs are not included, because copyright runs from the making of the negative. Artistic works, other than engravings (for definition see sect. 35), are also not included, so that, whether these be published or not, copyright ceases fifty years after the artist's death.

(*l*) Sect. 17.

(*m*) See *post*, "International Copyright," Part IV., Chap. I.

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This section is practically a reproduction of sect. 5 of the Literary Copyright Act, 1842, only extending the provisions of that section so as to enable the right to perform a work in public to be compulsorily acquired. It is believed that the section of the repealed Act above referred to was never put into force, and it is doubtful whether this substituted section will have any greater results; but, possibly, it may operate *in terrorem*. The section as originally drafted, prior to its consideration by the House of Commons, required that applications for compulsory licences should be made to the Comptroller of Patents, and contained a provision that a work should be deemed to be withheld from the public if, by reason of the excessive price charged for copies of the work or the undue limitation of the number of copies issued, the demand of the public for the work is not reasonably met. The section was altered to its present form in Committee of the House of Commons.

Construction of the section.

A section which in effect expropriates the property of another ought, it is thought, to receive a strict construction. No compulsory licence can under the terms of the section be granted until after the death of the author and until after the work has been once published or publicly performed with the consent of the author (*n*). Moreover, in order that a case for a compulsory licence can arise, the work must have been withheld from the public by reason of the fact that "the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work." If the author's representatives are willing to republish, but only at a prohibitory price, that, it is thought, is not a refusal to republish. Presumably, it is not the intention that the section shall interfere with business arrangements. But it is not so easy to say whether, if an author was willing that his work should be performed in London, but not in any other place, that would be a refusal to allow the public performance of the work. Unless it be so, the section would not have met the case of "Parsifal."

***Semble*, does not apply to foreign works.**

The section, it is submitted, has no application to a foreigner's work. Presumably, the author's representatives would have to be served with a petition to the Privy Council, and there would seem to be no jurisdiction to serve such a petition upon a person outside the jurisdiction.

Compulsory right to reproduce on payment of royalties.

When the Copyright Bill was before Parliament, the proposed extension of the term of copyright met with considerable opposi-

(*n*) Sect. 35 (2).

tion, and by way of compromise between those who desired that there should be no extension of the term and those who wished to see the full term of life and fifty years accorded, the curious proviso to sect. 3 was inserted, which is as follows:—

"Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties."

Application to posthumous works.

The above proviso is to apply to posthumous works as if the author had died at the date when his work was first published, performed, or delivered in public (*o*). There is no similar provision expressly extending the proviso to photographs and mechanical contrivances, and it is submitted that these cannot be compulsorily reproduced upon a royalty basis.

But not to photos and records.

Conditions of the right to reproduce a work.

In order to be entitled to reproduce a copyright work, a person, other than the owner of the copyright (*p*), must prove (*q*) (a) that he has given the prescribed notice of his intention to reproduce the work, and (b) that he has paid to, or for the benefit of, the owner of the copyright, royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes (*r*) the work.

Board of Trade Regulations as to notice.

The Board of Trade have, in accordance with the power conferred on them by the above-mentioned section, issued regulations prescribing the measures to be taken by those who desire

(*o*) Sect. 17.

(*p*) The copyright returns automatically to the representatives of the author, if he was the first owner of the copyright, twenty-five years after his death: sect. 5 (2), *post*, "Assignment of Copyright," Chapter VII.

(*q*) The burden of proof lies on him.

(*r*) N.B.—The publisher will therefore be well advised to publish at a net price.

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to publish works during the period of their non-exclusive protection (*s*). Notice must be sent not less than one month before any copies of the work are delivered to a purchaser by registered post to the owner of the copyright, or his agent for the receipt of notice, if the name and address of such owner or agent can with reasonable diligence be ascertained (*t*). The notice must contain the following particulars: (a) the name and address of the person intending to reproduce the work; (b) the name of the work which it is intended to reproduce, and (if necessary) a description sufficient to identify it.; (c) the manner in which it is intended to reproduce the work (*e.g.*, whether by painting, lithography, photography, &c.); (d) the price or prices at which it is intended to publish the work; (e) the earliest date at which any of the copies will be delivered to a purchaser (*u*).

As to payment of royalties.

Payment of the royalties is, in the absence of contrary agreement, to be made by means of adhesive labels to be affixed to the copies of the work. After notice of intention to reproduce the work has been given, it is the duty of the owner of the copyright to intimate by registered post to the person who has given the notice some reasonably convenient place within the United Kingdom from which adhesive labels can be obtained, and, upon tender of the price, to supply from such place adhesive labels of the required denominations at a price equal to the amount of royalty represented thereby (*x*).

Regulations in event of owner not being known or not delivering tickets.

So far, it is thought, no objection can be taken to the Board of Trade rules. It has been held (*y*), under the corresponding rules made under sect. 19 (6) with regard to the royalties payable in respect of mechanical contrivances, that payment by means of adhesive labels is a perfectly legitimate method of "securing" payment of the royalties to the author. It is much more questionable whether the regulations as to the course to be taken if the owner of the copyright cannot be found or fails to perform the obligations imposed upon him by the regulations are authorised by the Act. If the owner of the copyright cannot with reasonable diligence be found, notice is to be given to him by advertisement in the *London Gazette* (*z*). To this, it is conceived, there can be no objection, but the regulations then go on to provide that,

(*s*) Copyright Royalty System (General) Regulations, 1912. See Appendix E., *post*.
(*t*) Rule 3 (a). (*u*) Rule 2.
(*x*) Rule 4 (a). As to size and design of labels, see Rule 4 (c).
(*y*) *Monckton* v. *Pathé Frères*, (1914) 1 K. B. 395. See *post*, Chapter "Mechanical Contrivances," Part III., Chap. V.
(*z*) Rule 3 (b).

in cases where royalties are payable by means of adhesive labels, if at any time labels of the required denomination are not available either because—(a) after the expiration of fourteen days from the date of notice the owner of the copyright has not sent to the person reproducing the work an intimation of some reasonably convenient place within the United Kingdom from which such labels can be obtained; or (b) the owner of the copyright refuses or neglects to supply such labels within fourteen days after demand duly made, then copies of the work may be delivered to purchasers without having labels affixed thereto, and the amount of royalties is to be a debt due from the person reproducing the work to the owner of the copyright, the person reproducing the work keeping an account of all such copies sold by him (*a*).

Quære, as to whether these regulations are *intra vires*.

No doubt these regulations seem, at first sight, reasonable enough, but the question is not as to their reasonableness, but as to the jurisdiction of the Board of Trade to make them. The Act only authorises reproduction if the person reproducing "has paid" the royalty "to or for the benefit of the owner of the copyright." The Board of Trade may prescribe "the mode, time, and frequency of the payment of royalties," including regulations "securing the payment" of the royalties. Doubtless, tender of payment would be held to be equivalent to "payment," but can it be said that a direction that "the amount of royalties shall be a debt due from the person reproducing the work to the owner of the copyright" is either a "payment" or a "security for payment" of the royalties, or in any way "ensures" payment (*b*)? In this connection it may be recalled that under the Literary Copyright Act, 1842 (*c*), there was a provision to the effect that the copyright in articles contributed to an encyclopædia or periodical should, under certain circumstances, vest in the publisher of the work, if "paid for." This provision was construed strictly, and it was held not sufficient to show a contract for payment: actual payment must have been made (*d*). At the same time, the Board of Trade is authorised to prescribe as to the time of payment of the royalties, and perhaps the meaning of the regulation in question is that in a case where the owner of the copyright makes no reply to a notice, payment of the royalty is postponed until demand of payment is made, but, upon the whole, it is submitted that if the royalties are irrecoverable by

(*a*) Rule 4 (b).

(*b*) In *Monckton* v. *Pathé Frères*, (1914) 1 K. B. at p. 406, this was the meaning which Kennedy, L. J., attached to the word "securing."

(*c*) 5 & 6 Vict. c. 45, s. 18.

(*d*) *Richardson* v. *Gilbert* (1851), 1 Sim. N. S. 336; *Brown* v. *Cooke* (1846), 16 L. J. Ch. 140; *Trade Auxiliary Co.* v. *Middlesbrough* (1889), 40 Ch. D. 425; *Collingridge* v. *Emmott* (1888), 57 L. T. 864.

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reason of the insolvency of the publisher, or for any other reason, the proprietor of the copyright can sue for infringement of copyright.

Where mode of payment is agreed.

Where royalties are by agreement payable in any other mode than by means of adhesive labels, the time and frequency of the payments are to be such as are specified in the agreement (*e*).

Only published works may be compulsorily reproduced.

It is only "published" works that are liable to be compulsorily reproduced on payment of royalties. A dramatic or musical work is not published by public performance, nor is an artistic work by public exhibition, nor are works of sculpture and architectural works of art by the issue of photographs and engravings (*f*). Dramatic and musical works which have been publicly performed, but not sold in print, cannot therefore be reproduced upon the royalty system, nor can a picture, unless copies have been issued to the public.

No right to "perform" a work upon the royalty system.

The mode of reproduction is also limited. The work can only be reproduced "for sale," not for any other purpose which would be an infringement of copyright, *e.g.*, for the purpose of gratuitous distribution. The right is to "reproduce" the work, and this reproduction must result in a saleable article, for the amount of royalty payable is to be determined by the price at which the reproducer publishes his work. Performing rights, therefore, remain exclusive throughout the entire period of protection.

Right to reproduce in another form.

It seems also to be doubtful whether a work can be reproduced under this proviso except in similar form to the original publication, or whether part only of the work can be reproduced. The proviso in question does not give the right to reproduce "in any material form whatsoever," nor does it give the right to reproduce the work, or any substantial part thereof, as in sub-sect. (2) of sect. 1. It may be, therefore, that, except in a case falling within sect. 19 (2) of the Act (*g*), no compulsory right can be acquired to make a record or other mechanical contrivance of a work, such mechanical records not being "copies" of the original (*h*).

Or a part of a work.

No doubt *primâ facie* the right to reproduce the whole work should include a right to reproduce a part, but the fact that the copyright proprietor is to be remunerated by payment of ten per cent. upon the published price of the reproduction rather militates against this construction (*i*). This fact also raises diffi-

(*e*) Rule 4 (d).
(*f*) Sect. 1 (3), and see as to publication generally, *ante*, p. 37 *et seq.*
(*g*) See Chapter "Mechanical Contrivances," *post*, Part III., Chap. V.
(*h*) *Boosey* v. *Whight*, (1900) 1 Ch. 122.
(*i*) As to which see *Lee* v. *Gibbings* (1892), 67 L. T. 263; *Springfield* v.

culties if it should be desired to incorporate the whole of a published work in a larger work. For instance, can a published engraving, the author of which has been dead for over twenty-five years, be taken to illustrate a book, or can a literary work be included in an encyclopædia or other collective work?. If so, what is the basis for the ascertainment of the royalty payable to the owner of the copyright? Upon the whole, it is thought that the practical difficulties in giving effect to the provisions of the compulsory section are such that the Courts will probably hold that these provisions do not apply to such cases.. If a picture is inserted in a volume, it cannot fairly be said that the publisher "publishes the work"—*i.e.*, the picture—at any price, and yet the section makes the royalty 10 per cent. of that price, and, if this argument be overruled, there is absolutely no machinery for determining what is the proper proportion of the price of the volume to be attributed to the picture. Some support, too, seems to be lent to the argument that a work cannot be reproduced compulsorily as part of another work by the Board of Trade Regulations, which require, in the absence of contrary agreement, that the royalty shall be payable by means of adhesive labels "affixed to the copies of the work" (*k*).. The publisher of an encyclopædia might well hesitate before issuing a work dotted here and there with adhesive labels! The section, in a sense, expropriates the property of another, and the burden seems to be upon the reproducer to show that he has a right to do so.

Quære, whether an author's work may be compulsorily used as part of another work.

It has been said that an author may by his conduct or by his express desire *abandon* his copyright, and give to the public a right to publish his work before the time when his copyright would expire (*l*). There is no authority on the point, and it is difficult to say what amount of evidence the Court would require as to the fact of a dedication of a copyright to the public.

Abandonment of copyright.

But it is clear that a proprietor of a copyright does not lose his right of publication by permitting his book to remain out of print and obsolete for any number of years (*m*).. The copies may have been all sold, but he may exercise the right he has of republication at such periods as he thinks likely to answer his purpose and when he considers he can best find purchasers. It is a matter on which he has a right to exercise his own judgment.

Abandonment of copyright not presumed from book being out of print.

Thame (1903), 19 T. L. R. 650, and *post*, Chapter "Publishing Agreements," Part VI.

(*k*) Copyright Royalty System (General) Regulations, Rule 4 (a), *ante*, p. 104.

(*l*) 4 Burr. 2346, 2367, 2466; *Platt* v. *Batten* (1813), 19 Ves. 447; *Rundell* v. *Murray* (1821), Jac. 311, 316.

(*m*) *Weldon* v. *Dicks* (1878), 10 Ch. D. 247.

CHAPTER VI.

THE FIRST OWNER OF THE COPYRIGHT.

Copyright to vest in the "author."

WITH certain exceptions, which will be more fully considered hereafter, under the Copyright Act, 1911, the "author" of a work is to be the first owner of the copyright therein (*a*).

Meaning of "author."

As a general rule there will be no difficulty in determining who is the author of the work, notwithstanding that the Act contains no definition of "authorship"; but cases may perhaps arise in which the question is not so easy of solution. It is clear that the person who merely suggests the plot of a novel or a play to the writer, or the subject of a picture to an artist, is not the author of the novel, play or picture (*b*); it is equally clear that a mere amanuensis is not an author. But between these two extremes there may be gradations. It is submitted, however, that *primâ facie* the author of a literary work is the person who originates the language used, and the author of an artistic work is the person who actually executes the design. If A.'s manuscript is corrected and improved by B., it will probably be a question of the amount and value of the corrections and improvements as to whether the author is A. or B., or whether they are joint authors (*c*).

***Kenrick* v. *Laurence*.**

The case of *Kenrick* v. *Laurence* (*d*) may be taken as the leading case on the subject. In that case the plaintiffs were a firm of printers, and J., a member of the firm, conceived the idea of printing and publishing cards, bearing a representation of a hand holding a pencil in the act of completing a cross within a square, with a view to such cards being used at parliamentary and other elections for the guidance and instruction of illiterate

(*a*) Sect. 5 (1). The exceptions to the rule besides those dealt with in this chapter are (1) Government publications, and (2) mechanical reproductions. These are dealt with in separate chapters.

(*b*) *Shepherd* v. *Conquest* (1856), 17 C. B. 427.

(*c*) See *Springfield* v. *Thame* (1903), 89 L. T. 242, where the plaintiff had sent an account of an incident he had witnessed to a newspaper, and the account was so altered by the sub-editor of the paper that the latter was held to be the "author" of the newspaper paragraph.

(*d*) (1890), 25 Q. B. D. 99.

voters in the marking of their ballot papers. J., being unable to draw, employed an artist in the service of the firm to make under his direction a drawing of the representation above described. The plaintiffs registered the drawing under the Fine Arts Copyright Act of 1862 (*e*), and in the memorandum stated J. to be the author of the drawing. The Court, however, held that J. was not the author of the drawing, and that the registration was consequently void. Mr. Justice Wills remarked: "I do not see how a gentleman who is incapable of drawing even such a very simple picture as a rough sketch of the human hand, and who did not in fact set pencil to paper in the matter, can be called the author of the drawing. He suggested the subject and made such limited suggestions as to the treatment as the subject admitted of; but it seems to me that in an Act which gives copyright to drawings the author must mean a person who has at least some substantial share in putting the touches on to paper" (*f*).

Stannard v. *Harrison*.

The case of *Stannard* v. *Harrison* (*g*), at first sight, appears to be contrary to the case just cited. The engraver of a map, published with a view to assisting persons to follow the operations of the armies in the Franco-German war, was called as a witness, and proved that the plaintiff had brought to him his rough sketch or draft, a drawing of the same size as the stone upon which it was to be engraved, pointing out a rough sketch of the forts and towns to give the engraver an idea; he furnished him also with a large French map, and some maps published in the *Times* and *Daily Telegraph*; he also gave him notice daily of the earthworks that were made, and produced besides a picture published in the *Illustrated London News*. The plaintiff could not draw himself—and the Vice-Chancellor said: "That the plaintiff cannot draw himself is a matter wholly unimportant if he has caused other persons to draw for him. He invents the subject of the design beyond all question. He prescribes the proportions and the contents of the design; he furnishes a part of the materials from which the drawing has to be made in the first instance, and afterwards collects daily from the proper sources, and even, if it be necessary to say so, from official sources, the decrees, the reports, the bulletins, and accounts contained in the newspapers of the different phases of the war, and especially of the places in which earthworks are thrown up. These he communicates to the man whom he has employed to make a drawing for him. . . .

(*e*) 25 & 26 Vict. c. 68.
(*f*) The Court also held that, in any case, the drawing was not one entitled to the benefit of copyright: see *ante*, p. 91.
(*g*) (1871), 19 W. R. 811.

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Can there be anything more plainly within the words of the Act of Parliament than that Mr. Stannard did himself invent, that he did procure another person to design and draw for him, and do that which he himself could not do ?"

The distinction between these cases.

The distinction between these two cases lies in the wording of the different Acts upon which they were decided. The first cited case was decided under the Fine Arts Copyright Act, 1862, the second under the Engravings Acts (*h*). These latter Acts vested the copyright in the person who "shall invent or design, engrave, etch, or work, or from his own work, design, or invention, shall *cause or procure* to be designed, engraved, etched, or worked" (*inter alia*) a map or plan; whereas the former Act invested the copyright in a drawing in the "author." *Kenrick* v. *Laurence* is therefore an authority under the Act of 1911, but *Stannard* v. *Harrison* is not. And, although the decision in *Kenrick* v. *Laurence* would have actually been different if it had been decided under the Act of 1911, because of the contract of service existing between the artist and the conceiver of the design (*i*); yet it seems to be a distinct authority that the person who has no part in the physical operation of producing an artistic work cannot be its "author."

Barfield v. *Nicholson.*

The decisions in some other cases are also liable to misconception. Thus, in *Barfield* v. *Nicholson* (*j*), Sir John Leach said: "I am of opinion that, under the statute (8 Anne, c. 19), the person who forms the plan, and who embarks in the speculation of a work, and who employs various persons to compose different parts of it, adapted to their own peculiar requirements, that he, the person who so forms the plan and scheme of the work, and pays different artists of his own selection, who, upon certain conditions contribute to it, is the author and proprietor of the work, if not within the literal expression, at least within the equitable meaning of the statute of Anne, which, being a remedial law, is to be construed liberally."

Explanation.

In this case, it must be pointed out, the Master of the Rolls was referring to collective or composite works, such as encyclopædias, where there are distinct copyrights, namely, the copyright in the entire work and the copyright in the various separate contributions. The person who plans a collective work may perhaps be the author of the work as a whole although he makes no actual written contribution to the work, but the case of *Barfield* v. *Nicholson* must not be taken as an authority that he becomes

(*h*) 8 Geo. II. c. 13; 7 Geo. III. c. 38.
(*i*) Sect. 5 (1) (b), *post*, p. 117.
(*j*) (1824), 2 Sim. & St. 1.

the "author" of the separate contributions (*k*). To take a single contribution from a collective work is not necessarily an infringement of the collective work (*l*).

Hatton v. *Kean.*

On the same principle was determined the case of *Hatton* v. *Kean* (*m*), where the defendant, with the aid of scenery, dresses, and music, adapted one of Shakespeare's plays to the stage, and found the general design of the representation. He employed the plaintiff, a well-known musician named Hatton, for reward, to compose, and he did compose, as part of the representation, and as accessory to the dramatic piece, a musical composition, which formed part of the dramatic piece, on the terms that the defendant should have the liberty of representing and permitting to be represented the said musical composition with the dramatic piece as part thereof. And it was held that the defendant had the sole right of representing the entire dramatic piece, including the plaintiff's musical composition, and that he violated no right of the plaintiff within the 3 & 4 Will. IV. c. 15, and the 5 & 6 Vict. c. 45, by representing, without the plaintiff's consent in writing, the entire dramatic piece, including the plaintiff's musical composition. The reason assigned was that, though the plaintiff was the author of the musical composition, it appeared that the defendant was the author and designer of the entire dramatic work, and with respect to a part, accessory to that whole (that whole consisting of something produced by the skill of the defendant in its entirety), he employed the plaintiff. The production by the plaintiff would be a part of the whole, and the defendant would have the sole right of performing and representing the entire piece in conjunction with the music.

This case was followed in *Wallenstein* v. *Herbert* (*n*). There Matthews, the manager of the St. James's Theatre, had employed Wallenstein to furnish music for that theatre. The latter engaged and paid the musicians, supplied the instruments and compositions, and conducted the orchestra. Besides playing general orchestral music for the theatre, it was his duty to provide incidental music for dramas, when necessary; and such music he might either select or compose. In performance of this duty he composed incidental music for "Lady Audley's Secret," a drama brought out by Matthews, but of which the latter was not the author, and at that time was not even the owner. In composing

(*k*) See *post*, "Newspapers and Collective Works."
(*l*) *Walter* v. *Howe* (1881), 17 Ch. D. 708.
(*m*) (1859), 8 W. R. 7.
(*n*) (1866), 15 L. T. 64; on appeal (1867), 16 L. T. 453; see *Hazlitt* v. *Templeman* (1866), 13 L. T. 593.

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the music the plaintiff had received no assistance from the manager, and had himself found the paper on which the music was written, and employed a person to copy the various orchestral parts from the original score. These parts the composer kept in his own possession, nor did the theatre have a library of music. When the engagement between Matthews and Wallenstein had ended, the former obtained from the latter a duplicate copy of the music, with permission to use it "on a provincial tour." Afterwards, when the defendant, Miss Herbert, had succeeded Matthews in the management of the St. James's Theatre, and Wallenstein had ceased to be the musical director, she obtained permission from Matthews to represent "Lady Audley's Secret," of which play he was then the owner, and received from him the duplicate copy of the music which Wallenstein had made for him. The original score was still in the possession of the composer, who had given no consent either to Matthews or to Miss Herbert to use the music in London.

The Court held that the controlling facts in the case were not different from those in *Hatton* v. *Kean*; that the music became an inseparable part of the drama, and was not an independent composition; that Matthews, by virtue of the contract of employment, had acquired an unlimited right to use the music; and that the defendant, as the licensee of Matthews, was also entitled to use it.

From these cases it would seem to follow that in the case of a song or a musical play, if the author of the lyrics is a different person from the author of the music, it may be a question as to which of them is the author of the song as a whole, or the play as a whole, or whether they are joint authors (*o*).

Author of artistic work.

In the case of artistic works, other than photographs, it is the person whose hands fix the picture upon the canvas, paper, stone, copperplate, or wood who is the author. Even in the case of lithographs it is submitted that the author is the person who does the drawing upon the stone. Although it is usual to employ a special lithographic designer to draw the design for the express purpose of having the same lithographed, the latter is not, it is thought, the author of the lithograph (*p*). Nevertheless, in the

(*o*) It is submitted that they might conceivably be such notwithstanding that the definition of a joint work excludes the case where the contribution of one author is distinct from the contribution of the other, for their respective contributions to the work, considered as a whole, might be incapable of distinction.

(*p*) *Quære*, as to a map, whether the engraver or the surveyor would be the "author." A map is a "literary work" (sect. 35 (1)).

case of "engravings"—including etchings, lithographs, woodcuts, prints and other similar works, not being photographs (*q*)—if the plate or other original has been ordered by some other person and made for valuable consideration, it is provided by sect. 5, proviso (a), that the first owner of the copyright shall, in the absence of contrary agreement, be, not the "author" of the engraving, but the person by whom the plate or other original was ordered.

Photographs.

The difficulty under the old law of determining who was the "author" of a photograph (*r*) is solved under the new Act by providing that the person who was owner of the original negative at the time when such negative was made (*s*) is to be deemed the author of the work, and that where such owner is a body corporate, the body corporate is to be deemed for the purposes of the Act to reside within the parts of His Majesty's dominions to which the Act extends, if it has established a place of business within such parts (*t*).

Works executed on commission.

Proviso (a) to sect. 5 (1) above alluded to, applies not only to engravings, but also to photographs and portraits. It does not, however, apply to any artistic works other than engravings and photographs unless they fall under the designation of "portraits."

Application of old cases as to photographs.

There was a somewhat similar provision in the Fine Arts Copyright Act, 1862 (*u*), to the effect that where a painting, drawing, or the negative of any photograph should be "made or executed for or on behalf of any person for a good or a valuable consideration," the copyright should belong to "the person for or on whose behalf the same shall be so made or executed" (*x*). Under this Act it was necessary, if the commissioned author was to retain the copyright in himself, that he should do so in writing.

The differences between the Act of 1911, and the Fine Arts Copyright Act, 1862, as to commissioned works.

The differences between the Act of 1911 and the Act of 1862 are (1) that under the Act of 1911 writing is not required if the artist desires to retain his copyright, the proviso only says "in the absence of any agreement to the contrary"; (2) that the 1862 Act refers to a work "made" for another, and the Act of

(*q*) Sect. 35 (1).

(*r*) See *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627; *Melville* v. *Mirror of Life*, (1895) 2 Ch. 531.

(*s*) If the film were stolen prior to exposure, perhaps the law as to "confusion" would apply, and the copyright belong to the owner of the film and not to the thief: *sed quære*.

(*t*) Sect. 21. The provisions as to residence of corporations are due to the fact that residence is essential to copyright in unpublished works: sect. 1 (1) (b), *ante*, p. 27.

(*u*) 25 & 26 Vict. c. 68.

(*x*) *Petty* v. *Taylor*, (1897) 1 Ch. 465; *Boucas* v. *Cooke*, (1903) 2 K. B. 227.

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1911 speaks of a plate or original "ordered" by some other person; (3) that the 1862 Act uses the expression "a good or a valuable consideration," whereas the Act of 1911 only has the words "valuable consideration."

Stackemann v. Paton.

In the case of *Stackemann* v. *Paton* (*y*), Farwell, J., laid some stress upon the fact that the Fine Arts Copyright Act employed the word "good," in addition to "valuable," consideration, and seemed to suggest that there might be a difference between the two. In that case the plaintiffs were photographers who were in the habit of taking photographs of schools and the pupils attending them. This they did as a speculation. Their practice was to seek permission from the principals to take the photographs, it being clearly understood that no one was to be compelled to purchase copies, although, no doubt, the photographers had reasonable expectations of being able to effect sales amongst the pupils and others. In the particular case that came before the Court, the plaintiffs had obtained permission from the principal, who had gone to some trouble in showing the photographer over the interior of the school buildings, in gathering the pupils and grouping them for the purpose of being photographed. A certain number of copies were sold to pupils and others. The defendants were publishers of a book the purpose of which was to advertise schools, and the proprietors of the school in question had supplied them with a block made from the plaintiffs' photographs to be used for advertising the school in the defendants' publication.

Mr. Justice Farwell, in these circumstances, held that the copyright in the photographs was vested in the proprietors of the school, and that, therefore, the plaintiffs had no right to complain of their reproduction in the defendants' publication. The ground for this decision was that the school proprietors had given "good" consideration by reason of their permitting the photographer to have access to private buildings. The learned judge seems to have been influenced in his decision by the consideration that the school proprietors could hardly have intended to permit the plaintiffs to publish the photographs in any manner they pleased, but in order to give effect to such intention it was not necessary to hold that the plaintiffs had parted with their copyright. The case was put by the learned judge of a photograph which produced an atrocious caricature of the sitter; but it is submitted that in such a case, even although the copyright were without doubt vested in the photographer, the latter might be restrained from publishing

(*y*) (1906) 1 Ch. 774.

the same on the ground of breach of faith or libel. There would, it is thought, be little difficulty in implying into a contract with a celebrity, even if paid to give a sitting, an undertaking by the photographer not to hold the sitter up to ridicule, or, even further, that no photographs should be published unless they had been submitted to the sitter for approval. But whether this be so or not, no such question arose in the case we are now considering. The proprietors of the school were not seeking to restrain the photographers from publishing the photographs, but were actively asserting the right to themselves publish copies of a photograph, for the making of which they had given no consideration beyond permitting the photographer to have access to the school buildings for the purpose of taking the photographs.

The correctness of this decision doubted.

It is not easy to reconcile this decision with the cases of *Ellis* v. *Marshall* (*z*) and *Melville* v. *Mirror of Life* (*a*), in both of which it was held that celebrities who were requested by photographers to give sittings without any charge being made for the taking of the photographs did not acquire the copyright in the photographs, notwithstanding that they subsequently purchased some copies. The learned judge in *Stackemann* v. *Paton* sought to distinguish these cases upon the ground that the only possible consideration given by the celebrities was that they took the trouble to walk up to the photographer's room and to sit in his chair; but, even if quantity of consideration is a matter which ought to be considered at all, the consideration given by the principal who permitted access to his buildings seems, at least, no greater than that given by a celebrity who sacrifices his time to attend a photographer's studio.

***Semble*, *Stackemann* v. *Paton* no longer law.**

But whether or not the case of *Stackemann* v. *Paton* was rightly decided under the old law, it is submitted that if similar facts were to recur, the decision would not be the same under the Act of 1911. It is doubtful whether any importance ought to be attached to the fact that the latter Act omits any reference to a "good" consideration, but it requires that not only must the plate or other original be made for valuable consideration before the copyright shall belong to a person other than the author, but also that the plate or other original shall be "ordered by some other person." No doubt an order may be given expressly or impliedly, and the mere fact that a sitting has been canvassed for is certainly not conclusive that the sitter did not order the plate; but where an "order" is given, payment in some form or other

(*z*) (1895), 64 L. J. Q. B. 757.
(*a*) (1895) 2 Ch. 531.

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is usually expected, and the law implies a contract to pay for the work (*b*). The fact, therefore, that no payment is made will, it is thought, generally justify the inference that the plate or original was not ordered by some other person. Further, the reasonable inference from the facts in *Stackemann* v. *Paton* surely was that the copyright was intended to belong to the photographer, who was to have any profit that might arise from the taking of the photographs. Under the Act of 1911, consequently, it is submitted that the Court would find an "agreement to the contrary" if under similar circumstances the school proprietors were to claim the copyright in the photographs. Under the old law, as previously pointed out, no claim could be based upon this ground by the plaintiffs in *Stackemann* v. *Paton*, because of the absence of any written agreement to that effect.

The present law.

The new Act, therefore, it is submitted, restores the law to what it was generally thought to be prior to the decision in *Stackemann* v. *Paton*, namely, that if an artist or photographer solicits the making of a picture or photograph, without making any charge for doing so, the copyright *primâ facie* belongs to the artist or photographer, even although the picture or photograph could not have been made or taken without the permission of some third person, and even although the sitter pays for some copies; but that, on the other hand, if a person requests a picture or photograph to be made or taken, the law implies a promise to pay for it, and this notwithstanding that the commission may have been solicited by the artist or photographer, and the copyright will *primâ facie* belong to the person giving the commission (*c*).

"Portraits" are the only works to which the proviso applies, except in case of engravings and photographs.

It must not, however, be forgotten that it is only in the case of engravings and photographs *of any subject* that the copyright can, under the proviso to sect. 5, sub-sect. (1), vest in the first instance in the person ordering the engraving or photograph. There is no such provision in the Act in the case of any other artistic work, unless that work falls under the description of a "portrait."

What is a "portrait"?

There is no definition of a "portrait" in the Act. The dictionary definition of the word is "a representation or delineation of a person, especially of the face, made from life (*d*) by drawing,

(*b*) *Boucas* v. *Cooke*, (1903) 2 K. B. 227.

(*c*) Photographers requested to photograph, say, football teams or school groups will be well advised, therefore, to make special arrangements as to copyright.

(*d*) It is submitted that this is not essential in the sense that the portrait must be taken direct from the living subject, provided material exists for making an accurate likeness; *e.g.*, a picture painted from a photograph of a

painting, photography, engraving, &c." (*e*). The meaning of the word was much discussed in a case of *Duke of Leeds* v. *Amherst* (*f*), in which the question arose upon the construction of a will, whether a picture of the Duke of Schomberg sitting, clad in armour, upon horseback, a battle scene forming the background of the picture, passed under a bequest of "portraits"; and it was held that it did. Whether a picture is a "portrait" or not seems to depend upon what is the main purpose of the picture. If the main object is the likeness of a person, it is not the less a portrait because of the presence of subordinate accessories in the picture. It is fairly clear that a "portrait" might include the likeness of more than one individual, but that, on the other hand, the mere fact that real persons happen to be delineated in a picture does not necessarily make that picture a "portrait" (*g*).

When copyright vests in employer.

Another exception to the rule that copyright vests in the first instance in the author is made by the Act in the case "where the author was in the employment of some other person under a contract of service or apprenticeship, and the work was made in the course of his employment by that person." In that case the person by whom the author was employed is, in the absence of any agreement to the contrary, to be the first owner of the copyright (*h*).

What is a "contract of service."

Whether a person is engaged under a "contract of service" or not is a question of fact and not of law, and therefore there is no appeal from a judge of first instance upon his finding upon this point (*i*), unless he misdirects himself or there is no evidence to support his finding (*j*). The meaning of the expression "contract of service" was discussed in the case of *Simmons* v. *Heath*

person would, no doubt, be a portrait, even though that person were no longer living.

(*e*) New English Dictionary. In a Copyright Bill drafted by the Artistic Copyright Society, a "portrait" was defined as follows:—"Any work shall be considered a portrait whose principal object is the likeness in any form of art of any specified person."

(*f*) (1844), 14 L. J. Ch. 73.

(*g*) Of course the copyright in a "snapshot" will be in the owner of the negative, for it will not have been "ordered," nor will valuable consideration have been given, and there seems to be no legal ground, unless it be "breach of confidence," upon which a person who has been "snap-shotted" can object to publication of the "snapshot"; it must be considered one of the risks of the highway.

(*h*) This is subject to the qualification that in the case of contributions to newspapers, magazines and similar periodicals, the proprietors of such periodicals can only reproduce the contributions as part of similar periodicals: see Chapter "Newspapers," *post*.

(*i*) *Smith* v. *General Motor Cab Co.*, (1911) A. C. 188; *Wilmerson* v. *Lynn Steamship Co.*, (1913) 3 K. B. 931.

(*j*) *Doggett* v. *Waterloo Taxicab Co.*, (1910) 2 K. B. 336.

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Laundry Co. (*k*), a case decided under the Workmen's Compensation Act, 1906 (*l*), where a similar expression is to be found. A "contract of service" is not the same thing as a "contract for services." In the case cited, it was held that the applicant, who attended at a pupil's residence to give her music lessons, was not under a contract of service with her employer. The question really turns upon the degree of control exercised by the employer over the emp . "The greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the grounds for holding it to be a contract of service; and, similarly, the greater the degree of independence of such control, the greater the probability that the services rendered are of the nature of professional services, and that the contract is not one of service" (*m*). "In each case the question to be asked is, what was the man employed to do? Was he employed upon the terms that he should, within the scope of his employment, obey his master's orders, or was he employed to exercise his skill and achieve an indicated result in such manner as, in his judgment, was most likely to ensure success?" (*n*).

It is clear, therefore, that if an author or an artist is employed by a publisher to write a book or draw a picture, he does not necessarily become the servant of the publisher. The person who employs him must have the right under his contract to require the author or artist to produce such a work as the employer desires, and if the work does not meet with his approval, to require the author or artist to alter his work. Subject to these general principles, each case must depend upon its own facts (*o*).

(*k*) (1910) 1 K. B. 543; see also *Sadler* v. *Henlock* (1855), 4 E. & B. 578; *Yewens* v. *Noakes* (1880), 6 Q. B. D. 530.

(*l*) 6 Edw. VII. c. 58, s. 13. The expression also occurs in the National Insurance Act, 1911 (1 & 2 Geo. V. c. 55), s. 1.

(*m*) *Per* Fletcher Moulton, L. J., *Simmons* v. *Heath Laundry Co.*

(*n*) *Per* Buckley, L. J., *ib.* at p. 553.

(*o*) As examples, the following have been held not to be under a contract of service:—clergy and ministers (*Re National Insurance Act*, (1912) 2 Ch. 563; *Re National Insurance Act* (1912), 107 L. T. 143); doctors, surgeons and anæsthetists employed at a hospital (*Scottish Insurance Co.* v. *Royal Edinburgh Infirmary* (1913), S. C. 751); a lecturer employed to explain the merits of an airship to persons attending an exhibition (*Walter* v. *British Exhibition* (1909), 25 T. L. R. 441). On the other hand, a pupil teacher (*Re National Insurance Act*, (1913) 1 Ir. R. 219), and a professional footballer (*Walker* v. *Crystal Palace Football Club*, (1910) 1 K. B. 87), have been held to be engaged under contracts of service. In the last cited case it was held sufficient that the footballer was bound to follow the general instructions of his employers. In the case of the *Lithographers and Engravers* ((1913), 108 L. T. 894), the contract of service was admitted, and the only question was as to whether they were manual labourers. In *Re Beeton & Co.* ((1913) 2 Ch. 279), the question as to whether persons employed regularly to contribute articles to a magazine were "clerks or servants" within the meaning of the Companies (Consolidation) Act, 1910 (8 Edw. VII. c. 69, s. 209). This case is more fully set out in the chapter on "Newspapers."

In order that the copyright may vest in an employer under proviso (b) of sect. 5 of the Copyright Act, it is not sufficient that the work is made by his servant, it must also be made "in the course of his employment." In the case of *Byrne* v. *Statist Co.* (*p*) it was held that the copyright in a translation made by a person on the regular staff of a newspaper, but during his spare time, did not vest in his employers, but remained in the translator.

Apprenticeship.

As to apprenticeship, "in legal acceptation an apprentice is a person bound to another for the purpose of learning his trade or calling, the contract being of that nature that the master teaches and the other serves the master with the intention of learning" (*q*).

Agreement to the contrary.

Just as where there is an undoubted contract of service between employer and author, the author may retain the copyright on the ground of an agreement, express or implied, that he shall do so; so, equally, where there is no such contract of service, there may be an agreement, express or implied, that the employee shall be entitled to the copyright. In the former case the legal title to the copyright will, upon the making of the work, vest in the author, but in the latter case no legal title to the copyright will vest in the employer without an assignment in writing; he will only have an equitable title (*r*). Where an author is employed by a publisher to write a book or an article for a capital sum, the law will generally presume that it was the intention of the parties that the copyright shall belong to the publisher (*s*). In the case of artistic works the case will, wherever there is any employment of the artist, usually fall under proviso (a) to sect. 5, and the publisher may get the legal right to the copyright without any assignment by the artist.

(*p*) (1914) 1 K. B. 622.

(*q*) *Per* Cockburn, C. J., *Clapham* v. *St. Pancras* (1860), 29 L. J. M. C. 143, 146.

(*r*) See Chapter VII., "Assignment and Transmission," *post*.

(*s*) *Sweet* v. *Benning* (1855), 16 C. B. 459; *Lawrence* v. *Aflalo*, (1904) A. C. 17, considered further in Chapter I., Part III., "Newspapers," *post*.

CHAPTER VII.

ASSIGNMENT AND TRANSMISSION OF COPYRIGHT.

Distinction between title to copyright and to the material object.

COPYRIGHT is to be distinguished from the material object which is the subject of the copyright. The assignment of the material object does not necessarily transfer the title to the copyright, any more than the transfer of the copyright necessarily transfers the title to the material object (*a*). Probably, no purchaser of a book would suppose that he, by his purchase, acquired the right to multiply copies of it, but it is quite possible that the purchaser of an artistic work, such as a picture, even though not made to his order (*b*), may be surprised to find that his purchase does not include the right to reproduce it by such means as engravings and photographs, nor even the right to prevent the artist or anyone else from making reproductions, unless the doing so would be a breach of contract or trust (*c*). It is, nevertheless, the fact that such a purchaser can only obtain the right to reproduction of the work he has purchased by insisting upon a licence or assignment of copyright in writing (*d*). Thus, in *Cooper* v. *Stephens* (*e*), the plaintiffs sold certain electric blocks for the purpose of printing certain drawings. The purchasers lent these blocks to the defendants in order that they, in turn, might print from them; but Mr. Justice Romer held that the plaintiffs were entitled to restrain the defendants from doing so, notwithstanding the permission of the purchasers. "The sale of the blocks," said the learned judge, "could not have had the effect of an assignment of copyright" (*f*). At the same time the Courts consider that the retention by the vendor of a picture of the copyright therein involves an "unnatural dissociation of two kinds of property," and, consequently, they will lean towards construing any document given at the time

(*a*) See, for example, the law as to copyright in letters, *ante*, p. 43 *et seq.*
(*b*) As to which see Copyright Act, s. 5 (1) (a).
(*c*) *Ante*, p. 30.
(*d*) Sect. 5 (2). The American Copyright Act, 1909 (Appendix D), expressly so provides (sect. 41).
(*e*) (1895) 1 Ch. 567, followed by the C. A. in *Marshall* v. *Bull* (1901), 85 L. T. 77.
(*f*) At p. 571.

of the sale as an assignment of copyright (*g*). An assignment of copyright must, however, be made in writing (*h*).

Death of proprietor of copyright.

Copyright is personal property (*i*). Upon the death of the proprietor it will pass to his personal representatives for the benefit of the person to whom he has bequeathed it, or if the proprietor has died intestate, for the benefit of his next of kin (*k*). In the case of a literary work which has not been published, nor performed or delivered in public, where the ownership of the author's manuscript has been acquired under a testamentary disposition "made by the author" (*l*), that ownership is to be *primâ facie* evidence of the copyright being with the owner of the manuscript (*m*).

Bankruptcy of proprietor.

The copyright in a published work will also pass to the trustee in bankruptcy of the proprietor, without any assignment in writing (*n*). As regards unpublished literary works, it is submitted that the right to publish these does not pass to the trustee in bankruptcy of the author. It is true that copyright is now conferred by sect. 1 (1) of the Act of 1911 upon an author as soon as his work is "made," and probably MSS. which have an intrinsic value apart from any literary merit would pass to a trustee in bankruptcy. But, upon the whole, it is thought that the right to publish an unpublished manuscript conferred upon authors by sect. 1 (2) of the Act is of a personal nature, and, consequently, one which would remain in the author notwithstanding his bankruptcy. At all events, the trustee could not compel the author either to finish his MS. or to see the work through the press (*o*).

Execution.

There would appear to be no process whereby copyright can be taken in execution by a judgment creditor of the proprietor (*p*), although, of course, royalties due to the judgment debtor might be attached by garnishee proceedings or other process of execution.

(*g*) *London Printing & Publishing Alliance* v. *Cox*, (1891) 3 Ch. 291, 304.

(*h*) *Infra*.

(*i*) It was expressly so provided by the Literary Copyright Act, 1842, s. 25. There is no express provision to that effect in the Act of 1911, but it clearly is personalty.

(*k*) *Thompson* v. *Stanhope* (1774), Amb. 737; *Barnett* v. *Chetwood* (1720), 2 Mer. 441; *Latour* v. *Bland* (1818), 2 Stark. 382.

(*l*) The Act does not raise any such presumption in the case of a bequest by an "assign" of the author.

(*m*) Sect. 17 (2); cf. *Macmillan* v. *Dent*, (1907) 1 Ch. 107.

(*n*) *Mawman* v. *Tegg* (1826), 2 Russ. 392; *Re Curry* (1848), 12 Ir. Eq. R. 391; *Re Grant Richards*, (1907) 2 K. B. 33. But not a personal right to publish: *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683. As to an author's right to royalties upon the bankruptcy of his publisher, see, now, the Bankruptcy Act, 1913, *post*, Chapter "Publishing Agreements," Part VI.

(*o*) *Gibson* v. *Carruthers* (1841), 8 M. & W. 343.

(*p*) *Edwards* v. *Pickard* (1909), 78 L. J. K. B. 1108.

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Provisions of Act of 1911 as to assignment.

Sect. 5, sub-sect. (2), of the Act of 1911 is as follows:—

"The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations to the United Kingdom or any self-governing dominion or other part of His Majesty's dominions to which this Act extends, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work."

And sub-sect. (3) of the same section provides that:—

"Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly."

Can a work not in existence be assigned?

Whether there can be a legal assignment of a work not in existence—as distinct from a work which exists, whether published or unpublished—is doubtful. Of course, if the author is under a contract of service with another, who employs him to make a work on his behalf, the copyright will vest in the employer (*q*), but in other cases (*r*) sect. 5 is precise that "the author of a work shall be the first owner of the copyright therein."

(*q*) Sect. 5 (1) (b).
(*r*) Except in the case of a Government publication (sect. 18).

There appears to be authority for thinking that, even under the old law, there could not be a legal assignment of a work not in existence at the date of the alleged assignment (*s*); but in the more recent case of *Ward, Lock & Co.* v. *Long* (*t*) Mr. Justice Kekewich held the contrary. In that case the plaintiffs offered to an author "£200 for the complete copyright of a story containing not less than 80,000 words," on the lines of a synopsis which had been submitted by the author to the plaintiffs, and this offer was accepted. The story, when written, consisted of only about 70,000 words, and the plaintiffs paid the author the sum of £160, and declined to make any further payment. The author thereupon purported to assign his copyright in the story to the defendants, who published the same in ignorance of the author's contract with the plaintiffs. Mr. Justice Kekewich granted an injunction against the infringement of the plaintiffs' copyright. The decision is far from being satisfactory. The learned judge seems to have hesitated to say that the letters which had passed between the author and the plaintiffs amounted to an assignment, but "an agreement to assign in matters of this kind is quite as good as a direct assignment in words, is enforceable in equity, and as between business men is complete" (*u*). With all deference to the learned judge, it is submitted that there is a great deal of difference between a legal and an equitable assignment, for the one is enforceable, and the other is not enforceable, against a purchaser for value without notice, and if the assignment to the plaintiffs in that case was an equitable assignment only, it is submitted that it was an entire departure from principle to hold that the same held good against the innocent defendants, who appear to have had a legal assignment. The learned judge at the same time seems to have based his decision in some respects upon the wording of sects. 2 and 3 of the Literary Copyright Act, 1842 (*x*). By sect. 3 of that Act it was provided that copyright should vest in the author "or his assigns," and sect. 2 defined "assigns" as including "every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether derived by sale, gift, bequest, or by operation of law or otherwise." There are no similar words in the Act of 1911 which are capable of being construed so as to vest the copyright initially in any "assign"—legal or equitable—of the author,

Ward, Lock & Co. v. *Long.*

(*s*) *Colburn* v. *Duncombe* (1838), 9 Sim. 161; *Sweet* v. *Shaw* (1839), 3 Jur. 217.
(*t*) (1906) 2 Ch. 550.
(*u*) (1906) 2 Ch. 557.
(*x*) 5 & 6 Vict. c. 45.

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and it is submitted that, whether or not the decision of Mr. Justice Kekewich in the case referred to was correct under the old law, it does not accurately express the new law. It is submitted that under the Act of 1911 the right to the copyright will, save in cases falling within the exceptions to sect. 5, vest at law in the author notwithstanding any purported assignment made prior to the "making" of the work, although in equity the assignee, being an assignee for valuable consideration, may have a right to compel the author to execute a legal transfer, or to allow his name to be used by the assignee for the purpose of an action for infringement (*y*), but not against a subsequent purchaser for value without notice. The contrary doctrine, laid down by Mr. Justice Kekewich in *Ward* v. *Long*, might lead to grave injustice, for, although it is true that a legal assignment of an existing work may be suppressed, it is seldom that an assignee purchases a completed work except with a view to immediate publication, whereas the period between a contract to compose a work or paint a picture and the completion of the work might be considerable, and the purchaser of the completed manuscript or picture might have no possible means of ascertaining the existence of the contract.

What words will effect an assignment.

The Act does not state that the assignment of copyright shall be in any special form, beyond that it shall be in writing, signed by the owner of the right in respect of which the assignment is made, or by his duly authorised agent (*z*). A mere receipt for the purchase-money may, under some circumstances, amount to an assignment of the copyright (*a*). In *London Printing Alliance* v. *Cox* (*b*), K. & Co., art colour printers, who were owners of a picture called "The Bride" and the copyright in it, entered into an agreement with the A. Company, the terms of which were embodied in a letter of the 19th of April, 1890, from K. & Co. "For 55,000 copies of 'The Bride' [style of reproduction described], price £13 9*s*. per 1,000 copies, which price includes

(*y*) *Leader* v. *Purday* (1849), 7 C. B. 4; *Sims* v. *Marryat* (1851), 17 Q. B. 281; *Tailby* v. *Official Receiver* (1888), 13 A. C. 523.

(*z*) Under the old law the copyright in a literary work was required to be in writing: *Leyland* v. *Stewart* (1876), 4 Ch. D. 419. The copyright in an engraving had to be in writing, attested by two witnesses (8 Geo. II. c. 13, s. 1); in a work of sculpture by deed, attested by two witnesses (54 Geo. III. c. 56, s. 4); and in a painting, drawing, or photograph in writing, signed by the proprietor of the copyright or his agent (25 & 26 Vict. c. 68, s. 3). It was generally considered that an assignment of literary copyright did not require to be attested, and the Act of 1911 does not appear to require any attestation (*Cumberland* v. *Copeland* (1861), 1 Hurl. & C. 194; but see 8 Jur. N. S., Part II., p. 148). As to an assignment by a foreigner, see *Jefferys* v. *Boosey* (1854), 4 H. L. C. 915.

(*a*) *Kyle* v. *Jeffreys* (1859), 18 So. Sess. Cas. 906; *Howitt* v. *Hall* (1862), 6 L. T. 348; *Levi* v. *Rutley* (1871), L. R. 6 C. P. 523; *Colburn* v. *Duncombe* (1838), 9 Sim. 151.

(*b*) (1891) 3 Ch. 291.

sole and entire copyright net. 5,000 copies not later than September, 1890; balance, 50,000, not later than November 15, 1890. Picture and frame to become your property for an extra sum of £17, we to insure and take all risks of picture during time of progress of work. Terms of payment, bills at five, six, and seven months from date of delivery of goods." It was held by Fry and Lopes, L. JJ., that the title to the copyright passed immediately by this letter; by Lindley, L. J., that the letter only amounted to an agreement to sell the copyright, and not to an assignment of it.

To the like effect is the case of *Savory, Ltd.* v. *The World of Golf* (*c*). There the plaintiffs purchased from an artist a picture called "Thirteen down—Great Scot!" representing a depressed golf-player making his way to the next tee with a bundle of golf clubs hanging from his shoulder. The only memorandum of the assignment of the copyright was made prior to the Act of 1911 and took the form of a receipt as follows:—"Received of Messrs. E. W. S., Ltd., the sum of £2 6*s*. 6*d*. for five original card designs, inclusive of all copyrights. Subjects: Four Golfing subjects; one Teddy Bear painting." This was held to be a sufficient assignment in writing of the copyright. In both these cases, however, the property in the pictures themselves passed to the purchasers, and in such cases the Courts strive to hold that the copyright is not severed from the picture (*d*). In *Lacey* v. *Toole* (*e*), it was held that an agreement to "let A. have" a certain work in discharge of a debt owing to A. was sufficient to pass the copyright in the work to A. The intention of the parties must, however, always be regarded, and, therefore, in the case of an agreement with publishers whereby the publishers agreed to pay to an author a royalty of sixpence per copy on every copy of the work sold "in consideration of Mr. W. St. J. (author) giving Mr. W. C. N. (publisher) the sole and exclusive right of printing and publishing the series of 'Music and the Higher Life,' and issuing the same in volume form," it was held that the agreement was a publishing agreement only and not an assignment of copyright (*f*).

An author who has assigned his copyright in a work is not at liberty, in the absence of stipulation to the contrary, to reproduce substantially the same matter in another publication (*g*).

Assignor may not reproduce the work.

(*c*) (1914), W. N. 335.
(*d*) *Ante*, p. 120.
(*e*) (1867), 15 L. T. 512.
(*f*) *Re Jude's Musical Compositions*, (1907) 1 Ch. 651; cf. *Edwards* v. *Cotton* (1905), 19 T. L. R. 34.
(*g*) (1861), 14 Ir. Com. Law Rep. 158; *Colburn* v. *Simms* (1843), 2 Ha. 543; see as to replicas, sect. 2 (1) (ii).

CAP. VII.

Divisibility of copyright.

The sub-section of the Act of 1911 now under consideration expressly authorises the owner of the copyright to assign the right "either wholly or partially and either generally or subject to limitations to the United Kingdom, or any self-governing dominion or other part of His Majesty's dominions to which this Act extends" (*h*).

Assignment limited in time.

The Act, therefore, clearly authorises an assignment limited either in point of time or in point of locality, and by sub-sect. (3) such limited assignee is to be regarded as the owner of the copyright as respects the rights assigned.

Copyright might be assigned for a limited time under the old law, and it has been determined that, in the absence of a special contract to the contrary, the assignor of a copyright is entitled, after the assignment, to continue selling copies of the work printed by him before the assignment and remaining in his possession (*i*).

In *Howitt* v. *Hall* (*k*), it appeared that the defendants, having bought the copyright for four years in a book of which the plaintiff was the author, were still continuing, several years after the end of that term, to sell copies which they had printed during the four years. The Court, in refusing an injunction to restrain such sales, held that the purchase of the copyright carried the right of printing; and that, while this right reverted to the author at the end of four years, the publishers were entitled to sell, after the expiration of that term, all copies which had been printed in good faith during the term. "The Copyright Acts," said Vice-Chancellor Wood, "were directed against unlawful printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed" (*l*).

Limited as to locality.

Whether, under the old law, copyright was divisible as to locality is not so clear, but the balance of authority is in favour of so holding (*m*); but the new Act clearly permits the copyright to be so divided, the only question being as to whether there are any limits to the permissibility. It is upon the whole submitted that the owner of an English copyright could not make an assignment to one person of rights in Lancashire and to another person of rights in Middlesex, but that he could make an assignment to one

(*h*) *I.e.* under sects. 25 *et seq.*

(*i*) *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418; see *Tuck* v. *Priester* (1887), 19 Q. B. D. 48; *Tuck* v. *Continental Printing Co.* (1897), 3 T. L. R. 150, 661, 826; *Troitzsch* v. *Rees* (1887), 3 T. L. R. 773.

(*k*) (1862), 6 L. T. 348.

(*l*) But see *Pitt-Pitts* v. *George & Co.*, (1896) 2 Ch. 866.

(*m*) *Jefferys* v. *Boosey* (1854), 4 H. L. C. 815; *Pitt-Pitts* v. *George & Co.*, *supra*.

person of rights in Australia and to another of rights in India (*n*). And where a person can secure a copyright in two countries governed by two distinct copyright laws, there could be no valid objection to his assigning his rights in one country to another, securing his rights in the other country to himself. For instance, suppose an author to be able to secure a copyright for himself both in France and in this country, he might make a valid assignment of his French copyright to one person, and his English to another (*o*). But this, perhaps, cannot be regarded, strictly speaking, as a division of copyright, the rights being distinct—the one conferred by one country, the other by another.

Performing rights are, in practice, frequently divided as to locality even between various parts of the same country, *e.g.*, one person may be given the exclusive right of performing in London and another in the provinces, and so on, but these would appear to be not true assignments, but exclusive licences only (*p*).

Limited as to mode of reproduction.

There is yet a third manner in which copyright may be divided, and that is as to the mode of reproduction. The words of the Act are very wide, permitting an assignment of the copyright "wholly or partially." Thus, the performing rights, the translating rights, the gramophone rights, the photographic rights, the engraving rights, and so forth, are all capable of separate assignment, and it follows from sub-sect. (3) of sect. 5 that the assignee of these separate rights can sue for the infringement of his own particular right without making the assignor a party to his action. But it must be remembered that a partial assignee has no right to sue for infringement of any other right than that assigned to him, however much the infringement of the right not assigned may commercially damage him. For instance, in *Dick* v. *Brooks* (*q*), it was held that the proprietor of the engraving rights in a picture called "The Huguenot" had no right to bring an action against a defendant who had published a chromo-printed pattern for woolwork copied from the original picture (*r*).

Care to be taken in framing assignments of copyright.

Having regard to the various derivative rights which flow from ownership of copyright, an assignor of copyright should always take care that the assignment is drawn in such a way as not to carry rights in excess of those intended to be assigned. The assignment of the material thing, such as the manuscript or the

(*n*) *Holt* v. *Wood* (1896), 17 N. S. W. R. 36.
(*o*) *Pitt-Pitts* v. *George, supra.*
(*p*) *Neilson* v. *Horniman* (1909), 25 T. L. R. 188; see *post*, p. 130.
(*q*) (1880), 15 Ch. D. 22.
(*r*) This, it is submitted, is the true explanation of this case; see *post*, Chapter "Infringement."

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picture, does not of itself carry the copyright (*s*), but any document purporting to assign copyright ought to be carefully worded. Under sect. 22 of the Literary Copyright Act, 1845 (*t*), it was provided that no assignment of any book consisting of, or containing a dramatic piece or musical composition should, *primâ facie*, be taken to convey to the assignee the performing rights. There is no similar provision in the Act of 1911, and an assignment of "copyright" would, no doubt, operate, in the absence of contrary intention, to convey to the assignee all the rights which go to make up copyright (*u*).

The proviso to sect. 5 (2)

There is, however, one limitation to the powers of assigning copyright, namely, that contained in the curious proviso to subsect. (2) of sect. 5 of the Act, previously set out (*x*), depriving an author of the right to assign any interest in his copyright beyond the expiration of twenty-five years from the author's death.

only applies if the author is the first owner of the copyright.

It is to be noticed that this proviso only applies in a case where the author was the first owner of the copyright. In the case, therefore, of an engraving, photograph, or portrait, where the plate or other original was ordered by some other person and was made for valuable consideration, or in the case of a work made by an author in the employment of some other person under a contract of service or apprenticeship, the proprietor of the copyright is at liberty to assign it for the full term, for in neither of these cases does the copyright vest in the author in the first instance (*y*).

Proviso does not apply to collective works.

The proviso in question is not to apply "to the *assignment* of the copyright in a collective work or a *licence* to publish a work or part of a work as part of a collective work" (*z*). The words here employed should be noticed. In a collective work there may be several distinct copyrights—there is the copyright in the complete work, considered as a whole, and the various copyrights in the distinct contributions to the work. An "assignment" of the copyright of the complete work may be made for the full period of protection, and a "licence" to publish a contribution as part of the collective work may also be granted for the like full period; but an "assignment" of the copyright in the contribution cannot

(*s*) *Ante*, p. 120.
(*t*) 5 & 6 Vict. c. 45.
(*u*) Copyright Act, 1911, s. 1 (2); *Cumberland* v. *Planché* (1834), 1 A. & E. 580; cf. *Ex parte Hutchins & Romer* (1878), 4 Q. B. D. 90, 483.
(*x*) *Ante*, p. 122.
(*y*) Sect. 5 (1) (a) and (b).
(*z*) A "collective work" means (a) an encyclopædia, dictionary, year-book, or similar work; (b) a newspaper, review, magazine, or similar periodical; and (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated (sect. 35 (1)).

be made for the period commencing twenty-five years after the author's death (*a*).

nor to posthumous works;

Inasmuch as it is only the author himself who is prohibited from assigning the entire copyright, the proviso cannot apply to posthumous works, which are entitled to protection until publication and for a period of fifty years thereafter (*b*).

but, *semble*, does to existing works.

On the other hand, the proviso seems to apply to works in existence prior to the Act.

Quære, as to photographs and mechanical instruments.

It is questionable whether the proviso against assignment applies to photographs and mechanical instruments, the copyright in both of which is for a period of fifty years from the date of the making of the negative or plate, as the case may be, and vests in the owner of the negative or plate, who is to be "deemed to be the author of the work" (*c*). The proviso did not form part of the Bill as it was originally laid before the House of Commons, but was drafted and added to the Bill during its passage through Committee of the House. It would almost seem as though the draftsman of the proviso had overlooked the fact that, in the case of some works, the period of copyright protection bears no relation to the lives of their authors, and although the words of the proviso, at first sight, seem wide enough to cover photographs and records, it is submitted that the Courts ought to endeavour to exclude its application to such works. One reason, no doubt, for fixing the period of twenty-five years from the death of an author as the limit of the assignability of copyright is because at that date a work ceases to have exclusive copyright, and any person—including, of course, the assignee of the copyright, who then ceases to have the benefit of his assignment—can publish the work upon a royalty basis (*d*). It is, however, doubtful whether a photograph or a record can be published upon this basis (*e*). The assignee of the copyright in a photograph or record whose author died shortly after the making of the negative or plate would therefore be in an unfair position as compared with an assignee of, say, literary copyright. Another reason for excluding photographs and records from the proviso against assignment is that a corporation may be deemed to be the "author" of either of these works, and in such a case the proviso could have no possible application. Again, the proviso refers

(*a*) Possibly an assignment for the full term might be construed as a licence.
(*b*) Sect. 17.
(*c*) Sects. 19, 21.
(*d*) Sect. 3, proviso, *ante*, pp. 102 *et seq.* In the case, however, of works existing prior to the Act, this right does not arise until after thirty years from the death of the author (sect. 3). There is thus left a hiatus of five years.
(*e*) *Ante*, p. 103.

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to the interest of the author after the termination of the period of his assignment as "the reversionary interest in the copyright expectant on the termination of that period." If works as to which the existence of any reversionary period is problematical (for the author of a photograph might live for twenty-five years after the making of the photograph) were intended to be included, it would have been more in accordance with the rules of good draftsmanship to have added after "reversionary interest" the words "if any."

Illusory nature of the benefits enforced by the proviso.

The proviso to sect. 5 (2) was, of course, inserted in the interests of an author's family, to prevent, if possible, a successful author from making improvident contracts to the detriment of his dependants. In practice it will probably be found that the benefits to the author's family or dependants will be quite illusory. The proviso does render null and void any attempt by a living author to dispose of his copyright for longer than the period of his life and twenty-five years after his death, but the weakness of the proviso seems to lie in the fact that it declares that the reversionary interest shall, "on the death of the author," devolve on his legal personal representatives "as part of his estate." This reversionary interest, then, unassignable during the author's lifetime, becomes an asset of the author's estate and assignable immediately upon his death. It will consequently be liable to be sold by his executors for the payment of his debts, and even if not required for that purpose, it will frequently be the duty of the executors to realize the interest for the purpose of winding up the author's estate (*f*). Supposing the author made a specific bequest of his reversionary interest in his copyright, the specific legatee will probably be ready to sell that interest forthwith, rather than wait for a chance of income twenty-five years later. The only possible purchaser, at any rate in the case of a literary work, will, save in exceptional cases, be the author's publisher, and the amount which he will be prepared to give for a reversionary interest in a copyright falling into possession twenty-five years later is not likely to be very large, particularly having regard to the fact that he will, even if he declines to purchase the reversion, be entitled to continue to publish the work, if he thinks it worth while to do so, upon payment of a royalty to the owner of the copyright, and that if he does purchase, he cannot acquire an exclusive copyright (*g*).

Licences.

The owner of a copyright may, as an alternative to assigning the same, grant a licence to produce and copy his work. Such

(*f*) For instance, the rule, well known to equity lawyers as the rule in *Howe* v. *Lord Dartmouth* (1802, 7 Ves. 137), would apply.
(*g*) Sect. 3.

licences must be in writing, signed by the owner of the copyright or his agent, and, where the author is the first owner of such copyright, cannot be made for a longer period than the life of the author and twenty-five years after his death (*h*).

Parol licence a defence to action for infringement.

A distinction must, however, be made between a licence where invoked in aid of an action of infringement and where invoked as a defence to such an action (*i*). As copyright is only infringed by a person who does certain acts "without the consent of the owner of the copyright" (*k*), and there is no suggestion that for this purpose the consent must be in writing, a verbal licence will be a good defence in an action for infringement of copyright by the person who gave the licence. Such a licence would often be presumed from the circumstances of the case (*l*).

Distinction between an assignment and a licence.

The distinction between an assignment and a licence lies in the fact that an assignment conveys an interest in the property assigned, whereas a licence does not, unless it is coupled with a grant, carry any proprietary rights in the property but merely creates a contractual relationship between the parties, or, as it was put by Tindal, C. J., in *Muskett* v. *Hill* (*m*), "a dispensation or licence properly passes no interest, but only makes an action lawful which, without it, would have been unlawful." It has been held, therefore, that a licensee from a copyright owner has no title to sue in his own name for infringement (*n*), but that his proper course is to join as co-plaintiff with himself the owner of the copyright (*o*), who does not lose his right to sue by reason of his having granted a licence (*p*). Again, in the case of *London Printing Alliance* v. *Cox* (*q*), Vaughan Williams, J., held that a purchaser of the copyright in a picture without notice of the existence of a previous licence to copy the picture in monochrome was not bound by the licence and could sue the licensee for doing that which he was authorised by the licence to do.

Whether the Act of 1911 has altered the law.

These cases were all decided under the repealed Copyright Acts, and it seems to be arguable whether the recent Act has not altered

(*h*) Sect. 5 (2).

(*i*) *Strahan* v. *Graham* (1868), 17 L. T. 457.

(*k*) Sect. 2 (1). This, no doubt, means without the consent of the owner of the copyright at the date when the alleged infringing act is performed.

(*l*) *E.g.*, *Cooper* v. *Stephens*, (1895) 1 Ch. 567; *Dennison* v. *Ashdown* (1897), 13 T. L. R. 226; *Boucas* v. *Cooke*, (1903) 2 K. B. 227, 236; and see *ante*, p. 45.

(*m*) (1839), 5 Bing. N. C. 694; *Heape* v. *Hartley* (1889), 40 Ch. D. 461.

(*n*) *Neilson* v. *Horniman* (1909), 25 T. L. R. 685; cf. *Heape* v. *Hartley*, *supra*; *Wooley* v. *Broad*, (1892) 1 Q. B. 806.

(*o*) *Macmillan* v. *Dent*, (1907) 1 Ch. 107. If the owner refused to join, the proper course would be to make him a defendant.

(*p*) *Marshall* v. *Bull* (1901), 85 L. T. 77.

(*q*) (1891) 3 Ch. 291.

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the law. If a licence is "coupled with an interest" the licensee can sue in his own name, and a purchaser, with or without notice, will be bound by the licence. Sect. 5 (2) authorises the owner of the copyright "to *grant any interest in the right* by licence." This seems to imply that there may be such a thing as a licence in respect of copyright "coupled with an interest," and if so, it is thought that an irrevocable and exclusive written licence would be construed as a licence coupled with a grant (*r*). If so, this will avoid troublesome questions of construction such as have sometimes arisen, as to whether the words used in a particular document amount to an exclusive licence only, or to a partial assignment of the copyright (*s*).

Whether a licence is revocable.

But before a licence can be held to pass any legal interest in the copyright it would have to be shown that the licence was both irrevocable and exclusive. A simple licence has often been stated to be revocable at any time upon reasonable notice (*t*), but it seems more correct to say that it is revocable unless the intention of the parties is shown to be to the contrary: and if the licensee has paid a lump sum for the licence this is evidence that it was not the intention of the parties that the licence should be revocable (*u*). It is, indeed, questionable whether the old cases as to revocability of licences still hold good, and it has been held that a licence, coupled with a contract for good consideration not to revoke it, confers an enforceable right (*x*).

Whether licence is exclusive.

Whether a licence is or is not exclusive must turn upon the words of the particular agreement. *Primâ facie*, it would appear that a licence is not exclusive and the grantor is at liberty to grant similar licences to others (*y*). In one case, a pencil note "Herewith the MS. of your song 'Men'" was held not to be sufficient to give a permanent and irrevocable licence to sing the song.

In another case (*z*), where the plaintiff gave her manuscript to a

(*r*) Against this argument, however, must be set sub-sect. 3 of sect. 5, which only refers to partial *assignments*.

(*s*) *E.g.*, *Re Jude*, (1907) 1 Ch. 651.

(*t*) *Wood* v. *Leadbitter* (1845), 13 M. & W. 838; as to damages if it is revoked, see *Kerrison* v. *Smith*, (1897) 2 Q. B. 445.

(*u*) *Guyot* v. *Thomson*, (1894) 3 Ch. 388 (patent case). And *quære*, whether the doctrine of *Wood* v. *Leadbitter*, if still good law, ought not to be confined to licences in respect of land. In a case of *Williams* v. *Feldman* (*Times*, Oct. 1913), a letter was produced appointing the defendants as agents for the sale of songs "for a period of twelve months, to pay us 10 per cent. royalty on all copies sold of our various publications." Mr. Justice Sargant remarked, "On the face of it that was an authority coupled with an interest, which could not be revoked."

(*x*) *Hurst* v. *Picture Theatres, Ltd.* (1914), 30 T. L. R. 642; and see *Lowe* v. *Adams*, (1901) 2 Ch. 598.

(*y*) *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497.

(*z*) *Rundell* v. *Murray* (1821), Jac. 311.

publisher, with a parol licence to publish it at his own risk and expense, and disclaimed any intention to receive any emolument from it, and the defendant published it for fourteen years (the first term under the statute then in force) and continued to publish and sell it afterwards, and the plaintiff then applied for an injunction to restrain its further publication by the defendant: Lord Eldon refused the injunction, upon the ground that the defendant had been licensed to publish without any limitation of time. The question, however, was left undecided whether the right to publish did not remain in the plaintiff concurrently with the defendant, or whether the defendant had acquired any right as against the public. The defendant's counsel expressly disclaimed any title to the copyright, admitting that there was no legal assignment of it. The case therefore proceeded upon the effect of a parol licence to publish, and shows that such licence conveys no copyright to the exclusion of the author.

Whether assignable.

Primâ facie, a licence is assignable, but this will not be so if there is any evidence that the licensee was chosen on account of his personal skill or reputation (*a*).

Assignment of copyright not *bonâ fide*.

Where the proprietors of the copyright in two pictures assigned the same to the plaintiffs upon the plaintiffs' undertaking not to reproduce the same without the assignor's consent, the purpose of the assignment being to enable the plaintiffs to sue for infringement of the copyright in the pictures, it was held that the assignment was not *bonâ fide*, and that the plaintiffs could not sue without joining the assignors as co-plaintiffs (*b*).

The question as to the rights of an assignee of copyright to make alterations in the work is treated in another place (*c*).

(*a*) *Re Jude*, (1907) 1 Ch. 651; *Stevens* v. *Benning* (1854), 1 K. & J. 168; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; *Griffith* v. *Tower Publishing Co.*, (1897) 1 Ch. 21.

(*b*) *Landeker & Brown* v. *Wolf* (1907), 52 Sol. J. 45.

(*c*) See Chapter "Publishing Agreements," *post*, Part VI., which see generally upon the subject of assignment.

CHAPTER VIII.

INFRINGEMENT OF COPYRIGHT.

(a) *Literary and General.*

Definitions of infringement.

By the Literary Copyright Act, 1842 (*a*), copyright was, for the purposes of that Act, defined as meaning "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject" to which that Act applied: and any act which invaded the sole and exclusive liberty was an infringement of copyright. Similarly, the Act of 1911 provides (*b*) with regard to all works, that the copyright therein "shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright," but the section goes on to provide that six specific acts therein mentioned (*c*), which might otherwise have been deemed to be infringements of copyright, shall not be considered to be such. It is probably correct to say that any act which would have been an infringement of copyright under the old law—unless it be one of the above-mentioned six acts—will be an infringement of copyright under the new law, but that, on the other hand, there are several acts which were not infringements under the old law, but which are made so by the new Act. In particular, whereas under the Act of 1842 copyright conferred the exclusive liberty of "printing or otherwise multiplying copies" of a work, the Act of 1911 confers a wider right upon the copyright owner, namely, "the sole right to produce or reproduce the work or any substantial part thereof *in any material form whatsoever*."

Same work may be independently arrived at.

The question of what is, and what is not, a piracy must necessarily often be a matter of difficulty, and it is always important to bear in mind that plagiarism is not necessarily an invasion of copyright, for there can be no copyright in an idea (*d*); moreover, the

(*a*) 5 & 6 Vict. c. 45, s. 2.
(*b*) Sect. 2 (1).
(*c*) These six acts are all examples of what might be considered "fair dealing" with the original work (*post*, p. 137). They will be treated in greater detail later in this Chapter.
(*d*) See *ante*, p. 2.

owner of a copyright does not stand in the same position as the owner of a patent. A patentee has the sole right to use his invention within certain limits, and if anybody uses that patent, although he has made independent investigations, he infringes the patent. But in the case of copyright that is not so. It is always possible to arrive at the same result from independent sources, and the fact that the defendant produces something like the plaintiff's earlier work does not necessarily create an infringement: it must be shown that the defendant has derived his work from the plaintiff's (*e*).

Ignorance no excuse.

Copyright being a proprietary right, except in those cases where the Act especially provides to the contrary (*f*), ignorance is no excuse for infringement (*g*).

Liability for acts of agent.

Part of the monopoly of the owner of the copyright is to "authorise" any of the acts of which he is given the exclusive right (*h*). From this it follows that a principal will be liable for the acts of his agent if he has expressly authorised him to commit them, and even probably if the agent was acting within the apparent scope of his authority (*i*). If, on the other hand, it could be shown that the actual infringement was committed by an independent contractor, without instructions from his employer, the latter would not be liable. Thus, in the case of *Kelly's Directories* v. *Gavin* (*k*), the defendant Gavin published a book which was an infringement of the plaintiffs' copyright. The defendants Lloyd had agreed to print the book for Gavin, but in order to save time, at Gavin's request, they subsequently relinquished their contract as to part of the work, and Gavin employed other printers to print the pirated portion. When the book was published it bore on the title page the statement "Printed at Lloyd's," but Lloyds were ignorant of the piracy until they were informed of it after the publication. The Court was satisfied by the evidence that Gavin and Lloyds were not partners or co-adventurers in the publication of the book, and that the printers who printed the pirated matter were agents of Gavin and not of Lloyds, and held that Lloyds had not

(*e*) *Rees* v. *Robbins, Times,* 6th Feb., 1914; on appeal, *Times,* 4th July, 1914; *Corelli* v. *Gray* (1913), 29 T. L. R. 570.

(*f*) *E.g.*, in cases falling under sect. 2, sub-sects. (2), (3).

(*g*) *Mansell* v. *Valley Printing Co.*, (1908) 2 Ch. 441; *Lee* v. *Simpson* (1847), 3 C. B. 871; *Wittman* v. *Oppenheim* (1884), 27 Ch. D. 260; *Byrne* v. *Statist Co.*, (1914) 1 K. B. 622. Ignorance may, however, affect the remedies: see sect. 8, *post,* Chapter "Infringement of Copyright."

(*h*) Sect. 1 (2).

(*i*) *Marsh* v. *Conquest* (1864), 17 C. B. 418; *Monaghan* v. *Taylor* (1885), 2 T. L. R. 685.

(*k*) (1901) 1 Ch. 374.

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"caused" it to be printed within the meaning of sect. 15 of the Literary Copyright Act, 1842 (*l*).

A person, *semble*, may be liable for "authorising" an act which has not been committed.

It would also seem that the new Act has enlarged the protection accorded to the owner of a copyright by thus making it part of his monopoly to "authorise" any of the acts referred to in sub-sect. (2) of sect. 1, and that a person may be liable to an action for infringement of copyright if he has, without the consent of the owner of the copyright, "authorised" any of those acts, although the authorised act has not been completed. Under the old law a person was only liable if he "caused" a work to be performed or printed, and in the case of *Russell* v. *Briant* (*m*) Wilde, C. J., says, "No one can be considered as an offender against the provisions of the Act so as to subject himself to an action of this nature, unless by himself or his agent he actually takes part in a representation which is a violation of copyright." Again, in the case of *Karno* v. *Pathé Frères* (*n*), it was held that a person who sold cinematograph films, knowing that the purchasers intended to exhibit them publicly, had not "caused to be represented" the plaintiff's sketch from which the films were taken. But, under the new Act, where the defendant had announced, by means of posters and handbills, their intention to exhibit a cinematograph film in which the plaintiffs had the copyright, at certain theatres, the defendants had authorised "a performance of the film" within the meaning of sect. 2 (1) of the Act and were consequently liable in damages (*o*).

Modes in which copyright may be infringed.

Copyright in a published literary work may be invaded in several ways (*p*):—

1st. By reprinting the whole work *verbatim*.

2nd. By reprinting *verbatim* a part of it.

3rd. By imitating the whole or a part, or by reproducing the whole or a part with colourable alterations.

4th. By reproducing the whole or a part under an abridged form.

5th. By reproducing the whole or a part under the form of a translation.

6th. By converting it into a dramatic work.

(*l*) See also *Bolton* v. *London Exhibitions* (1898), 14 T. L. R. 550; *Green* v. *Irish Independent*, (1899) 1 Ir. R. 386; *Colburn* v. *Simms* (1843), 2 Ha. 543, 547.

(*m*) (1849), 8 C. B. 836, at p. 848; *Lyon* v. *Knowles* (1863), 3 B. & S. 556; but see *Marsh* v. *Conquest* (1864), 17 C. B. N. S. 418.

(*n*) (1909), 100 L. T. 260.

(*o*) *Fenning Film Service* v. *Wolverhampton, &c. Cinemas*, (1914) W. N. 338. At the time of writing no full report of this case has been published.

(*p*) As to unpublished works, see further, *ante*, p. 30 *et seq.*

Piracies of the nature of the first class are comparatively seldom committed, on account of the ease with which they can be detected (*q*).

1. By reprinting the whole *verbatim*.

When such cases do arise generally either the defendant has mistaken his rights or the infringement has been imported from abroad.

It must be remembered that, according to sect. 1, sub-sect. (2), of the Copyright Act, copyright is "the sole right to produce or reproduce" a work, and to constitute a piracy there must be an invasion of this right. To *make use* of a book is not a piracy, if the copies are not multiplied. To take a familiar instance, it is the custom for many Law Societies to print general conditions relating to the sale of real estate. A. and B. enter into a contract for sale and incorporate by reference into their agreement "the Conditions of Sale of the X.Y. Law Society." Assuming these conditions to be the subject of copyright, A. and B. are not infringing that copyright if they confine themselves to a reference and do not copy the conditions into their agreement.

Piracies of the nature of the second division are far more frequent and more difficult of detection. The quantity of matter subtracted cannot in all cases be a true criterion of the extent of the piracy, for a work may be a piracy upon another, though the passages copied are stated to be quotations, and are not so extensive as to render the piratical work a substitution for the original work.

2. By reprinting *verbatim* a part.

In questions as to the extent of appropriation which is necessary to establish an infringement, extreme difficulty is usually experienced, for the quality of the piracy is frequently more important than the proportion which the borrowed passages bear to the whole work (*r*).

The exclusive right of the owner of the copyright is to produce or reproduce the work "or any substantial part thereof" in any material form (*s*).

Whilst, therefore, it is recognised that it is not every abstraction from the work of another which constitutes a piracy, the amount taken must not exceed the limits of what is fair.

What is a "fair use" of an earlier publication?

If so much is taken that the value of the original is sensibly diminished, or the labours of the original author are substan-

(*q*) Such piracies are, however, by no means unknown.

(*r*) *Tinsley* v. *Lacey* (1861), 1 H. & M. 747; *Warner* v. *Seebohm* (1888), 39 Ch. D. 73; and see *Trade Auxiliary Co.* v. *Middlesbrough* (1889), 40 Ch. D. 425.

(*s*) Copyright Act, 1911, s. 1 (2).

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tially, to an injurious extent, appropriated by another, that is sufficient, in point of law, to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author; and it is no defence that another person has appropriated a part and not the whole of such property. Recent cases have been more favourable to the owner of the copyright than some of the earlier ones, and it is no longer essential that the alleged infringing work should be of a character which would compete in the market with the original work—it is sufficient that the copyist has deprived the author of profits which he might otherwise have reasonably expected to make. In a recent case (*t*), Mr. Justice Parker made the following remarks:—"Then it is said that the real and only test as to whether or not the defendants have made an unfair use of [the plaintiff's work] lies in the answer to the question whether there will be any competition between such volume and the defendants' book. It is no doubt true that where, as is often the case, it is a difficult matter to determine whether in preparing one publication an unfair use may be made of another, the nature of the two publications and the likelihood or unlikelihood of their entering into competition with each other is not only a relevant, but may be even the determining factor of the case. But, in my opinion, an unfair use may be made of one book in the preparation of another, even if there is no likelihood of competition between the former and the latter. After all, copyright is property, and an action to restrain the infringement of a right of property will lie, even if no damage be shown. In the present case there may not be much probability that anyone will buy the defendants' book instead of [the plaintiff's book], but the fact remains that in preparing this book the defendants have utilized, wholesale and without permission, lists prepared by the plaintiffs at much trouble and expense. In so doing they have appropriated the result of this labour and expense to their own use; and even if they have injured the plaintiffs in no other way, they have, at any rate, deprived them of the advantage which their copyright conferred on them of being able to publish such a book as the defendants' book at much less labour and expense than anyone else."

Quantity taken only a slight test.

In the case from which the above remarks are taken, the learned judge considered that the defendants had been saved six-sevenths of the labour which would have been required if they had made no use of the plaintiff's book; but whether the limits of fair use

(*t*) *Weatherby* v. *International Horse Exchange*, (1910) 2 Ch. 297, 304; 79 L. J. Ch. 609, 612; cf. *Sweet* v. *Cater* (1841), 11 Sim. 580.

have been exceeded or not can seldom be determined simply by looking to the quantity taken.

Lord Cottenham, in the cases of *Bramwell* v. *Halcomb* (*u*) and *Saunders* v. *Smith* (*x*), adverting to this point, said: "When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value; that is always looked to. It is useless to refer to any particular cases as to quantity." In short, we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, direct or indirect, or supersede the objects of the original work. Many mixed ingredients enter into the discussion of such questions. In some cases a considerable portion of the materials of the original work may be fused into another work, so as to be indistinguishable in the mass of the latter, which has other professed and obvious objects, and cannot fairly be treated as a piracy; or they may be inserted as a sort of distinct and mosaic work into the general texture of the second work, and constitute the peculiar excellence thereof, and then it may be a clear piracy. If a person should, under colour of publishing "elegant extracts" of poetry, include all the best pieces at large of a favourite poet, whose volume was secured by copyright, it would be difficult to say why it was not an invasion of that right, since it might constitute the entire value of the volume. The case of *Maxman* v. *Tegg* (*y*) is to this purpose. There was no pretence in that case that all the articles of the encyclopædia of the plaintiffs had been copied into that of the defendants; but large portions of the materials of the plaintiff's work had been copied. Lord Eldon, upon that occasion, held that there might be a piracy of a part of a work, which would entitle the plaintiffs to a full remedy and relief in equity. In prior cases he had affirmed the like doctrine. In *Wilkins* v. *Aikin* (*z*), he said: "There is no doubt that a man cannot, under the pretence of quotation, publish either the whole or a part of another's book, although he may use, what in all cases it is difficult to define, fair quotation."

But it is in cases of this kind that the character of the books In these cases,

(*u*) (1836), 3 My. & Cr. 737; *Neale* v. *Harmer* (1897), 13 T. L. R. 209.
(*x*) (1838), 3 My. & Cr. 711.
(*y*) (1826), 2 Russ. 385.
(*z*) (1810), 17 Ves. 422.

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character of works may be regarded.

may be looked at; for an author will be allowed greater freedom of quotation if he is writing a book of an entirely different character from that from which he quotes, than if the books directly compete with one another. This is well illustrated by the case of *Bradbury* v. *Hotten* (*a*), one which is very near the line. There the publication complained of was "The Man of his Time," the object of which was to illustrate the career of Napoleon III. by caricatures taken from leading English and foreign illustrated papers. Nine caricatures, with their original headings and references, but much reduced in size, were copied from nine numbers of "Punch," comprised within the period extending from 1849 to 1867. It was declared that the selections had been taken for the sole purpose of illustrating the career of Napoleon. While admitting that limited extracts might be taken from copyright works for a fair purpose of this kind, the Court found that the defendant had republished the caricatures in "Punch" for the same purpose as they were originally published, namely, to excite the amusement of his readers. It was held that the defendant had gone beyond the privilege of fair quotation, and therefore a case of piracy was made out.

In the course of his judgment in this case, Kelly, C. B., gave the following illustrations:—"A traveller publishes a book of travels about some distant country like China. Amongst other things, he describes some mode of preparing food in use there. Then the compiler of a cookery book republishes the description. No one could say that that was piracy. So again, an author publishes a history illustrated with woodcuts of the heads of kings, and another person, writing another history of some other country, finds occasion to copy one of these woodcuts. That, again, would not be a piracy. Yet, on the other hand, the copying of a single picture may, under some circumstances, be an infringement. For example, take the case of a work illustrated by one engraving of the likeness of some distinguished man, where no other likeness is extant. No one could have a right to copy that into a book upon any subject whatever, and a jury would in such a case rightly find that there had been an infringement of the copyright."

"Thackerayana, Notes and Anecdotes." For biography.

A similar case to the last cited was that concerning the book entitled "Thackerayana, Notes and Anecdotes, illustrated by nearly Six Hundred Sketches, by William Makepeace Thackeray." It purported to be a kind of biography of Thackeray, based on

(*a*) (1872), L. R. 8 Exch. 1; cf. *Leslie* v. *Young*, (1894) A. C. 335.

the assumption that his own experiences were narrated in certain of his novels. Besides some previously unpublished sketches and caricatures by Thackeray, the work contained extensive selections from his published works, the copyright of which belonged to the plaintiff. The extracts were prepared by, and interspersed with original comments by the compiler. The Court found that the effect of the book was to supersede to a damaging extent the works from which the selections had been made, and accordingly held it to be a case of piracy (*b*).

Reports of public speeches.

In *Walter* v. *Lane* (*c*) it was decided that a reporter may acquire copyright in his report of a speech delivered on a public occasion. The speeches in question were delivered by Lord Rosebery, and the defendant published a book called "Appreciations and Addresses: Lord Rosebery," in which were contained four entire speeches of Lord Rosebery, taken *verbatim* from the "Times." An injunction was granted restraining this copying, but, in accordance with the principles laid down by Kelly, C. B., in the above-cited case of *Bradbury* v. *Hotten*, it is considered that in such a case the Courts would give a liberal interpretation to the meaning of "fair quotation"; for, obviously, the speech was public property, though the report belonged to the "Times."

Telegraph codes.

Where the plaintiff published "The Standard Telegram Code," a book containing 100,000 words selected from eight languages, which words he considered specially adapted for correct telegraphic transmission, and the defendants printed a book containing some 70,000 of the words comprised in his book with the addition of interpretations suited for the purposes of the timber trade, which book they called "Shadbolt's Telegraph Code," an injunction was granted. The defendants maintained that having purchased one of the plaintiff's books, they were perfectly justified in selecting, as they had done, words from it, and in attributing to these and to other words chosen by themselves meanings in ordinary language suitable for the purpose of their trade, and in having the book so formed printed and used by themselves and their correspondents, and they insisted that this was a legitimate use of the plaintiff's book—that they had used it for the purpose for which it was compiled, *i.e.*, by their own ingenuity and with original matter of their own had turned it into a private code for the purposes of their business and correspondents. Mr. Justice Kay, however, pointed out that if what the defendants had done was lawful, a person

(*b*) *Smith* v. *Chatto* (1874), 31 L. T. 775.
(*c*) (1900) A. C. 539.

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might buy one of the plaintiff's books, reprint every word of it, putting opposite to each of them his own interpretation or phrase, and then sell the work at a third or a tenth of the cost of the plaintiff's book, and so render it unnecessary for any one to buy the plaintiff's book, and in fact prevent the sale of a single further copy (*d*).

Law reports.

It is manifest, from what fell from Lord Chancellor Cottenham in *Saunders* v. *Smith* (*e*), that he entertained no doubt (although he did not decide the point) that there might be a violation of the copyright of volumes of reports, by copying *verbatim* a part only of the cases reported. It is questionable, how far and to what extent certain cases in Law Reports may be reprinted at length in a treatise on the particular subject to which they relate; but it is clearly piracy to collect together, and reprint from the reports all the cases upon a particular subject, though the collection and classification may be new, and the publication be adorned with the addition of several unpublished decisions and notes (*f*). In the case last cited, however, the substance and value of the book consisted mainly of the cases pirated; and a case presenting greater difficulty was that of the well-known book entitled "Smith's Leading Cases," where the annotations really form the substance and essence of the work. In regard to the legal right in the last-mentioned case (*g*) Lord Cottenham said: "In this case I find the publication complained of to be of a character which, whether it be or be not an infringement of the copyright of the plaintiffs, is a course of proceeding which has been pretty largely admitted, and pretty generally adopted. Several cases occurred to me, and several were mentioned to me at the bar, in which a gentleman at the bar, desirous of publishing a work upon a particular subject, has collected the cases upon that subject, and has taken these cases, generally speaking *verbatim*, from reports which are covered by copyright. No instance has been represented to me in which those entitled to the copyright have interfered; no judgment, therefore, has been pronounced upon that subject. I am not stating whether the owner of the copyright is entitled to interfere in such a case, or whether the use of published reports is or is not to be permitted. That is a question of legal right upon which I find at present no reason for coming to an adjudication." But in a

(*d*) *Ager* v. *Collingridge* (1886), 2 T. L. R. 291, following *Ager* v. *P. & O. Steam Co.* (1884), 26 Ch. D. 637; cf. *Pitman* v. *Hine* (1884), 1 T. L. R. 39.
(*e*) (1838), 3 My. & Cr. 711; *Butterworth* v. *Kelly* (1888), 4 T. L. R. 430.
(*f*) *Hodges* v. *Welsh* (1840), 2 Ir. Eq. R. 266.
(*g*) *Saunders* v. *Smith*, *supra*.

subsequent case, where eleven cases only had been copied *verbatim*, and a considerable number of what were called abridged cases were mere copies of the plaintiff's with slight variation, Sir L. Shadwell, V.-C., granted an injunction (*h*). He distinguished the case from *Saunders* v. *Smith*. "In that case," said he, "there was no question but some parts of the plaintiff's work had been copied in the defendant's work. But there the publication of the defendant appeared to me to be altogether distinguished from that in which the cases originally appeared, and one could never be substituted for the other. In this case, from the class of persons who are held out as likely to be purchasers of the defendant's publication, I think it may be materially injurious to the sale of the plaintiff's work."

Extracts for school books.

The right to make extracts from copyright works for educational purposes is now definitely recognised by the Copyright Act, 1911. Sect. 2, sub-sect. (1) (iv), states that the following shall not constitute an infringement of copyright: "The publication in a collection mainly composed of non-copyright matter, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged" (*i*).

The liberty accorded by this sub-section is a very limited one. It only applies to literary works, and these must be published, and not themselves intended for the use of schools. It would seem, therefore, that passages cannot be taken from dramatic and musical

(*h*) *Sweet* v. *Shaw* (1839), 3 Jur. 217; but see *Weatherby* v. *International Horse Exchange*, cited *ante*, p. 138.

(*i*) See Revised Berne Convention, Article X., Appendix B., *post*. With regard to this sub-section, the Council of the Publishers' Association has passed resolutions which have been approved by the Society of Authors, to the following effect:—"(1) The Council of the Publishers' Association is of opinion that it will be to the interest of everyone concerned if any publisher proposing to make use of copyright matter in a school book in accordance with the provisions of the Copyright Act, 1911, s. 2 (iv), gives notice of his intention to the owner of the copyright. (2) The Council considers that vexatious litigation may be avoided if some general understanding is arrived at as to what constitutes a 'short passage' from a published literary work, and they beg to suggest the following:—(a) a 'short passage' from a prose work should not exceed 1,000 words; (b) a 'short passage' from a poetical work should not exceed 100 lines: Provided that a 'short passage' should not in either case contain more than one-third of the complete poem, essay, address, story or other literary work from which it is extracted."—*The Author*, 1st Nov., 1913. It hardly needs to be pointed out that these resolutions do not bind the Courts, but they indicate the views of those best equipped to determine what should be considered fair.

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works, nor, of course, can school books be illustrated from copyright artistic works.

Private study and criticism.

Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary, is also expressly permitted by the Act (*k*). This permission is extended not only to the case of published works, but also to that of unpublished works. The reason for thus extending the permission is, doubtless, because a dramatic or musical work is not published by public performance (*l*), and the object is to authorise effective criticism of a play which has been performed but not printed or published. In any case, however, where there has been no presentation of a work before the public in any shape or form any dealing with the same for the purposes above mentioned would probably be held to be "unfair" (*m*).

It is not very clear why the provision authorising fair dealing with any work for the purposes above mentioned should have been expressly inserted in the Act, for fair dealing for other purposes has always been, as pointed out above, permitted and, presumably, it was not intended to cut down the rights of fair user previously enjoyed under the old law. Similarly, the right to make extracts for the purposes of criticism was well recognised under the old law, and the cases decided under the old law may be taken as guides to what will be considered as fair dealing for the purposes of criticism.

Reviews or criticisms.

In a case in which the work alleged to be pirated was a play extending over forty pages, and the defendant had published a journal of theatrical criticism in which, as illustrative of his critical remarks, he had introduced broken and detached fragments of the piece in question, amounting in the whole to six or seven pages, some weight appears to have been allowed by the Court to the fact of the extent of the extracts being so inconsiderable, as affording ground for doubt whether the defendant had transgressed the limits of fair quotation (*n*).

The Great Western Railway inquiry.

In *Bell* v. *Whitehead* (*o*) the plaintiffs had published in the "Monthly Chronicle" an article entitled "The Great Western Railway Inquiry," occupying nineteen pages; the defendant had extracted four pages and a half from this, and published it in the "Railway Times," a weekly paper, with animadversions. A con-

(*k*) Sect. 2 (1) (i).
(*l*) Sect. 1 (3).
(*m*) *Gilbert* v. *Star Newspaper Co.* (1894), 11 T. L. R. 4.
(*n*) *Whittingham* v. *Wooler* (1817), 2 Swan. 428.
(*o*) (1839), 8 L. J. Ch. 141.

troversy was, at that time, going on as to the principles upon which a railway should be constructed, on the one side being Mr. Brunel, and on the other Dr. Lardner. The "Railway Times" took the side contrary to Dr. Lardner, and the article taken from the "Monthly Chronicle" was in favour of Dr. Lardner's views, and the defendant's object in taking it was to criticise it. Under these circumstances Lord Cottenham, C., dissolved an injunction which had been obtained.

Copying short stories for review.

But where, in a later case (*p*), the publisher, Mr. Maxwell, applied for an injunction against the proprietor of the "Bristol Mercury" to restrain him from publishing two stories, "A Troubled Life," and "How I Lost the County," which he had taken *verbatim* from "Belgravia" and the "Belgravian Annual"; and it appeared that the magazines were sent to the defendants for review, and that it was the custom, and had been so for many years, to extract short stories in the way defendants had done, Vice-Chancellor Bacon decided that the defendants had no right to publish articles from publications sent to them for criticism; but in granting the injunction asked, made no order as to costs, being of opinion that the defendants had acted unwittingly in making use of the articles in question.

Custom is no excuse for piracy.

There can be no "custom" authorising the copying of articles from one newspaper into another. This was decided by the case of *Walter* v. *Steinkopff* (*q*). There the proprietors of the "Times" brought an action against the proprietor and the publisher of the "St. James's Gazette," to restrain the defendants from further publishing any copy of a newspaper containing any copy of an article by Mr. Rudyard Kipling, or substantial portions thereof, and also certain other extracts taken from the "Times" and contained in twenty-two separate paragraphs of the "Gazette" of the 13th of April. It was not denied by the defendants that they had copied some two-fifths of the Kipling article, and all the extracts from the "Times," practically *verbatim*, but it was contended that the consent of the proprietors of the "Times" might be assumed if the four following conditions were observed:—(i.) That the source of the information was acknowledged; (ii.) That the paper copying and the paper copied were not direct rivals or competitors; (iii.) That the paper copied from had also copied, thereby implying that it agreed to a free interchange of

(*p*) *Maxwell* v. *Somerton* (1874), 30 L. T. 11.
(*q*) (1892) 3 Ch. 489.

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literary and other matter; (iv.) That the editor of the paper copied had given no notice of his objection to matter being copied. It was proved by the "Times" that the copyright in the Rudyard Kipling article and in some of the twenty-two paragraphs was vested in them. Mr. Justice North, in delivering judgment, said that the plaintiffs could not have asked successfully for the interference of the Court with respect to the paragraphs in which they had not proved that they had any copyright: their claim to relief was confined to the Rudyard Kipling article, and three of the paragraphs in which they had proved that they had copyright. With regard to the article the plaintiffs' case was clear, it was practically undisputed by the defendants' advisers, the defendants had deliberately reprinted the most attractive portion of an article which they admitted they knew had been acquired by the plaintiffs at a high cost. There were purposes, no doubt, for which, notwithstanding the plaintiffs' copyright, the defendants might legitimately have made reasonable extracts, as, for instance, if they had been criticising Mr. Kipling's works, &c., but in the present case there was a mere reproduction of copy without trouble or cost. The same remarks applied also to the three paragraphs. It was said that there was no copyright in news, but there was or might be in a particular form of language or modes of expression by which information was conveyed, and not the less so because the information might be with respect to the current topics of the day. With regard to the quality of the matter copied, the paragraphs pirated were taken in their entirety for the very purpose for which they were used in the "Times," viz., to convey information to the readers of the paper. It was not a case of the selection of a part or quotation, or an extract. The defendants had failed to prove that the first three of the four alleged conditions had been observed, but even if they had, the plea of the existence of such a custom or practice of copying as was set up could no more be supported when challenged than the highwayman's plea of the custom of Hounslow Heath. It had often been relied on, but had always been repudiated by the Courts. In the result, therefore, the defendants were entirely wrong.

Defence of "common source."

The defence of "fair quotation" may be pleaded where the copyist has taken original *copyright* matter from a previous work. Another common defence is raised where the previous writer has embodied in his work information which is matter of common knowledge or common observation, and which cannot well be put in different language, or selections from non-copyright sources.

This defence is chiefly raised in cases of compilations. All

definitions of the same thing must be nearly the same, and descriptions which are definitions of a more lax and fanciful kind must always have in some degree that resemblance to each other which they all have to their object. Consequently, in compiling such works as dictionaries, gazetteers, grammars, maps, arithmetics, almanacs, concordances, encyclopædias, itineraries, guide books, and similar productions, the materials, to a considerable extent, must be nearly identical, and the prior compiler cannot monopolise what did not originate with himself, nor a subsequent compiler employ a prior arrangement and materials to such an extent as to be a substantial invasion of the anterior compilation.

Compilations.

In *Scott* v. *Stanford* (*r*), the plaintiff had published statistical returns of all coal imported into London, and the defendant, in giving the universal statistics of the United Kingdom, had copied from the plaintiff's work to the extent of one-third of the whole of the defendant's work, at the same time acknowledging the source from which his information was derived. Vice-Chancellor Wood decided that having regard to the quantity and matter of the information which had been republished without the exercise of any independent thought and labour, and the prejudice to the plaintiff in having the sale of his work superseded by this republication, the plaintiff was entitled to an injunction. If the defendant, after collecting the information for himself, had checked his results by the plaintiff's tables, that would have been a widely different thing from the wholesale extraction of the vital part of his work. But no man is entitled to avail himself of the previous labours of another for the purpose of conveying to the public the same information, although he may append additional information to that already published. This is consonant to the law as laid down in *Kelly* v. *Morris* (*s*), which was in the following terms: In the case of a dictionary, map, guide book, or directory, where there are certain common objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In the case of a road-book, he must count the milestones for himself, . . . and the only use

(*r*) (1867), L. R. 3 Eq. 718; *Morris* v. *Ashbee* (1868), L R. 7 Eq. 34; *Maxman* v. *Tegg* (1826), 2 Russ. 398; *Jarrold* v. *Houlston* (1857), 3 K. & J. 708; *Cox* v. *The Land and Water Co.* (1869), L. R. 9 Eq. 324; *Trade Auxiliary Co.* v. *Middlesbrough and District Tradesmen's Protection Association* (1889), 40 Ch. D. 425; *Cate* v. *Devon and Constitutional Newspaper Co.* (1889), 40 Ch. D. 500.

(*s*) (1866), L. R. 1 Eq. 697.

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that he can legitimately make of a previous publication is to verify his own calculations and results when obtained.

From these observations it is not to be inferred that in compiling a directory the compiler may not look into the previous directory of another for the purpose of ascertaining where a particular person lives, and for the purpose of ascertaining from that book whether or not it is worth his while to call upon that person (*t*); they imply no further than that he may not take a passage from the directory, and go and see whether it happens to be accurate, and if it be accurate, bodily copy it into his directory.

This latter is precisely what was done in *Morris* v. *Ashbee* (*u*). The defendant copied the plaintiff's book, and then sent out canvassers to see if the information so copied was correct. If the canvasser did not find the occupier of the house at home, or could get no answer from him, then the information copied from the plaintiff's book was repeated bodily, as if it were a question for the occupier of the house merely, and not for the compiler of the previous directory. The copying was as direct as in the case of *Kelly* v. *Morris*, to which we have already referred. Not only were the slips for the purpose of canvassing copied, but the course pursued really was that when a slip was presented to the person who was canvassed, and his permission received for the insertion of the particular entry, the slip was forthwith copied into the book. "Now, it is plain," observed Lord Justice Giffard, "that it could not be lawful for the defendants simply to cut the slips, which they have cut from the plaintiff's directory, and insert them in theirs. Can it then be lawful to do so, because, in addition to doing this, they sent persons with the slips to ascertain their correctness? I say, clearly not" (*x*). "In *Pike* v. *Nicholas* (*y*, we had this: Two rival books were published with reference to the same subject-matter, and we thought certainly that the defendant had been guided by the plaintiff's book, more or less, to the authorities which the plaintiff had cited; but it was a perfectly legitimate course for the defendant to refer to the plaintiff's book, and if he did, taking that book as his guide, himself go to the original authorities, and compile his book from the original autho-

(*t*) *Morris* v. *Wright* (1870), L. R. 5 Ch. 279; *Scott* v. *Stanford* (1867), L. R. 3 Eq. 718; *Cox* v. *Land and Water Journal Co.* (1869), 9 Id. 324; *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 251; *Hogg* v. *Scott* (1874), L. R. 18 Eq. 444; *Lamb* v. *Evans*, (1892) 3 Ch. 462; (1893), 1 Ch. 218; *Kelly's Directories* v. *Gavin and Lloyds*, (1901) 1 Ch. 374; (1902) 1 Ch. 631.

(*u*) (1868), L. R. 7 Eq. 34.

(*x*) *Morris* v. *Ashbee* (1868), L. R. 7 Eq. p. 41.

(*y*) (1870), 38 L. J. Ch. 259.

rities, he made no unfair or improper use of the plaintiff's book" (*z*).

How far prior literature may be used.

The question as to how far advantage may be reaped from the work of another, and what use may be legitimately made of it, is difficult of solution. Perhaps the strongest case in favour of the adoption by a subsequent compiler of the work of a preceding one is that of *Cary* v. *Kearsley* (*a*), where Lord Ellenborough thought that the former might fairly adopt part of the work of the latter, and might so make use of his labours for the promotion of science and the benefit of the public; but having done so, he was of opinion that the question would be, was the matter so taken used fairly with that view, and without what he might term the *animus furandi?* For while he considered himself bound to secure every man in the enjoyment of his copyright, he was fearful of putting manacles upon science.

At the present day, however, the *animus furandi* will not, it is thought, be taken into consideration, except in doubtful cases (*b*).

Sale of a sheet almanac printed from a directory restrained.

Where the defendant published a sheet almanac containing matter pirated from a distinct part of a directory published by the plaintiff, affording information with respect to the post office, compiled from public documents, and the matter pirated formed an exceedingly small portion of the plaintiff's work, though they bore a great proportion to the other matters in the defendant's work, the Court granted and continued an injunction against him (*c*).

Railway guides.

In *Leslie* v. *Young* (*d*) the appellant had compiled a railway guide affecting the Perth district, and he sought an injunction against the respondents, the publishers of a new Perth railway time-table, to restrain, *inter alia*, the sale of their time-tables for July, 1891, on the ground of infringement. It appeared that the appellant's time-table consisted of a train service from Perth, selections for this purpose having been made from official time-tables, and also of information as to circular tours convenient to be taken from Perth which had not merely been selected from official tables, but condensed and arranged. The appellant com-

(*z*) *Per* Giffard, V.-C., *Morris* v. *Wright* (1870), 22 L. T. at p. 82. "The true principle in all these cases," said Vice-Chancellor Hall, in *Hogg* v. *Scott* (1874), L. R. 18 Eq. 458, "is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work; that is, in fact, merely to take away the result of another man's labour, or, in other words, his property."

(*a*) (1802), 4 Esp. 168.

(*b*) *Scott* v. *Stanford* (1867), L. R. 3 Eq. 718; cf. *Maxwell* v. *Valley Printing Co.*, (1908) 2 Ch. 441.

(*c*) *Kelly* v. *Hooper* (1840), 4 Jur. 2.

(*d*) (1894) A. C. 335.

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plained that the respondents, instead of going to the common and public sources for materials, substantially copied both his time-tables and circular tour information, and thus took advantage of his skill and labour in condensing into a small space a huge mass of information. The respondent practically admitted that he had copied the appellant's circular tour information, and, in respect of this, an injunction was granted, but the House of Lords refused an injunction in the case of the time-tables.

This case is not very easy to follow, and the facts are not very clearly reported, but the Lords Justices seem to have based their decision as much on the ground that the appellant's time-table was not a proper subject for copyright, as upon the ground that the respondents had not infringed it.

The "Guide to Science," and the "Reason Why."

In *Jarrold* v. *Houlston* (*e*), the publishers of Dr. Brewer's "Guide to Science" obtained an injunction against the publication of the "Reason Why." The works in controversy were written on the same plan, and presented, in the form of question and answer, popular information on a variety of scientific subjects. The earlier book, Dr. Brewer's "Guide to Science," had evidently been used to a considerable extent in the preparation of the later one, although copying was denied. The judge said: "I take the illegitimate use, as opposed to the legitimate use of another man's works on subject-matters of this description to be this: if, knowing that a person whose work is protected by copyright has, with considerable labour, compiled from various sources a work in itself not original, but which he has digested and arranged, you, being minded to compile a work of a like description, instead of taking the pains of searching into all the common sources, and obtaining your subject-matter from them, avail yourself of the labour of your predecessor, adopt his arrangements, adopt, moreover, the very questions he has asked, or adopt them with but a slight degree of colourable variation, and thus save yourself pains and labour by availing yourself of the pains and labour which he has employed, that I take to be an illegitimate use." But where the same plaintiffs filed a bill against the publishers of a work called "Class Book of Modern Science," compiled by Messrs. Thomas and Francis Bullock, as being a piracy of their "Dr. Brewer's Guide," and it was admitted by the defendant that he had referred to the plaintiffs' book in the course of compiling the "Class Book," but he insisted that every fact or illustration referred to in the "Class Book" was verified by the

(*e*) (1887), 3 K. & J. 708.

labour and research of the authors themselves, by means of actual observation, inquiry, or experiment where such was possible, and by reference to scientific authorities and standard works of which the plaintiffs' book did not affect to be one; it was held by Vice-Chancellor James that though if any part of a work complained of was a transcript of another work, or with only colourable additions and variations, and prepared without any real independent literary labour, such portion of the work complained of was piratical, yet it was impossible to establish a charge of piracy where it was necessary to track mere passages and lines through hundreds of pages, or where the authors of a work challenged as piratical had honestly applied their labours to various sources of information. The learned Vice-Chancellor remarked, "The whole of the part about sound, fogs, winds, dew, and hoar-frost in the defendant's work has a striking similarity, almost identity of appearance, with parts of the plaintiffs' work. The defendant's authors, however, have both of them sworn positively that they did not copy from the plaintiffs' work, although that work was known to them, and had been used in tuition, in common with nearly fifty other books of the same character and on the same topics. These authors have not been cross-examined. The defendant's counsel have gone through the works in question passage by passage, and have shown that in nearly all the instances of alleged piracy the defendant's production had been, in fact, taken from other works which were antecedent to both plaintiffs' and defendant's books. The plaintiffs said that the difference of language between the two was part of the defendants' authors' fraud and artful disguise of what they had done. But the language thus complained of is conclusively traced to other books. This fact recoils destructively on the plaintiffs' case, for it goes far to show that the defendant's writers honestly applied their labours to various sources of information. I do not consider that the imitation of the questions in the plaintiffs' book is a piracy, so long as the defendant's writers have gone to independent sources in the preparation of their answers" (*f*).

A compiler must produce an original result.

The rule appears not to be settled that the compiler of a work in which absolute originality is of necessity excluded is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labour upon what he has taken, and subjects it to such revision and correction as *to produce an original result*, provided that he

(*f*) *Jarrold* v. *Heywood* (1870), 18 W. R. 279.

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does not deny the use made of such preceding works, and the alterations are not merely colourable (*g*).

So, in the case of a descriptive catalogue of fruit and trees, the Court was of opinion that the later compiler might use the work of his predecessor as a guide or instructor, but might not copy the descriptions from it, although he should verify and correct them from specimens of fruit before him. Though he could not be prevented from getting much aid in the way of information, suggestions, &c. from the protected work open before him, he must write his own descriptions from actual specimens or common sources of information (*h*).

The case of a dictionary analysed.

To further illustrate the principle, take the case of a dictionary. There may be a certain degree of skill exhibited as to order and arrangement, and there may be a good deal of ingenuity exhibited in the selection of phrases and illustrations, which are the best exponents of the sense in which the word is to be used: and there may also be great labour in the logical deduction and arrangement of the word in its different senses, when the sense of the word departs from its primary signification; but there cannot be copyright in much of the information contained in the numerous dictionaries published, each necessarily having a large number of words identically similar. The great point to decide in such cases is, as we have already stated, whether in the particular case the work is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work (*i*).

The case of *Spiers* v. *Brown*.

Lord Hatherley, while Vice-Chancellor, in the case of *Spiers* v. *Brown* (*k*), thus summed up the law in his peculiarly lucid style: All cases of copyright were very simple when a work of an entirely original character was concerned, being a work of imagination or invention on the part of the author, or original in respect of its being a work treating of a subject common to mankind, such as history, or other branches of knowledge varying much in their mode of treatment, and in which the hand of the artist would be readily discerned. But the difficulty that arose

(*g*) *Spiers* v. *Brown* ('858), 6 W. R. 352; *Reade* v. *Lacy* (1861), 1 J. & H. 524; and in the case of a catalogue, *Hotten* v. *Arthur* (1863), 1 H. & M. 603.

(*h*) *Hogg* v. *Scott* (1874), L. R. 18 Eq. 444; *Cary* v. *Kearsley* (1802), 4 Esp. 168; *Matthewson* v. *Stockdale* (1806), 12 Ves. 270; *Longman* v. *Winchester* (1809), 16 Ves. 269; *Bailey* v. *Taylor* (1829), 3 L. J. O. S. 66; *Bramwell* v. *Halcomb* (1836), 3 My. & Cr. 737; *Kelly* v. *Hooper* (1840), 4 Jur. 21; *Murray* v. *Bogue* (1852), 1 Drew. 353.

(*i*) *Vide Wilkins* v. *Aikin* (1810), 17 Ves. 422; *Bramwell* v. *Halcomb* (1836). 3 My. & Cr. 737; *Cornish* v. *Upton* (1861), 4 L. T. 863.

(*k*) (1858), 6 W. R. 352.

in cases of the class then before him was that they not only related to a subject common to all mankind, but that the mode of expression and language was necessarily so common that two persons must, to a very great extent, express themselves in identical terms in conveying the instruction or information to society which they were anxious to communicate. The most obvious case was that of figures, such as the table of logarithms—the case before Sir John Leach—where it would be impossible to deviate in the calculations, or to vary the order, and the result must be identical. The same might be said of directories, calendars, Court guides, and works of that description. These were cases in which the only mode of arriving at the amount of labour bestowed was by the common test resorted to of discovering the copying of errors and misprints, indicating a servile copying (*l*).

Editing a non-copyright work.

Where a writer has edited a non-copyright work with notes, he cannot, of course, prevent another from editing the same work, but the later writer must go to original sources and not copy directly from the previous writer's work. Thus, where the plaintiff had issued an edition of the "Letters of Dorothy Osborne," the originals of which had subsequently come to the British Museum and, it was alleged, were not the subject of copyright, and the defendants, in publishing a new edition of the same letters, had sent the plaintiff's text of the letters directly to the printers, instead of having them copied from the MSS. in the British Museum, Mr. Justice Farwell indicated such a strong opinion that this method could not be defended, that the defendants submitted to a perpetual injunction (*m*).

Selections and quotations from

It is obvious that in many cases of compilations their whole merit lies in their accuracy and completeness; but in the case

(*l*) This is one of the surest tests of copying, see *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697; *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 251; *Cox* v. *Land and Water* (1869), L. R. 9 Eq. 324. In *Murray* v. *Bogue* (1852), 1 Drew. 353, 366, where instances were stated in the bill and at the bar in which the defendant had the plaintiff's errors, Vice-Chancellor Kindersley said, "Now the use of showing the same errors in both is, that where the defendant says he has got his information, not from the plaintiff, but from other sources, if the evidence is unsatisfactory on the question whether the defendant did use the plaintiff's work or not, to show the same errors in the subsequent work that are contained in the original, is a strong argument to show copying." It will be in the defendant's favour if he shows that the matter in his own book is free from many of the errors in the plaintiff's; but still the errors may have been corrected in copying. In *M'Neill* v. *Williams* (1840), 11 Jur. 344, it appeared that seven errors in the plaintiff's mathematical tables were also found in those of the defendant. The latter declared that this was accidental, and that the plaintiff's book contained seventy errors not to be found in his own. It does not appear what importance the Court attached to this circumstance; but the injunction was refused.

(*m*) *Parry* v. *Moring and Gollancz*, Farwell, J., 3rd April, 1903, see *ante*, p. 53.

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non-copyright sources.

of a work comprising selections or quotations from various works which are not the subject of copyright, there is often an additional merit in the selection. It has been contended that the same principles govern both classes of works, but this contention was, in a modern case (*n*), repudiated by Lord Justice Collins. "Counsel justified," he said, "annexing another man's quotations on the ground that you may follow an indication given in another book as to the place where you will find authorities; that you have the right to consult them; and that all the defendant Mr. Marshall does, being directed by a reference to a particular quotation, is to go and look to the author and see whether the quotation corresponds with the text, and, if so, the text being common property, he is at liberty to annex that quotation. I cannot admit that for a moment. He rather suggested that it was justified by the cases relating to directories, which say that you can, where another man has compiled a directory, simply take his sheets with you and go and see whether the existing facts concur with the description in the sheets, and that, if you do, you may publish the result as your own. Certainly; but are you at liberty to apply the same principle to a series of quotations—to take the references given by one author, although he quotes such and such a passage as illustrating a particular matter and to say: 'I will just go and see if that is correctly copied or not, and if it is correctly copied, I propose to introduce it with any other which illustrates the particular passage, and I propose to adopt that as my own work'? That leaves out the whole merit; the felicity of the quotation; its adaptability to a particular end; its illustration of a particular characteristic; all those things enter into the choice of one quotation as apart from another. If you obey a certain direction to go to a certain place, it does not entitle you to annex the skill and judgment and taste which has dictated the selection. . . . It seems to me that the law is clearly such as to entitle the plaintiff to complain if quotations selected and arranged by him are imitated and adopted by the defendant."

Edition of "As You Like It."

The case last cited (*o*) is an instructive one upon the whole subject of infringement. The plaintiffs, Moffatt & Paige, Ltd., were the registered proprietors of the copyright of an annotated edition of Shakespeare's play "As You Like It," edited by Thomas Paige

(*n*) *Moffatt and Paige* v. *Gill & Sons* (1902), 86 L. T. at p. 470; cf. *Macmillan* v. *Suresh Chunder Deb*, 17 Ind. L. R. (Calcutta Ser.), 951, where an infringement of the "Golden Treasury" was restrained.

(*o*) *Moffatt and Paige* v. *Gill & Sons* (1901), 84 L. T. 452; on appeal (1902), 86 L. T. 465.

and published in the year 1893. In March, 1900, the defendants, Messrs. Gill & Sons, published an annotated edition of the same play, edited by the defendant Marshall. Messrs. Gill & Sons had in the year 1899 produced another edition of the same play, by the same editor, and an action had been brought by Messrs. Moffatt & Paige in respect of that edition This action, in respect of the earlier edition, to which the defendant Marshall was not a party, was disposed of by consent, Messrs. Gill & Sons agreeing to pay certain damages and costs and undertaking to destroy any copies in their possession. After this, Messrs. Gill & Sons instructed the defendant Marshall to prepare another edition, and it was in respect of this later edition that the plaintiffs now sued. The plaintiffs, by their particulars, alleged infringements under five heads: (1) That the general arrangement of the defendants' book, including a glossary, was copied from the plaintiffs'; (2) that sketches of character were copied; (3) that certain passages were copied, instancing a passage from Lady Martin's "Shakespeare's Female Characters" set out in the plaintiffs' book; (4) that literary notes were copied; and (5) certain other infringements. The defendant Marshall alleged that his book was the result of independent labour, making a legitimate use of the plaintiffs' book in common with the works of other commentators.

The way in which the second edition was prepared is thus described by Lord Justice Collins in his judgment:—"The first edition could not be defended. That was admitted by the publishers. It was not admitted by the author in the first proceedings, because he was not a party thereto. But, as a result of the examination in the present action, there is a practical admission by the author himself that the first edition could not be defended. What is the process that the defendant has adopted by which his second edition has been developed? He has in his possession the proofs of the first edition; he carefully re-reads those proofs, and he puts marks, which, though they do not efface them from his view, do denote the fact that certain particular passages are such that he thinks they cannot stand, having regard to what happened at the first trial. He marks those passages, but they are so worked as to be still obvious to the eye and capable of being read, although they are not to appear as in that edition. He has before his eye his own edition, no doubt; but, in fact, so far as the matters in the case are concerned it is practically the work of the defendants, because it is a copy of the plaintiffs' book. It is garbled to a certain extent, but it is nothing better than a copy. Having that before him, he makes certain notes, indicating what passages cannot stand, and

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for which, therefore, some substitution must be found. We have heard and we see as the result in the second edition changes of expression which he has made, while conveying the same thing in substance—the alteration of the order of quotations, while leaving the quotations there themselves, the retention of the string of quotations used, and the purpose to which they were applied; and, further, the same general system of analysis of character, which had been reproduced by the defendant, Mr. Marshall, in the first edition of his own. That, broadly speaking—I am not pretending to treat the matter with exactitude of detail—is the process by which the second edition was reproduced" (*p*). In the result, the Court of Appeal, reversing Kekewich, J. (who decided on the ground of want of an *animus furandi*), granted a perpetual injunction.

Infringement by imitation.

Copyright may be infringed by imitating the whole or part or by reproducing the whole or part with colourable alterations.

Distinction between a copy and an imitation.

A copy is one thing, an imitation or resemblance another. It is indeed certain that whoever attempts any common topic will find unexpected coincidences of his thoughts with those of other writers; nor can the nicest judgment always distinguish accidental similitude from artful imitation. "There is likewise," says Dr. Johnson, "a common stock of images, a settled mode of arrangement, and a beaten track of transition which all authors suppose themselves at liberty to use, and which produce the resemblance generally observable among contemporaries. So that in books which best deserve the name of originals there is little new beyond the disposition of materials, already provided; the same ideas and combinations of ideas have been long in the possession of other hands; and by restoring to every man his own, as the Romans must have returned to their cots from the possession of the world, so the most inventive and fertile genius would reduce his folios to a few pages. Yet the author who imitates his predecessor only

(*p*) 86 L. T. at p. 468. In *Black* v. *Murray* (9 Sc. Sess. Cas. 3rd Ser. 355), where Lockhart's annotated edition of Scott's "Minstrelsy of the Scottish Border" was in question, and it appeared that of the 200 notes added by the editor, all but fifteen were quotations from common sources, and the ballads themselves were common property, Lord Kinloch said: "To a considerable extent the notes borrowed (to use an euphemism) from Messrs. Black's edition consist of quotations from various authors, employed by Mr. Lockhart to illustrate ballads in the 'Minstrelsy.' It was perhaps thought that to repeat quotations from well-known authors was not piracy. If so, I think a great mistake was committed. In the adaptation of the quotation to the ballad which it illustrates, the literary research which discovered it, the critical skill which applied it, there was, I think, an act of authorship performed, of which no one was entitled to take the benefit for his own publication, and thereby to save the labour, the learning, and the expenditure necessary even for this part of the annotation."

by furnishing himself with thoughts and elegancies out of the same general magazine of literature can with little more propriety be reproached as a plagiary than the architect can be censured as a mean copier of Angelo or Wren because he digs his marble from the same quarry, squares his stones by the same art, and unites them to columns of the same order."

It is very evident that any use of materials, whether they are figures or drawings, or other things which are well known and in common use, is not the subject of a copyright, unless there be some new arrangement thereof. Still, even here, it may not always follow that any person has a right to copy the figures, drawings, or other things made by another, availing himself solely of his skill and industry, without any resort to such common source. In all cases the question of fact to come to the jury is, whether the alterations be colourable or not. There must be a similitude, so as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript; so with regard to charts, there is no monopoly in that subject; but upon a question of the above nature the jury must decide whether the latter work be a servile imitation of the former or not.

In *Trusler* v. *Murray* (*q*) Lord Kenyon put the point in the same light, and said: "The main question here is whether, in substance, the one work is a copy and imitation of the other; for undoubtedly in a chronological work (such was the character of the work before the Court) the same facts must be related." And Mr. Justice Story, in his elaborate and learned judgment in *Emerson* v. *Davies* (*r*), laid it down as the clear result of the authorities in cases of this nature that the true test of piracy or not is to ascertain whether the defendant has, in fact, used the plan, arrangements, and illustrations of the plaintiff as the model of his own book, with colourable alterations and variations only to disguise the use thereof, or whether his work is the result of his own labour, skill, and use of common materials and common sources of knowledge open to all men, and the resemblances are either accidental or arising from the nature of the subject. In other words, whether the defendant's book is, *quoad hoc*, a servile or evasive imitation of the plaintiff's work, or a *bonâ fide* original compilation from other common or independent sources.

Cases such as those referred to, namely, those where there is a resemblance between the substance and the general scheme of the

One test, substantial identity.

(*q*) (1789), 1 East, 363, n.
(*r*) (1845), 3 Story (Amer.), 768, 793.

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two works in question, while at the same time the language of each is by no means similar, occasion great difficulty. The inquiry usually resolves itself into a matter of fact which rests with the Court to determine—Is there such a resemblance between the two works in controversy as to make it clear that one has been copied from the other?

Alternative explanations of similarities.

Wherever it is alleged that there are similarities between the plaintiff's work and that of the defendant, those similarities may be due to any one of four hypotheses, namely: (1) to mere chance; (2) to both works being taken from a common source; (3) to the plaintiff's work being taken from the defendant's; or (4) to the defendant's work being taken from the plaintiff's (*s*). Every case must depend upon its own circumstances. Particularly in the case of dramatic works of a similar class, such as melodramas, there are certain stock characters and stock situations; the fact, therefore, that there are similarities between the plaintiff's and the defendant's works is not conclusive that they have copied the one from the other (*t*). A combination of ordinary materials may, however, be original, and when such a combination has arrived at a certain degree of complexity, it becomes practically impossible that they should have been arrived at independently by a second individual, and the inference is that one has copied from the other (*u*).

By abridgment.

4th. Copyright may be infringed by reproducing the whole or a part under an abridged form.

It is, perhaps, unfortunate that the right to make an abridgment of his work is not one of the rights specifically reserved to the proprietor of the copyright by the Copyright Act, because the decisions on the subject are somewhat inconsistent (*x*).

What is an abridgment?

To constitute a proper abridgment, the arrangement of the book abridged must be preserved, the ideas must also be taken, and expressed in language not copied, but condensed. To copy certain passages and omit others, so as to reduce the volume in bulk, is not such an abridgment as the Court would recognise as sufficiently original to protect the author. The judgment of the abridger must be called into play in condensing the views of the author. There is a clear distinction between an abridgment and a compila-

(*s*) *Per* Sargant, J., *Corelli* v. *Gray* (1913), 29 T. L. R. 570; aff. 30 T. L. R. 116.

(*t*) *Rees* v. *Robbins*, *Times*, 6th Feb., 1914; 4th July, 1914, "A Beggar Bride."

(*u*) *Corelli* v. *Gray*, *supra*.

(*x*) An abridgment made for purposes of "private study" is not an infringement of copyright (sect. 2 (1) (i)).

tion. As an American judge (*y*) well observed: "A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of the author. The former cannot be extended so as to convey the same knowledge as the original work; the latter contains an epitome of the work abridged, and consequently conveys substantially the same knowledge. The former cannot adopt the arrangements of the works cited; the latter must adopt the arrangement of the work abridged. The former infringes the copyright if matter transcribed, when published, shall impair the value of the original book; a fair abridgment, though it may injure the original, is lawful."

Dodsley v. Kinnersley.

The first case is that of *Dodsley* v. *Kinnersley* (*z*), where an injunction was applied for to restrain the publication of an abridgment of Dr. Johnson's "Rasselas." It appeared that not one-tenth part of the first volume had been abstracted, and that the injury alleged to have been sustained by the author arose from the abridgment containing the narrative of the tale and not the moral reflections. The Master of the Rolls, Sir Thomas Clarke, refused the injunction, saying, "I cannot enter into the goodness or badness of the abstract. It may serve the end of an advertisement (*a*). In general, it tends to the advantage of an author if the composition be good; if it be not, it cannot be libelled. What I materially rely upon is that it could not tend to prejudice the plaintiffs when they had before published an abstract of the work in the 'London Chronicle.' If I were to determine this to be elusory, I must hold every abridgment to be so." Chancellor Kent, in referring to this case, says, "This latitudinarian right of abridgment is liable to abuse, and to trench upon the copyright of the author. The question as to a *bonâ fide* abridgment may turn not so much upon the quantity as the value of the selected materials."

Hawkworth v. Newbery.

In *Hawkworth* v. *Newbery* (*b*), Lord Chancellor Apsley, having spent some hours in consultation with Mr. Justice Blackstone, decided that an abridgment, where the understanding is employed in retrenching unnecessary and uninteresting circumstances which rather deaden the narration, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work. It requires both invention

(*y*) *Story's Exors.* v. *Holcombe,* 4 McLean (Amer.), p. 314.
(*z*) (1761), Amb. 403; *Gyles* v. *Wilcox* (1740), 2 Atk. 141.
(*a*) It is no defence to say that the pirated work is not offered for sale itself, but merely used to promote the sale of the books mentioned in it: *Hotten* v. *Arthur* (1863), 1 H. & M. 603.
(*b*) (1774), Lofft, 775; *Butterworth* v. *Robinson* (1801), 5 Ves. 709.

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and judgment, and displays frequently a deal of learning. Lord Hardwicke thus stated the rule (*c*):—"Where books are colourably shortened only, they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the statute, and cannot be called an abridgment. But this must not be carried so far as to restrain persons from making a real and fair abridgment; for abridgments may, with great propriety, be called a new book, because not only the paper and print, but the invention, learning, and judgment of the author is shown in them, and in many cases are extremely useful (*d*), though in some instances prejudicial, by mistaking and curtailing the sense of an author" (*e*).

But an injunction will be granted where the facts and the *terms* in which the facts are related are merely the same in both books. Thus, where an injunction was moved for to restrain the publication of a book entitled "Memoirs of the Life of Mrs. Bellamy," which was alleged to have been pirated from a book called "An Apology for the Life of George Anne Bellamy," and it appeared in evidence that Mrs. Bellamy was author of the latter work; and that she sold the copyright to the plaintiff, who printed it in five volumes at a selling price of fifteen shillings; and that the work against which the injunction was prayed was in one volume, which sold for two shillings and sixpence; upon passages being read from each to show that the *facts*, and even the *terms* in which they were related in the latter work, were frequently taken *verbatim* from the original one, an injunction was immediately granted (*f*).

Butterworth v. Robinson.

In the case of *Butterworth* v. *Robinson* (*g*), a motion was made upon certificate of the bill, for an injunction to restrain the defendant from selling a work entitled "An Abridgment of Cases argued and determined in the Courts of Law, &c." until answer or further order. A copy of the work was handed to the Lord Chancellor. In support of the motion, it was stated that this work was by no means a fair abridgment; that, except in colourably leaving out some parts of the cases, such as the arguments of counsel, it was a mere copy *verbatim* of several of the reports of

(*c*) *Gyles* v. *Wilcox* (1740), 2 Atk. 141.

(*d*) *Hodges* v. *Welsh* (1840), 2 Ir. Eq. Rep. 266.

(*e*) This paragraph seems to confuse the distinct questions (a) whether an abridgment is an original work entitled itself to copyright, and (b) whether the abridgment is a piracy of the abridged work. There is little doubt that an abridgment is, subject to the rights of the proprietor of the copyright in the original, itself capable of acquiring copyright: see *ante*, p. 63.

(*f*) *Bell* v. *Walker* (1784), 1 Bro. C. C. 451; *Story's Exors.* v. *Holcombe*, 4 McLean (Amer.), 308.

(*g*) (1801), 5 Ves. 709.

cases in the Courts of law, and among them of the "Term Reports," of which the plaintiff was proprietor; comprising not a few cases only, but all the cases published in that work; the chronological order of the original work being artfully changed to an alphabetical arrangement under heads and titles to give it the appearance of a new work. In support of the motion, *Bell* v. *Walker* (*h*) was cited. The Lord Chancellor said: "I have looked at one or two cases, with which I am pretty well acquainted, and it appears to me an extremely illiberal publication. Take the injunction upon the certificate of the bill filed, to give them an opportunity of stating what they can upon it."

Sweet v. Benning.

In the case of *Sweet* v. *Benning* (*i*), the defendants were restrained from taking *verbatim* the headnotes from a series of law reports and arranging them in a different manner. In the course of his judgment, Jervis, C. J., remarked as follows:—"I admit that a digest may be made from a copyright work without piracy upon it, but that is a work in which a man applies his mind to the labour of extracting the principles of the original work, and by his labour really produces a new work. It is not so where he merely reduces extracts or passages of another man's work to an alphabetical order, which is a work a clerk might accomplish, and requires neither learning nor study, but may be little more than a merely mechanical operation of cutting out and classifying under certain letters of the alphabet. In one of the cases cited, the 'Term Reports' were so dealt with, and it was held to be a piracy. I think that case is decisive of the present, and therefore that the plaintiffs are entitled to our judgment."

D'Almaine v. Boosey.

In *D'Almaine* v. *Boosey* (*k*), the question arose as to the right to make adaptations of music. Lord Lyndhurst, then Lord Chief Baron, observed that it was a nice question, what should be deemed such a modification of an original work as should absorb the merit of the original in the new composition. "No doubt," said he, "such a modification may be allowed in some cases, as in that of an abridgment or a digest. Such publications are in their nature original. Their compiler intends to make of them a new use; not that which the author proposed to make. Digests are of great use to practical men, though not so, comparatively speaking, to students. The same may be said of an abridgment of any study; but it must be a *bonâ fide* abridgment, because if it contains many chapters of the original work, or such as made that work

(*h*) (1784), 1 Bro. C. C. 451.
(*i*) (1855), 16 C. B. 459.
(*k*) (1835), 1 Y. & C. 288.

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most saleable, the maker of the abridgment commits a piracy. Now, it will be said that one author may treat the same subject very differently from another who wrote before him. That observation is true in many cases. A man may write upon morals in a manner quite distinct from that of others who preceded him; but the subject of music is to be regarded upon very different principles. It is the air or melody which is the invention of the author, and which may in such case be the subject of piracy; and you commit a piracy if, by taking, not a single bar, but several, you incorporate in the new work that in which the whole meritorious part of the invention consists."

Dickens v. *Lee.*

In *Dickens* v. *Lee* (*l*), the plaintiff's work was an imaginative tale; the defendant had taken the fable, the characters, the incidents, the names, and even the style of language. It is to be gathered from the report that thus using all the plaintiff's materials, he had told the story in a shorter manner, and he relied upon abridgment as his defence; but the Court held that such an abridgment was not an exercise of mental labour deserving the character of an original work, and granted an injunction, putting the plaintiff to establish his right at law, if the defendant desired it. In this case, Vice-Chancellor Knight Bruce is reported to have said that he was not aware that one man had the right to abridge the works of another; on the other hand, he did not mean to say that there might not be an abridgment which might be lawful, which might be protected; but to say that one man had the right to abridge, and so publish in an abridged form, the work of another, without more, was going much beyond his notion of what the law of this country was.

Finally, Lord Hatherley, when Vice-Chancellor, in the case of *Tinsley* v. *Lacy* (*m*), spoke very unfavourably in regard to the rights of an abridger; he said: He must confess that he did not agree in the reasons for upholding such a work given by some learned judges, viz., that an abridger was a benefactor. He should have himself regarded him rather as a sort of jackal to the public, to point out the beauties of authors.

It will be noticed that there has been no modern decision as to the rights of an abridger, and, having regard to the tendency of later cases to depart from the stringency of the earlier decisions and the recognition of the principle that an author is entitled to the indirect, as well as the direct, fruits of his labour (*n*), it is considered

(*l*) (1844), 8 Jur. 183.
(*m*) (1861), 1 H. & M. 747.
(*n*) *Weatherby* v. *International Horse Agency*, (1910) 2 Ch. 297.

probable that it will be held that abridgments of copyright works are no longer permissible.

By translation.

5th. Copyright may be infringed by reproducing the whole or part under the form of a translation.

If there was any doubt, under the old law, as to whether a translation infringed the copyright in the original work (*o*), it is set at rest by the Act of 1911, which expressly includes in the copyright which is conferred upon an author, the sole right "to produce, reproduce, perform, or publish any translation of the work" (*p*).

Re-translation.

If A.'s work is translated by B., and C. re-translates from B.'s translation into the original language, C. infringes A.'s copyright (*q*).

Infringement by public performance.

The right to prevent public performance of a work is not now confined to musical and dramatic works, but is extended to all works (*r*). By sect. 35 of the Act "performance" means "any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument." Under the Literary Copyright Act, 1842 (*s*), the author of a literary work had no right to complain of portions of his work being recited or read aloud in public (*t*). This would appear to be no longer so. The definition of "performance" seems wide enough to cover a mere recitation, even without action or costume, and the fact that sect. 2 (1) (vi) expressly authorises "the reading or recitation (*u*) in public by one person of any reasonable extract from any published work," leads to the inference that the reading or recitation of an unreasonable extract is an infringement. In considering whether the length of extract recited is reasonable or unreasonable no doubt greater latitude will be permitted in the case of recitations or readings from non-dramatic works than from dramatic works (*x*).

Infringement by dramatization of non-dramatic works.

It is no longer permissible, as it was under the old law, provided the actual words were not copied (*y*), to convert a novel or other non-

(*o*) *Burnett* v. *Chetwood* (1720), 2 Meriv. 441; cf. *Cate* v. *Devon Newspaper Co.* (1889), 40 Ch. D. 500. A translation was held not to be a piracy in America (*Stowe* v. *Thomas*, 2 Am. L. R. 231), and in India (*Macmillan* v. *Shamsul* (1895), 19 Ind. L. R. (Bombay Ser.) 557).

(*p*) Sect. 1 (2) (a); *Byrne* v. *Statist Co.*, (1914) 1 K. B. 622.

(*q*) *Murray* v. *Bogue* (1852), 1 Drew. 353, 368.

(*r*) Sect. 1 (2).

(*s*) 5 & 6 Vict. c. 45.

(*t*) *Per* Stirling, J., *Hanfstaengl* v. *Empire Palace*, (1894) 3 Ch. 109, 116.

(*u*) But not "singing."

(*x*) See further as to infringement by public performance, *post*, p. 174.

(*y*) *Reade* v. *Conquest* (1861), 9 C. B. 755; *Tinsley* v. *Lacy* (1863), 32 L. J. Ch. 535; *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73.

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dramatic work or an artistic work into a dramatic work by way of performance in public or otherwise (*z*). This effects a considerable extension of the rights of the proprietor of the copyright in a novel, because the result is to give protection not merely to the form of the words in the novel, but sometimes to the situations contained in it, so that if it is found that a series of incidents in combination have been taken from a copyright novel an injunction will be granted, even though there is not a single sentence used in the dramatic work which is similar to one used in the novel (*a*).

Gratuitous circulation.

It is no defence that the copying is made for the purpose of gratuitous circulation (*b*), unless it be for private study or research (*c*): nor that the work has been copied not directly from the work itself, but only indirectly from another work (*d*).

Certain dealings with pirated copies may be infringement of copyright.

It is not only the person who reproduces or publicly performs in whole or in part a copyright work who is liable to an action for infringement: persons who deal with infringing copies may also be exposed to a like action, but in this case only if they do so knowingly. This is the result of sect. 2 (2), which is as follows:—

"Copyright in a work shall also be deemed to be infringed by any person who—

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(c) by way of trade exhibits in public; or

(d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place."

Meaning of "infringing" copy.

"Infringing," when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation

(*z*) Sect. 1 (2) (c). The words "or otherwise" presumably qualify "performance" not "public." They are not, it is thought, intended to convey that a performance in private of a dramatized work is to be an infringement of copyright.

(*a*) *Per* Cozens-Hardy, M. R., *Corelli* v. *Gray* (1913), 30 T. L. R. 116.

(*b*) *Novello* v. *Sudlow* (1852), 12 C. B. 177; *Ager* v. *P. & O. Steamship Co.* (1884), 26 Ch. D. 637.

(*c*) Sect. 2 (1) (i).

(*d*) *Cate* v. *Devon Newspaper* (1889), 40 Ch. D. 500.

made or imported in contravention of the provisions of the Copyright Act (*e*). To sell a work which has been lawfully made, unless it was made in a foreign country, is not, therefore, an infringement of copyright (*f*).

Acts complained of must be committed within the jurisdiction.

The section does not, except as to importation, expressly state that the act complained of must be done within those parts of the world to which the Act extends, but copyright only extends throughout the parts of His Majesty's dominions to which the Act extends (*g*), and the English Courts have no jurisdiction to entertain actions for infringements of copyright committed abroad (*h*). In order, therefore, that a person can be sued for knowingly selling a work which to his knowledge infringes copyright it must be shown that the sale took place in the United Kingdom, and the fact that goods are despatched from another country pursuant to an order received from England does not make it a sale in England (*i*). Similarly, an agent who orders goods to be delivered at a foreign port to an English firm who then import them into England does not "sell" in England (*k*).

Selling or exposing for sale infringing works.

A person who simply attempts to effect a sale does not thereby infringe copyright (*l*), unless he "by way of trade exposes or offers for sale or hire" the infringing article. The new Act does not go so far as the Literary Copyright Act, 1842, which made it an infringement of copyright for any one knowingly "to have in his possession for sale or hire" an imported book which infringed copyright (*m*).

Distribution for trade purposes.

As we have seen, it is no defence to any one who has directly infringed copyright to say that he did so without the intention of making any profit thereby (*n*), but in order to render liable a person who merely *distributes* an article which to the knowledge of the distributor infringes copyright, it must be shown that he has done so "either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright." It is not, however, very easy to imagine a case in which gratuitous distribution

(*e*) Sect. 35.

(*f*) This point seems to have been overlooked in the recent case of *Monckton* v. *Pathé Frères* ((1914) 1 K. B. 395), more fully considered in the chapter on "Mechanical Contrivances," Part III., Chapter V.

(*g*) Sect. 1 (1).

(*h*) *Morocco Bound* v. *Harris*, (1895) 1 Ch. 534.

(*i*) *Badische Anilin und Soda Fabrik* v. *Basle Chemical Works*, (1898) A. C. 200.

(*k*) *Saccharin Corporation* v. *Reitmayer*, (1900) 2 Ch. 659; *Badische Anilin und Soda Fabrik* v. *Hickson*, (1906) A. C. 419.

(*l*) *Wolff* v. *Wood, Times*, 31st Oct., 1903; *Britain* v. *Kennedy* (1903), 19 T. L. R. 122.

(*m*) 5 & 6 Vict. c. 45, s. 17.

(*n*) *Novello* v. *Sudlow* (1852), 12 C. B. 177.

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would not prejudicially affect the owner of the copyright. Likewise, "exhibition" must be "by way of trade."

Infringement by importation.

As regards importation of infringing works, again, the Act of 1911 is not so stringent as the Literary Copyright Act, 1842. Under sect. 17 of the latter Act it was an offence to import piracies, whether or not the importer had knowledge that the works were piracies (*o*). Under the Act of 1911, to render the importer liable to be sued as an infringer of copyright, it must be proved that he imported for "sale or hire" and that the imported works "to his knowledge" infringe copyright; but, inasmuch as by sect. 7 it is provided that all infringing copies of "any work in which copyright subsists or of any substantial part thereof" are to be deemed the property of the owner of the copyright, it would seem that an innocent importer who deals with the copies in his possession may be liable in damages for the conversion of what is not his own property, but the property of the owner of the copyright (*p*). In fact sect. 7 seems calculated in many cases to deprive any person who is deemed to infringe copyright under sect. 2 (2) of any material benefit arising from his innocence.

Proof of knowledge.

The burden of proof as to knowledge appears to lie upon the plaintiff (*q*), and the best method of proving knowledge is by giving notice prior to instituting proceedings (*r*). The defendant's ignorance must, however, be of the facts and not of the law (*s*), and probably the knowledge of an agent would be imputed to his principal.

(b) *Dramatic and Musical.*

Same principles applicable as in piracies of literary copyright.

In considering what amount of copying or imitation will constitute piracy of a dramatic or musical work, similar rules to those already laid down with reference to literary copyright may be applied.

Two leading cases on infringement of dramatic copyright are the cases of *Planché* v. *Braham* (*t*), and *Chatterton* v. *Cave* (*u*). In the first of these cases the defendant used the words of two or three songs of the plaintiff as the vehicle of some airs in an English version of Weber's opera of "Oberon," and the action was brought under the above Act. The rest of the version had

(*o*) *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

(*p*) As to seizure of piracies by the Customs authorities, see *post*, Chapter IX., "Civil Remedies for Infringement of Copyright."

(*q*) Cf. sects. 2 (3), 8, where the burden of proof is thrown upon the defendant.

(*r*) *Cooper* v. *Whittingham*, *ubi sup.*

(*s*) *Burton* v. *Bevan*, (1908) 2 Ch. 240.

(*t*) (1837), 4 Bing. N. C. 17.

(*u*) (1878), L. R. 10 C. P. 572; 2 C. P. D. 42; 3 App. Cas. 483.

been written by another person. There was no question as to appropriation of the music; and Lord Chief Justice Tindal left it to the jury to say whether there had been a representation of a part of the plaintiff's dramatic production. The jury found that there had been; and gave a verdict accordingly for the statutory penalty. Serjeant Wilde moved to set aside the verdict on the ground that as there had been no representation of a part of the plaintiff's piece—the words of the songs adapted to the music being immaterial to the development of the drama—the defendant was entitled to a judgment. But the Court affirmed the verdict, holding that the question before it must in all cases be determined by a jury. "It is difficult," said the Chief Justice, "to say what is or is not a representation of a part of a dramatic production, . . . and it must be left to a jury to determine the fact."

The second case was an action against the defendant in respect of his having committed an infringement of the copyright of the plaintiffs in a drama founded on the novel by Eugène Sue called "The Wandering Jew." There had been a drama in French founded on the same novel, and the version claimed by the plaintiffs, prepared by Mr. Lewis and assigned by him to them, was an adaptation from the French. The defendant had since brought out another adaptation, which it was alleged was, in part, an imitation of the former, and had thereby committed an infringement of the plaintiffs' copyright. The judge found there had been two "scenes or points" of the plaintiffs' drama taken by the defendant without recourse either to the French novel or to the drama constructed from it, and he directed the verdict to be entered for the defendant. The finding was as follows: "I find in this case that two scenes or points of the drama of the defendant have been taken direct from the drama of which Mr. Lewis was the author and the plaintiffs the assignees, without recourse to either the French novel or the French drama, originals common to the dramas of both the plaintiffs and defendant. I find this, first, in respect of the final scene of the defendant's drama; and secondly, of the appearance of the Wandering Jew, and the stage business connected with that appearance, which are to be found in the second scene of the second act of the defendant's drama, and in the fourth scene of the first act of the plaintiffs' drama. I find that the drama of the defendant is not, except in these respects, a copy from or a colourable imitation of the drama of the plaintiffs. I direct the verdict to be entered for the defendant. I assess the damages at 40*s*. if upon argument, as provided by the terms agreed to at

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the trial, the Court should be of opinion that the verdict ought to be entered for the plaintiffs.". The case was argued upon a rule obtained to enter the verdict for the plaintiffs. This rule was discharged (*x*), and on appeal this decision was affirmed (*y*). The plaintiffs appealed to the House of Lords, and it was argued that the scenes, or points, as they were called, were material, valuable, and striking points, and affected considerably the attractiveness of the drama, and no one doubted that they had been copied from the plaintiffs' production, but the House affirmed the decisions of the Courts below, Lord Hatherley saying: "There is indeed one obvious difference between the copyright in books and that in dramatic performances. Books are published with an expectation, if not a desire, that they will be criticised in reviews, and if deemed valuable, that part of them will be used as affording illustrations by way of quotation or the like, and if the quantity taken be neither substantial nor material, if, as it had been expressed by some judges, 'a fair use' only be made of the publication, no wrong is done and no action can be brought. It is not, perhaps, exactly the same with dramatic performances. They are not intended to be repeated by others, or to be used in such a way as a book may be used, but still the principle *de minimis non curat lex* applies to a supposed wrong in taking a part of dramatic works, as well as in reproducing a part of a book. The minimum of damages to be awarded when the fact of damage and the right to damages have been once established, was no doubt fixed because of the difficulty of proving with definiteness what amount of actual damage had been sustained, by perhaps a single performance at a provincial theatre of a work belonging to a plaintiff, whilst at the same time his work might be seriously depreciated if he did not establish his right as against all those who infringed upon it. . . . I think, my lords, regard being had to the whole of the case, to the finding of the Lord Chief Justice that the parts which were so taken were neither substantial nor material parts, and the impossibility of damage being held to have accrued to the plaintiff from such taking, and the concurrence of the other judges before whom the case was brought, that this appeal should be dismissed, and dismissed with costs" (*z*).

It is worthy of note here that when the question was raised in the Common Pleas, Lord Coleridge set out fully the reasons which had dictated his direction, and it then appeared that though

(*x*) L. R. 10 C. P. 572. (*y*) 2 C. P. D. 42.
(*z*) 3 A. C. 483, 492, 493.

the finding had no explicit allegation as to the character of the "scenes" or "points" which it finds to have been taken, their immateriality was meant to be conveyed. "These points so copied," said he, "were not parts of the dialogue or composition of the plaintiffs' drama, but were in the nature of dramatic situations or scenic effects. It appeared to me that looking to the general character of the two dramas respectively, the extent to which the one was taken from the other was so slight, and the effect upon the total composition was so small, that there was no substantial and material taking of any one portion of the defendant's drama from any portion of the plaintiffs'. Therefore, though I felt bound to find that there was a taking of these two small points, I decided to enter the verdict for the defendant."

In another case the defendant had dramatized a story of the plaintiff and had extracted almost *verbatim* from the tale very considerable passages for introduction into his play. Thus, Act I. consisted of 674 lines: 47 of these were stage directions; of the remaining 627, 125 were taken *verbatim* from the novel. Some of the passages extracted were prominent and striking parts of the dialogue contained in the novel. It was held that an infringement had been committed, and that all passages from the plaintiff's book must be cancelled (*a*).

What amounts to substantial identity.

As to what amounts to such substantial identity as to constitute piracy is well illustrated by an American case (*b*). The matter alleged to have been pirated was the "railroad scene" in Daly's play, "Under the Gaslight." In this scene is represented a surface railroad and a signal station-shed, in which a woman, at her own request, is locked by the signalman, who then disappears. Next, are seen two men, one of whom binds the other with a rope, fastens him to the railroad track, and leaves him to be killed by an expected train. From a window in the shed the woman sees what is done, hears the noise of the approaching train, breaks open the door with an axe, and frees the intended victim an instant before the train rushes by.

This scene was reproduced, but with variations, by Mr. Boucicault in his drama entitled "After Dark." In that play he made one of the characters, from a wine vault where he had been thrown, see, through a door into an adjoining vault, two persons pass through a hole in the wall the body of a man who had been made unconscious by drugs. With an iron bar he enlarges an orifice in

(*a*) *Warne* v. *Seebohm* (1888), 39 Ch. D. 73.
(*b*) *Daly* v. *Palmer* (1868), 6 Blatch. (Amer.) 256.

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the wall of the vault, which opens on an underground railway, and sees lying insensible on the track the person whose body has just been put there by the two men in the adjoining vault. Hearing the noise of a coming locomotive, he quickly makes his way through the opening in the wall and moves the body from the track, just in time to prevent it from being run over by the passing train.

In Daly's drama this incident occupied the third scene of the fourth act, and during its progress there is considerable conversation between the several characters on the stage. In Boucicault's drama it was represented in three scenes of the third act, chiefly by action, but partly by monologue spoken by one of the characters after he has seen the body on the track.

After pointing out the similarities and the differences between the two plays, Mr. Justice Blatchford continued:—"All that is substantial and material in the plaintiff's railroad scene has been used by Boucicault in the same order and sequence of events, and in a manner to convey the same sensations and impressions to those who see it represented, as in the plaintiff's play. Boucicault has, indeed, adapted the plaintiff's series of events to the story of his play, and, in doing so, has evinced skill and art; but the same use is made in both plays of the same series of events to excite, by representation, the same emotions in the same sequence. There is no new use, in the sense of the law, in Boucicault's play of what is found in the plaintiff's railroad scene. The railroad scene in Boucicault's play contains everything which makes the railroad scene in the plaintiff's play attractive as a representation on the stage. As, in the case of a musical composition, the air is the invention of the author, and a piracy is committed if that in which the whole meritorious part of the invention consists is incorporated in another work, without any material alteration in sequence of bars; so in the case of the dramatic composition, designed or suited for representation, the series of events directed in writing by the author in any particular scene is his invention, and a piracy is committed if that in which the whole merit of the scene consists is incorporated in another work, without any material alteration in the constituent parts of the series of events, or in the sequence of the events in the series.

"The adaptation of such series of events to different characters who use different language from the characters and language in the first play is like the adaptation of the musical air to a different instrument, or the addition to it of variations or of an accompaniment. The original subject of invention, that which required

genius to construct it and set it in order, remains the same in the adaptation. A mere mechanic in dramatic composition can make such adaptation, and it is a piracy if the appropriated series of events, when represented on the stage, although performed by new and different characters using different language, is recognised by the spectator, through any of the senses to which the representation is addressed, as conveying substantially the same impressions to, and exciting the same emotions in the mind, in the same sequence or order. Tested by these principles, the railroad scene in Boucicault's play is undoubtedly, when acted, performed, or represented on a stage or public place, an invasion and infringement of the copyright of the plaintiff in the railroad scene in his play."

Common source.

It is, of course, clear that there can be no plagiarism in dramatizing the same incidents taken from a source common to all (*c*), but it may be different where great originality is shown (*d*). "Stage business" and "gag" are not the subject of copyright, and therefore similarities in such matters cannot be made the subject of an action for infringement of copyright; but "where a question of plagiarism arises, and the words of two dramatic pieces are to some extent similar, it is legitimate to look at scenic effects and dramatic situations in order to see whether they do not help to show that there has been a borrowing of an idea, or of an expression of an idea, by the one piece from another" (*e*). In a case of *Scholtz* v. *Amasis* (*f*) it was laid down by the Court of Appeal that, as a matter of law, for the subject of the copyright to obtain protection, it was necessary for it to be embodied in the words, and that a similarity of plot and general outline was not sufficient to constitute infringement. But in the more recent case of *Corelli* v. *Gray*, where Miss Corelli (*g*), the novelist, complained that her novel, "Temporal Power," had been dramatized by the defendant in a sketch called "The People's King," it was held that there might be copyright in a combination of stock incidents, and consequently an infringement of copyright, although no single sentence in the defendant's play was similar to any sentence used in the plaintiff's novel. In a case (*h*), however,

(*c*) *Reichardt* v. *Sapte*, (1893) 2 Q. B. 308; *Rohl* v. *Palace Theatre* (1911), 28 T. L. R. 69; *Tate* v. *Fulbrook*, (1908) 1 K. B. 821; *Rees* v. *Robbins*, 4th July, 1914.

(*d*) *Daly* v. *Palmer*, *supra*.

(*e*) *Per* Kennedy, L. J., *Tate* v. *Fulbrook*, (1908) 1 K. B. 821, at p. 834, see *ante*, p. 80.

(*f*) C. A. 1909.

(*g*) (1913), 29 T. L. R. 570; on appeal, 30 T. L. R. 116.

(*h*) *Rees* v. *Robbins*, *Times*, 6th Feb. 1914; on appeal, *Times*, 7th July, 1914.

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where the defendant had admittedly had the manuscript of the plaintiff's melodrama in his possession at one time, and had subsequently produced a melodrama bearing some resemblance to that of the plaintiff, the Court declined to hold that the defendant had been guilty of piracy. The plaintiff was defeated upon the finding of fact by the learned judge in the Court of first instance that the defendant's play was substantially constructed independently of the plaintiff's play, and that the resemblances between the two plays were only of the same nature as were likely to arise between any two melodramas of the same class. In the course of his judgment, the Master of the Rolls stated that he had read the two plays, and was satisfied that there was no ground for the contention that the defendant's play infringed the plaintiff's copyright, so far as it was a literary production. With regard to the contention that in the case of an alleged infringement of dramatic copyright it was sufficient to show that the plot was taken, although in every other respect there might be no similarity, he found it difficult to understand copyright in a mere plot. He did not, however, decide the case upon that ground, but upon the ground that he regarded the defendant's play as an original production. He did not think that the circumstance that in each play the hero would either lose a fortune or fail to get it, unless he married before a certain day, and that the fortune was secured or preserved by a marriage at the last moment to a beggar girl, entitled the plaintiff to say that her dramatic copyright had been infringed.

Infringement of the copyright in a musical composition.

As to what amounts to an infringement of the copyright in a musical composition, it has been decided that to publish, in the form of quadrilles and waltzes, the airs of an opera in which there exists an exclusive copyright, amounts to such. In *D'Almaine* v. *Boosey* (*i*), the plaintiff published first the overture, and then a number of airs and all the melodies. It was admitted that the defendant had published portions of the opera containing the melodious parts of it; that he had also published entire airs; and that in one of his waltzes he had introduced seventeen bars in succession containing the whole of the original air, although he added fifteen other bars which were not to be found in it. This, it was contended, was not a piracy: first, because the whole of each air had not been taken; and, secondly, because what the plaintiff had purchased of the original author was the entire opera, and the opera consisted, not merely of certain airs and melodies, but of the whole score. Lord Lyndhurst, Chief Baron, however, held,

(*i*) (1835), 1 Y. & C. 288.

as to the first argument, that piracy might be of part of an air as well as of the whole; and with reference to the second, that, admitting that the opera consisted of the whole score, yet if the plaintiff was entitled to the work, *à fortiori* he was entitled to publish the melodies which formed a part. The Lord Chief Baron regarded the subject of music on a different principle to that on which he regarded other literary works; for he would not admit that the adapting for dancing, or otherwise, from the original composition, in which some degree of art is needed, could be deemed such a modification of an original work as should absorb the merit of the original in the new composition. It is the air or melody which is the invention of the author, and which may, in such case, be the subject of piracy; and a piracy is committed if, by taking, not a single bar, but several, that in which the whole meritorious part of the invention consists is incorporated in the new work.

"If," said Lord Lyndhurst, "you take from the composition of an author all those bars consecutively which form the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them, in a different order, or broken by the intersection of others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now, the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is when the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding variations makes no difference in the principle" (*k*).

Mechanical contrivances.

Under the old law it was held that perforated rolls and other mechanical devices for reproducing musical airs were not infringements of copyright, upon the ground that they could not be regarded as "copies" of a sheet of music (*l*); but the Act of 1911 provides that it shall be an infringement of copyright to make any

(*k*) See also *Fairlie* v. *Boosey* (1879), 4 A. C. 711; *Leader* v. *Purday* (1849), 7 C. B. 4.

(*l*) *Boosey* v. *Whight*, (1900) 1 Ch. 122; *Newmark* v. *National Phonograph Co.* (1907), 23 T. L. R. 439; *Mabe* v. *Connor*, (1909) 1 K. B. 575; *Monckton* v. *Gramophone Co.* (1912), 106 L. T. 84.

record, perforated roll, cinematograph film, or other contrivance by means of which a literary, dramatic or musical work may be mechanically performed or delivered (*m*).

Private performances not infringement.

In order that the performance of a work may be an infringement of copyright, it is necessary that it takes place in public (*n*), a strictly private performance not entitling the owners of the copyright to take any proceedings.

Yet a representation may be regarded as a public one, though the privilege of admission be denied to the general public and extended only to certain persons. And though the fact that no charge is made for admission is, no doubt, one ingredient in determining whether the performance be public or private, yet it cannot in all cases be taken as conclusive. For as the object of the law is to protect the proprietor of the copyright from injury, a performance nominally private, but in reality public, whether a charge be made for admission or not, would be restrained, on the ground that it might be as injurious to the proprietor as if the representation had been public. "Private theatricals" are sometimes given by amateur performers in a place of public amusement to which a charge is made for admission. This undoubtedly would be regarded as a representation in public, although only invited persons or members of a certain society were privileged to buy tickets of admission.

In a case, however, where the performance was in the room of a hospital by amateurs for the entertainment of the nurses and others connected with the institution, free, though the governors of the hospital paid for seats, the Court held that the room where the drama was represented was not a place of public entertainment, and consequently the performers were not liable to damages or penalties under the Acts (*o*).

In the case last referred to the Master of the Rolls said: "It is not necessary that there should be profit made by the representation." He considered that the place need not be habitually kept for the exhibition of dramatic entertainments. A representation in a nursery by children, or by grown-up persons in a drawing-room, is not an infringement because it is obviously domestic and private. So, too, a "representation for the amusement of friends

(*m*) Sect. 1 (2) (d). See Chapter "Mechanical Contrivances," *post*, Part III., Chap. V.

(*n*) Under the 3 & 4 Will. IV. c. 15, the representation was required also to be in a "place of dramatic entertainment": see *Russell* v. *Smith* (1848), 12 Q. B. 217.

(*o*) *Duck* v. *Bates* (1884), 12 Q. B. D. 79; 13 Q. B. D. 843; cf. *Caird* v. *Sime* (1887), 12 A. C. 326; *Selig* v. *Polyscope Co.* (1911), 27 T. L. R. 554.

in an unfurnished house hired for the occasion." The representation in that case is also "domestic and private." There must be present a sufficient part of the public who would also go to a performance licensed by the author as a commercial transaction. "Suppose that a member for a Parliamentary borough organizes dramatic entertainments to which the inhabitants are admitted without payment. Suppose that an amateur company chooses to act some drama for a charitable object, with admission upon payment of money or by tickets issued generally. In each of these instances an infringement of the statute has been committed." Fry, L. J., while agreeing that the place need not be habitually used for dramatic entertainments and that the representation need not be for reward or hire, differed as to the necessity for publicity (*p*), holding that "there may be internal and domestic representations which are well within the purview of the statute, as when a nobleman gives a dramatic performance in his mansion to guests staying in his house, and to invited residents in the neighbourhood—what would be the chance of the next company which came to the adjoining town to perform the same piece, getting together as good an audience as they could get had the piece not been performed in the nobleman's mansion?"

Liability of the person who lets a place of entertainment.

It was held, under the old law, that a person who had let for hire a place of entertainment for public performance of songs and music was not, from the mere fact of letting, to be held liable if copyright songs were sung without the consent of the proprietors of the copyright (*q*). But in the case of *Marsh* v. *Conquest* (*r*) the defendant was the owner and manager of the Grecian Theatre, and for £30 he had let for one night to his son, who was the stage manager, the use of the theatre, company, and all persons employed. The son selected and brought out a play, for which representation the Court held the defendant liable. The judgment was based on the fact that the defendant had the control and management of the theatre and the company during that performance. "I think," said Erle, C. J., "the defendant is responsible for that representation. He was the proprietor of the theatre, and had entire control over the establishment and all belonging to it; and what was done by his son was done by his permission. The

(*p*) There is, of course, under the new Act no doubt as to the necessity for publicity. The Act (3 & 4 Will. IV. c. 15) only required that the performance should take place at a "place of dramatic entertainment." The dissenting judgment of Fry, L. J., in *Duck* v. *Bates* may therefore, it is thought, be ignored.

(*q*) *Russell* v. *Briant* (1849), 8 C. B. 836; *Lyon* v. *Knowles* (1863), 3 B. & S. 556.

(*r*) (1864), 17 C. B. 418.

CAP. VIII. case of *Lyon* v. *Knowles* seems to me to recognise that distinction. There the defendant merely let his theatre with the scenery, scene-shifters, bands, lights, &c. to Dillon, who brought his own company to represent pieces of his own selection, the plaintiff having no control whatever over any person employed in the representation. Here, however, the piece is performed by the defendant's own *corps dramatique*, his son being one of them; and the performance takes place for the defendant's profit to the extent of £30. I think, therefore, it is impossible to say that the defendant did not cause the piece to be represented."

So in another case (*s*), the defendant was the proprietor of a music-hall, and had engaged a singer who on numerous occasions sang a song called "We are going to reform some day," the copyright of which was in the plaintiff as assignee. The defendant at the trial denied that he had directed the song to be sung; he was in the hall when it was being sung, but had never heard the whole of it. The Court held that inasmuch as the singer was hired by the defendant to sing what songs he liked and no supervision or control was exercised as to copyright, there was evidence of agency and authority to sing the song complained of.

It was argued that an authority to do an unlawful act could not be presumed, and that the presumption should be that under a general or implied permission to sing what the artiste chose, only songs which could not be lawfully sung would be selected; but it was considered that there having been a general permission by the defendant to sing, the true inference was that he took the chance of the songs sung being such as could be lawfully or unlawfully sung.

The cases of *Marsh* v. *Conquest* and *Monaghan* v. *Taylor*, it is presumed, still represent the law, and that a person is liable for directly infringing a performing right if the performers can fairly be regarded as his servants, or as authorised by him to perform the particular piece (*t*), even although he be ignorant that the works are to be performed without the consent of the proprietor of the performing right. But now, by sub-sect. (2) of sect. 2 of the Copyright Act, 1911, "a person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public" of any work without the consent of the owner of the copyright is to be deemed to infringe copyright, "unless he was not aware and had no reasonable ground for suspecting that the performance would be an infringement of copy-

(*s*) *Monaghan* v. *Taylor* (1885), 2 T. L. R. 685.
(*t*) *Ante*, pp. 135, 136.

right." This sub-section seems to overrule the cases of *Russell* v. *Briant* (*u*) and *Lyon* v. *Knowles* (*u*), unless innocence can be proved.

The user must be "for his private profit."

It will be noticed that in order to bring the case within this sub-section, the defendant must have permitted user "for his private profit," so that a person who gratuitously allows a place to be used for a public performance is not liable under the sub-section, but the person "permitting" need not necessarily be remunerated by a fixed rent; it would be sufficient if he were to receive a share of the profits, even if there were in fact no profits, for he none the less, it is thought, permits the place of entertainment to be used "for" his private profit (*x*). There is a growing practice amongst proprietors of hotels and restaurants to engage orchestras to play during specified hours, with a view to attracting customers. These proprietors, it is submitted, permit their premises to be used for the performance of the pieces played for their "private profit," and consequently may be liable under this sub-section if the orchestra were to play copyright music without the permission of the owner of the copyright (*y*).

Performance to be at a "theatre or other place of entertainment."

The place in which the public performance takes place must be a "theatre or other place of entertainment." Under the 3 & 4 Will. IV. c. 15, the performance had to be at a "place of dramatic entertainment," and the question arose, in several cases, as to the meaning of this expression. The cases of *Russell* v. *Smith* (*z*) and *Wall* v. *Taylor* (*a*) appear to be authorities to the effect that the very fact that a dramatic entertainment to which the public are invited is given in a particular building makes that building, for the time being, a "place of dramatic entertainment," and that that is sufficient to satisfy the statute. In the latter case, Brett, M. R., is reported to have definitely stated: "performing a dramatic piece makes the place where it is performed a place of dramatic entertainment" (*b*). In the later case of *Duck* v. *Bates* (*c*), however, the Master of the Rolls qualified this dictum. "Is a breach of the statute," he says (*d*), "committed only when a dramatic piece is represented in a place ordinarily kept for dramatic entertainment? If this question is to be answered in the affirmative, the statute will be infringed only when the performance takes place in a licensed theatre. But a

(*u*) *Ubi supra.*
(*x*) *Quære*, whether an agent who received a commission for letting a theatre could be said to "permit" the use of the theatre for his private profit. Probably not.
(*y*) *Sarpy* v. *Holland*, (1908) 2 Ch. 198; *Monaghan* v. *Taylor*, *supra.*
(*z*) (1848), 12 Q. B. 217.
(*a*) (1883), 11 Q. B. D. 102.
(*b*) At p. 408.
(*c*) (1884), 13 Q. B. D. 843.
(*d*) At p. 846.

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dramatic piece may be acted elsewhere than in a licensed theatre, and persons without the author's consent may act his drama in places not habitually devoted to dramatic entertainment. In my opinion, in order to come within the prohibition of the statute, a place need not be kept habitually for the exhibition of dramatic entertainments: it is not correct to say that the statute is infringed only when the place is habitually used for dramatic entertainments. It seems to have been supposed that I said that the representation of a dramatic piece, wherever it may be acted, makes the place where it is performed a place of dramatic entertainment. I believe I did not say so; *but if I did I was wrong.* I do not pretend to have expressed myself with sufficient clearness, but I do not think that my words will really bear that construction. In describing the place to which the statute is to apply, the legislature uses the words, 'any place of dramatic entertainment.' From these words it is obvious to me that there is some place where a dramatic piece may be represented without an infringement of the statute: if it is not a place of dramatic entertainment, no breach is committed: the statute requires that the dramatic representation shall be performed at a place of dramatic entertainment." Applying these observations to the Copyright Act, 1911, it may be urged that when the legislature refers to a person who permits the use of a "theatre or other place of entertainment," it is obvious that it does not intend to include "any place whatsoever." Moreover, the fact that "place of entertainment" is used in conjunction with the word "theatre" suggests that possibly the *ejusdem generis* construction should be applied, and that the sub-section is only intended to apply to lessors of theatres and other places of entertainment of a like character. On the other hand, the fact that the lessor can plead ignorance as an excuse is a strong argument in favour of not limiting the expression in this manner, for there can be no logical ground for distinguishing between a person who lets a theatre and a person who lets a barn for the purpose of a public performance of a piece which the lessor knows to be an infringement of copyright, although the law might require a greater degree of care from the lessor of a place habitually used for public performances of plays than from the lessor of a building which is ordinarily used for totally different purposes.

Burden of proof.

The burden of proof as regards ignorance seems to lie upon the defendant. This was not so under the Copyright (Musical Compositions) Act, 1888 (*e*) (now repealed), where the plaintiff had

(*e*) 51 & 52 Vict. c. 17, s. 3.

to prove that the person permitting his premises to be used for an unauthorised representation or performance had done so "wilfully" (*f*).

(c) *Artistic.*

Distinguishing features of artistic piracies.

There is, in some cases, greater difficulty in determining what is an infringement of the copyright in an artistic work than in either a literary work or a dramatic work. There is no great variety in the methods by which a literary or dramatic work can be reproduced or performed, but the general idea or design of a picture can be conveyed in a variety of ways—by lithography, photography, sculpture, or even by tableaux vivants, and it may be copied upon paper, canvas, or any other material, with the object either that the copy shall be sold as a distinct article or used to embellish another article.

What were infringements under the old law.

In considering how far the cases decided under the old law apply to the Act of 1911, it may be well to point out the differences in the language employed. The Fine Arts Copyright Act, 1862 (*g*), provided by sect. 1 that the copyright in a picture, drawing, or photograph, should confer "the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photographs, and the negative thereof, by any means and of any size"; and by sect. 6 of the same statute, penalties were imposed upon any person who, without the consent of the proprietor of the copyright, should "repeat, copy, colourably imitate, or otherwise multiply . . . any such work or the design thereof." In the case of engravings, copyright was infringed by any person who "shall copy in the whole, or in part, by varying, adding to, or diminishing from the main design" (*h*); and, in the case of works of sculpture, by any person who should make or import "any pirated copy or pirated cast" of the original sculpture (*i*). Under the Copyright Act, 1911, the proprietor of the copyright in an artistic work has the sole right to produce or reproduce his work or any substantial part thereof in any material form whatever (*k*), and his copyright is infringed by any person who invades this right without his consent (*l*). There is no reference in this Act to the "design" of the artistic work.

(*f*) *Sarpy* v. *Holland*, (1908) 2 Ch. 198; *Moul* v. *Coronet Theatre*, *Times*, 11th Dec. 1901; on appeal, *Times*, 4th Feb. 1903.
(*g*) 25 & 26 Vict. c. 68.
(*h*) 17 Geo. III. c. 57.
(*i*) 54 Geo. III. c. 56, s. 3.
(*k*) Sect. 1 (2).
(*l*) Sect. 2 (1).

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Probably, no alteration in law made by Act of 1911.

It is doubtful whether the new Act has made any alteration in the law as to what is a direct infringement of the copyright in an artistic work. The absence of any reference to the "design" of the work is probably not material. There was no reference to the "design" in the old Engraving Acts, but Lindley, L. J., in the case of *Hanfstaengl* v. *Empire Palace* (*m*), remarked: "although it is very true, as was pressed upon us by Mr. Scrutton, that the word 'design' is not used in the Engraving Acts, still the object of the Acts in protecting engravings is exactly the same as the object which the legislature had in view in protecting paintings, drawings, and photographs in this Act." Again, although some of the old cases seem to turn upon the meaning of the word "copy"—a word which does not appear in the Act of 1911—it is not very easy to draw any distinction between a "reproduction" and a "copy." In fact the language of the Fine Arts Copyright Act, 1862 (*n*), differs very slightly from that of the Act of 1911, for by the first-named Act the author of every original painting was given the exclusive right of "copying . . . reproducing and multiplying such painting . . . by any means."

"Living pictures."

The meaning of these words was fully considered in the series of cases, known as the "Living Picture" cases (*o*).

The defendants, the Empire Palace, in the year 1894, produced on their stage certain tableaux vivants, which were intended to be representations of pictures the copyright in which belonged to the plaintiff. The representations were exact reproductions, as tableaux vivants, of the pictures, and the backgrounds, taken from photographs of the original pictures, were painted on canvas, the whole being enclosed in a large gilt frame. The plaintiff gave notice of motion for an interlocutory injunction to restrain this exhibition, contending that the groups of living persons were a reproduction of the design of his pictures within the meaning of the Act of 1862. The motion coming on for hearing before Mr. Justice Stirling, that learned judge was of opinion that the representation of the designs of the pictures by means of groups of living persons was no infringement of the plaintiff's rights, and upon the defendants undertaking to keep until the trial the backgrounds to the "Living Pictures," or to take and keep photographs of the backgrounds used in respect thereof, and to keep an

(*m*) (1894) 2 Ch. 1, at p. 6.

(*n*) 25 & 26 Vict. c. 68, s. 1.

(*o*) *Hanfstaengl* v. *Empire Palace*, (1894) 2 Ch. 1; *Hanfstaengl* v. *Newnes*, (1894) 3 Ch. 109; *Hanfstaengl* v. *Baines*, (1895) A. C. 20.

account of the moneys received at all exhibitions at which any such backgrounds were exhibited, and the number of times each such background was exhibited, no order was made on the motion. The plaintiff thereupon appealed to the Court of Appeal, who confirmed the opinion of Mr. Justice Stirling, and dismissed the appeal (*p*).

In giving judgment, Lord Justice Lindley, after referring to the terms of sect. 1 of the Act, said: "We are asked to say that the words 'copying and reproducing by any means' include reproducing in the sense of imitating or representing by means not equivalent to drawing or painting or photographing, or any such means, but by totally different means, by the exhibition of living figures. Is that what is aimed at? It appears to me obviously and plainly it is not. When we look at the language used, where an idea of that kind was present to the mind of the legislature, we find a totally different class of words selected. The word 'represent' is the word used in the Dramatic Copyright Act (3 & 4 Will. IV. c. 15) but there is not a word about representing in the Act with which we are dealing. It does not say that the author of a picture shall be entitled to prevent anybody from representing his picture. It is intended to protect the author of the picture from anybody's producing a painting, drawing, or photograph of his picture so as to compete with him in the market. The language appears to me to be incapable of being stretched so as to touch such a representation as is sought to be restrained by this case. Light is thrown upon the true construction of sect. 1 by sect. 6, which provides for the forfeiture, and sect. 10, which prohibits the importation of copies unlawfully made. Those sections are not applicable to this Act if it is construed as the plaintiff asks us to construe it. But I do not rely so much upon those sections as upon the clear, and what I consider the unquestionable, meaning and intention of Parliament in passing this series of Acts. If we are to go out of the language and look further, I think a good deal of light is thrown upon this question by the case of *Dicks* v. *Brooks* (*q*), because, although it is very true, as was pressed upon us by Mr. Scrutton, that the word 'design' is not used in the Engraving Acts, still, the object of the Acts in protecting engravings is exactly the same as the object which the legislature had in view in protecting paintings, drawings, and photographs in this Act. It was not intended to give them the right to restrain Madame Tussaud from

(*p*) *Hanfstaengl* v. *Empire Palace*, (1894) 2 Ch. 1.
(*q*) (1880), 15 Ch. D. 22, *post*, p. 187.

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exhibiting a representation of a painting in waxwork; but to restrain people from producing something which would compete in the market with the originals or with authorised copies of them."

So Lord Justice Kay: "A reproduction of a painting must, one would think, be by another painting or something which is equivalent to another painting. The argument has been rather put on the ground that this is a reproduction of 'the design thereof' within the meaning of the Act. What does 'reproduction' really mean? Reproduction is producing again. Is this a producing again the design of this painting within the meaning of the Copyright Act? I cannot think that it is. It seems to me that in order to reproduce the painting you must have something which itself is and would be properly described as a picture."

This case subsequently went to trial, when the Court adhered to its former opinion as to the groups, but held that the backgrounds were infringements of the plaintiff's copyright (*r*).

At the same time that the plaintiff, in the case above referred to, commenced his proceedings against the Empire Palace he also took proceedings against two daily newspapers—the "Daily Graphic" and the "Westminster Budget"—for having published in their papers sketches, made by artists who had visited the Empire, of the tableaux vivants that had been represented on the stage of the theatre, alleging that these sketches were infringements of the copyright of his pictures, though the sketches were not taken directly from the pictures, but indirectly through the tableaux vivants. Mr. Justice Stirling held that, though the tableaux vivants were not themselves infringements of the plaintiff's copyright, nevertheless the sketches published in the newspapers were reproductions of the design of the pictures, and he granted an injunction (*s*).

From this decision the "Westminster Budget" did not appeal, but the "Daily Graphic" did, and succeeded in obtaining a reversal of Mr. Justice Stirling's decision in the Court of Appeal (*t*), and the decision of the Court of Appeal was finally affirmed by the House of Lords (*u*).

Mr. Justice Stirling considered, on the authority of *Ex parte Beal* (*x*), that the fact that the sketches were indirect, and not

(*r*) (1895), 11 T. L. R. 314, 368; (1895), W. N. 76.
(*s*) *Hanfstaengl* v. *Nownes*, (1894) 3 Ch. 109.
(*t*) *Ibid.*
(*u*) *Hanfstaengl* v. *Baines & Co.*, (1895) A. C. 20.
(*x*) (1868), L. R. 3 Q. B. 387.

direct, copies of the pictures made no difference, and that the sketches must be treated as copies of the pictures. The answer to the argument that the illustrations in no way competed with copies of the pictures authorised by the plaintiff appeared to him to be that the illustrations constituted a violation of the exclusive right conferred by the statute of 1862; that, in the language of Kelly, C. B., in *Bradbury* v. *Hotten* (*y*), the defendants were thereby applying for their own use and for their own profit what otherwise the plaintiff might have turned, and possibly might still turn, to a profitable account.

In the Court of Appeal, Lord Justice Lindley was not prepared to say, as a matter of law, that although the sketches were made from something in which there was no copyright, and although they represented something which was not of itself an infringement of the plaintiff's copyright, the sketches might not infringe the plaintiff's rights, if they could be fairly regarded as reproductions of his pictures, or of the designs thereof. To hold otherwise would be to open the door to indirect piracies, which he was not at all disposed to do. A copy of a foreign copy of an English painting would not, he apprehended, be protected by sect. 2 (*z*), and the judgment of Lord Blackburn in *Ex parte Beal* (*a*) showed that if a painting is, in fact, reproduced, it is immaterial what the intermediate steps might be by which the reproduction was arrived at. His decision was based upon different and wider grounds. "The sketches are not intended to be, and are not, in fact, copies of the pictures at all, neither are they intended to be, nor are they, in fact, reproductions of the designs of the pictures. They do not represent any of the beauties. They are rough sketches, made for a different purpose and answering a very different purpose, that purpose being, not to give an idea of the plaintiff's pictures, but to give a rough idea of what is to be seen at the Empire Theatre. In giving that idea, it is true that they also give a very rough idea of the subject represented in the plaintiff's pictures. It is also true that in *West* v. *Francis* (*b*) Mr. Justice Bayley said: 'A copy is that which comes so near to the original as to give to every person seeing it the idea created by the original.' But in apply-

(*y*) (1872), L. R. 8 Ex. 1, 6.
(*z*) See *Murray* v. *Bogue* (1852), 1 Drew. 353.
(*a*) *Ubi sup.*
(*b*) (1822), 5 B. & Ald. 737, 743. In *Hanfstaengl* v. *Smith*, (1905) 1 Ch. 519, at p. 524, Mr. Justice Kekewich preferred the following definition: "A copy is that which comes so near to the original as to suggest that original to the mind of every person seeing it."

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ing this to any particular case the degree of resemblance is all-important, and the possibility of injury to the plaintiff must be regarded. It is only by a great stretch of language and by the exercise of much imagination that these sketches can be regarded as copies of the plaintiff's pictures or the designs thereof. The case is very unlike *Gambart* v. *Ball* (*c*), where engravings were copied by photography. I cannot bring myself to say that the sketches complained of are, in any fair sense of the words, copies of the plaintiff's pictures or reproductions of the designs thereof within the meaning of the statute to which I have referred. The question, if it came before a jury, would be one of fact for the decision of the jury, or a proper exposition by the judge of the meaning of the statute, and I do not believe that any jury, properly directed, would find these sketches to be copies of the plaintiff's pictures or reproductions of his designs. The defendants have not, in fact, directly or indirectly, intentionally or unintentionally, made any use, certainly not any unfair use, of the plaintiff's pictures or of the brains of their authors" (*d*).

In the House of Lords Lord Herschell, L. C., was equally clear that the defendants had not infringed the plaintiff's copyright. It was obvious, he said, that the plaintiff could not successfully claim to have a monopoly of every treatment of such common subjects as love and courtship, or charity. He was far from saying that a "Living Picture" might not be so arranged to represent an existing painting that a photograph or drawing of the "Living Picture" would be a copy of the design of that painting. All that he could say was that this must depend upon the character of the picture, and what is justly to be regarded as its design. In the present case, the sketch most favourable to the plaintiff's case was admittedly that representing "Courtship." As to that, "there is no doubt a resemblance between the sketch and the photograph from the painting. In each case a young man and a young woman are standing beside one another close to a stile or fence. In each case the woman is shading her head by a parasol, and the dress of the man is somewhat similar in the two. The idea suggested is, of course, the same, each represents 'Courtship,' but the idea of a young man courting a young woman at a country stile is of great antiquity. It has often formed the subject of pictorial representation. This cannot be said to be the design of the plaintiff's painting within the

(*c*) (1863), 14 C. B. N. S.
(*d*) (1894) 3 Ch. p. 131.

meaning of the Act. Much more must be comprehended than this. There can only be a copy of such a design if the treatment of the subject be the same. Now, comparing the sketch with the photograph from the painting, I do not think this can be said to be the case. The faces are different; the mode in which the woman's hair is arranged is different; the pose is different; the attitudes are different; the background is different; and in the case of the sketch the foreground is wanting. In the artist's design all these things play a part, and, though I do not say that a variation in one or even more of these respects would prevent the sketch being a copy of the design, yet comparing the two, and considering the design of the painting as a whole, I cannot avoid the conclusion that the sketch is not a copy of the painting or of the design thereof, and therefore that there has been no infringement" (*e*).

Effect of decisions in the "living picture" cases.

Too much stress must not be placed upon the fact that in these cases some of the judges attached importance to the fact that the alleged piracies could not compete in the market with the plaintiff's pictures. A photograph hardly competes in the market with a painting, yet the owner of the copyright in a painting clearly has a right to prevent sales of a photograph of it, for the artist himself may some day make and sell such a photograph. In *Hanfstaengl* v. *Holloway* (*f*), copies of the plaintiff's pictures were put on pill boxes, yet this was held to be an infringement of copyright. Nor again did the decisions in the "Living Pictures" cases turn entirely on the fact that the copies were bad imitations. The effect of the decisions, it is submitted, rather is that the combination of circumstances must be looked at; and that, if it be found that the alleged copies are made for entirely different objects from the original picture, then it is of importance to examine how close a copy the alleged infringement is of the original picture (*g*). Another matter that may be taken into consideration is whether the conception of the picture is original or hackneyed.

Semble, these cases still law.

It is, upon the whole, submitted that the "Living Picture" cases have not been overruled by the Copyright Act, 1911. The difference in language between the statutes does not appear to be substantial, and the argument upon which the Court in the case of *Hanfstaengl* v. *Empire Palace* (*h*) laid some stress, that

(*e*) (1895) A. C. p. 24.
(*f*) (1893) 2 Q. B. 1; cf. *Hildesheimer* v. *Faulkner*, (1901) 2 Ch. 552; *Weatherby* v. *International Horse Agency*, (1910) 2 Ch. 297.
(*g*) See *Guggenheim* v. *Ling* (1896), 12 T. L. R. 491.
(*h*) (1894) 2 Ch. 1.

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the Act under consideration seemed to contemplate a copy which is apable of delivery, can equally be urged under the new Act, which, by sect. 7, confers the right upon the proprietor of the copyright to recover all "infringing copies." It could hardly be urged that a person who produces a spectacle is the author of an artistic work, and therefore an artistic work is not "reproduced" by a spectacle (*i*).

"Performance" of an artistic work.

It may indeed be urged that the Copyright Act, 1911, for the first time confers upon the author of an artistic work the exclusive right of public performance (*k*), and that a tableau vivant is a "performance" of a picture. "Performance" is, however, defined by the Act (*l*) as "any acoustic representation of a work, and any visual representation of any dramatic *action* in a work." It is submitted that there can be no "performance" of a work within the meaning of the Copyright Act if there is an absence of both words and action. It must, indeed, be confessed that if this is so, it is not very easy to imagine how there can be any "performance" of a single artistic work, but probably this provision of the statute is satisfied by referring it to a series of pictures, *e.g.*, a cinematograph film.

Infringement predicates multiplication of copies.

Subject to sect. 2 (2) of the Act, there must be some multiplication of the copies of the artistic work in order to make an infringement of copyright. The fact that copies lawfully produced are used for purposes other than those permitted by the proprietor of the copyright, does not constitute an infringement of copyright, though it may be a breach of contract. Thus in a case where the owners of the copyright in an engraving gave a licence to a publisher to use the picture once only as a small wood block in a pamphlet illustrative of certain pictures, the defendants, who had purchased a number of the pamphlets and cut out the wood-cut in question and mounted it on cards, which they sold, were held not to be guilty of infringement of copyright (*m*).

Alterations and copying part of a work.

It is equally an infringement of copyright whether the size of the copy has been increased or reduced (*n*), and whether the whole or part only of the original has been copied.

Thus where a man had a drawing of his wife made, having attached to her arm and dress a dress-holder, a patented inven-

(*i*) (1894) 2 Ch. at p. 8.
(*k*) Sect. 1 (2).
(*l*) Sect. 35 (1).
(*m*) *Frost* v. *Olive Series Publishing Co.* (1908), 24 T. L. R. 649; cf. *Murray* v. *Heath* (1831), 1 B. & Ad. 804.
(*n*) *Hanfstaengl* v. *Holloway*, (1893) 2 Q. B. 1; cf. *Gambart* v. *Ball* (1863), 14 C. B. N. S. 306; 1 B. & Ad. 804; *Cooper* v. *Stephens*, (1895) 1 Ch. 567; *Marshall* v. *Ball* (1901), 85 L. T. 77.

tion of his own, and substituted for his wife's head that of the Princess of Wales, taken from a photograph, the copyright in which belonged to the plaintiff, and from the combination so obtained made and printed cabinet-size photographs for the purpose of advertising his invention, that was held to be an infringement (*o*).

In another case, the plaintiff was the owner of the copyright in a picture and engraving known as "Can't you talk?" which represented a collie dog seated on his haunches on a stone floor looking down at the upturned face of a child; there was a wall in the background with a door on one side through which a cat was looking; above the dog was a table on which was a tub with a spoon in it. The defendants were the owners of a periodical in which was a wood-cut that almost exactly reproduced the whole of the plaintiff's engraving, with the exception of the child, whose position was replaced by a tortoise and two cats. The wood-cut was given as an illustration of a story entitled "A Strange Visitor." It was held that, as the defendants had taken a substantial portion of the plaintiff's engraving and reproduced it in the wood-cut with slightly different surroundings, this constituted an infringement of the plaintiff's copyright, and that the latter was accordingly entitled to an injunction (*p*).

In another case the plaintiff was the proprietor of the copyright in an oil painting of considerable size, called "Nature's Mirror," which portrayed the draped figure of a "Psyche" with wings, kneeling on a rock, and looking into a pool of water, there being a suitable background to the picture. In the advertisement page of a magazine a number of photographic reproductions of pictures used in well-known advertisements appeared, one such reproduction being a rude copy of the figure in "Nature's Mirror" without the wings and without the background, the reproduction being about the size of a halfpenny. This was held to be an infringement of the copyright in the picture (*q*).

Reproduction by different process.

The copyright in a work may be infringed by being produced by a different process from that employed in the original, and this whether the copy be made direct from the original itself or through intervening copies (*r*).

Dicks v. *Brooks.*

The question as to whether the copyright in an artistic work

(*o*) *London Stereoscopic Society* v. *Kelly* (1888), 5 T. L. R. 160.
(*p*) *Brooks* v. *Religious Tract Society* (1895), 45 W. R. 476.
(*q*) *Hanfstaengl* v. *Smith & Son*, (1905) 1 Ch. 519.
(*r*) *Ex parte Beal* (1868), L. R. 3 Q. B. 387; *Gambart* v. *Ball* (1863), 14 C. B. 306; *Graves* v. *Ashford* (1867), L. R. 2 C. P. 410.

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could be infringed by the design being transferred to an article of manufacture arose in the case of *Dicks* v. *Brooks* (*s*). Plaintiffs were the publishers and proprietors of a weekly periodical called "Bow Bells." Defendants were the proprietors by assignment of the copyright of a print called "The Huguenot," engraved from Millais' picture, and of a photograph taken from the print. The plaintiffs had published for their Christmas number of 1877 a chromo-printed pattern for wool work, called "The Huguenot," taken, as they stated, from a Berlin wool pattern which had been imported by a German warehouse. The leading incident of Millais' picture, the farewell of two lovers of different creeds on the eve of the massacre of St. Bartholomew, was to be found in the Berlin wool pattern, but a different background had been introduced, and the colours were not the same as those of the picture. In December, 1877, the defendants issued a circular containing a warning against the sale of any copy of the subject, "The Huguenot," without the stamp or imprint of their firm, in whom the sole subsisting copyright existed, and that all such unstamped copies were imitations and unlawfully made. The plaintiffs, alleging that the publication of this circular was a false and malicious libel on their print and pattern, which was not an imitation of any picture to the copyright of which the defendants were entitled, and that their sale of the publication had been greatly damaged by such circular, brought an action to restrain, and obtain damages for, this alleged libel and slander of title. The defendants by their statement of defence and counterclaim asserted their title to the engraving, averring that the plaintiffs had unlawfully copied it in whole or in part, and greatly damaged the defendants' property therein; and they claimed an injunction and the penalty of 5*s*. under the Act 8 Geo. II. c. 13, for every copy sold by the plaintiffs, and damages.

Vice-Chancellor Bacon held that the defendants had the exclusive right of publishing the subject delineated in the print taken from Millais' picture. He considered that the plaintiffs' pattern was to all intents and purposes a direct copy of that print. Were they then entitled, said he, to despoil the defendants of their property, and foist upon the public a very coarse imitation of a very celebrated picture? Being mere pirates, they complained that their title was being slandered, and that they were injured by the circular issued by the defendants for the

(*s*) (1880), 15 Ch. D. 22; cf. *Martin* v. *Wright* (1833), 6 Sim. 297.

protection of their property. It was the old story of the wolf and the lamb. There was no pretence for the first action, which he accordingly dismissed with costs; and as the defendants had established the right set up by their counterclaim to restrain this piratical publication by the plaintiffs, he decided that they were entitled to the statutory penalty of 5*s*. for every copy sold by the plaintiffs. The Court, however, on appeal held that a pattern for Berlin wool-work could not be regarded as a copy of an engraving within the meaning of the statutes, inasmuch as though there was a reproduction of the design, there was no reproduction of anything which constituted the work of the engraver. And they accordingly reversed the judgment of the Vice-Chancellor.

In delivering the judgment of the Court of Appeal, Lord Justice James said: "The question before us resolves itself into this, whether this pattern for working in Berlin wool is a piratical copy of the print of which the defendants are the proprietors. It appears to me that the Vice-Chancellor fell into (if I may venture so to call it) the error of supposing that the case was within the Act 8 Geo. II. c. 13, which gave a protection, not to a mere engraver, but to a man of genius who by his industry, pains, and expense, invented a design, 'or engraved, etched, or worked, or from his own work and invention caused to be designed and engraved, etched, or worked,' and so on, 'any historical print.'

"Those words were intended to give protection for the genius exhibited in the invention of the design, and the protection was commensurate with the invention and design. That Act was afterwards extended to embrace the case of persons engraving from something which was not the design of the engraver. Now it appears to me that the protection given by the subsequent Acts to the mere engraver was intended to be, and was commensurate with, that which the engraver did, and the engraver did not acquire against anybody in the world any right to that which was the work of the original painter, did not acquire any right to the design, did not acquire any right to the grouping or composition, because that was not his work but the work of the original painter. What, as it seems to me, the Act gave him, and intended to give him, was protection for that which was his own meritorious work. The art of the engraver is often of the very highest character, as in the print before me. It is difficult to conceive any skill or art much higher than that which has by a wonderful combination of lines and touches reproduced the very

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texture and softness of the hair, the very texture and softness of the dress, and the expression of love and admiration in the eyes of the lady looking up at her lover. That art or skill was the thing which, as I believe, was intended to be protected by the Acts of Parliament, and what we have to consider is, whether the wool pattern before us (the maker of which must have been aided in the production of it by having before him the defendant's print, or some kind of copy of it, because the wool pattern follows the print in some particulars in which the engraving differs from the picture) is a copy of the engraver's work? It appears to me that without going into any etymological definitions of the word 'copy,' and using the word in the ordinary sense of mankind as applied to the subject-matter, the question is, Is this a copy, is it a piracy, is it a piratical imitation of the engraving—of that which was the engraver's meritorious work in the print? I am of opinion, as a matter of fact, that the wool pattern is not a copy, is not a piratical imitation, with colourable variations of the defendant's engraving. The alleged copy is not a thing intended as a print in the ordinary sense of the word. It was intended to be printed, and was printed, as a pattern for Berlin wool, not put forward in any way fraudulently or as a sham, but really in truth intended solely for that purpose. Now, I am of opinion that whatever may be the similarities between the one and the other, the attempt not to reproduce the print, but to produce something which has some distant resemblance to the print, not by anything in the nature of the engraver's work, but by what I may call a mosaic of coloured parallelograms, is not in any sense of the word a piratical imitation of the print. Nobody would ever take it to be the print, nobody would ever buy it instead of the print, nobody would ever suppose that it was, to use the language of the first Act, a base copy of the print. It is a work of different class, intended for a different purpose, and, in my opinion, no more calculated to injure the print *quâ* print, or the reputation of the engraver, or the commercial value of the engraving in the hands of the proprietor, than if the same group were reproduced from the same engraving by waxwork at Madame Tussaud's, or in a plaster of Paris cast, or in a painting on porcelain. I cannot conceive that such a reproduction of the subject in tapestry, or Berlin wool, or upon china, or in earthenware, is within the meaning of the Act of Parliament. Whether dealing with it as a matter of law, or dealing with it, as we must do, as a matter of fact, I am satisfied that the appellant's pattern is not a copy or piracy of any part of that which con-

stituted the real merit and labour of the engraver of the defendant's print" (*t*).

Effect of this decision.

In this case the defendants were not the proprietors of the copyright in the original picture, "The Huguenot," and it is submitted that the decision goes no further than that the Berlin wool pattern was not an infringement of the engraving rights, which were the only rights vested in the defendants. It is not clear that if the action had been brought against the proprietor of the copyright in the picture the decision would have been to the same effect, although if an artist parts with the engraving or photographic rights, the person who sues for infringement must show that the infringement was taken from his copy (*u*). Even if this be not so, it is submitted that whatever the law may have been prior to the Act of 1911, the copying of a picture upon an article of manufacture is under that Act an infringement of copyright, the Act forbidding the reproduction of a work in "any material form whatsoever" (*x*). Little weight would, it is thought, be attached at the present day to the argument that the infringing article is not likely to compete in the market with the original (*y*).

Whether copyright in statuary infringed by a photograph, &c., and *vice versâ*.

It is more difficult to say whether the copyright in a plastic work can be infringed by a reproduction in the flat or whether the copyright in a work originally produced in the flat can be infringed by a reproduction in the round or in relief. The point appears never to have come up for decision under the old law, but the general opinion was, it is believed, that the copyright in a work of sculpture was not infringed by a photograph, because the Sculpture Copyright Act, 1814 (*z*), only expressed it to be an infringement of copyright to make, import, or expose for sale "any pirated copy or pirated cast" of the original sculpture, "whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way" the original. These words, it was thought, did not naturally apply to a reproduction in the flat. It was also thought by many that it was no infringement of the copyright in a picture to reproduce it in relief. The only authority for such a belief appears to have been the "Living Picture" cases (*a*), and particularly the dictum

(*t*) 15 Ch. D. at p. 34.
(*u*) *Lucas* v. *Cooke* (1880), 13 Ch. D. 872.
(*x*) Sect. 1 (2).
(*y*) *Weatherby* v. *International Horse Agency*, (1910) 2 Ch. 297.
(*z*) 54 Geo. III. c. 56, s. 3.
(*a*) *Ante*, p. 180 *et seq.*

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of Kay, L. J., in *Hanfstaengl* v. *Empire Palace Co.* (*b*), "that in order to reproduce the painting you must have something which itself is and would be properly described as a picture." It is submitted, however, that under the Act of 1911, which forbids the reproduction of an artistic work "in any material form whatsoever," that copyright in a plastic work is infringed by reproduction in the flat, and this view receives some confirmation from sect. 2 (1) (iii), which, by expressly authorising the making or publishing of paintings, drawings, engravings, or photographs of works of sculpture or artistic craftsmanship in certain cases, impliedly forbids the same in other cases (*c*). It is also submitted that equally will it be, under the new Act, an infringement of the copyright in a painting, drawing, or engraving to make a work of sculpture from it. It is very doubtful whether the dictum of Kay, L. J., above referred to meant anything more than that the copyright in an artistic work having a more or less permanent form could not be infringed by the transitory grouping of living persons in such a way as to bring the original picture to the memories of the audience at the theatre. And if the definition of a "copy" suggested by Mr. Justice Kekewich, namely, that it means "that which comes so near the original as to suggest the original to the mind of the person seeing it," be taken as correct, it would seem to cover the case of a piece of statuary copied from a painting (*d*).

Public exhibition.

The statute does not make it any infringement of copyright to publicly exhibit an original picture whether for trade or otherwise (*e*), and it is only an infringement of copyright to exhibit unlawful copies when it is done "by way of trade" (*f*).

Specific cases not infringement of artistic copyright.

In addition to the permission, which applies to all works, whether literary, dramatic, or artistic, to fairly deal with a work for the purposes of private study or research (*g*), the Act authorises the copying of artistic works in two other cases, viz., (1) where the author of the artistic work is not the owner of the copyright therein he may use any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of the work;

(*b*) (1894) 2 Ch. 1, 7, 8.
(*c*) It has been so held in America: *Bracken* v. *Rosenthal* (1907), 151 Fed. R. 136.
(*d*) Plastic effect can be given to a picture by the use of a stereoscope.
(*e*) Cf. *Martin* v. *Wright* (1833), 6 Sim. 297; *Turner* v. *Robinson* (1860), 10 Ir. Ch. R. 121, 510.
(*f*) Sect. 2 (2).
(*g*) *Ante*, p. 144.

(2) anyone may make or publish paintings, drawings, engravings or photographs of works either of sculpture or artistic craftsmanship permanently situate in public places (*h*).

Use of plans, studies, &c. by artist.

The first of these liberties is personal to the artist. The artist may not be the owner of the copyright either because (a) the work is a portrait made for valuable consideration (*i*); or (b) the work was made in the course of his employment under a contract of service (*k*); or (c) he has assigned his copyright (*l*). It is, perhaps, not very easy to say when the study will repeat or imitate the "main design" of the work. In *Hanfstaengl* v. *Baines* (*m*), Lord Watson expressed the opinion that the "design" of a work "means nothing more than the particular forms and arrangements (whether of lines or colouring) which the copyright author has selected as the vehicle for conveying his idea to those who see his work." If, therefore, a picture is made up of a group of persons or things, each the subject of a separate study, the artist will be at liberty to make replicas of the separate studies, but not to group them in such a way as to give the general impression of the completed work for which the studies were originally made. The expression that the artist is to be at liberty to "use" his studies is peculiar, but, probably, it includes the right not only to "use" them for the purpose of making other artistic works, but also to sell the studies themselves or make exact copies of them.

Works situate in public places.

With regard to the liberty to make copies of works permanently situate in public places or buildings, it will be noticed that this does not apply to paintings and drawings, but it is strictly confined to works of sculpture and artistic craftsmanship (*n*). It is not clear what will be considered to be a "public place or building" within the meaning of the sub-section, but it is thought that statuary situate in the public streets and squares or in national or municipal galleries or halls may be reproduced without infringing copyright, but that the permission does not apply to

(*h*) Sect. 2 (1) (ii) and (iii). As to drawings, &c. of architectural works, see Part III., Chap. III.
(*i*) Sect. 5 (1) (a), *ante*, p. 113.
(*k*) Sect. 5 (1) (b), *ante*, p. 117.
(*l*) Sect. 5 (2), *ante*, p. 122.
(*m*) (1895) A. C. 20, 27.
(*n*) Works of sculpture include "casts and models" (sect. 35 (1)); works of artistic craftsmanship are not defined by the Act. It has been pointed out that there is a possible doubt as to whether a reproduction in the flat of a work of sculpture is an infringement of the copyright in the latter work (see *ante*, p. 191). The fact that the Act expressly authorises such reproduction if the sculpture is in a public place suggests the inference that the reproduction in this manner would be an infringement, if the sculpture were not situate in a public place.

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statuary placed in, say, a theatre or other place to which the public are generally only admitted upon payment. And although, as regards works of sculpture and artistic craftsmanship permanently placed in public galleries, they may be painted, drawn, or photographed without infringing copyright, there is, it is submitted, nothing in the Act to prevent the curators of galleries and museums making regulations curtailing the liberty of visitors to make copies, for breach of which regulations an action could lie for breach of contract or confidence (*o*).

(*o*) See sect. 31.

CHAPTER IX.

CIVIL REMEDIES FOR INFRINGEMENT OF COPYRIGHT.

The various remedies open.

THE remedies given by the Copyright Act for infringement of copyright are of two classes, civil and criminal. As to the civil remedies sect. 6 provides as follows:—

> "When copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts and otherwise, as are or may be conferred by law for the infringement of a right."

Who may sue.

The remedies are given to the "owner of the copyright," that is to say, the original owner or a person deriving title under him by assignment, but an equitable assignee can take action notwithstanding that he has not obtained an assignment in writing, if he is in a position to compel a legal assignment (*a*). "This Court," said the Vice-Chancellor, in *Bohn* v. *Bogue* (*b*), "always takes notice of the equitable interest; and if the equitable right to the copyright is complete, this Court will take care that the real question shall be tried, notwithstanding there may be a defect in respect of the legal property." But a mere agent to sell has not such an interest in the work as to entitle him to claim relief (*c*). On the other hand, a licensee is not the owner of the copyright or any part of it, and therefore cannot bring an action for infringement in his own name; he must join the proprietor of the copyright either as co-plaintiff with himself or as defendant (*d*).

Infringement abroad.

The English Courts have no jurisdiction to entertain an action for infringement of copyright in a foreign country (*e*).

Remedy by injunction.

The first and most usual remedy for infringement of copyright

(*a*) *Sweet* v. *Cater* (1840), 11 Sim. 572; *Hodges* v. *Welsh* (1840), 2 Ir. Eq. 266; *Sims* v. *Marryat* (1851), 17 Q. B. 281; *Hazlitt* v. *Templeman* (1866), 13 L. T. 593; *Grace* v. *Newman* (1875), L. R. 19 Eq. 623.

(*b*) (1847), 10 Jur. 421.

(*c*) *Nicol* v. *Stockdale* (1820), 3 Swans. 687; *Petty* v. *Taylor*, (1897) 1 Ch. 465.

(*d*) *Neilson* v. *Horniman* (1909), 25 T. L. R. 685.

(*e*) *Morocco Bound* v. *Harris*, (1895) 1 Ch. 534.

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is by means of an injunction, but this remedy is not open to an architect suing for infringement of a work of architecture, if the infringing building has been actually commenced (*f*). An injunction may be either final—that is, one granted at the trial of the action—or interlocutory—that is, one granted prior to the trial and only until that trial, or further order. In order to obtain an interlocutory injunction, which is usually granted upon evidence by affidavit only, the plaintiff must show that the case is of some urgency, that he has a clear colour of title (*g*), and that the granting of the injunction will not cause irreparable damage to the defendant if it should turn out at the trial that he was in the right (*h*).

Delay in taking proceedings.

Delay, unless explained, is generally fatal to an application for an interlocutory injunction (*i*), but the tendency of modern decisions is not to refuse an injunction at the hearing of the action merely on account of delay in instituting proceedings (*k*), subject to the three year limitation prescribed by sect. 10 of the Act of 1911. Under certain circumstances delay might be held to amount to a tacit permission to reproduce the work (*l*).

Actual damage need not be proved.

If the plaintiff proves that his copyright has been infringed, the Court will grant an injunction without proof of actual damage (*m*), but he must show that there is a probability of damage (*n*), and that the defendant is likely to continue his infringement, and that this is not simply trivial (*o*). Moreover, an injunction will not be granted to restrain infringements of future numbers of a periodical, although the defendants have systematically copied from numbers already published (*p*).

Where portion only of the work is piratical.

Where only part of a work has been copied, and the part which has been copied from the plaintiff's work can be separated from that which has not been copied, an injunction will be granted only against the objectionable part or parts (*q*); but even where

(*f*) Sect. 9.

(*g*) *Universities of Oxford and Cambridge* v. *Richardson* (1802), 6 Ves. 689; *Platt* v. *Button* (1813), 19 Ves. 447.

(*h*) *Spottiswoode* v. *Clarke* (1846), 2 Phillips, 154.

(*i*) *Southey* v. *Sherwood* (1817), 2 Mer. 435; *Mawman* v. *Tegg* (1826), 2 Russ. 385, 393; *Lewis* v. *Chapman* (1840), 3 Beav. 132.

(*k*) *Hogg* v. *Scott* (1874), L. R. 18 Eq. 444; *Morris* v. *Ashbee* (1868), L. R. 7 Eq. 34.

(*l*) *Rundell* v. *Murray* (1821), Jac. 311; *Saunders* v. *Smith* (1838), 3 My. & Cr. 711.

(*m*) *Smith* v. *Johnson* (1863), 33 L. J. Ch. 137.

(*n*) *Borthwick* v. *Evening Post* (1888), 37 Ch. D. 449.

(*o*) *Whittingham* v. *Wooler* (1817), 2 Swans. 428; *Baily* v. *Taylor* (1829), 1 Russ. & My. 73; *Cox* v. *Land and Water* (1869), L. R. 9 Eq. 324.

(*p*) *Cate* v. *Devon Newspaper Co.* (1889), 40 Ch. D. 500, 507; but see *Bradbury* v. *Sharp*, W. N. (1891) 143.

(*q*) *Jarrold* v. *Houlston* (1857), 3 K. & J. 708; *Lamb* v. *Evans*, (1892) 3 Ch. 462.

a very large proportion of a work of a piratical nature is unquestionably original, if the parts which have been copied cannot be separated from those which are original without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing, for an injunction will be issued against the whole.

To what extent the injunction is to go.

The opinion of Lord Hardwicke (*r*) appears to have been that an injunction might be granted against the whole, although only a portion was pirated; and in the instance of Milton's "Paradise Lost," with Dr. Newton's notes, there being nothing new in that work except the notes, he granted an injunction against the entire book. There is the record of a case tried before Lord Kenyon (*s*), in which he states that the question whether an injunction could be issued against the whole of a book on account of the piratical quality of a part, came before Lord Bathurst; and Lord Bathurst seems to have held it could not, unless the part pirated was such, that granting an injunction against such part necessarily destroyed the whole. Lord Kenyon, who possessed great information on this subject, states himself to have been perfectly satisfied with the opinion of Lord Bathurst, as bearing upon the judgment of Lord Hardwicke and the other cases. In the case referred to before Lord Kenyon the declaration at law contained a count for publishing the whole work, and another for publishing a part; and Lord Kenyon's direction to the jury seems to have been to find damages for publishing the part only.

"As to the hard consequences which would follow from granting an injunction," said Lord Eldon, in *Mawman* v. *Tegg* (*t*), "when a very large proportion of the work is unquestionably original, I can only say, that, if the parts which have been copied cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which

(*r*) 4 Burr. 2326.
(*s*) *Vide Cary* v. *Longman* (1801), 1 East, 360; *Trusler* v. *Murray* (1781), 1 East, 363.
(*t*) (1826), 2 Russ. 385, 391.

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belongs to me; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame."

Where the Court upon the evidence was led to conclude that if the parts affected with the character of piracy were taken away there would be left an imperfect work which could not, to any useful extent, serve the purpose intended by the publication, the injunction to restrain the publication of any parts pirated from the plaintiff's work was granted without waiting till all the parts pirated could be distinctly marked (*u*).

Similarity of appearance.

An injunction may be obtained to restrain the publication of a book whose external appearance so nearly resembles that of a work wherein copyright exists as to have the effect of deceiving the public, by leading them to believe it to be the same or a continuation thereof (*x*).

Thus in one case the defendant was restrained from publishing, selling, or offering for sale the defendant's work in or with its present form, title-page, or cover, or any other form, title-page, or cover calculated to deceive persons into the belief that it was the plaintiff's work (*y*).

And in another case (*z*) Lord Romilly, M. R., said: "The defendants must be restrained from the publication of this work, and they are not entitled to publish a work with such a title, or in such a form as to binding or general appearance as to be a colourable imitation of that of the plaintiff."

The true criterion in such cases must be the effect upon the public, whether the similarity of the one publication to the other is so great as to mislead the public—is such as that an intending purchaser of the one might be misled into purchasing the other (*a*). And where such a similarity does not exist the Court will not interfere. Thus where there was a well-known comic paper called "Punch," and another called "Judy," and the defendant issued a publication with the title "Punch and Judy," the Court held that though the defendant would not be at liberty to use either "Punch" or "Judy" singly as a title, yet there was no reason why he should

(*u*) *Lewis* v. *Fullerton* (1839), 2 Beav. 6; *Kelly* v. *Morris* (1866), L. R. 1 Eq. 697.

(*x*) *Spottiswoode* v. *Clarke* (1846), 2 Phil. 154; *Chappell* v. *Davidson* (1855), 2 K. & J. 123.

(*y*) *Metzler* v. *Wood* (1878), 8 Ch. D. 609.

(*z*) *Mack* v. *Petter* (1872), L. R. 14 Eq. 431.

(*a*) *Reddaway* v. *Banham*, (1896) A. C. 199; *Parsons* v. *Gillespie*, (1898) A. C. 239. As to the cases in which an injunction will be granted against copying the title of a work, see *ante*, p. 66.

not use the two combined, for in such combination the title was not such as to deceive persons of ordinary intelligence. The Vice-Chancellor considered that the defendants clearly had no right to use a name which was calculated to mislead or deceive the public in purchasing, and he intimated that if he had thought on the whole that their journal was calculated to mislead persons of ordinary intelligence (for those were the persons he had to consider) he would have granted the injunction. "'Punch,'" said he, "is well known both in name and appearance. And its price is three-pence. Could any one be misled into buying this other paper instead, which has the words 'Punch and Judy' printed on it in distinct letters, with a different frontispiece and its price a penny? I am clearly of opinion that the mass of mankind would not be so misled" (*b*).

Damages.

The next remedy is damages (*c*). The measure of damages under sect. 6 (1) will be the loss which the proprietor of the copyright has suffered by reason of the diminution of the sales of his work, or the loss of profit which he might otherwise have made. The fact that the pirated work may have injured the reputation of and vulgarised the original is also a fact that may be taken into consideration in assessing the amount of damages (*d*), and generally the damages may be said to be at large. In *Byrne* v. *Statist Company* (*e*), where a newspaper reproduced the plaintiff's translation of a public speech as a newspaper advertisement, the judge assessed the damages at £150, but gave no indication as to how he arrived at that figure.

Recovery of infringing copies.

There is, however, another section of the Act upon which the plaintiff may base his claim for damages. By sect. 7 it is provided that "all infringing copies (*f*) of any work in which copyright subsists, or of any *substantial* part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof."

The plaintiff can frame his action either under this section or under sect. 6, but his statement of claim should show clearly

(*b*) *Bradbury* v. *Beeton* (1869), 18 W. R. 33; *Borthwick* v. *Evening Post* (1888), 37 Ch. D. 449.
(*c*) No "penalties" are imposed as was done under the repealed Acts.
(*d*) *Hanfstaengl* v. *Smith*, (1905) 1 Ch. 519.
(*e*) (1914) 1 K. B. 622.
(*f*) By sect. 35 (1), "infringing, when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made or imported in contravention of the provisions of this Act."

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under which section he intends to proceed (*g*). Under this section the measure of damages is that "the defendant is to account for every copy of his book sold as if it had been a copy of the plaintiff's, and to pay the plaintiff the profit which he would have received from the sale of so many additional copies" (*h*). In *Muddock* v. *Blackwood* (*i*), the defendant sold twice. On the first occasion he sold 1,010 copies at a total price of £38 19*s*. 9*d*., and at a profit of £8 10*s*. 4*d*.; on the second occasion he sold twenty-nine copies at a profit of £1 4*s*. 2*d*. Mr. Justice Kekewich assessed the damages at forty guineas.

Portion only pirated.

Where only a portion of a work is piratical the plaintiff is, nevertheless, entitled to delivery of the whole (*k*), unless the piratical portion can be conveniently separated from the original parts (*l*), or unless the pirated portion is "unsubstantial."

Right to an account.

Another remedy is an account of profits, which is an equitable remedy incidental to the right to an injunction (*m*), but a plaintiff cannot obtain both an account of profits and an inquiry as to damages (*n*). The principles upon which such an account is granted were thus stated by Wigram, V.-C., in *Colburn* v. *Simms* (*o*). "It is true," he said, "that the Court does not, by an account, accurately measure the damage sustained by the proprietor of an expensive work from the invasion of his copyright by the publication of a cheaper book. It is impossible to know how many copies of the dearer book are excluded from sale by the interposition of the cheaper one. The Court, by the account, as the nearest approximation which it can make to justice, takes from the wrongdoer all the profits he has made by his piracy, and gives them to the party who has been wronged. In doing this the Court may often give the injured party more, in fact, than he is entitled to, for *non constat* that a single additional copy of the more expensive book would have been sold, if the injury by the

(*g*) *Muddock* v. *Blackwood*, (1898) 1 Ch. 58. There is a common law right to the delivery up of pirated copies, but only for destruction, not for the benefit of the owner of the copyright: *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73, 82. The remedy under sect. 7 will, therefore, generally be preferred.

(*h*) *Per* James, L. J., *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 260.

(*i*) *Ubi sup.*

(*k*) *Isaacs* v. *Fiddeman* (1880), 49 L. J. Ch. 412; *Boosey* v. *Whight* (No. 2) (1899), 81 L. T. 265; cf. *Mawman* v. *Tegg* (1826), 2 Russ. 385, 391; *Stevens* v. *Wildy* (1850), 19 L. J. Ch. 190.

(*l*) *Warne & Co.* v. *Seebohm* (1888), 39 Ch. D. 73; *Leslie* v. *Young*, (1894) A. C. 333.

(*m*) *Hogg* v. *Kirby* (1803), 8 Ves. 215; *Bailey* v. *Taylor* (1829), 1 Russ. & My. 73; *Sherriff* v. *Coates* (1830), 1 R. & M. 159; *Kelly* v. *Hooper* (1840), 1 Y. & C. C. C. 140.

(*n*) *De Vitre* v. *Betts* (1873), L. R. 6 H. L. 319.

(*o*) (1843), 2 Hu. 543, 560; see *Pike* v. *Nicholas* (1870), L. R. 5 Ch. 255.

sale of the cheaper book had not been committed. The Court of Equity, however, does not give anything beyond the account."

Discovery for purposes of account.

A plaintiff is entitled to discovery for the purposes of the account. The defendant must give full particulars, upon oath, of the number of copies printed and sold, and the cost of publication and distribution, verified by the production of all proper vouchers and receipts (*p*). An account will be refused if it is clear that there are no profits (*q*). In such a case the plaintiff may elect to claim damages and an inquiry as to the same (*r*).

Seizure of imported copies.

Sect. 14 of the Act prohibits from being imported into the United Kingdom all copies "made out of the United Kingdom" (*s*) of any work in which copyright subsists, which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing, by himself or his agent, to the Commissioners of Customs and Excise, that he is desirous that such copies shall not be imported into the United Kingdom. If the owner of the copyright gives such notice, then the copies will be included in the table of prohibitions and restrictions contained in sect. 42 of the Customs Consolidation Act, 1876 (*t*), and that section is to apply accordingly. Under that section the copies are liable to be forfeited and destroyed or otherwise disposed of as the Commissioners of Customs may direct. The Commissioners are authorised to make regulations, either general or special, respecting the detention and forfeiture of copies and the conditions to be fulfilled before such detention and forfeiture, and by such regulations to determine the information, notices, and security to be given, and the evidence requisite, for any of the purposes of sect. 14 of the Copyright Act, and the mode of verification of such evidence (*u*). The regulations made by the Commissioners by virtue of this power provide (*x*) that the notice is to be given by the copyright owner in one of the forms set out in the Schedule to the regulations, or as near thereto as circumstances permit (*y*), and be accompanied by a statutory

(*p*) *Stevens* v. *Bett* (1873), 12 W. R. 572.

(*q*) *Lee* v. *Alston* (1789), 1 Ves. Jun. 78; *Colburn* v. *Simms* (1843), 2 Ha. 560; *Powell* v. *Aikin* (1857), 4 K. & J. 343.

(*r*) *Mawman* v. *Tegg* (1826), 2 Russ. 385, 400.

(*s*) These words were probably inserted so as to enable the owner of a copyright who has sold his foreign rights to prevent the importation into this country of copies lawfully manufactured abroad, but they also seem to prevent the Customs authorities from seizing piratical copies made in England and exported to a foreign country upon their being re-imported into this country.

(*t*) 39 & 40 Vict. c. 36.

(*u*) Sect. 14 (3).

(*x*) Appendix E., *post*.

(*y*) Rule 1.

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declaration in the form set out in the same Schedule (*z*). Before any article which appears, or is alleged, to be a copy of the copyright work is detained, the person who gave the notice must, if required, give such further information and evidence, verified, if so required, by statutory declaration, as the Customs authorities think necessary, to satisfy them that the article in question is liable to detention and forfeiture (*a*), and must also deposit a sum of money sufficient to cover any expense which may be incurred in the examination of the goods detained (*b*). The Commissioners may require an undertaking to indemnify them against expenses and damages incurred by reason of their detention and forfeiture of the article (*c*). The Customs Consolidation Act, 1876, applies to the colonies, except that by sect. 151 it is provided that the Customs Acts (which by the interpretation clause, sect. 284, means and includes that and all or any other Acts or Act relating to the Customs) shall not extend to "any such possession as shall by local Act or ordinance have provided or may hereafter, with the sanction and approbation of her Majesty and her successors, make entire provision for the management and regulation of the Customs of any such possession, or make in like manner express provisions in lieu, or variation, of any of the clauses of the said Act for the purposes of such possessions" (*d*). The Isle of Man is not, for the purposes of sect. 14 of the Copyright Act, to be considered as part of the United Kingdom (*e*), but the section is, with the necessary modifications, to apply to the importation into a British possession to which the Act extends (*f*) of copies of works made out of that possession.

What piratical works may be seized.

It is not clear whether any works other than those which substantially reproduce the whole of the original work from which it was copied or derived can be seized by the Customs authorities under this section. The section only authorises the seizure of "copies" of the original work, and does not use the expression "infringing copies" which is defined by sect. 35 (1). Obviously, the Customs authorities are not in a position to determine nice points of copyright law, and it is not intended that they should have power to summarily seize any works, except those that are flagrant piracies. In other cases, the proprietor of the copyright

(*z*) Rule 4.
(*a*) Rule 5.
(*b*) Rule 6.
(*c*) Rule 7.
(*d*) *Black* v. *Imperial Book Co.* (1903), 6 Ont. L. R. 184.
(*e*) Sect. 14 (6).
(*f*) See sect. 25, and chapter "Colonial Copyright," Part IV., Chapter II., *post*.

must pursue his other remedies. In fact, the great protection given by sect. 14 is against the flooding of the English markets with the cheap foreign reprints, which are frequently issued with the licence of the proprietor of the copyright upon the understanding that these reprints are not to compete with him in the home market. Such reprints are, of course, liable to be seized if imported into England, for they would infringe the copyright "if made in the United Kingdom."

Innocent infringers (sect. 8).

We must now consider that curious section—sect. 8—which is as follows:—

> "Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant *in* his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had no reasonable ground for suspecting, that copyright subsisted in the work" (*g*).

Limited application of section.

This section was, doubtless, inserted in the Act because of the removal of all formalities, such as registration, which were sometimes requisite, under the old law, for the acquisition or protection of copyright, and which gave some public warning of the existence of copyright. Judging from its marginal note, the section is intended to afford protection to innocent infringers, but it is framed in such language that it is difficult to imagine a case in which it can be invoked in aid. The section must be specifically pleaded, and the burden is upon the defendant to prove that "at the date of the infringement he was not aware, and had no reasonable ground for suspecting, that copyright subsisted in the work." We have seen that inasmuch as copyright is a proprietary right, it is usually no defence to prove that the defendant acted innocently (*h*). Nor is it, under sect. 8, sufficient to prove mere innocence and absence of carelessness; the innocence that must be proved is ignorance that "copyright subsisted in the work," *i.e.*, the work which has, in fact, been pirated. This point is well illustrated by the recent case of *Byrne* v. *Statist Co.* (*i*). There the plaintiff was employed by the proprietors of a newspaper to translate and summarise in his spare time a speech of the

Byrne v. *Statist Co.*

(*g*) Compare with the similar sect. 33 of the Patents Act, 1907 (7 Edw. VII. c. 29).

(*h*) *Mansell* v. *Valley Printing Co.*, (1908) 2 Ch. 441, *ante*, p. 135.

(*i*) (1914) 1 K. B. 622; but see *Savory* v. *World of Golf* (1914), 83 L. J. Ch. 824.

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Governor of the State of Bahia, Brazil, reported in a foreign language, for the purpose of publication as an advertisement in their paper. The summarized translation was duly published in this way with the words "translated from the Portuguese language by F. D. Byrne" at the end. The defendants saw this advertisement, obtained permission from the Governor to publish it as an advertisement in their papers, for which they were duly paid, and they reproduced the plaintiff's translation *verbatim*. In an action for infringement of copyright, the defendants pleaded sect. 8 of the Copyright Act, but without success. In dealing with this plea, Mr. Justice Bailhache remarked as follows: "The defendant suggested that they had no reasonable ground to suspect that there was any copyright in the advertisement at all; but the advertisement contained upon its face an intimation that it was translated by the plaintiff. The defendants' witnesses admitted that that was an unusual and unprecedented fact, but stated that it was one to which they, as men of experience, attached no importance. In that I think they were wrong, and I find as a fact that there was reasonable ground to suspect that there was copyright in the plaintiff's translation. The position of the defendants in fact was not so much that they did not suspect copyright, as that they supposed the copyright was in the Governor of Bahia, whose instructions for its reproduction they had obtained. This merely amounts to saying that they supposed themselves to have the authority of the owner of the copyright, a very different thing from alleging and proving that they did not suspect that any copyright existed. It is this latter state of mind that sect. 8 requires to be proved, and sect. 8 is no protection to a person who, knowing or suspecting that copyright exists, makes a mistake as to the owner of the copyright, and under that mistake obtains authority to publish from a person who is not in fact the owner." The plaintiff was awarded £150 damages.

The section thus affords no defence in a class of case that not infrequently arises. A photograph is submitted to a newspaper for publication. The proprietors of the newspaper accordingly publish the same and pay for it, upon receiving an assurance that the copyright belongs to the person who submitted the photograph to them, and they only become aware of the fact that they have been misinformed when a claim is made for damages for infringement of copyright. Clearly, the newspaper proprietors cannot urge that they did not suspect that copyright existed, but were only deceived as to the person in whom the copyright was vested, and so they have no defence upon the ground of ignorance.

To what cases section might apply.

In what cases, then, can the section apply? What "reasonable ground" can a direct copyist have for not suspecting the work he copies to be the subject of copyright? It is submitted that the proper attitude of mind of a copyist towards a work that he copies is that copyright in the latter subsists, unless he has evidence to the contrary. The only grounds for not suspecting copyright appear to be either (a) that the period of copyright protection has run out, or (b) that he thinks that the work is of such a character that it ought not to be a subject of copyright. If a copyist were to ascertain that the author of the original work was born 130 years ago, or that the work was published 100 years ago, but, after due inquiry, he could not discover the date of the author's death, he might, perhaps, have reasonable grounds for thinking the copyright had run out. Or, again, if a work, bearing no author's or publisher's name, is pronounced by experts to be the work of A. who died sixty years ago, whereas it, in fact, is the work of B. who died only forty years ago, this, perhaps, is another case in which the section might be successfully pleaded. But it is submitted that no person has a right to assume, without inquiry, that a work published anonymously is not the subject of copyright. And if it is hard to imagine a case in which the section will be of any avail to a copyist at first hand, it is still harder to imagine a case in which a person deriving title under the original pirate could plead the section. We have seen that the section does not apply if the defendant publishes a work under a wrong impression as to who is the proprietor of the copyright. Take another case that may arise. A publisher publishes a work of X. which, unknown to the publisher, contains large extracts from the work of Y. Y. is a living person well known to the publisher. He cannot, it is thought, plead successfully that he did not suspect copyright to subsist in Y.'s work; all he could urge is that he did not suspect that X. had copied from Y.'s work, and that, apparently, would not bring him within the section. Finally, if the defendant pleads that he did not think the pirated work was of a character which ought to be entitled to copyright protection, upon the Court holding the contrary, the defendant may have some difficulty in convincing the Court that he had no "reasonable grounds" for anticipating the Court's decision. Of course, it might be different if the defendant's belief was based upon a decision of the Courts which was subsequently overruled.

Can sect. 8 be pleaded in answer to a

It has been suggested that under no circumstances could sect. 8 be a defence to an action based upon sect. 7, which declares that

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Claim for delivery of infringing copies?

infringing copies are to be deemed the property of the owner of the copyright, because an action of detinue or trover would not be an action "in respect of the infringement of the copyright." It is submitted, however, that this is a narrow construction to put upon the section. Of course, no person, however innocent at the time he procured a stock of works which infringe another's copyright, could lawfully continue to dispose of his stock after notice that the same were piracies; but if he were to be liable to pay in damages for any portion of the stock which he had disposed of prior to receiving such notice, sect. 8 would become practically nugatory. It is thought that it is putting no undue strain upon the language to say that an action for recovering damages in trover under sect. 7 is one taken "in respect of" the infringement of the copyright, for the circumstances will be such that no such action would lie, unless there had been an infringement of copyright. In other words, the infringement of the copyright is the ground and basis of the action (*j*).

Matters of procedure.

An action for infringement is commenced by writ. Under the Literary Copyright Act, 1842, it was necessary that the plaintiff should have registered his title at Stationers' Hall prior to issuing his writ (*k*). There is no necessity for any registration under the Act of 1911, but it has been held that, notwithstanding the fact that works which at the date when the Copyright Act, 1911, came into force (*l*) were entitled to copyright became entitled to a similar right under the new Act (*m*), nevertheless, no action can be brought under that Act in respect of an infringement committed prior to the date when the same came into force, unless the plaintiff was registered at Stationers' Hall (*n*).

Invasions of copyright by several persons cannot be restrained in one action, the right of an author against different booksellers selling the same spurious edition of his work not being joint, but a distinct right against each (*o*).

Where a joint proprietorship exists, either party may sue; and

(*j*) This view seems to receive some support from sub-sects. (2) and (3) of sect. 6, the former providing that costs "in any proceedings in respect of the infringement of copyright" are to be in the discretion of the Court, the latter providing that there is to be a presumption that the plaintiff is the owner of the copyright in a work "in any action for infringement of copyright." See also sect. 10.

(*k*) *Warne* v. *Lawrence* (1886), 54 L. T. 371.

(*l*) *I.e.*, 1st July, 1912.

(*m*) Sect. 24; see *post*, chapter "Existing Works."

(*n*) *Evans* v. *Morris*, (1913) W. N. 58; *contra*, if the infringement took place after the commencement of the Act, *Savory* v. *World of Golf, Ltd.* (1914), 83 L. J. Ch. 824.

(*o*) *Dilly* v. *Doig* (1790), 2 Ves. 486.

where a plaintiff has an assignment from some only of several part-owners, he is entitled to sue to prevent a stranger from interfering with his rights (*p*).

It is not essential that the statement of claim or affidavit filed in support of an application for an interlocutory injunction should specify the parts of the work stated to have been pirated; though no copyright is claimed in all the identical passages, a general allegation that the defendant's work contains pirated passages, and a verification by affidavit of those passages, are sufficient. The Vice-Chancellor, in *Sweet* v. *Maugham* (*q*), said: "It has always been considered sufficient to allege, generally, that the defendant's work contains several passages which have been pirated from the plaintiff's work. Then, when the injunction has been moved for, the two works have been brought into Court, and the counsel have pointed out to the Court the passages which they rely upon as showing the piracy." But if a plaintiff brings an action to protect a work, being only entitled to copyright in a small part of such work, he ought to tell the defendant in his claim what that part is, otherwise costs unnecessarily incurred must be borne by the plaintiff (*r*).

Presumptions.

There are certain presumptions in favour of a plaintiff suing for infringement of copyright. Sub-sect. (3) of sect. 6 provides that "in any action for infringement of copyright" (*s*) in any work the work shall be presumed to be a work in which copyright subsists, and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff. The presumption is an absolute one if the issue is not raised. If these matters are put in issue, then further presumptions may arise, namely: (a) if a name purporting to be that of the author of the work is "printed or otherwise indicated thereon in the usual manner," the person whose name is so printed or indicated is, unless the contrary is proved, to be presumed to be the author of the work; and (b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon "in the usual manner," then this

(*p*) *Lauri* v. *Renad*, (1892) 3 Ch. 402.
(*q*) (1840), 11 Sim. 51; *Hotten* v. *Arthur* (1863), 1 H. & M. 603.
(*r*) *Page* v. *Wisden* (1869), 17 W. R. 483; and generally a defendant can obtain an order for particulars.
(*s*) As to whether an action of detinue or trover under sect. 7 is "an action for infringement of copyright," see *ante*, p. 205.

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latter person is, unless the contrary is proved, to be presumed to be the owner of the copyright in the work *for the purposes of proceedings in respect of the infringement of the copyright therein* (*t*).

The language of this sub-section should be noticed. If the name of the author of the work is indicated "thereon" (*u*) in the "usual manner," then the presumption, until the contrary is proved by the defendant, will be that the person so indicated is the "author" of the work, not that he is the owner of the copyright. The presumption will probably be most useful in an action brought by an assignee of the copyright. He will not be compelled to strictly prove the authorship, but, of course, he will have to strictly prove a title derived from the person named as author. If, on the other hand, no one is named as author on the work, or the name is not the author's true name or the name by which he is commonly known, then the presumption is that the person who is named as publisher or proprietor of the work is, for the purposes of the proceedings, the owner of the copyright. If, therefore, the action be brought by a person other than such publisher or proprietor of the work, such person will have to be prepared to displace the presumption against him, and prove that he, and not the publisher, is the owner of the copyright (*x*). The object of this presumption is to enable an anonymous author to preserve his anonymity in any legal proceedings he may take to protect his copyright. For the purposes of the sub-section, it does not appear to be necessary that the name of the author or publisher, as the case may be, shall appear on all copies.

Posthumous works.

Under sect. 17 (2) the ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author, and the manuscript is of a work which has not been published, nor performed in public, nor delivered in public, is *primâ facie* proof of the copyright being with the owner of the manuscript.

Defence.

The defendant to an action for infringement of copyright must, if he desires to dispute the authorship, or the plaintiff's title to the copyright in the work, specifically raise the point on his pleadings (*y*); but he is not required, as he was under the Literary

(*t*) See Article 15 of Revised Convention of Berne (Appendix B.).

(*u*) Presumably this will not be construed literally. It is thought that the presumption will arise if the author's name is indicated, say, upon the mount of a photograph.

(*x*) The object, no doubt, is to enable a pseudonymous or anonymous author to preserve the secret of his identity.

(*y*) Sect. 6 (3).

Copyright Act, 1842 (*z*), to state in his defence the person he alleges to be the author or the proprietor of the copyright, but in a proper case the defendant might be ordered to answer interrogatories on the point. If, again, the defendant desires to plead his innocence, under sect. 8 he must specifically allege in his defence that he was not aware of the existence of the copyright in the work. If the action be in the County Court, the putting of the title of the plaintiff in issue and the plea of ignorance are both, it is thought, special defences, of which notice must be given to the plaintiff (*a*).

Costs.

The costs of all parties in any proceedings in respect of the infringement of copyright are in the "absolute discretion" of the Court (*b*). It is thought probable that an action for the recovery of pirated copies is an action "in respect of the infringement of copyright" (*c*). In any case, the sub-section does not, probably, make the law as to costs any different in a copyright case from what it is in other cases. Under the Rules of the Supreme Court costs are generally in the discretion of the Court, but the discretion is a judicial discretion, and although the general rule is that there is no appeal simply upon a question of costs, such an appeal will lie if the judge has deprived a successful litigant of his costs upon other than judicial grounds. The same rule, it is thought, applies to a copyright case, notwithstanding that the costs are said to be in the "absolute" discretion of the Court (*d*).

Points as to costs.

A person whose copyright has been infringed is not bound to rest satisfied with the promise of the defendant not to commit any further infringement, but he has a right to have an injunction, and is entitled to the costs of such injunction (*e*). It is not sufficient to entitle the defendant to escape being ordered to pay the plaintiff's costs of obtaining an injunction that he has before issue of the writ offered the plaintiff all that he was entitled to; but, if, having made such an offer prior to action brought, the defendant were later to repeat the offer, enlarging it by including the costs of the action up to date, the costs of persisting in his action might perhaps be cast upon the plaintiff. This, it has been said, is the

(*z*) 5 & 6 Vict. c. 45, s. 16.
(*a*) County Court Rule X.
(*b*) Sect. 6 (2).
(*c*) Sect. 6 (2), *ante*, p. 205.
(*d*) The same expression as to costs is to be found in the Copyright (Musical Compositions) Act, 1888 (51 & 52 Vict. c. 17), s. 2, now repealed. Previously to that Act a successful plaintiff in an action for publicly performing a musical composition was entitled as of right to his costs: *Reeve* v. *Gibson*, (1891) 1 Q. B. 652; *Roberts* v. *Bignell* (1887), 3 T. L. R. 552.
(*e*) *Geary* v. *Norton* (1846), 1 De G. & Sm. 9; *Savory* v. *World of Golf, Ltd.*, 83 L. J. Ch. 824.

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only way in which, where a wrong has been done, the defendant can escape from the liability of having the infringed rights asserted in Court, and a proper order obtained (*f*).

Moreover, cases of infringement of copyright should be heard in open Court, and, therefore, even if the defendant admits liability and consents to the requisite order being made in Chambers, the plaintiff is entitled to the costs of a motion for judgment in Court (*g*).

In *Cooper* v. *Whittingham* (*h*), Jessel, J., thought that where a plaintiff came to enforce a legal right and there had been no misconduct on his part the Court had no discretion, and could not take away his right to costs, and Chitty, J., took the same view in *Upman* v. *Forester* (*i*). But in *Walter* v. *Steinkopff* (*k*), Mr. Justice North said that he could not understand that view, it was in the teeth of the General Orders and Act of Parliament, which say the judge has a discretion which he is to exercise, and in the case of *The American Tobacco Co.* v. *Guest* (*l*), Stirling, J. was of the same opinion. Mr. Justice North, considering that in the case in question the defendants had been hardly dealt with by being pulled up all at once without notice for doing what they had been doing for twelve years past, decided that the defendants should pay all the costs of the action down to a certain day, and also such further costs as would have been properly incurred by the plaintiffs in proceeding upon a motion unopposed by the defendants to make the interlocutory order perpetual, leaving all other costs to be borne by the parties who incurred them. But the mere fact that the damages are trifling is not a sufficient reason for depriving the plaintiff of his costs (*m*). If the defendant is successful he may, nevertheless, be deprived of his costs if the Court thinks that he has conducted his case improperly, or his conduct prior to action has been, in the opinion of the Court, unfair (*n*).

Period for bringing actions.

No action "in respect of infringement of copyright" is to be commenced after the expiration of three years next after the infringement (*o*). It is not easy to say whether this limitation applies to an action for conversion or detinue under sect. 7. The Courts, it is thought, would not be unwilling to stretch the

(*f*) *Per* Neville, J., *Savory* v. *World of Golf*, *supra*.
(*g*) *Smith and Jonks, Ltd.* v. *Service, Reeve & Co.*, (1914) W. N. 283.
(*h*) (1880), 15 Ch. D. 501.
(*i*) (1883), 24 Ch. D. 231.
(*k*) (1892) 3 Ch. 489.
(*l*) (1892) 1 Ch. 630.
(*m*) *Hanfstaengl* v. *Smith*, (1905) 1 Ch. 519.
(*n*) *Cobbett* v. *Woodward* (1872), L. R. 14 Eq. 407; *Pike* v. *Nicholas* (1869), L. R. 5 Ch. 251; *Kelly's Directories* v. *Gavin*, (1901) 1 Ch. 374; cf. *Liverpool Brokers* v. *Commercial Press*, (1897) 2 Q. B. 1.
(*o*) Sect. 10.

language a little, and hold that such an action was brought "in respect of infringement of copyright" (*p*), but a further difficulty arises from the fact that the period of limitation is to run from the date of "the infringement." An infringement occurs by reason of the improper reproduction of a work or the knowingly dealing with the work by sale, distribution, exhibition, or importation (*q*); the mere possession of an infringing copy gives no right of action. An action against a person who simply has an infringing copy in his possession would not lie until a demand had been made requiring the possessor to hand over the copy to the owner of the copyright (*r*). Nor would the refusal to comply with such demand constitute an "infringement" of copyright, and it is, therefore, possible that in the case of an action under sect. 7 the ordinary period of limitation will apply, namely, six years from the date of the conversion or refusal to deliver the infringing article (*s*). It may be, however, that the true construction of sect. 10 is that wherever there has been an infringement of copyright the proprietor of the copyright is to lose all remedies whatsoever after three years, and that, inasmuch as before an "infringing copy" can exist, there must have been an infringement of copyright, though not necessarily committed by the person who has possession of the infringing copy at the time of action, no action of detinue or conversion can be brought except within three years after the infringing copy was made. Of course, if, after knowledge that the copies in his possession were piracies, the possessor were to sell or distribute or exhibit the copies for the purpose of trade, this would under sect. 2 (2) constitute an entirely new offence (*t*), and the period of limitation would commence to run afresh. If this suggested construction of sect. 10 were to prevail, it would, to some extent, remove the difficulty which arises from the fact that, whereas sect. 2 (2) contemplates a person being only liable for dealing with infringing copies with knowledge that they are infringements, the provisions of sect. 7 seem calculated to deprive him of much of the benefit he might derive from his innocence (*u*); for in that case a person who sold an infringing copy innocently could only be sued within three years from the making of the work, but, if he did so with knowledge, within three years from the sale.

(*p*) See *ante*, p. 205.
(*q*) Sect. 2.
(*r*) *Miller* v. *Dell*, (1891) 1 Q. B. 468.
(*s*) *Miller* v. *Dell*, *supra*.
(*t*) Sect. 2 (2).
(*u*) See *ante*, p. 166.

CHAPTER X.

SUMMARY REMEDIES FOR INFRINGEMENT OF COPYRIGHT.

Sect. 11 of the Act.

In addition to his civil remedies, sect. 11 of the Copyright Act, 1911, now confers upon the proprietor of copyright the right in some cases to take criminal proceedings in respect of an infringement. Under the old law criminal proceedings were only possible in respect of the infringement of the copyright in musical works, under the Musical (Summary Proceedings) Copyright Act, 1902 (*a*), as amended by the Musical Copyright Act, 1906 (*b*). The section of the Bill dealing with criminal proceedings was considerably modified in Committee of the House of Commons. In the form in which it was originally introduced it extended to owners of copyright in all works the same criminal remedies as were, under the Acts above referred to, given to the owners of copyright in musical works. The section, however, as originally drafted, met with so much opposition, that finally it was abandoned, and whilst the two Musical Copyright Acts above referred to remained unrepealed with regard to musical works, the present section, giving modified criminal remedies in respect of infringement of other works, was agreed to (*c*). The section is as follows:—

"(1) If any person knowingly—

(a) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or

(c) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) by way of trade exhibits in public any infringing copy of any such work; or

(e) imports for sale or hire into the United Kingdom any infringing copy of any such work (*d*):

(*a*) 2 Edw. VII. c. 15, *post*, p. 214.
(*b*) 6 Edw. VII. c. 36.
(*c*) The summary remedies do not apply to infringement of copyright in architectural works: sect. 9 (2).
(*d*) See and compare sect. 2 (2) of the Act.

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

"(2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

"(3) The Court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the Court may think fit.

"(4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906."

Who may be convicted

A person can only be convicted under this section if he acts knowingly. The persons liable to be convicted may be divided into four classes: (i.) makers of "infringing copies"; (ii.) distributors of "infringing copies"; (iii.) persons having in their possession any plate (*e*) for the purpose of making "infringing copies"; (iv.) persons causing "any work in which copyright subsists" to be publicly performed.

The meaning of "infringing copy."

An "infringing copy" is defined by the Act. "Infringing," when applied to a copy of a work in which copyright subsists, means "any copy, including any colourable imitation, made or imported in contravention of the provisions of this Act" (*f*). A

(*e*) In a case of *R.* v. *Baldoli* (*Times*, 27th Nov., 1913), the defendant was convicted of having in his possession a cinematograph film for the purpose of making an infringing copy.

(*f*) Sect. 35 (1).

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person who produces or reproduces a work, "or any substantial part thereof" (*g*), and a person who sells, distributes, exhibits, or imports for sale a work which to his knowledge "infringes copyright" (*g*), is liable to a civil action; but the criminal remedies are not available unless the subject-matter of the charge is an "infringing copy," which includes any copy which is a "colourable imitation" of the original, but, apparently, not necessarily every work in respect of which civil proceedings might be taken. It is evidently not the policy of the Act to require the police courts to decide intricate questions as to infringement of copyright, and it is only in the grosser cases that the criminal procedure can be invoked. Again, in the case of infringement by public performance, the "work in which copyright subsists" must be performed, and, as a statute which creates a criminal offence must always be strictly construed, the words of the Act would seem to suggest that no criminal proceedings can be taken in respect of the public performance of only a "substantial part" of the work. If this be so, it gives an unfortunate loophole to the pirate, and it will probably not tax the ingenuity of small touring companies to make such alterations or omissions in a play as will enable them to escape conviction under this section. On the other hand, "performance" includes "any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument." Thus, the case of a cinematograph performance is covered.

Musical (Summary Proceedings) Copyright Act, 1902.

In the case of pirated music the criminal remedies are somewhat wider. The Musical (Summary Proceedings) Copyright Act, 1902, was passed for the greater protection of the owners of copyright in musical compositions who, at that date, were suffering considerable injury at the hands of street hawkers who were in the habit of selling in the streets pirated copies of songs and music for a few pence.

Sect. 1 of the Act referred to provides that a Court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may, if satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, by order authorise a constable to seize such copies without warrant and to bring them before the Court, and the Court, on proof that the copies are pirated, may order them to be destroyed or to be

(*g*) Sects. 1 (2), 2 (1); cf. also, sect. 7.

delivered up to the owner of the copyright if he makes application for that delivery.

Sect. 2 authorises a constable to seize without warrant pirated copies of musical works when they are being hawked, carried about, sold, or offered for sale, on the request in writing of the apparent owner of the copyright or of his agent thereto authorised in writing, and at the risk of such owner. On seizure of such copies, they are to be conveyed by the constable before a Court of summary jurisdiction, and on proof that they are infringements of copyright, they are to be forfeited or destroyed or otherwise dealt with as the Court may think fit.

"Musical copyright" is defined by the Act to mean the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or authorise another person to do all or any of the following things in respect of a musical work: (1) to make copies by writing or otherwise of such musical work; (2) to abridge such musical work; (3) to make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system. "Musical work" is defined as any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced, and a work is said to be pirated when it is reproduced without the consent lawfully given by the owner of the copyright.

Failure of Act.

This Act had not the effect of putting a stop to the practices above referred to. Sect. 2 is obviously the most convenient section to proceed under, but it was held that before an order could be made for forfeiture or destruction of pirated copies seized under this section, the person from whom they had been seized must have been served with a summons notifying the intention to apply for such order (*h*). As there is no power given in the Act to compel the person in whose possession the copies are found to give his name and address, or to ascertain, if he gives them, that they are correct, this decision rendered the Act practically nugatory. Another defect discovered in the Act was that the magistrates had no power to issue a warrant to search shops and premises where pirated copies were printed or stored and thus enable the proprietor of the copyright to get at the real offender, though under sect. 1 a magistrate is bound to issue his warrant to seize copies of all alleged pirated music, even if it appear that

(*h*) *Ex parte Francis* (No. 1), (1903) 1 K. B. 275.

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the music is being sold at a private house (*i*). The practice of the magistrates as to the proof of copyright required from the proprietor varied in different Courts.

It was further held that a perforated roll was not a "pirated copy" of a musical work (*k*), a decision that seems to be equally applicable to sect. 11 of the Act of 1911.

Musical Copyright Act, 1906.

In consequence of the failure of the Act of 1902, the Musical Copyright Act, 1906 (*l*), was passed, which provides that any person who prints, reproduces, or sells, or exposes, offers, or has in his possession for sale any pirated copies of any musical work, or has in his possession any plates for the purpose of printing or reproducing pirated copies of any musical work, shall (unless he proves that he acted innocently) be guilty of an offence punishable on summary conviction, and shall be liable to a fine not exceeding five pounds, and on a second or subsequent conviction to imprisonment with or without hard labour for a term not exceeding two months or to a fine not exceeding ten pounds.

If, however, the defendant has not been previously convicted of an offence under the Act, and proves that the copies of the musical work in respect of which the offence was committed had printed on the title page thereof a name and address purporting to be that of the printer or publisher, he is not to be liable to any penalty unless it is proved that the copies were to his knowledge pirated copies (*m*). Any constable may take into custody without warrant any person who in any street or public place sells or exposes, offers, or has in his possession for sale any pirated copies of any such musical work as may be specified in any general written authority addressed to the chief officer of police, and signed by the apparent owner of the copyright in such work or his agent thereto authorised in writing, requesting the arrest, at the risk of such owner, of all persons found committing offences under this section in respect to such work, or who offers for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars (*n*). A copy of every such written authority is to be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority (*o*).

(*i*) *Ex parte Francis* (No. 2) (1903), 88 L. T. 806. There is no right to grant a search warrant under sect. 11 of the Act of 1911.
(*k*) *Mabe* v. *Connor*. [illegible] K. B. 515.
(*l*) 6 Edw. VII. c. [illegible] full text of this Act, Appendix A.
(*m*) Sect. 1 (1). Sect. 1 (2). (*o*) Sect. 1 (3).

Search warrants.

A search warrant may be granted by a Court of summary jurisdiction if satisfied that there is reasonable ground for suspecting that an offence against the Act is being committed, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against the Act is being committed. Any copies or plates so seized are to be brought before the Court, and if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies, are to be forfeited and destroyed, or otherwise dealt with as the Court thinks fit (*p*). The Act contains definitions of "pirated copies," "musical work" (*q*) and plates (*r*).

Appeal.

Upon summary conviction (*s*), whether under the Musical Copyright Act, 1906, or the Copyright Act, 1911, an appeal lies in England or Ireland to a Court of Quarter Sessions, and in Scotland under the Summary Jurisdiction (Scotland) Acts (*t*). Seven days' notice of appeal must be given, and the appeal is to a Court of Quarter Sessions held not less than fifteen days after the date of conviction (*u*).

Conspiracy to infringe copyright.

Apart from the summary remedies given by the Copyright Acts, it may sometimes be possible to prosecute infringers for a conspiracy at common law. To create this offence two or more persons must have conspired together to deprive the proprietor of the copyright of his property, *e.g.*, by printing for sale piratical copies of a copyright work (*x*).

Fraudulent alteration of works of art.

In dealing with the summary remedies for infringement of copyright, sect. 7 of the Fine Arts Copyright Act, 1862 (*y*), may be referred to. By that section (which is not repealed by the Copyright Act, 1911) it is made an offence if any person shall do any of the following acts:—

1st. If he shall fraudulently sign or otherwise affix, or cause to be signed or otherwise affixed, to any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram (*z*).

2nd. If he shall fraudulently sell, publish, exhibit, or dispose

(*p*) Sect. 2.
(*q*) The definition is different from that in the Act of 1902, the definition being "a musical work in which there is a subsisting copyright."
(*r*) Sect. 3.
(*s*) But not upon acquittal: *R.* v. *London JJ.* (1890), 25 Q. B. D. 557.
(*t*) Musical Copyright Act, 1906, s. 1 (4); Copyright Act, 1911, s. 12.
(*u*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31.
(*x*) *R.* v. *Willetts* (1906), 70 J. P. 127; *R.* v. *Bokenham, Times,* 22nd July, 1910.
(*y*) 25 & 26 Vict. c. 68, s. 7, Appendix A.
(*z*) This was inserted by reason of the decision in *R.* v. *Close* (1858), 27 L. J. M. C. 54.

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of, or offer for sale, exhibition or distribution, any painting, &c. having thereon the name, initials, or monogram of a person who did not execute such work.

3rd. If he shall fraudulently utter or dispose of any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been executed by the author of the original work from which such copy or imitation shall have been made.

4th. If, where the author of any painting, drawing, or photograph, or negative of a photograph, shall have sold such work, any person shall afterwards make any alteration by addition or otherwise during the life of the author, without his consent, or shall knowingly sell or publish such work, or any copies thereof so altered, or of any part thereof, as or for the unaltered work of such author.

Every offender under this section is liable upon conviction to forfeit to the person aggrieved a sum not exceeding £10, or not exceeding double the full price at which all such copies or altered works shall have been sold or offered for sale; and they are to be forfeited to the person, or the assigns or legal representatives of the person whose name, initials, or monogram shall have been fraudulently used; provided such person shall have been living at or within twenty years next before the time when the offence may have been committed (*a*).

It would seem that if the double price of the copies be less than £10, yet that amount may still be recovered, and that if the double value exceed £10, then any sum up to such double price may be recovered by the person aggrieved, as an inducement to him to proceed, he having to give up the spurious work to the true artist or his representatives, and receive from the person who has defrauded him the price he has paid and as much more.

The penalties imposed as a punishment for a criminal offence.

Under these penal sections it has been determined that a person sentenced to pay a penalty cannot, by executing a deed of arrangement with his creditors, escape from the imprisonment consequent on a failure to pay (*b*). Mr. Graves, a publisher of engravings, became the proprietor of the copyright in Frith's "Railway Station," and other paintings, and the designs thereof, and also of the copyright in the engravings of such pictures. Photographic copies of these engravings were then fraudulently made, and sold for about one-twentieth of the price at which the copies of Mr.

(*a*) There is, however, no power to grant a search warrant.
(*b*) *Ex parte Graves* (1868), L. R. 3 Ch. 642.

Graves's prints were sold. Such photographic copies were exact reproductions of the engravings and of a large size. Upon the 16th of May, 1868, a man named William Banks Prince was convicted by a magistrate at Lambeth of having sold no less than nineteen of the fraudulent photographic copies in question. He was adjudged to pay a penalty of £5 in respect of each of the copies sold; and in default of payment the magistrate sentenced Prince to fourteen days' imprisonment in respect of each of the nineteen offences he had committed by selling the photographic copies. While the magistrate was giving his judgment Prince executed a deed of composition with his creditors, which contained a release from them. That deed was assented to by certain creditors of Prince, and then registered in due form. Not having paid the penalties in which he was convicted, he was taken into custody upon a magistrate's warrant, and imprisoned pursuant to his sentences. Thereupon he applied to the Bankruptcy Court for his discharge from custody, upon the ground that the penalties in which he had been convicted were *debts*, from the payment of which he had been released by the deed of composition executed between him and his creditors. The registrar held that Prince was entitled to his discharge.

From this decision Mr. Graves appealed to the Lords Justices, upon the ground that penalties recovered under the Fine Arts Copyright Act, 1862, were in the nature of a punishment, and consequently were not released by the composition deed which had been executed between Prince and his creditors. On the contrary, it was argued for the respondent that, inasmuch as under the Fine Arts Copyright Act the penalties were payable to Mr. Graves, they amounted in the aggregate to nothing more than a debt, which would have been provable under bankruptcy, and was therefore released by the deed. But Lord Justice Page Wood held that what Prince had done in selling the photographic copies was throughout the Copyright Act treated as an offence, as a *fraudulent* act, for which a punishment was to be inflicted; and that the debtor was not entitled to his discharge from custody unless the penalties were paid.

Whether alteration must be fraudulent.

An offence is committed under the first three clauses of sect. 7 of the Fine Arts Copyright Act, 1862, only if the act complained of is done with fraudulent intent, but this is not so under the fourth clause. Under that clause it is no offence to make the alteration, but only to sell, publish, or offer for sale the work or any copies of it after alteration. This must be done "knowingly," but not necessarily "fraudulently," and it is no defence that the

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copyright in the picture is vested in the person making the alterations.

Carlton Illustrators v. Coleman.

These points were decided in the case of *Carlton Illustrators* v. *Coleman* (*c*). There the plaintiff was an artist who was the author of a fine line drawing made for the purpose of being used as an advertisement in newspapers and periodicals by the defendants, and the copyright was vested in them. The defendants produced and published, without the consent of the plaintiff, on public hoardings throughout the country in the form of large coloured posters a reproduction of the plaintiff's drawing, and for this purpose they caused various alterations to be made in the original drawing by someone other than the plaintiff, leaving the plaintiff's signature on such posters. Mr. Justice Channell held that an offence had been committed under the fourth clause of sect. 7 of the Act of 1862, although no suggestion of fraud was made. In dealing with the question of what would be an "alteration" of the work within the clause, the learned judge pointed out that there might be some alterations which would not come within the clause. He did not think that an alteration in the artist's signature, for instance, would have been within that clause, for that would have been an alteration immaterial with reference to the object for which the clause was passed. "To come within the enactment," he said, "an alteration must be a material alteration, having regard to the object with which the enactment was passed; and that which would be material in that sense would be some alteration which might affect the credit and reputation of the artist. To my mind, that is what is prohibited. I do not think it would be necessary to find in any particular case the alteration had affected the character and reputation of the artist; it is sufficient if the alteration is of such a character that it might affect his character and reputation. Applying that principle, I think that this case is brought within the clause" (*d*). He then dealt with the question whether a change in the colouring of a picture would be such an "alteration" as to be an offence under the clause, and expressed the opinion that that must depend upon the facts of each case. He thought that if the drawing was coloured originally, the putting of different colours would obviously be an alteration; but that the mere addition of colour to a drawing which originally had none would not necessarily be an alteration, although in the majority of cases it probably would be so (*e*).

(*c*) (1911) 1 K. B. 771.
(*d*) (1911) 1 K. B. at p. 780.
(*e*) At p. 780.

Penalties recoverable only by the artist;

The object of sect. 7 of the Fine Arts Copyright Act being to protect the character and reputation of the author or maker of a painting, drawing, photograph, or negative of a photograph, the penalties are recoverable by such maker and not by the assignee of the copyright, or, *semble*, by the employer of the artist, even though the artist was under such a contract of service with him that, under sect. 5 (1) (b) of the Copyright Act, 1911, the copyright would vest in the employer in the first instance (*f*).

and may be recovered in a civil action.

Although the penalties are recoverable summarily, the artist may, if he prefers to do so, bring a civil action for their recovery and for an injunction to restrain future breaches of the clause (*g*).

(*f*) *Carlton Illustrators* v. *Coleman, supra.*
(*g*) 25 & 26 Vict. c. 68, s. 8; *Carlton Illustrators* v. *Coleman, supra.*

CHAPTER XI.

DELIVERY OF COPIES OF BOOKS TO LIBRARIES.

Deposit of copies of books must be made.

THE Copyright Act, 1911, has, in obedience to Article 4 of the Revised Convention of Berne, which provides that the enjoyment and exercise of the rights conferred by the Convention shall not be subject to the performance of any formality, abolished all necessity for registration of copyright, but has substantially re-enacted sects. 6 to 9 of the Copyright Act, 1842 (*a*), relating to the deposit of published books at the British Museum and other libraries (*b*). A strong protest was made by the publishing trade during the passage of the Act of 1911 through Parliament with a view to getting these provisions, which were alleged to be an undue tax upon the trade, modified in favour of the publishers, but these efforts failed, and, in fact, the old law is slightly extended by the Act, inasmuch as the National Library of Wales is now added to the list of libraries which can, under certain circumstances, demand delivery of a copy of a published book.

The libraries entitled to the privilege.

Sect. 15 (1) requires the publisher of every book published (*c*) in the United Kingdom to deliver, at his own expense, one copy of the book, within one month after publication, to the trustees of the British Museum, who are to give a receipt for the same. Copies are likewise to be delivered for the benefit of the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of Trinity College, Dublin, and, subject to certain restrictions, the National Library of Wales, at any time within a month after a written demand made within twelve months after publication or within one month after publication if demand is made before publication. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts the written demand may include all numbers or parts of the work which may be subsequently published (*d*).

Books to be delivered to

As regards the National Library of Wales, the Board of Trade

(*a*) 5 & 6 Vict. c. 45.
(*b*) Copyright Act, 1911, s. 15.
(*c*) As to the meaning of "publication," see sect. 1 (3), and *ante*, p. 37.
(*d*) Sub-sect. (2).

National Library of Wales.

has power to make regulations specifying classes of books whereof copies need not be delivered to that library. Accordingly the Board has issued regulations whereby copies cannot be demanded of books of which (i.) the number of copies in the published edition does not exceed 300; or (ii.) the number of copies in the published edition does not exceed 400, and the published price of each volume exceeds £5; or (iii.) the number of copies in the published edition does not exceed 600, and the published price of each volume exceeds £10; but none of these exemptions applies to books written wholly or mainly in Welsh or any other Celtic language, or relating wholly or mainly to the antiquities, language, literature, philology, history, religion, arts, crafts, or industries of the Welsh or other Celtic peoples, or relating wholly or mainly to the natural history of Wales (*e*).

Meaning of "book."

For the purposes of sect. 15, the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but does not include any second or subsequent edition of a book, unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto (*f*).

What copies are to be delivered.

The copy to be delivered to the British Museum must be one of the best copies published (*g*), but the copy for each of the other libraries is to be one of the copies of which the largest number is printed for sale (*h*).

Effect of failure to deliver copies.

Sect. 15 does not make delivery of the copies a condition of copyright, the only effect of non-compliance with the requirements of the section is to expose the publisher, upon whom, and not upon the author, the duty is imposed of delivering the requisite copies of the work, to a fine not exceeding £5 and the value of the book upon summary conviction (*i*). That is to say, he is liable to a separate fine for each library in respect of which default is made.

Foreign books published in England.

No copies of books first published in a foreign country in respect of which an Order in Council has been made under sect. 29 need be delivered, unless the Order in Council otherwise directs (*k*); but it would seem that sect. 15 relates to any other book published in the United Kingdom, even though it may have previously been published in another country and is consequently not entitled to copyright in this country.

(*e*) The National Library of Wales (Delivery of Books) Regulations, 1912, Appendix E., *post*.
(*f*) Sect. 15 (5).
(*g*) Sect. 15 (3).
(*h*) Sect. 15 (4).
(*i*) Sect. 15 (6).
(*k*) Sect. 29 (1), proviso (iii).

PART III.

APPLICATION OF COPYRIGHT LAW TO SPECIAL WORKS OR UNDER SPECIAL CIRCUMSTANCES.

CHAPTER I.

NEWSPAPERS, ENCYCLOPÆDIAS AND OTHER COLLECTIVE WORKS.

Definition of "collective work."

A "COLLECTIVE WORK" is defined by sect. 35 (1) of the Copyright Act, 1911, as meaning "(a) an encyclopædia, dictionary, year book, or similar work; (b) a newspaper, review, magazine, or similar periodical; and (c) any work written in distinct parts by different authors, or in which works, or parts of works, of different authors are incorporated." A collective work is, therefore, to be distinguished from "a work of joint authorship," which means "a work produced by the collaboration of two or more authors, in which the contribution of one author is not distinct from the contribution of the other author or authors" (*a*), and will be considered in the next Chapter.

Where the expression is used.

Although the Act thus gives a definition of a "collective work," there are only two sections of the Act in which the expression occurs, namely, in sect. 5 (2), the proviso to which is not to apply to an assignment of the copyright in a collective work or a licence to publish a work, or part of a work, as part of a collective work (*b*), and sect. 24 (1) (a) (ii), which gives the benefit of the extended term of copyright granted by the Act of 1911 to works which were the subject of copyright at the date of the commencement of the Act to the proprietor of a collective work (*c*). The expression is, nevertheless, a useful one to indicate a class of works which differ in principle from ordinary literary, dramatic or artistic works.

(*a*) Sect. 16 (3).
(*b*) *Ante*, p. 128.
(*c*) *Post*, Chapter VII., "Existing Works."

Distinct copyrights in collective works.

In the case of a collective work there appear to be two distinct copyrights, namely, (1) in the collective work, considered as a whole; and (2) in the distinct works of the various contributors to the collective work. The "author" of the collective work, as a whole, will be the person who edits the work or arranges the various contributions, whether he does or does not himself contribute any distinct portion of the work (*d*), and consequently the copyright in the collective work vests in him, unless he is under a contract of service with the proprietor or publisher of the work (*e*). On the other hand, each separate contributor is the author of his distinct contribution, and, unless he is under a similar contract with the proprietor or publisher of the work, the copyright in his distinct contribution vests in him, and any licence or assignment of his copyright must, if it is to vest the legal right to the copyright, be given or made in writing (*f*).

Where the author is under a contract of service.

If the author is in the employment of some other person under a contract of service or apprenticeship, and his contribution to the collective work is made in the course of his employment, then, in the absence of any agreement to the contrary, his employer will be the first owner of the copyright; but if the contribution is to a *newspaper*, *magazine* or *similar periodical* the employer will not, in the absence of agreement, obtain the full copyright in his employé's contribution, for there will be deemed to be reserved to the author a right to restrain the publication of the work otherwise than as a part of a newspaper, magazine, or similar periodical (*g*).

Contract that copyright shall belong to proprietor of collective work may be implied.

But there is authority for saying that, even if there is no contract of service, the Court ought generally to draw the inference that, if an author is employed by the proprietor of an encyclopædia or similar work to contribute articles to that work and is to be paid for his work, it is the intention of the parties that the copyright shall belong to the employer. The cases to this effect are *Sweet* v. *Benning* (*h*), *Lamb* v. *Evans* (*i*), and *Lawrence and Bullen* v. *Aflalo* (*k*), all decided under sect. 18 of the Literary Copyright Act, 1842, the effect of which was to vest in the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts the copyright in articles contributed to the composite work if those articles were

(*d*) *Barfield* v. *Nicholson* (1824), 2 Sim. & St. 1.
(*e*) Sect. 5 (1).
(*f*) Sect. 5 (2), in which case an assignment for the full term of copyright may be made, see *ante*, p. 128.
(*g*) Sect. 5 (1) (b).
(*h*) (1855), 16 C. B. 459.
(*i*) (1893) 1 Ch. 218.
(*k*) (1904) A. C. 17; and see *Chantrey* v. *Day* (1912), 28 T. L. R. 499.

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paid for and were contributed "on the terms that the copyright therein shall belong to such proprietor."

Lawrence and Bullen v. *Aflalo.*

It will be sufficient to set out the facts in *Lawrence and Bullen* v. *Aflalo*. There the respondent Aflalo was employed by the appellants, a firm of publishers, to edit an encyclopædia on sport, and it was a term of the agreement that the former was to be remunerated for his editorial services by a lump sum, for which he was to contribute certain articles without further fee. The respondent Cooke was also employed by the appellants to contribute certain articles to the encyclopædia at so much per thousand words. No express agreement was made as to copyright. The respondents duly contributed their articles, and the encyclopædia was published. Afterwards the appellants published a book called "The Young Sportsman," containing copies of articles written by the respondents for the encyclopædia, and the respondents sought to restrain them from doing so. Mr. Justice Joyce held that the circumstances were not such as to warrant the inference that the copyright was to belong to the publishers, and granted an injunction to restrain the publishers from publishing the articles in separate form (*l*). Upon appeal, this decision was affirmed by Romer and Stirling, L. JJ., dissentiente Vaughan Williams, L. J. (*m*), but the House of Lords reversed the decisions of both Joyce, J., and the Court of Appeal, holding that, upon the facts, the copyright was vested in the proprietors of the encyclopædia (*n*). The House of Lords considered that the question in whom the copyright was vested depended on an inference of fact, and not of law, to be drawn by a reasonable man, from the nature of the contract and all the circumstances. From this point of view the House considered it was not reasonable to suppose that the appellants had paid their money for the right to publish the articles in their encyclopædia, at the same time leaving it open to the respondents to publish their articles the next day in separate form. The House considered that the case was covered by the earlier decisions of *Sweet* v. *Benning* and *Lamb* v. *Evans* (*o*) to the same effect.

Quære, whether *Lawrence* v. *Aflalo* is still law.

It is, upon the whole, submitted that the Act of 1911 has altered the inference to be drawn in cases where the facts are similar to those in *Lawrence and Bullen* v. *Aflalo*. It is clear that the case is overruled so far as it decided that the *legal* right to the copy-

(*l*) (1902) 1 Ch. 264.
(*m*) (1903) 1 Ch. 318.
(*n*) (1904) A. C. 17.
(*o*) But see *Bishop of Hereford* v. *Griffin* (1848), 16 Sim. 190; *Walter* v. *Howe* (1881), 17 Ch. D. 708, where, however, *Sweet* v. *Benning* was not cited.

right vested in the proprietors of the encyclopædia, for the respondents were not under a contract of service with the proprietor (*p*), and it is only in such a case that, under the Act of 1911, the copyright could vest in the proprietor in the first instance. But if there is an agreement on the part of the contributor that the copyright in his contribution is to belong to the proprietor, an assignment of the copyright could be compelled, and in the meantime the proprietor would have an equitable title thereto (*q*). But it is submitted that when the Act of 1911 provides that where an author is in the employment of some other person under a contract of service or apprenticeship, and the work is made in the course of his employment by that person, the legal right to the copyright is, in the absence of agreement to the contrary, to vest in the employer, it ought not to be held that the equitable right to the copyright in a work contributed by a paid contributor, not under a contract of service, vests in the employer, unless there is something more than mere employment and payment from which a contract to that effect can be inferred. Otherwise the contributor to a newspaper, magazine, or similar periodical, not under a contract of service, would be worse off than one who was under a contract of service, for the latter is deemed to have reserved to him the right to restrain the publication of the work otherwise than as part of a newspaper, magazine, or similar periodical, whereas no such reservation would, presumably, be implied in favour of the former.

The right to prevent publication otherwise than in a newspaper, &c.

The reservation to the contributor to a newspaper, magazine, or similar periodical of a right to restrain the publication of the work otherwise than as part of a newspaper, magazine, or similar periodical, was inserted in the Bill when it was passing through the committee stage in the House of Lords and is of somewhat *doubtful construction and limited application*. It will be noticed that it does not apply to all collective works, but only to newspapers, magazines, and similar periodicals, and that the contribution must be an "article," an expression which seems to refer only to contributions of a literary character, and not to illustrations. It is not clear that the author would have any right to sue anybody except the proprietor of the newspaper or magazine for publishing the article separately. The proviso does not, indeed, expressly limit the right in this way, but as the right is to be deemed to be "reserved" to the contributor, it may be urged that

(*p*) See *ante*, p. 117, as to the meaning of a "contract of service."
(*q*) *Ante*, p. 122, 195.

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it is of a contractual nature only (*r*), and not one vesting any portion of the copyright in the author, and the view suggested, perhaps, receives confirmation from the fact that the only remedy given to the author is an injunction, not damages. The right conferred upon the author is, again, a right to restrain the publication of the article otherwise than as part of "a," not "the," newspaper, magazine, or similar periodical. The employer, therefore, is apparently at liberty to republish the article not merely in a reprint of the work to which it was originally contributed, but in any newspaper, magazine, or similar magazine whatsoever. Finally, the section does not reserve to the author any right to republish the article in separate form: neither he nor his employer can do this, except by mutual arrangement.

When contributors are under contracts of service.

If the contributor is under a "contract of service" with the proprietor of the collective work and the contribution is made in the course of his employment, the proprietor will be the first owner of the copyright (*s*). The meaning of a contract of service has been already discussed (*t*). Persons on the regula staff of a periodical will, no doubt, usually be under contracts of service if their engagements are practically exclusive, but the mere fact that anyone is employed to supply contributions to a periodical at a fixed salary does not necessarily involve a contract of service. In the case of *Re Beeton & Co.* (*u*), questions arose as to whether certain contributors to a weekly periodical belonging to a company which was in process of liquidation were "clerks or servants" of the company within the meaning of sect. 209 of the Companies (Consolidation) Act, 1910 (*x*), so as to be entitled to preferential payment of the arrears of salary due to them. A. was a director of the company and was also appointed "dress editress" at a fixed salary per annum. Her duties occupied practically the whole of her time and she did no similar work for any rival paper. B. was also employed by the company at a fixed salary per annum to supply "fashion drawings" for the periodical and the company had a first call on her services, and her work occupied most of her time, but occasionally she did work for other publishers. C. was employed at a fixed salary per annum to supply weekly articles and other information for the periodical,

(*r*) The similar right under sect. 18 of the Literary Copyright Act, 1842, was held to be of a contractual nature: *Mayhew* v. *Maxwell* (1860), 1 J. & H. 312.
(*s*) Sect. 5 (1) (b).
(*t*) *Ante*, p. 117.
(*u*) (1913) 2 Ch. 279.
(*x*) 8 Edw. VII. c. 69.

but she also wrote for other publishers. The Court held that A. was a "clerk or servant" of the company, but that B. and C. were not.

Of course, even though a person be on the regular staff of a paper and under a contract of service he will retain the copyright in work done by him in his spare time and outside the scope of his employment (*y*).

Who can sue for piracy of any particular article?

In cases where the copyright in a collective work is vested in one person, but the several contributors have retained the copyright in their separate contributions, difficult questions may arise as to the person who can sue for infringement. For instance, if A.'s article is pirated from a collective work, the copyright in which is in B., can A., or B., or both, sue the infringer? It has sometimes been said that there cannot be two copyrights in the same work, but in a case in which three newspapers combined to employ a person to collect information to be published in each of their papers, it was held that the infringer was liable to an action by each of the newspapers (*z*). That the proprietor of the collective work can sue for infringement, if a single article has been pirated, was decided in *Henderson* v. *Maxwell* (*a*). It would seem, however, that in that case the copyright in the separate article also was vested in the proprietor of the periodical, although as he had only registered the first number of the periodical and not his copyright in the separate article (registration being, under the Literary Copyright Act, 1842, necessary before action could be brought (*b*)) he was compelled to rely upon the act of the defendant in abstracting a single article as being an infringement of the copyright in the collective work. And under the Act of 1911 it is clearly an infringement of copyright to reproduce "any substantial part" of a work (*c*). It would, therefore, seem to follow that a person who unlawfully copies a single article from a collective work may be exposed to two actions, one at the suit of the proprietor of the copyright in the collective work, and the other at the suit of the proprietor of the copyright in the separate article (*d*).

(*y*) *Byrne* v. *Statist Co.*, (1914) 1 K. B. 622.

(*z*) *Trade Auxiliary* v. *Middlesbrough, &c. Association* (1889), 40 Ch. D. 425; and cf. *Lamb* v. *Evans*, (1893) 1 Ch. 218.

(*a*) (1877), 4 Ch. D. 163.

(*b*) *Ante*, p. 16. The registration of the first number of the periodical was, under sect. 19, sufficient to protect his copyright in the entire *periodical*.

(*c*) Sect. 1 (2).

(*d*) There are, however, practical difficulties—*e.g.*, sect. 7 provides that infringing copies are to be deemed the property of the owner of the copyright, who may take proceedings for the recovery of the possession thereof. This right cannot be exercised by both proprietors.

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Copyright in a newspaper.

Whether copyright could exist at all in the case of newspapers was doubted by Lord Chelmsford (*e*), but there can be no doubt that newspapers are "literary works" and as such entitled to copyright (*f*). There cannot, however, be any prospective copyright in a newspaper (*g*).

Copyright in news.

There can be no copyright in news as such, but only in the literary form given to news (*h*). The Courts have, nevertheless, in more than one case protected news agencies from having information obtained by them disseminated in breach of faith (*i*). There is no "custom" justifying one newspaper in copying from another (*k*).

Larger protection to newspapers given by the Act than by the Berne Convention.

The English law gives a larger protection to newspaper articles than the Revised Convention of Berne requires, for under the Copyright Act they enjoy complete protection although there may be no notice expressly forbidding the copying thereof. Article IX. of the Convention authorises any *newspaper* to copy from another newspaper any matter other than serial stories and tales, unless the reproduction thereof is expressly forbidden and provided the source be acknowledged. Having regard to this liberty, which, of course, does not justify any such copying by one British newspaper from another British newspaper, express notices forbidding reproduction are sometimes to be found appended to articles in British newspapers, the object being to prevent their being copied by foreign newspapers.

Property in letters, &c. sent to newspapers.

It may be mentioned here that letters and other manuscripts sent to the editor of a newspaper, as agent for the proprietor, are the property of the latter, and if the editor after ceasing to be editor attempts to use them for his own purposes he will be restrained on the application of the proprietor, and be compelled to hand over such letters or other manuscripts (*l*).

There is no obligation on the part of the proprietor of a newspaper to insert or to preserve any manuscript sent to him uninvited, and if the manuscript be lost or destroyed, the author cannot recover for its value. Of course, if an editor or proprietor

(*e*) *Platt* v. *Walter* (1867), 17 L. T. 159.

(*f*) *Cox* v. *Land and Water* (1869), L. R. 9 Eq. 324; *Walter* v. *Steinkopff*, (1892) 3 Ch. 489; *Johnson* v. *Newnes*, (1894) 3 Ch. 633; *Walter* v. *Lane*, (1900) A. C. 539.

(*g*) *Platt* v. *Walter*, *supra*. As to the right to the title of a newspaper, see *Licensed Victuallers' Newspaper* v. *Bingham* (1888), 38 Ch. D. 139; *Borthwick* v. *The Evening Post* (1888), 37 Ch. D. 449; and *ante*, p. 66.

(*h*) *Per* North, J., *Walter* v. *Steinkopff*, (1892) 3 Ch. 489.

(*i*) *Exchange Telegraph Co.* v. *Gregory*, (1896) 1 Q. B. 147; *Exchange Telegraph Co.* v. *Central News*, (1897) 2 Ch. 48; *ante*, p. 35.

(*k*) *Walter* v. *Steinkopff*, *supra*.

(*l*) *Hogg* v. *Kirby* (1803), 8 Ves. 215.

undertook to return unaccepted communications the case would be different.

Alterations in communications made to newspapers.

Difficulties sometimes arise by reason of alterations made in the matter communicated by correspondents and others to newspapers. The rule may be taken to be as follows: Where the author's name appears, any alterations of a nature which may affect the credit or the literary reputation of the author would be illegal, and an injunction might be obtained to restrain the publication (*m*). Of course, if the communication, though signed, contained any matter of an objectionable or offensive description this might be omitted, but the insertion of new matter which would have the effect of distorting the writer's meaning would not be permissible.

As to unsigned communications, the right of the editor to alter seems to be unlimited. The author here can suffer no injury in reputation, the "custom of the trade" in this respect is well known and must be deemed to be known to the author, and the alterations may be so substantial as to make the editor the "author" of the paragraph (*n*).

Special privileges of newspapers.

Certain privileges are accorded to newspapers by the Copyright Act in dealing with the works of other persons. It is no infringement of the copyright in those works to deal with them fairly for the purposes of a review or "newspaper summary" (*o*). A newspaper may also publish a report of a lecture (*p*) delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; and even if there be such a prohibition, a "summary" of any lecture may be published (*q*); and if the "address" be of a political nature a full report may be published (*r*).

Pictures submitted by press photographers.

A modern feature of newspaper production is the publication of pictures and photographs illustrating the topics of the day, and various agencies exist for supplying the press with such illustrations. The practice is for these agencies to submit prints of photographs to the illustrated papers, upon the understanding

(*m*) *Archbold* v. *Sweet* (1832), 5 C. & P. 219; but see *Lee* v. *Gibbings* (1892), 9 T. L. R. 773.
(*n*) *Springfield* v. *Thame* (1903), 89 L. T. 242.
(*o*) Sect. 2 (1) (i); see *ante*, p. 144.
(*p*) A "lecture" includes an address, speech or sermon: sect. 35 (1).
(*q*) Sect. 2 (1) (v).
(*r*) Sect. 20.

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that these papers shall be at liberty to use such of these prints as they desire, but there is no obligation upon the paper to use all or any of the prints. If they publish any, then an agreed fee is payable for each picture used. The legal effect of this arrangement is, that in the absence of any evidence to the contrary, the agency makes an offer to the paper to permit them to use the pictures submitted for publication in the paper, upon payment of the agreed sum. Like all offers, however, made without consideration, this offer is liable to be revoked by notice, and therefore the proprietor of the paper cannot insist upon a right to publish pictures which have been submitted to them by the agency, after the agency has given notice of the withdrawal of their permission, and this notwithstanding that the paper has used any picture previously to the revocation of the permission and has the necessary block for printing the same in its possession (*s*).

Advertisements.

In the case of *Lamb* v. *Evans* (*t*), Mr. Justice Chitty held that there might be copyright in the headings under which advertisements were classified, but not in the advertisements themselves. The Court of Appeal in the same case doubted whether the learned judge had not been too cautious, and thought there might be copyright in the arrangement of a sheet of advertisements (*u*).

Nom de plume.

Although there cannot be any copyright in a *nom de plume* in a case where the plaintiff had been in the habit of contributing articles to a newspaper under a *nom de plume* which she had invented, the Court held that as against the proprietor of the paper the plaintiff was entitled to the exclusive right to print, publish, and use her *nom de plume* after her connection with the publication had ceased upon the ground that the newspaper, by continuing to publish articles under the same *nom de plume*, were likely to deceive the public into the belief that the articles were contributed by the plaintiff (*x*).

(*s*) *Bowden* v. *Amalgamated Pictorials, Ltd.*, (1911) 1 Ch. 386.
(*t*) (1892) 3 Ch. 462.
(*u*) (1893) 1 Ch. 218; see *ante*, p. 59.
(*x*) *Landa* v. *Greenberg* (1908), 24 T. L. R. 441; and see generally as to the right to a name or title, *ante*, p. 66.

CHAPTER II.

WORKS OF JOINT AUTHORSHIP.

What is a collaboration?

A COLLABORATION—or, to use the expression employed in the Copyright Act, "a work of joint authorship"—must be distinguished from a collective work. For the purposes of the Copyright Act, 1911, a work of joint authorship means "a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors." If the contributions are capable of being distinguished in the completed work, then that work is a collective work (*a*). All the collaborators must answer the description of "authors," and, therefore, if one person is merely the medium for transmitting to paper or canvas the original work of another, that is neither a joint work nor a collective work (*b*).

Term of copyright in joint works.

There was no definite decision as to the term of copyright in a joint work under the old law, but probably a literary work was entitled to protection during the life of the longest liver of the co-authors and for a period of seven years from his death or for a period of forty-two years, whichever period was the longer (*c*). The complicated provisions of the new Act upon the subject of joint authorship do not appear to have been very carefully thought out, and some difficult problems may arise for determination. Sect. 16 (1) of that Act now provides that, in the case of a work of joint authorship, copyright is to subsist during the life of the author who first dies and for a term of fifty years after his death or during the life of the author who dies last, whichever period is the longer. In other words, the work will be entitled to copyright so long as any of the co-authors is still living, but the protection will cease immediately upon the death of the longest liver of the authors, if—as, of course, in the great majority of cases he is unlikely to do—he outlives the author who died first by something

(*a*) See *ante*, p. 224.
(*b*) *Ante*, p. 108 *et seq.*
(*c*) *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627, 637.

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more than fifty years. If the period which elapses between the death of the author who died first and the author who died last amounts to less than fifty years, then the *post mortem* period of fifty years runs from the death of the author who died first. Thus, if a joint work were published in 1912, and the first of the authors were to die in 1915, and the last in 1965, or at any later date, copyright would cease immediately upon the death of such last of the authors, but if the last of the authors were to die at any date prior to 1965, the copyright would cease in 1965.

Some of the authors not satisfying the conditions necessary for obtaining copyright.

The Act next provides for the case where some one or more of the joint authors fails to satisfy the conditions conferring copyright laid down by the Act (*d*). In such a case the work is to be treated, for the purposes of the Act, as if the other author or authors had been the sole author or authors, except that the term of copyright is to be the same as it would have been if all the authors had satisfied such conditions as aforesaid. This provision appears to have only a very restricted operation, because there are only two conditions laid down by the Act for the acquisition of copyright, namely: (1) that in the case of published works, they must be first published within such parts of His Majesty's dominions as the Act extends to, and (2) in the case of unpublished works, the author was at the date of the making of the work either a British subject or resident within such parts of His Majesty's dominions as aforesaid (*e*). It is fairly obvious that, as regards the first condition, if one of the authors complies with it, all must do so, and therefore the provisions now referred to can only operate in the case of unpublished works, and it is probably rare to find an artistic work which could be a "joint work" within the meaning of the Act (*f*).

Unpublished joint work of foreigner and British subject.

Suppose that A. and B. jointly produce a work and that the same is not published, A. being a British subject, and B. a foreigner not resident, at the time when the work was made, in any part of the King's dominions to which the Act extends, nor entitled to protection under the international provisions of the Act (*g*). In such a case B. would not be entitled to any protection if he were the sole author (*h*), and consequently A. is to be treated, for the purposes of the Act, as if he were the sole author, except

(*d*) Sect. 16 (2).
(*e*) Sect. 1 (1), subject, however, to sect. 23.
(*f*) Is the work of an artist and an engraver in producing an engraving a "joint work"? Presumably, if a new edition of A.'s work is produced by B. it is not a joint work, for the work of the two authors could be distinguished by a comparison between the old and new editions.
(*g*) Sect. 29.
(*h*) See *ante*, p. 27.

that the term of protection is to be the same as though both authors had been British subjects at the time the work was made (*i*).

Although, "for the purposes of this Act," A. is to be deemed to be the sole author, it does not, of course, follow that B. in the circumstances we are now supposing has no rights as against A. A. is no doubt considered to be the legal owner of the entire copyright, and he—and he alone—could bring an action for infringement, but he may have contractual obligations towards B., and, in the absence of agreement to the contrary, he would probably be regarded as trustee of the copyright for himself and B. in equal shares.

As regards the term of copyright in the case supposed, the fact of B. being a foreigner cannot make any difference to that term of copyright, provided the work be published at a time when he and A. are both living; nor in the case of a photograph, where the period of protection is a gross period of fifty years (*k*). If the work be published, then, from the date of publication, both A. and B. satisfy the conditions laid down by the Act for conferring copyright, provided first publication takes place in a part of the King's dominions to which the Act extends (*l*). The ordinary principle will then apply, and the work will fall into the public domain either fifty years after the death of the author who dies first or upon the death of the author who dies last, whichever shall be the later date (*m*).

If, on the other hand, the work is not published at all, or is only published after the death of either A. or B. or both, then the term of copyright will depend upon whether the work is either a literary, dramatic, or musical work, or an engraving, or is an artistic work other than an engraving. In the case of an artistic work other than an engraving, sect. 17—shortly to be considered—has no application. The copyright period runs from the date of the making of the work, and is, in all cases, the same as if the work had been published at that date (*n*). In the case supposed, A.—the British subject—is to be deemed the sole author of the artistic work, but the term of copyright is to be the same as though both authors had been British subjects, that is to say, the term is to be neither longer, nor shorter. Consequently, if A. survives B. for less than fifty years, the copyright runs out fifty years after B.'s death, just as though A. and B. had both been British subjects. Similarly, if B., the foreigner, should happen

(*i*) Sect. 16 (2). (*k*) Sect. 21. (*l*) Sect. 1.
(*m*) Sect. 16 (1). (*n*) See *ante*, p. 25.

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to outlive A., the British subject, by more than fifty years, the work will remain protected during the residue of B.'s life, and his rights enforceable by A.'s personal representatives.

Posthumous joint works.

Before considering the period of protection in the case of a literary, dramatic, or musical work, or an engraving, made jointly by a foreigner and a British subject, but which is not published until after the death of one of the authors, it will be necessary to consider the general effect of sect. 17 (1) relating to posthumous works.

It is provided by this section that, in the case of a joint literary, dramatic or musical work, or an engraving, in which copyright subsists, at or immediately before the date of the death of the author who *dies last*, but which has not been published nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public before that date, copyright shall subsist until publication, or performance, or delivery in public, whichever first may happen, and for a term of fifty years thereafter. This section, therefore, has no application except when the joint work was unpublished at the date of the death of the author who dies last: if the work is published after the death of one author, but whilst his co-author is living, the term of copyright must, apparently, be measured strictly by sect. 16, that is to say, it runs out fifty years after the death of the author who dies first or upon the death of the author who dies last, whichever date is the later. This may have somewhat curious consequences. Thus, if the first author were to die in 1915, and the work were published in 1920 by the co-author, who died in 1921, the copyright would run out in 1965; whereas if the second author had died in 1920, whilst the work was in the press, the copyright would not run out until 1970; or—to take an extreme case—if the second author delayed publication until 1964, and died the year after, the work would fall into the public domain iimmediately upon his death; in other words, would receive protection for one year only!

Applying, then, sect. 17 to the case where one of the joint authors is a foreigner, it will be remembered that although the work is to be considered as the work of the British subject alone, this is not to have any effect upon the term of protection. The British subject neither gains advantage or suffers disadvantage, in respect of the period during which the work will be entitled to copyright, from the fact that his co-author was a foreigner. Thus, to follow the example given above of an author dying in 1915, and his work being published by his co-author in 1920, we have

seen that if both authors were British subjects, the copyright would run out in 1965. If the work were the joint work of a foreigner and a British subject, and the latter were the one to die in 1915, copyright is still to expire in 1965, notwithstanding that, if the work had been, strictly, the work of the British subject alone, the copyright would have continued until 1970.

Application of period of modified copyright to joint works.

It will be remembered that by sect. 3 (1) of the Act it is provided that in the case of the work of a single author published in his lifetime, the period of *post mortem* copyright shall be divided into two periods; during the first period of twenty-five years the work being entitled to unrestricted protection, but during the last twenty-five years anybody being at liberty to reproduce the work upon payment of a royalty (*o*), and, further, it is provided by sect. 5 (2) that this latter modified copyright is to be incapable of assignment by an author except by will (*p*). It remains to be considered how these provisions apply to joint works. There is no mention of joint authorship in sect. 3, and, therefore, it seems open to contend that its proviso does not apply to joint works at all. Sect. 16, again, does not in so many words refer, as sect. 17 does, to this proviso, but it contains a general provision that "references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter." This provision is not, perhaps, a model of clear draftsmanship, but in applying it to the proviso to sect. 3 (1) its effect would appear to be, that the period of absolute copyright ends either at the expiration of twenty-five years from the death of the author who dies first or immediately upon the death of the author who dies last, whichever date happens to be the later. In this way it is secured—as is only fair—that so long as any of the joint authors is still living the copyright is absolute, but that, if the period between the death of the author who dies first and the author who dies last is more than twenty-five years, the period (if any) during which anybody is at liberty to reproduce the work upon a royalty basis commences immediately upon the death of the latter author. The length of the period of modified copyright will thus depend upon circumstances, and there may, conceivably, be no such period. For example, A. and B. are joint authors of a work published

(*o*) *Ante*, p. 103.

(*p*) *Ante*, p. 128.

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in 1915, and A. dies in 1920. If B. dies in or after 1970, the copyright runs out upon A.'s death, and there is no period of modified copyright. If B. dies in or prior to 1945, the period of modified copyright will commence in 1945, and run until 1970, when the copyright will expire. If B. dies at any date between 1945 and 1970, the period of modified copyright will commence immediately after, but not before, B.'s death, and will run until 1970, when the copyright will expire. If the work, being a literary, dramatic or musical work, or an engraving, is not published until after the death of both A. and B., the period of modified copyright commences twenty-five years after publication (*q*). The period of modified copyright is unassignable except by will (*r*).

Compulsory licences.

With regard to the power to grant compulsory licences to republish literary, dramatic, or musical works which is given under certain circumstances by sect. 4 (*s*) after the death of an author, it is provided that the section shall not apply to joint works until after the death of the author who dies last (*t*).

Rights of co-authors *inter se*.

Co-authors hold the copyright as tenants in common rather than as joint tenants (*u*), and, presumably, in the absence of agreement to the contrary, in equal shares. Upon the death of one co-author, therefore, his interest does not pass to his co-authors, but to his personal representatives as part of his estate. One of several authors cannot, therefore, grant a licence to publish which will be binding upon the others (*x*); but, on the other hand, one of the joint authors can sue in respect of an infringement and obtain an injunction and his share of damages (*y*) without joining the other authors as plaintiffs.

Where co-authors do not all satisfy the provisions of the Act.

Some difficulty seems to arise if one or more of the joint authors fail to satisfy the conditions conferring copyright laid down by the Act. In that case, as we have seen, the work is to be treated as though the author who does satisfy such conditions was the

(*q*) Sect. 17 (1).
(*r*) Sect. 5 (2), *ante*, p. 128.
(*s*) See *ante*, p. 101.
(*t*) Sect. 16 (1).
(*u*) *Lauri* v. *Renad*, (1892) 3 Ch. 402. It is true that the authority of this decision is diminished by the fact that Mr. Justice Kekewich considered that *Powell* v. *Head* (1879), 12 Ch. D. 686, was conclusive on the point, whereas no such point was involved in that decision, for the persons there held to be tenants in common were each assignees of a moiety of the copyright from the author. It is, nevertheless, submitted that it is reasonably clear that the statement in the text is correct. See, however, *Marzials* v. *Gibbons* (1874), L. R. 9 Ch. 58.
(*x*) *Powell* v. *Head*, *supra*.
(*y*) *Quære*, whether he could not recover the full amount of damages, subject to a liability to account to his co-authors.

sole author. The latter, consequently, may not only sue for infringement, but, apparently, may grant licences to publish without the necessity of obtaining the consent of his co-author (*z*). If, however, the work is first published in any part of the King's dominions to which the Act extends, all the authors become legally entitled to the copyright (*a*). What, then, is the position, supposing the author who, prior to publication, was considered as the sole author granted a licence to publish, contrary to the wishes of his co-author? It is thought that the publisher is not exposed to an action for infringement at the instance of the latter, but that he can rely upon the licence obtained from the author who, at the time when the licence was given, had the legal right to grant it. It is, however, provided by sect. 35 (2) that, for the purposes of the Act (other than those relating to infringements of copyright), a work is not to be deemed to be published or performed in public if published or performed in public without the consent or acquiescence of "the author," his executors, administrators, or assigns. In a case of joint authorship it seems probable that the consent of the author who satisfies the conditions of the Act will be sufficient to make the work a published work within the meaning of the statute, and that the other author's only remedy will be in damages against his co-author. It is more difficult to say whether this will be so if all the authors satisfy the requirements of the Act (*b*). Inasmuch as a licence to publish must *primâ facie* be given by all co-owners, it would appear that one co-owner cannot commit his co-owners as to place or time of first publication.

Husband and wife co-authors.

It is provided by sub-sect. (4) of sect. 16 of the Act that where a married woman and her husband are joint authors of a work, the interest of the married woman shall be her separate property. Presumably, this sub-section was inserted in order to make it clear that the whole of this copyright is not to belong to the husband under his common law riglit to the personal property of his wife. It is a little curious, therefore, to find that there is no similar provision for the case where a married woman is a co-author with a person other than her husband.

(*z*) *Lauri* v. *Renad, supra; Powell* v. *Head, supra; Trade Auxiliary Co.* v. *Middlesbrough* (1888), 40 Ch. D. 425.

(*a*) *Ante*, p. 234. (*b*) *Macmillan* v. *Dent*, (1907) 1 Ch. 107,

CHAPTER III.

WORKS OF ARCHITECTURE.

The claim of architects to protection.

ARCHITECTS have, for many years past, claimed for their works similar protection to that accorded to works of sculpture. The justice of this claim was recognised in some foreign countries, notably in France and Belgium, and more recently in Germany, even prior to the revision of the Berne Convention after the conference of the Powers at Berlin in the year 1908, but, prior to that revision, no party to the Berne Convention was compelled to accord copyright protection to architectural works themselves, as distinguished from architectural plans and sketches. Now, under the Revised Convention works of architecture are included amongst the subjects to which all countries, parties to that Convention, are bound to grant protection (*a*).

Opposition to these claims.

The committee appointed by the British Government in the year 1909 to consider what alterations in the English law were necessary or advisable in order that England should come into line with the other countries who were parties to the Revised Convention of Berne, only by a majority reported in favour of the inclusion of works of architecture amongst the subjects of copyright. Further opposition to the claims of architects was met during the passage of the Copyright Bill through Parliament. The architects, however, triumphed to this extent, that "architectural works of art" are now definitely included amongst the works to be protected under the Copyright Act, although the remedies for the infringement of the copyright in those works are considerably less drastic than those inserted in the Bill, as originally laid before Parliament.

Grounds of objection.

The main objections urged against giving copyright to architectural works have been the difficulty in distinguishing between a work of such an artistic character as to merit protection, from one having no such artistic character, and the proper remedies to be granted against an infringer. To the former objection it

(*a*) See "International Copyright," Part IV., Chapter I., *post*.

has been replied that the difficulty is no greater than that met with in the case of any other artistic work, and is one which the Courts of the foreign countries which have hitherto granted protection to architectural works have not found to be insuperable (*b*). The second objection has been met by the Act only giving limited remedies for infringement of copyright in such works. The fear, again, has sometimes been expressed that the inclusion of works of architecture amongst the works entitled to copyright would lead to a flood of litigation. Such fear is probably unfounded, and at the time of writing no case of an architect complaining of infringement has come before the Courts. It must be remembered that the burden of proof will lie upon any architect who brings an action for infringement to show that his work is original, and that the alleged infringing edifice must have been copied from his, but architects feel that it is a considerable gain to their profession that the principle has at length been acknowledged, that one architect has no right to servilely copy a building designed by another, and that the mere fact that an action for infringement is possible will be some protection to them against the piracies of which they have complained in the past (*c*).

Plans and sketches.

An architect's plans and sketches were, even prior to the Act of 1911, protected as "drawings" under the Fine Arts Copyright Act, 1862 (*d*), but upon a "sale" of the plans the copyright ceased unless it was expressly reserved (*e*). It was therefore urged that all that architects could reasonably require was that more effective protection should be given to their plans, inasmuch as a building could seldom be copied without plans being first made. The answer to this contention, however, is that it has always been assumed that a building—that is to say, a constructed edifice—is not an infringement of the copyright in a drawn plan, and that although an architect, seeing his building imitated, may well suspect that his plans have been copied, the burden of proof would lie upon him, and it might be very difficult for him to prove that this had in fact been done. Moreover, it has been held (*f*) that if a person employs an architect to design a building, upon the latter being paid his remuneration the plans, in the absence of contrary

(*b*) Two decisions of foreign Courts will be found set out in an Appendix to the published evidence taken before the British Copyright Committee in 1909 (Blue Book, Cd. 5051).

(*c*) In an Appendix to the Blue Book referred to above (pp. 174, 175), a list of twenty-three alleged flagrant piracies is given.

(*d*) 25 & 26 Vict. c. 68.

(*e*) *Ante*, p. 20.

(*f*) *Gibbon* v. *Pease*, (1905) 1 K. B. 810; *Ebdy* v. *McGowan*, cited in Hudson on Building Contracts, Vol. II., p. 8.

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agreement, become the property of his client. Such client might then use the same plans for erecting another similar building without infringing any copyright in the plans. Further, it is probably not without the range of possibility for an architect, by merely viewing another building and by making a series of photographs, to copy the distinctive features of that building without ever having access to the plans from which it was erected.

Sketches and plans under the new Act.

The Act of 1911 has, of course, not deprived the architect of his copyright in his plans and sketches, but it is a little curious that apparently his plans are protected as "literary works," and his sketches as "artistic works." This results from the definition of "literary works" contained in the Act, which includes amongst literary works "maps, charts, plans, tables and compilations," whereas an "artistic work" includes a "drawing" (*g*). This seeming anomaly is not of great importance, but it may have the effect of giving a longer term of copyright to the plans than to the sketches, for sect. 17, relating to posthumous works, does not apply to artistic works other than engravings, so that, notwithstanding that the architect's sketches are unpublished at his death, the copyright will run out fifty years later, although his plans, being literary works, are protected under the section above referred to until publication and for fifty years thereafter (*h*).

Ownership of plans does not give right to copy them.

The Act does not alter the rule as to the *primâ facie* ownership of an architect's plans, but the rule that these generally become the property of the client does not mean more than that the sheets of paper, with the plans drawn upon them, belong to the client; it does not imply that the copyright in the plans passes to the client. This would only be so if the architect assigned the copyright in writing (*i*), or he were under a contract of service with his client (*k*). The client therefore may not make copies of the plans, except for the purposes of private study (*l*). On the other hand, if the architect has parted with the copyright in his building, he may "use" his plans and sketches if, as is believed to be generally the case, the plans remain in his possession, provided he does not imitate the main design (*m*).

Definition of architectural work of art.

Turning now to the specific provisions of the Act relating to works of architecture, we find that architectural works of art are

(*g*) Sect. 35 (1).

(*h*) *Ante*, p. 101. See also sect. 2 (1) (iv). It may be remarked, however, that the Literary Copyright Act, 1842, also included "maps, charts or plans" amongst the subjects of copyright, yet it was generally considered that an architect's plans fell under the Fine Arts Copyright Act, 1862, and it is possible that "*maps, charts, plans, tables and compilations*" in sect. 35 of the Act of 1911 do not include architects' plans.

(*i*) Sect. 5 (2).

(*k*) Sect. 5 (1) (b).

(*l*) Sect. 2 (1).

(*m*) Sect. 2 (1) (ii).

included amongst "artistic works," and that such a work is defined as meaning "any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection given by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction" (*n*). The work must also be "original" (*o*), but, as we have seen (*p*), this does not imply more than that the work is the personal effort of the architect.

Artistic character or design.

Protection is—unfortunately, in our opinion—limited to works "having an artistic character or design." One of the differences between works of architecture and other works of art lies in the fact that the former are, primarily, utilitarian in character, whilst the latter are, primarily, artistic. It is submitted that, notwithstanding that the buildings must have an artistic character or design, the Courts will not constitute themselves judges of artistic style. The object of the provision in question is, it is submitted, to prevent an architect from claiming protection against imitation of something which he has erected in a certain way, with a view to obtaining a purely utilitarian object. For instance, if he has made a chimney of a certain shape or height with a view to prevent its smoking, his chimney would not be entitled to copyright; he must seek protection for his invention, if he can, under the patent laws. On the other hand, it is submitted that the fact that a building is plain does not necessarily disentitle it to protection—its very beauty may arise from its simplicity—although it will doubtless be more difficult to prove infringement of copyright in a plain building than in one showing marked originality. An architect who has erected a façade showing six windows and a door clearly could not complain of another building showing the like number of windows and doors, for each architect may have drawn from common sources; but if his plain building has been servilely copied down to the smallest detail, there seems no good reason for depriving him of the right to complain. Slight differences between buildings of no marked originality will prevent them from being held to be copies of each other, which would not be the case if the buildings were of an original character.

Building or structure.

The work to be protected must be a "building or structure or a model for the same." No general definition of the words "building or structure" can be given (*q*), although it has been

(*n*) Sect. 35 (1). (*o*) Sect. 1.
(*p*) *Ante*, p. 49.
(*q*) *Per* Byles, J., *Stevens* v. *Gourley* (1859), 7 C. B. N. S. 99.

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said that *primâ facie* a "building" means "a block of brick or stone work covered in by a roof" (*r*). But the words must be construed reasonably, having regard to the object of the statute (*s*). Upon this principle, it is thought that the building or structure must be of such a character as is usually erected upon the ground from plans with elevations, but that, if it be of such a character, it will be entitled to protection not only as a whole, but in every architectural detail. For instance, a chimney-piece might, it is thought, be entitled to copyright, subject to this, that the detail must not be capable of being registered as a design under the Designs Act, 1907 (*t*), and intended to be used as a model or pattern to be multiplied by some industrial process (*u*).

First owner of copyright.

The copyright in an architectural work will vest, in the first instance, in the person who has been the author of the plans (*x*). Such person—and not the builder—is clearly the "author" of the architectural work. It will not be usual for an architect to be under a "contract of service or apprenticeship" (*y*) with the client who employs him to design a building, and the latter must remember that if his building is copied, it will be the architect, and not himself, who will have the right to complain; unless he has obtained an assignment of the copyright in writing from the architect (*z*). So, the client will have no right to build other buildings from the plans which, as we have seen, will generally be his property, whilst the architect, unless he has expressly or impliedly agreed to the contrary (*a*), will be at liberty to repeat the building.

"Publication."

It would seem that an architectural work of art will rarely be a published work. "Publication," for the purposes of the Act, means "the issue of copies of the work to the public," and "photographs and engravings" of architectural works are not to be deemed publication. It is submitted that not even the repetition of a building down to the smallest detail would be a "publication" within the meaning of the Act, for that could hardly be

(*r*) *Moir* v. *Williams*, (1892) 1 Q. B. 264. See also *Waite's Exors.* v. *Inland Revenue Commrs.*, (1914) 3 K. B. 196.

(*s*) *Per* Lindley, L. J., *Lavy* v. *London County Council*, (1895) 2 Q. B. 577, 582. It is submitted, therefore, that cases decided under other Acts, *e.g.*, the London Building Acts, have little or no application. As to the erections that have been held to be "buildings or structures" under the London Building Act, see 2 Halsbury's Laws of England, p. 175.

(*t*) 7 Edw. VII. c. 29.

(*u*) Sect. 22, see *ante*, p. 95 *et seq.*

(*x*) Sect. 5 (1).

(*y*) Sect. 5 (1) (b).

(*z*) See Chapter "Assignment of Copyright," *ante*, p. 120.

(*a*) Probably an implied agreement not to repeat the building might be readily implied.

regarded as an issue of copies "to the public" (*b*). "Engravings" include etchings, lithographs, woodcuts, prints, and other similar works (*c*), but do not include paintings and drawings. If a painting or drawing can be correctly called a "copy" of a building or structure (*d*), it would seem that the only way in which the architect could publish his work would be by issuing paintings or drawings to the public (*e*).

Foreign architects.

It consequently follows that, apart from international regulations, a foreign architect does not obtain copyright in buildings erected according to his designs in England unless he were—as, no doubt, he usually would be—resident within a part of the King's dominions to which the Copyright Act extends during a substantial portion of the period during which the buildings were being constructed (*f*). On the other hand, it follows from the fact that construction is not publication, that a British architect could claim protection in England against piracy of a building which has been erected from his designs in a foreign country (*g*).

Term of copyright.

The fact of non-publication of an architect's work does not, however, make any difference to the term of copyright. The period of protection will in any case be during the life of the author and fifty years after his death, for sect. 17 of the Act, relating to posthumous works, does not apply to an architectural work.

Commencement of copyright.

Nor is the date when the copyright commences a matter of great moment, but the question may be material if it should ever be necessary to decide the question whether an architectural work was or was not entitled to protection at the date when the Copyright Act first came into force, that is, the 1st July, 1912. The protection given to architectural works is an entirely new right conferred for the first time by the Act of 1911, and that Act has no retrospective operation, sect. 24 only applying to works which were entitled to some copyright protection immediately before the commencement of the Act (*h*). Supposing, then, a building or structure were in the course of erection on the 1st July, 1912, but were not completed until after that date; is that building or structure entitled to protection under the Act? The answer probably is that that portion of the building which was erected after

(*b*) Sect. 1 (3). For the same reason the building will not be a publication of the plans.
(*c*) Sect. 35 (1).
(*d*) As to which see *ante*, p. 191.
(*e*) Paintings do not infringe the copyright in the structure (sect. 2 (1) (iii)).
(*f*) Sects. 1 (1) and 35 (4).
(*g*) Sect. 1 (1) (b).
(*h*) See *post*, Chapter VII.

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the date in question is so entitled, but not that portion which was erected prior to that date. Copyright, in fact, probably attaches to each portion of a building as the same is completed.

Infringement.

It is quite impossible to say how the Courts will apply the general principles as to infringement of copyright (*i*) to architectural works, but it is to be noticed that paintings, drawings, engravings and photographs, unless they are in the nature of architectural drawings or plans, are not infringements of the copyright in such works (*k*). In fact, the infringement must be another building or structure.

Remedies for infringement.

As regards the remedies for infringement, it is provided (*l*) that where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced (*m*), the owner of the copyright is not to be entitled to obtain an injunction or interdict either to restrain the construction of such building or structure or to order its demolition; further, that the other provisions of the Act which provide that an infringing copy of a work is to be deemed to be the property of the owner of the copyright, or impose summary penalties, are not to apply in like cases. If, therefore, the infringing building has been either finished or commenced, the only remedy of the owner of the copyright will be an action for damages (*n*).

(*i*) *Ante*, Part II., Chapter VIII.
(*k*) Sect. 2 (1) (iii).
(*l*) Sect. 9.
(*m*) The actual building must have been commenced. The section would not apply if only the plans had been got out.
(*n*) *Ante*, Chapter IX. Part II.; and as to an innocent infringer, see *ante*, p. 203.

CHAPTER IV.

CINEMATOGRAPHS.

The methods of cinematography.

THE principle of the cinematograph is well known. It consists of a series of photographs projected upon a screen in such rapid succession as to give the illusion of motion. Similar illusion might, doubtless, be produced by a series of drawings, but, for practical purposes, at present, photography may be treated as the exclusive means for obtaining the necessary pictures.

Courses open to the maker of a film.

A film may be regarded as an original work or a derivative work or a combination of the two. The producer of the film may adopt one of several courses:—

1. He may photograph a single incident or series of consecutive incidents actually occurring in life—*e.g.*, the race for the Derby.

2. He may photograph a series of disconnected incidents and combine them in such a way as to make them appear as though they had happened consecutively—*e.g.*, by photographing incidents in the life of an individual which actually happened on different days, but which, upon the cinematograph, are made to appear as though no interval of time had elapsed between the various incidents.

3. He may re-enact, by his own actors, in front of the camera selected incidents as he may conceive them to have in fact happened—*e.g.*, a life of Mary Queen of Scots or Queen Victoria.

4. He may dramatize the novel of another and perform his work in front of the camera, arranging the scenery and engaging the performers.

5. He may make a film from a dramatic piece as it is actually being played in a theatre at the time, or procure the piece to be acted in order to make a film.

6. He may himself be the author of the novel or drama to be reproduced on the cinematograph, or he may employ another to write him a plot.

How affected by the copyright laws.

It is obvious, therefore, that the maker of the film is liable, in doing so, to infringe the rights of various other persons, but that,

on the other hand, he may acquire independent rights, deserving of protection.

Again, assuming for the moment that the proprietor of the film is entitled to copyright therein, his rights are liable to be infringed either by the taking of a single picture from his film, or by the copying of the entire series of pictures, or by the series being "performed" by being thrown upon the screen in public.

The foregoing will sufficiently indicate that this new invention raises some complicated questions in the law of copyright which, unfortunately, the new Act does not very clearly solve.

Old law

It seems fairly clear that under the old law the proprietor of the copyright in a cinematograph film had a right to prevent a single picture being copied from his film; in other words, his film was entitled to protection like any other photograph (*a*). On the other hand, under the old law it was not an infringement of copyright to dramatize a novel, provided the expressions employed by the novelist were not copied (*b*), and the making of a cinematograph film was, presumably, no infringement of copyright; but whether the exhibition of a film in public could be fairly said to be a public "performance" of a dramatic work was, it is believed, never actually decided (*c*).

Copyright under new Act includes right to make cinematograph film.

In the Copyright Act, 1911, the only express references to cinematography are to be found in sects. 1 and 35. By sub-sect. (2) of the former section, it is provided that "copyright" shall include the sole right, in the case of a literary, dramatic or musical work, to make any . . . cinematograph film or other contrivance by means of which the work may be mechanically performed; and by sect. 35 (1) "cinematograph" is defined as including any work produced by any process analogous to cinematography. This right is confined to literary, dramatic and musical works, and is not extended to artistic works. It is, perhaps, not very clear whether an artistic work could be "performed" by means of a cinematograph film (*d*), but it is to be regretted that the British Code should have here departed from

(*a*) *Barker Motion Co.* v. *Hulton* (1912), 28 T. L. R. 496.

(*b*) *Ante*, p. 163.

(*c*) The point was raised in *Glenville* v. *Selig Polyscope* (1911), 27 T. L. R. 554; see also *Karno* v. *Pathé Frères* (1909), 100 L. T. 260; *Newark* v. *National Phonograph* (1907), 23 T. L. R. 439. In the case of *London Theatre of Varieties* v. *Evans* ((1914), 30 T. L. R. 258), the Court held that a music-hall artiste who performed a sketch with the object of enabling a cinematograph film to be made, thereby broke a covenant "not to permit any colourable imitation, representation or version of his performance to be given."

(*d*) A magic lantern slide being unaccompanied by the illusion of motion could hardly be regarded as a "performance," but it might perhaps be an exhibition by way of trade (sect. 2 (2)).

the provisions of Article 14 of the Revised Berne Convention (*e*), which requires that authors of "literary, scientific *or artistic works*" shall be given "the exclusive right of authorising the reproduction and public representation of their works by cinematography."

Films taken from novels.

Incidentally, we may here recall that under the new Act authors of novels or other non-dramatic works have the right to prevent their works from being converted into dramatic works by way of public performance "or otherwise" (*f*). It is therefore clear that if the cinematographer adopts expedient number (4) referred to above, he must obtain the licence of the proprietor of the copyright in the novel; and, similarly, if he adopts expedient number (5), he must obtain a licence from the proprietor of the copyright in the dramatic piece. It is also submitted that if he does not obtain such licence, he, by *making* the film, infringes literary rights, and not performing rights. On the other hand, there is no one who can prevent him adopting any of the other expedients referred to, provided he does the necessary photography and arrangement independently, and does not copy another's film or adopt another's method of arrangement. As already pointed out, there appears to be nothing in English law that ordinarily gives anyone a right to object to his being "snapshotted" in a public place, although any "faking" of the photograph might perhaps bring the photographer under the law of libel (*g*), and sometimes the taking of a photograph might be restrained by injunction, upon the ground that it was done in breach of confidence.

Public exhibition of films.

Besides the making of the film, the public exhibition of the film may be an infringement of copyright. Copyright includes the sole right to perform a work or any substantial part thereof in public (*h*), and "performance" means "any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument." Thus, any doubt as to whether a cinematograph show is a "performance" of a literary or dramatic work is removed, but it was held in the case of *Glenville* v. *Selig Polyscope* (*i*) that a person who sells films knowing that they are to be publicly exhibited, and who advertises them for public performance, does not himself either perform

(*e*) Appendix B., *post*.
(*f*) Sect. 1 (2) (c), *ante*, p. 164, n.
(*g*) *Ante*, p. 117, n. (*g*); *Corelli* v. *Wall* (1906), 22 T. L. R. 532.
(*h*) Sect. 1 (2); see *ante*, p. 163, where the meaning of performance "in public" is more fully considered.
(*i*) (1911), 27 T. L. R. 554; see also *Karno* v. *Pathé Frères* (1909), 100 L. T. 260. In America the contrary has been held: *Kilmer* v. *Harper Bros.* (1911), 222 U. S. R. 55.

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the work or cause it to be performed. In the same case it was further held that an exhibition by the makers of a film upon their business premises for the purpose of inducing their customers to purchase the film was not a public performance. This case was decided under the old law, and in a more recent case where the defendants, by means of posters and handbills, announced their intention of exhibiting a certain film at a theatre, Mr. Justice Horridge held that they had thereby "authorised" a performance of the work within the meaning of sect. 1, sub-sect. (2) of the Act of 1911, and so infringed the plaintiffs' copyright (*k*). The public exhibition of a film is an infringement of performing rights, and the right to restrain the same will belong to the author or the assignee of the performing rights, unless the cinematograph rights have been excepted from the assignment.

Problems arising as to copyright in the film.

Turning now to the protection which is accorded to the film itself, we do not find the Act to be very clear upon the point. The difficulty arises from the fact that the film may be regarded from two points of view: it consists of a series of photographs, and from this point of view it is an "artistic work"; but it is also a means by which dramatic incidents may be represented, and from this point of view it is a "dramatic work." That the film may be regarded as a dramatic work is made clear from the definition section (*l*), which states that a "dramatic work" is to include "any cinematograph production where the arrangement or acting form, or the combination of incidents represented give the work an original character." Again, the rights of the proprietor of the film may be invaded by the copying of a single picture, or by the copying of the entire series of pictures, or by the unauthorised use for public exhibition of a film lawfully or unlawfully manufactured.

Dramatic and non-dramatic films.

The Act seems to recognise the distinction between a dramatic and a non-dramatic film (*m*) in providing that a film is only to be regarded as a dramatic work "where the arrangement or acting form, or the combination of incidents represented give the work an original character." Referring back to the various methods which have been suggested as open to the person setting out to make a film for a cinematograph show (*n*), it is submitted that

(*k*) *Fenning Film Service* v. *Wolverhampton, &c. Cinemas*, (1914) W. N. 338.

(*l*) Sect. 35 (1).

(*m*) In the American Copyright Act, 1909, as amended by the Act of 1912 (Appendix D.), the same distinction is to be found, the expressions used being "motion-picture photo-plays," and "motion pictures other than photo-plays."

(*n*) *Ante*, p. 247.

all, except number (1), and, possibly, number (5) (*o*), answer the definition of a dramatic work, and it is submitted that a film made in any of those ways is entitled to full protection as a dramatic work. If the film consists of a series of photographs depicting an event, and the cinematographer has not in any way arranged or combined the incidents in such manner as to give the work an original character, then it does not appear to be a dramatic work. This does not, however, it is submitted, imply that it is entitled to no protection whatsoever; but all non-dramatic films are entitled to protection simply as a series of photographs, which, as we shall see, means a lesser period of protection than in the case of a dramatic film.

Reasons for distinction.

No doubt there is a logical principle underlying the distinction between a dramatic and a non-dramatic film—the former is the result of an intellectual effort combined with technical skill; to produce the latter only the technical skill is needed. The former is therefore given by the Act a higher degree of protection as a dramatic work, the latter a lower degree of protection as a photographic work. At the same time it is thought that logic might in this case have been sacrificed to convenience, and the distinction certainly seems likely to give rise to difficulties in some cases, particularly as the dividing line between a dramatic and a non-dramatic film may not always be easy to draw.

Consequences of distinction.

The main differences between the rights of the owner of the copyright in a dramatic and a non-dramatic film appear to be as follows:—First, the dramatic film receives protection for the longer period, namely, the life of the author and fifty years after his death (*p*), or if unpublished at the author's death, until the date of publication and for fifty years afterwards (*q*), whereas the non-dramatic film is only protected for the shorter period of fifty years from the date of the making of the film (*r*). Secondly, the dramatic film may be reproduced by anyone, subject to payment of a royalty, twenty-five years after the author's death (*s*), whereas probably the royalty system does not apply at all to a non-dramatic film (*t*). Thirdly, the first owner of the copyright in a dramatic film will be the "author" of the work, unless he was under a contract of service with another, and the film was made

(*o*) In case No. 5 there is certainly a dramatic work, but there appears to be no "original character" given to it by the maker of the film.
(*p*) Sect. 3.
(*q*) Sect. 17.
(*r*) Sect. 21.
(*s*) Sect. 3. But this does not give a right of public performance, see p. 106, *ante*.
(*t*) This system does not, it is thought, apply to photographs, see *ante*, p. 108.

by him in the course of his employment, in which case the employer would be the first owner of the copyright (*u*), whereas the first owner of the copyright in a non-dramatic film will be the owner of the negative at the time the film was made (*x*), unless the film was ordered by some other person and was made for valuable consideration in pursuance of that order, in which case the person who ordered the film will, in the absence of contrary agreement, be the first owner of the copyright (*y*).

The "author" of a film.

The "author" of a dramatic film is, of course, not the photographer who takes the pictures, nor the actors, if any, who play in front of the camera, but the person who invents the plot or arranges the incidents.

Whether a dramatic film can be regarded as a photographic work.

The question may arise as to whether a dramatic film can for any purposes be regarded as a photographic work, inasmuch as it certainly consists of a series of photographs. It is submitted that, if the owner of the copyright in a film were to detach a single picture and publish it separately, the picture so published would only be entitled to the lesser period of protection enjoyed by a photograph. But if a pirate were to copy a single picture which had never been published separately by the owner of the film, would he infringe dramatic rights or photographic rights? A person who took a photograph of a single incident in a play which was being acted upon a stage, would not, it is thought, infringe either the literary or performing rights in the play (*z*), and it might be thought that the same would apply to a person taking a single picture from a dramatic film, but it is submitted it is not so. The object of a dramatic work is to produce something which can be performed in the view of an audience. The means by which this result is to be obtained, whether by writing and actors performing before the audience, or by a series of photographs to be thrown consecutively upon a screen, are subordinate to the desired result. Regarded as a series of pictures making up a total dramatic work, a dramatic film is no more a photographic work than a photograph of a manuscript would be a photographic work, and, just as the author who prints his dramatic work can sue anyone who takes a substantial portion of his letterpress, so it is submitted the person who has made a film of his dramatic work can sue anyone who copies a substantial portion of his film, and this at any time during which the film, regarded as a whole, is entitled to protection.

(*u*) Sect. 5 (1), *ante*, p. 117.
(*x*) Sect. 21, *ante*, p. 113.
(*y*) Sect. 5 (1) (a).
(*z*) To "make" a cinematograph film is, however, an infringement of copyright: sect. 1 (2) (d), and sect. 2 (1).

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Effect of assignment of copyright prior to the commencement of the Act.

A curious point arises in connection with cinematograph exhibitions of works, the copyright in which has been assigned prior to the date of the commencement of the new Act (*a*). The short effect of sect. 24 (1) of the Act is that the person who at the date of the commencement of the Act, was entitled to any such right in a work, as is specified in the first column of the Schedule to the Act, is to be entitled to the substituted right specified in the second column of the Schedule, subject, where there has been an assignment of the right, to the author becoming entitled to the benefit of the extra period of protection allowed by the new Act (*b*). By virtue of the Schedule, the person entitled at the commencement of the Act to copyright in a work "other than a dramatic or musical work" becomes entitled to "copyright as defined by this Act." If, therefore, the author of a literary work has, prior to the commencement of the Act, assigned his copyright to a publisher, it is reasonably clear that it is the publisher, and not the author, who has the right to dramatise the work and make and exhibit cinematograph films. Similarly, in the case of a musical or dramatic work, if both copyright and performing right have been assigned, the assignee has all cinematograph rights, for he, too, is given by the Schedule "copyright as defined by this Act." But what if the author of a dramatic or musical work has assigned his performing rights, but retained his copyright, or *vice versâ?* Here, the effect of the Act is not so clear. The Schedule provides that in such case the owner of the copyright is to be entitled to "copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public," and that the owner of the performing rights is to be entitled to "the sole right to perform the work in public, but *none of the other rights* comprised in copyright as defined by this Act." "Performance," as we have seen, under the Act includes any visual representation of the dramatic action in a work "by means of any mechanical instrument" (*c*). It therefore appears that the right of *public exhibition* of the work by means of a cinematograph belongs to the proprietor of the performing rights and not to the proprietor of the copyright; but has the former the right to *make*, as distinct from the right to *exhibit*, a cinematograph film? It is submitted that he has not, inasmuch as sect. 1, sub-sect. (2) (d) treats the right to "make" a cinematograph film as a totally distinct right from the right of public

(*a*) *I.e.*, the 1st July, 1912.
(*b*) The section is more fully considered in Chapter VII., *post*.
(*c*) Sect. 35 (1).

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performance. If this be so, then the result is to produce a kind of stalemate: the owner of the copyright has the right to "make" the film, but not to "exhibit" it; the owner of the performing rights has the right to "exhibit" the film, but not to "make" it. Practically, therefore, a cinematograph exhibition can only be given by mutual arrangement between the respective owners of the performing rights and the copyright, and this seems to be a perfectly fair result (*d*).

Protection of foreign films.

Another point that has given rise to some difficulty is that the Act expressly provides that the performance in public of a dramatic or musical work is not "publication" of a work (*e*), and although this is only expressly provided for in the case of a dramatic or musical work, it is thought that inasmuch as publication means the issue of "copies" of the work to the public (*f*), the exhibition of a film—whether a dramatic or a non-dramatic film—upon the cinematograph screen would not be a publication of the work (*g*). The importance of this, of course, lies in the fact that, except under international arrangement, unpublished works are only entitled to protection under the Act of 1911 if the author was, at the date of the making of the work, a British subject or resident within the parts of His Majesty's dominions to which the Act extends (*h*). A great number of American films are exhibited in England, and as the United States of America is a country with which Great Britain has no international arrangement, and which has obtained no Order in Council under sect. 29 of the Act, it follows that these films do not become entitled to copyright protection under the Act, even though their first exhibition has taken place in England and the only way in which such copyright protection can be obtained is by first "publishing" them in England in some way or another. This state of the law has caused some perturbation amongst American film proprietors, but it is probable that such persons run no very considerable risk, owing to the natural difficulties of copying a cinematograph film. It is believed not to be the custom of owners of cinematograph

(*d*) On the other hand, it has been held in France that a cinematograph film infringes performing rights and not literary rights. In the case referred to leave had been obtained, upon payment of a certain sum, to make and exhibit a film illustrating certain works of the late Alexandre Dumas. The literary and the performing rights in the works of that author were vested in different persons, and the Court held that the sum paid for the cinematograph rights belonged to the owner of the performing rights, and not to the owner of the literary rights: *Levy* v. *Dumas*, Cour de Paris, 17th May, 1912; "Le Droit d'Auteur," 1912, p. 115. The French law does not, however, expressly confer the right to "make" a film upon the owner of the copyright.

(*e*) Sect. 1 (3).
(*f*) *Ib.*
(*g*) See *ante*, p. 37.
(*h*) *Ante*, p. 24.

films to sell the same outright, but only to hire them out to the proprietors of the cinematograph theatres, who are given limited licences to publicly exhibit them. Any breach of the conditions imposed upon the licensee could be restrained by injunction as a breach of contract or confidence (*i*). Further protection may be gained for a dramatic film by publishing simultaneously in Great Britain and America a book or pamphlet containing a short description of the film, its plot and the arrangement of scenes (*k*). If this be done, any cinematograph film which was a colourable imitation of the original film would be an infringement of the copyright in the literary work.

(*i*) Sect. 31, *see ante*, p. 30.

(*k*) The "manufacturing clauses" of the American Copyright Act do not apply to dramatic works, so that these prints need not be printed in America: see *post*, "Copyright in United States of America," *Hervieu* v. *Ogilvie* (1909), 169 Fed. R. 978.

CHAPTER V.

MECHANICAL CONTRIVANCES.

Controversy as to gramophones, &c.

THERE is, probably, no topic which has caused so much controversy during recent years amongst those interested in Copyright legislation as the question as to the rights of musical composers to prevent their compositions from being reproduced by mechanical means.

History of the controversy.

In the year 1886, the date of the Berne Convention, the only mechanical means generally known for reproducing music were musical boxes and Barbary organs. When, therefore, at the request of the Swiss delegates to the Conference of Powers which preceded that Convention, it was, in the interests of a national Swiss industry, declared by Article 3 of the Final Protocol that mechanical reproduction of musical airs should be no infringement of copyright, musical composers did not feel that they were abandoning rights of any great value to themselves. But when instruments were invented capable of reproducing not one or two tunes, but any number of tunes, and even the words of songs, by means of perforated rolls, discs and cylinders, and it was found that these evidently supplied a public need and met with a ready market, composers became perturbed. Actions were instituted in many countries with a view to testing whether the manufacture and sale of these contrivances were not an infringement of the composers' copyright.

Boosey v. *Whight.*

Composers met with varying success in different countries (*a*). In England the Court of Appeal, affirming Stirling, J., held that the interchangeable parts of a machine for reproducing sounds could not reasonably be taken to be "copies" of sheets of music,

(*a*) In Italy and Belgium the decisions of the Courts appear to have been uniformly in favour of the composers. The French Courts have been hampered by domestic legislation similar in effect to Clause 3 of the Protocol to the Berne Convention, to which, however, a strict construction has been given. Thus the French Courts have held that the permission to reproduce a "musical air" does not authorise the reproduction of the *words* of a song. The American Courts followed the English decisions, and held that mechanical instruments could not reasonably be held to be "copies" of musical works: *White Smith* v. *Apollo Co.* (1906), 147 Fed. R. 226. In Germany legislation was introduced expressly dealing with mechanical instruments in the year 1901.

and therefore that they did not infringe the composer's copyright under the Copyright Act, 1842 (*b*). The correctness of this decision was doubted by many, but the case was not taken to the House of Lords, and an attempt, in the year 1909, to convince the Court that the law had been altered on this point by the Musical (Summary Proceedings) Act, 1902 (*c*), met with no success (*d*); and a like attempt, in the year 1912, to obtain a decision to the effect that the mechanical contrivances infringed a composer's common law copyright met with the same fate (*e*).

Opposition to amendment of the law.

Upon the assumption that the case of *Boosey* v. *Whight* (*f*) correctly expounded the British copyright law, a very large industry in the manufacture of these mechanical devices was built up in this country. In the Revised Convention of Berne, 1908, a clause was inserted requiring that signatories to the Convention should give protection to composers against reproductions of their works by mechanical means (*g*). When, therefore, in the year 1910, a Parliamentary Committee was formed to report to the Houses of Parliament how far it was advisable to alter the British law in order to comply with the requirements of the Revised Convention, musical composers met with very powerful opposition from the manufacturing interests. On behalf of the manufacturers it was urged that an industry in which much capital was invested, which gave employment to large numbers, and brought good music into the houses of the poor ought not to be ruined by any alteration of the law, to all of which arguments it was replied that no industry ought to be permitted to flourish upon the methods of the highwayman. In fairness to the manufacturers, it should be said that they all willingly recognised that some remuneration was due to composers whose works were adapted to mechanical reproduction, their chief fear being that, if composers were allowed unlimited powers to either permit or prohibit the reproduction of their works by these means, the result might be that the largest and wealthiest firms engaged in the industry would be able to obtain a monopoly in the most popular works to the prejudice of their smaller competitors in business. With the object of preventing any such result, they urged that some provisions similar to those which had recently been introduced into the American Copyright Act (*h*),

(*b*) *Boosey* v. *Whight*, (1899) 1 Ch. 836; (1900) 1 Ch. 122.
(*c*) 2 Edw. VII. c. 15.
(*d*) *Newmark* v. *National Phonograph Co.* (1907), 23 T. L. R. 439.
(*e*) *Monckton* v. *Gramophone Co.* (1912), 106 L. T. 84.
(*f*) *Supra.*
(*g*) Article 13, Revised Convention of Berne, Appendix B., *post*.
(*h*) United States Copyright Act, 1909, s. 1 (e).

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giving powers to compulsorily acquire licences to reproduce musical works by mechanical means upon payment of a fixed royalty, should be inserted in the English Bill. The manufacturers failed to convince the Copyright Committee, who reported, with some few dissentients, in favour of allowing composers full control over the reproduction of their works by mechanical means. The manufacturers thereupon changed the scene of their efforts to the lobbies of the House of Commons, where they met with better success.

Amendment of Copyright Bill in Committee.

The Copyright Bill, as originally drawn, gave effect to the views of the majority of the Copyright Committee and left to composers the full control over mechanical reproduction of their works, but, in Committee of the House of Commons, a clause—now sect. 19 of the Act—was inserted, the short effect of which is to compel a musical composer, if he has granted a licence to one person to reproduce his work mechanically, to grant to any other person a licence to reproduce the same work in like manner upon payment of a certain royalty to the composer. However distasteful this "royalty clause" may be to composers, they must nevertheless admit that, if the case of *Boosey* v. *Whight* (*i*) correctly expounded the old law, their position has been clearly improved by the new Act.

Provisions of the Act of 1911.

Turning now to the sections of the Act of 1911 which deal with mechanical reproduction, we find that sect. 1 (2) (d) provides that copyright in the case of "a literary, dramatic or musical work" (*k*) includes the sole right to make or authorise the making of 'any record, perforated roll or other contrivance by means of which the work may be mechanically performed or delivered." This exclusive right is, *primâ facie*, vested in the "author" of the work (*l*), and its term is during the life of the author and fifty years after his death (*m*), or, if the work is unpublished at the date of the author's death, until publication and for fifty years thereafter (*n*).

Public performance by means of mechanical instruments.

We also find that an author is given "the sole right . . . to perform . . . the work or any substantial part thereof in public" (*o*), and "performance" is defined as meaning "any acoustic representation of a work . . . including such a representation made by means of any mechanical instrument" (*p*). Thus, the proprietor of the copyright has a clear right to prevent the public performance (*q*) of his work by means of mechanical

(*i*) *Supra*.
(*k*) An "artistic work" is omitted.
(*l*) Sect. 3.
(*m*) Sect. 5 (1).
(*n*) Sect. 17.
(*o*) Sect. 1 (2).
(*p*) Sect. 35 (1).
(*q*) As to the meaning of public performance, see *ante*, p. 163.

instruments, a right which he probably possessed even under the old law (*r*).

Mechanical rights where the copyright has been assigned.

Copyright may, therefore, be infringed either (a) by making the record which is capable of mechanically reproducing the work of another, or (b) by using the record in such a manner as to cause the work to be performed in public. Both these rights belong to the author, and if there has been an assignment of his rights by the author it is submitted that he retains all rights which he does not expressly, or by necessary implication, assign. It is thought, therefore, that whereas an assignment of copyright out and out will carry the right of reproduction by mechanical instruments and the right of public performance by means of the like instruments to the assignee, the assignment of the literary rights alone will not carry the right to make a record by which the work can be mechanically reproduced, for this is an entirely new and, it is thought, distinct right (*s*), although the making of the infringing article is rather in the nature of an infringement of the literary copyright than of the performing rights. On the other hand, the right of public performance by mechanical instruments is not, it is submitted, a right distinct from the right of public performance by other means, and would pass to the assignee of the performing rights, unless expressly excepted from the assignment.

Musical works consisting of words and music.

If the work that has been unlawfully reproduced by means of a record, roll, or other like contrivance, be a musical work consisting of words and music, it may not infrequently arise that the copyright in words and music will be vested in different persons. It is submitted that in that case the manufacturer is liable to be sued for infringement by both or either of those persons, and that the permission to reproduce the song upon a mechanical instrument must be obtained from both authors (*t*). Even if the author of the words has permitted them to be used by the author of the music for publication as a song, that does not, it is submitted, authorise the latter to reproduce the words upon a record or other like contrivance. The Act, no doubt, provides that, once permission has been given to reproduce a song mechanically, the author of the words is subordinated to the author of the music (*u*),

(*r*) *Newmark* v. *National Phonograph Co.* (1907), 23 T. L. R. 439.

(*s*) See as to assignments made prior to the commencement of the Act, sect. 19 (7) (c), *post*, p. 271.

(*t*) In the case of *Rubens* v. *Pathé Frères* (*Times*, 20th Dec., 1912), it was held that the composer of the music could sue in respect of a gramophone record made without his consent without joining the author of the words as his co-plaintiff.

(*u*) Sect. 19 (2) (ii), *post*, pp. 261, 265.

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but this provision of the Act does not, it is thought, apply in the case where no such permission has ever been granted.

The "royalty section" of the Act.

We now turn to examine the important provisions inserted in sect. 19 of the Act in the interests of the manufacturers of mechanical instruments and with a view to preventing a monopoly being gained by any particular firm of manufacturers in the works of the best composers. The scheme of the section is to give anyone the right, upon payment of a royalty and complying generally with the provisions of the Act, to make records, perforated rolls or other contrivances by which any particular musical work may be mechanically performed, provided that such contrivances have previously been made by or with the consent or acquiescence of the owner of the copyright in the work. In other words, the owner of the copyright is under no obligation to grant any licence to reproduce his work mechanically, but if he elects to grant any licence he cannot make that licence an exclusive one.

Application of system to works made after the commencement of the Act.

It will be convenient to consider in greater detail the working of this royalty system, first, as it applies to works made after the commencement of the Act of 1911, and, secondly, as it applies to works made before the commencement of the Act (*x*). Sub-sect. (2) of sect. 19 is as follows:—

> "It shall not be deemed to be an infringement of copyright in any musical work for any person to make (*y*) within the parts of His Majesty's dominions to which this Act extends records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—
>
> (a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and
>
> (b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:
>
> Provided that—
>
> (i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless

(*x*) The date of the commencement of the Act is the 1st July, 1912. See *post*, p. 270.

(*y*) This, no doubt, includes a right to sell the record when made: *per* Buckley, L. J., *Monckton* v. *Pathé Frères*, (1914) 1 K. B. at p. 403.

contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced."

System only applies to "musical works."

It is to be particularly noticed that this sub-section only applies to "musical works," and no compulsory rights can be acquired under the Act (*z*) to reproduce either literary or dramatic works by means of mechanical contrivances. There is no general definition of a musical work, but it will be noticed that "for the purpose of this provision" a musical work includes "any words so closely associated therewith as to form part of the same work (*a*), but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced." Records

(*z*) Except, possibly, under sect. 4 and the proviso to sect. 3.

(*a*) It has already been submitted (*ante*, p. 259) that words and music are so associated together as to become one work only for the purpose of this royalty section, and after permission has once been given for mechanical reproduction. It is very questionable whether this association of words and music is not contrary to the terms of the Revised Convention of Berne. By Article 13 of that Revised Convention it is permissible for any country to impose by its domestic legislation reservations and conditions upon the rights of authors of "musical works" with regard to the adaptation of their works to mechanical instruments, but "musical works" in that article were not intended to include words set to music. This was clearly stated by M. Renault in his report to the delegates who attended the international conference in the year 1908, which report was unanimously adopted by the delegates without alteration. M. Renault says, when dealing with the exact point (Blue Book Cd. 4467, Correspondence respecting Revised Convention, p. 143), "it clearly follows from the principles of the Union that the author of a literary work has the sole right of reproducing his work, and that any unauthorised reproduction is a piracy; any domestic legislation failing to recognise this principle would violate the Convention. The 'Protocol de Cloture' of 1886 contained a derogation from the general principle with regard to 'musical airs,' but this derogation must be strictly confined to the text establishing it. The phrase 'musical airs' does not include words, whether accompanied by music or not. The meaning of the phrase is determined by the fact that in 1886 the subjects chiefly in contemplation were musical boxes and Barbary organs, capable only of reproducing musical airs." Then, after expressing regret that the decisions of the Courts had not always followed this view, he continues:—"We are bound to affirm that the Berne Convention required no modification in order to give protection to the authors of words against reproduction of their words upon a phonograph or gramophone, and that Article 13 of the Revised Convention, which speaks of 'musical works,' should be understood in the same sense as the Protocol of 1886, which speaks of 'musical airs.'" The Revised Convention has since been construed in accordance with the views of M. Renault by the Belgian Courts: *Lecocq* v. *Compagnie Française de Gramophone*, "Le Droit d'Auteur," 1913, p. 99.

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themselves are not, therefore, subject to the royalty system—in other words, if a record has been lawfully made, a second manufacturer of records cannot reproduce directly from the record of the first manufacturer, even upon payment of a royalty, but must make an entirely fresh record.

Consent of author to first reproduction mechanically.

The first condition precedent to the right to reproduce a work by means of a mechanical contrivance without the consent of the owner of the copyright is that "such contrivances have previously been made by or with the consent or acquiescence of the owner of the copyright in the work." The principle is that an author is to be entitled to decline to permit his work to be reproduced at all by mechanical means, and no right to reproduce against his consent arises until he has given permission to some person to reproduce in this way, or has acquiesced in such reproduction. Whether, if the proprietor of the copyright has authorised reproduction by one particular contrivance, a claim may be made to reproduce, without his consent, by some other contrivance is not very clear. For instance, if permission has been given to reproduce by a perforated roll, is reproduction by record permissible? If, as seems probable, it should be held that consent to one form of mechanical reproduction gives rise to a right to reproduce by any other form of mechanical reproduction it is thought that the right must be strictly confined to the work, or the portion of the work which has been previously authorised. For instance, if the music of an opera were authorised to be reproduced by means of a perforated roll, the gramophone manufacturers could not, it is thought, insist upon a right to reproduce both words and music by means of a record, for, it is submitted, the consent of both author and composer would be necessary before a song could be lawfully reproduced by mechanical means. So, again, if permission has been given to make a record of a song without accompaniment, perhaps the makers of perforated rolls could claim no right to make a roll which would reproduce the music only without the words of the song, though probably, if the song were permitted to be sung along with an accompaniment, words and music might each be reproduced separately.

Consent of author and composer of a song requisite.

The question, above alluded to, whether, in the case of a song, any right to reproduce by other mechanical means upon a royalty basis can be acquired until there has been a consent by both the author of the words and the composer of the music is important, but, although a contrary construction seems possible, it is submitted that the effect of proviso (ii) to sub-sect. (2) of the section is that words and music only become so far associated as to become

one work after there has been a consent to mechanical reproduction by both author and composer (*b*). The consent or acquiescence which is the condition precedent to liberty to reproduce on the royalty system is that of "the owner of the copyright in the work," and even if the song is to be regarded as a single work there seems to be no good reason for saying that the composer of the music, rather than the author of the words, is to be regarded as the owner of the copyright in the composite work. In the case of a joint work the consent of all co-authors would be necessary, and it would seem illogical to put the author and composer of a song in worse positions than joint authors. The object of the proviso is, it is submitted, only to ensure that two royalties shall not be payable in respect of a song, and to make it clear that if words and music have been permitted to be reproduced mechanically both words and music are to be subject to the royalty system, bearing in mind that literary works are not themselves subject to that system.

Evidence of consent of owner of the copyright.

It is provided by sub-sect. (5) of sect. 19 that wherever any contrivances whereby musical works may be mechanically performed have been made, the consent of the owner of the copyright is deemed to have been given to the making of such contrivances if he fails to reply to the inquiries prescribed by Board of Trade Regulations within the time prescribed by such regulations. The Board of Trade Regulations, made pursuant to this power (*c*), require that the inquiries under this section are to be directed to the owner of the copyright by name, or (if his name is not known and cannot with reasonable diligence be ascertained) in general terms to the "owner of the copyright" of the musical work, to be sent, if an address within the United Kingdom is known or can with reasonable diligence be ascertained, by registered post to that address; otherwise, the inquiry is to be advertised in the "London Gazette." The notice of inquiry is to contain: (a) a statement of the name of the musical work in respect of which the inquiries are made, and of the author (if known), and (if necessary) a description sufficient to identify the work; (b) a statement of the name, address, and occupation of the person making the inquiries; (c) an allegation that a contrivance has previously been made by means of which the musical

(*b*) Of course, if the non-consenting author or composer were to refrain from interfering after knowledge that his work was being reproduced mechanically, he would doubtless be considered to have "acquiesced" in the making of the contrivance.

(*c*) Regulations 6 and 7 of the Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, Appendix E., *post*.

work may be mechanically performed, with the trade name (if known) and a description of such contrivance; and (d) an inquiry whether the contrivance so described was made with the consent or acquiescence of the owner of the copyright. The prescribed time for reply to such inquiries is to be, where the inquiries are required to be sent by post, seven days after the date when the inquiries would, in ordinary course of post, be delivered, or, in cases where the inquiries are required to be advertised, seven days after the advertisement (*d*).

Prescribed notice to be given and royalties paid.

The second condition to be fulfilled by any person who desires to reproduce a work under the royalty system is that he shall give the prescribed notice of his intention to make a contrivance and shall pay in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all contrivances sold by him, calculated at a rate which will hereafter be referred to. There are two branches of this condition: (a) the giving of a notice, (b) the payment of royalties.

Prescribed requirements as to notice.

Under the Board of Trade Regulations (*e*) the notice must be given not less than ten days before any contrivances on which the musical work is reproduced are delivered to a purchaser (*f*). The notice is to be sent by registered post to the owner of the copyright or his agent for the receipt of notice at his address within the United Kingdom if the name and address of such owner or agent can, with reasonable diligence, be ascertained; otherwise the notice is to be advertised in the "London Gazette," and any number of musical works may be included in the same advertisement (*g*). If the notice is sent by registered post, it is to contain (a) the name and address of the person intending to make the contrivances, (b) the name of the musical work which it is intended to reproduce (if known), and (if necessary) a description sufficient to identify the musical work, (c) the class of contrivances on which it is intended to reproduce the musical work (*e.g.*, whether discs, cylinders or music rolls), (d) the ordinary retail selling prices of the contrivances, and the amount of the royalty payable on each contrivance in respect of the musical work, (e) the

(*d*) Regulation 8.

(*e*) Appendix E., *post*. These Regulations are made by virtue of subsect. (6) of sect. 19, which enacts that "for the purposes of this section the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties."

(*f*) Regulation 3, *semble*, wholesale or retail.

(*g*) Regulation 3.

earliest date at which any of the contrivances will be delivered to a purchaser, (f) whether any other work is to be reproduced on the same contrivance with the musical work specified in accordance with paragraph (b) (*h*). If notice is given by advertisement, the Regulations prescribe that the advertisement "shall give the particulars required by (a) and (b) of Regulation 2, and shall also state an address from which a copy of the notice described in Regulation 2 may be obtained" (*i*). Accordingly, in a case where the name and address of the owner of the copyright is not known, a full notice must be made out containing all the particulars prescribed by Regulation 2, and a copy furnished to the owner of the copyright if he replies to the advertisement, but the advertisement itself need only contain particulars (a) and (b) with an address at which a copy of the full notice can be obtained.

To whom notice to be given.

The notice must, it is thought, in a case where the copyright in the work to be reproduced is vested in more than one person, be given to all such persons; but proviso (ii) to sub-sect. (2) enacts that "for the purposes of this provision a musical work shall be deemed to include any works so closely associated therewith as to form part of the same work." This proviso, though not very clearly worded, seems to have the effect of subordinating the owner of the copyright in the words of a song to the owner of the copyright in the music for the purposes of the sub-section. Notice of intention to reproduce a work upon a royalty basis would seem to be sufficient if given to the latter, and he, apparently, can give a receipt for the royalties payable, subject, presumably, to a liability to account to the owner of the copyright in the words (*k*).

Amount of royalty.

Next, as to the payment of the royalties. The amount of royalty payable is to be calculated (a) in the case of contrivances sold before July 1st, 1914, by the person making the contrivance, at the rate of $2\frac{1}{2}$ per cent., and (b) in the case of contrivances sold after that date 5 per cent. on the ordinary retail selling price of the contrivance calculated in the prescribed manner, but so that the minimum payable shall be one halfpenny for each separate musical work (*l*) in which copyright subsists reproduced on the contrivance, and that a fraction of a farthing is to be reckoned as a farthing (*m*). The Board of Trade Regulations (*n*) prescribe

(*h*) Regulation 2.
(*i*) Regulation 3 (b).
(*k*) Sect. 19 (4).
(*l*) N.B.—If two works are reproduced on one record, the minimum will be one penny, and so on.
(*m*) Sub-sect. (3). The proviso to this sub-section authorises the Board of Trade seven years after the commencement of the Act, and after holding a public inquiry, to alter the rate, subject to confirmation by Parliament.
(*n*) Regulation 5. See Appendix E.

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that the ordinary retail selling price of any contrivance shall be calculated at the marked or catalogued selling price of single copies to the public, or, if there is no such marked or catalogued selling price, at the highest price at which single copies are sold to the public.

Mode of payment of royalty.

Unless otherwise agreed, royalties are payable by means of adhesive labels, purchased from the owner of the copyright and affixed to the contrivance, or, in the case of cylinders, to a carton or box enclosing the cylinder, before the contrivance is delivered to a purchaser (*o*). The owner of the copyright must, by writing sent by registered post, intimate to the person who has given notice of intention to make the contrivance some reasonably convenient place within the United Kingdom from which the labels can be obtained, and supply the same of the required denominations upon tender of the price (*p*). If the labels are not available, either because the owner of the copyright has not sent an intimation of any reasonably convenient place within five days after the notice has been given him, or if he fails to supply the labels within three days after demand duly made, the contrivance may be delivered to purchasers without having labels affixed thereto, and the royalties are to be a debt due from the person making the contrivance to the owner of the copyright, and the maker must keep an account of all contrivances sold by him (*q*). Where the royalties are by agreement payable in any other mode than by means of adhesive labels, the time and frequency of the payment are to be such as are specified in the agreement (*r*).

Validity of Board of Trade Regulations.

The question of the validity of these Board of Trade Regulations, and particularly those which require manufacturers to purchase and affix adhesive labels to all contrivances prior to sale, was raised in the recent case of *Monckton* v. *Pathé Frères* (*s*). It was there urged on behalf of the defendants that the statute only required "payment," and that the Board of Trade had only power to prescribe (a) "the mode, time and frequency of the payment of royalties," and (b) regulations "requiring payment in advance, or otherwise securing the payment of the royalties." It was admitted that the purchase and affixing of adhesive labels was not a "mode of payment," but the Court held that it was a means of "securing the payment" of the royalties. "If," said

(*o*) Regulation 4 (a).
(*p*) Regulation 4 (a).
(*q*) Regulation 4 (b). The regulations also prescribe as to size, shape and design of the labels: Regulation 4 (f).
(*r*) Regulation 4 (e).
(*s*) (1914) 1 K. B. 395.

Lord Justice Buckley (*t*), "that word 'securing' means doing some act by which the debt for royalties shall become a secured as distinguished from an unsecured debt, the cross-appellants are right, but if it means ensuring or rendering certain, then they are wrong. The Board of Trade have made regulations whereby, unless otherwise agreed, royalties are to be payable by means of adhesive labels purchased from the owner of the copyright and affixed to the goods. If the copyright owner will not provide the labels, the manufacturer of records may proceed without affixing them, but, in default of agreement to the contrary, the manufacturer must, if the copyright owner provides the labels, buy them and affix them. The defendants contend, and I agree, that regulations in this respect are not within the words 'the mode of payment of royalties.' Payment is one act, supplying the labels is a second, and affixing them is a third. Neither of the last two is any part of the mode of doing the first. But are regulations as to this matter regulations for securing the payment of royalties? I think they are, if 'securing' means 'ensuring.' The royalties here in question are of very small amounts, paid upon, it may be, a vast number of goods. There is, obviously, great difficulty in ensuring that the debt created by the sale of a record shall become known to, and its payment ensured to, the copyright owner. Under these circumstances I think that the fair meaning of the word 'securing' in this context includes the meaning of ensuring, or rendering certain, the payment of royalties. If this be so, as I think it is, the regulations which the Board of Trade have made are not *ultra vires*, and this is my opinion."

In dealing, however, with the similar regulations made by the Board of Trade under sect. 3 of the Act with regard to the payment of royalties in respect of a work compulsorily published twenty-five years after the author's death, we expressed a doubt whether a regulation providing that if the owner of the copyright fails to supply labels, the amount of royalty payable to the owner of the copyright is to be a debt due from the manufacturer, was *intra vires*, upon the ground that the regulation prescribes neither a "mode" of payment, nor "ensures" payment (*u*). For similar reasons a doubt must be expressed as to the validity of the similar regulation in the event of the proprietor of the copyright in a musical work failing to supply labels to a person entitled to reproduce the work by mechanical means.

Effect of non-compliance

If there is any breach by the manufacturer of a record of any

(*t*) At p. 405.

(*u*) *Ante*, p. 105.

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with Regulations.

of the provisions of the Act or the Board of Trade Regulations, the effect will be that the record will be an infringement of the copyright in the work reproduced (*x*), and not only will the manufacturer be exposed to an action for infringement, but also any person who sells the record knowing that such provisions have not been complied with (*y*). Presumably, a vendor who sells a record which has no label attached is put upon his inquiry as to whether the royalty has been paid. It is to be noticed, however, that all the requirements of the Act and the Regulations have not to be complied with at one and the same time, and in particular that payment of the royalties does not become due until a record is sold. The only condition precedent to the actual "making" of the record appears to be that a record has "previously been made by, or with the consent or acquiescence of the owner of the copyright in the work" (*z*). The Regulations do not require that any notice need be given of intention to make the record until ten days prior to the date when any record is "delivered to a purchaser" (*a*). Payment of the royalties is to be made at the time when adhesive labels are supplied by the proprietor of the copyright, and these labels must be procured before a record is sold (*b*). If the owner of the copyright fails to supply labels possibly payment is postponed until demand for payment has been made (*c*).

Division of royalties.

It is provided that where a contrivance which reproduces two or more different works in which copyright subsists is made under these compulsory powers, and the owners of the copyright therein are different persons, the sums payable by way of royalties are to be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration (*d*). The amount of royalty in respect of each separate musical work reproduced must be not less than one halfpenny per record (*e*). In the case of co-owners of copyright, where the contribution of one author is not distinguishable from the contribution of another the royalties will, *primâ facie*, belong to them in equal shares (*f*).

Right to adapt the work for

Important limitations are put upon the right of a manufacturer who has acquired the liberty to make records under sect. 19 to make

(*x*) *Monckton* v. *Pathé Frères, ubi sup.*
(*y*) Sect. 2 (2).
(*z*) Sect. 19 (2) (a).
(*a*) Regulation 3. Sub-sect. (6) of sect. 19, however, only authorises the making of Regulations prescribing the "mode" in which notices are to be given.
(*b*) Regulation 4. The fixing of the time of payment is within the competence of the Board of Trade: sect. 19 (6).
(*c*) See *ante*, p. 105.
(*d*) Sect. 19 (4).
(*e*) Sect. 19 (3).
(*f*) *Ante*, p. 265.

mechanical reproduction.

alterations in the original work with a view to adapting the same for mechanical reproduction. It is provided by proviso (i) to sub-sect. (2) of sect. 19 that "nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question." The capacity of any mechanical contrivance is strictly limited, and it is generally found necessary to compress, arrange, or adapt a musical composition in order to make a satisfactory record. This fact is recognised by the proviso just referred to, which authorises the making of "such alterations and omissions as are reasonably necessary for the adaptation of the work to the contrivance in question," but the author is protected against any travesty of his work. Thus, if a song consists of four verses, undoubtedly it would be permissible to reproduce three only on the record. An alteration in the orchestration would also, probably, be permissible, but not, it is thought, an alteration in the harmony. In a recent case (*g*), the plaintiffs were the assignees of the copyright in the words and music of a song called "Where my Caravan has rested," which was published with a pianoforte accompaniment, but had not been adapted for an orchestra. The work had been first published prior to the coming into force of the Copyright Act, 1911, and was one, therefore, which, under the provisions of the Act, anyone could obtain the right to reproduce mechanically, notwithstanding that records of the work had not previously been made with the consent or acquiescence of the owner of the copyright in the work, and under the Act the right of authorising the working of mechanical contrivances belonged not to the plaintiffs as assignees of the copyright, but to the composer (*h*). The defendants, after giving the necessary notices to the composer and the plaintiffs of their intention to make a contrivance whereby the song might be mechanically reproduced, purchased the song and made copies of it and gave them to musical experts to make therefrom parts for the different instruments of an orchestra, for the purpose of making a disc with an orchestral accompaniment. The plaintiffs thereupon brought an action to restrain infringement of their copyright. It was admitted that the making and using a copy of the plaintiffs' music for the purpose of making an orchestral accompaniment would,

(*g*) *Chappell & Co.* v. *Columbia Gramophone Co.*, (1914) 2 Ch. 124.
(*h*) Sect. 19 (7) (a), (c), *post*, p. 271.

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before the Act of 1911, have been an infringement of the plaintiffs' copyright, but it was urged that, as the orchestration was for the purpose of making a gramophone record, proviso (i) to sub-sect. (2) of sect. 19 justified the defendants in the course they had pursued. It will be noticed that in this case the composer was no party to the action and it was not necessary to decide whether there had been any infringement of his rights, but the Court held that the Act did not affect or diminish the copyright of the assignees, and that the plaintiffs were entitled to succeed in their action. If the composer, to whom any royalties would be payable (*i*), had no right to complain of the defendants' conduct, the effect of this decision seems to be that the rights of the public may be prejudicially affected by an assignment of copyright before the coming into force of the Act of 1911, but it seems very doubtful whether the orchestration of the song was "reasonably necessary for the adaptation of the work to the contrivance in question."

Records of works made before the Act of 1911.

We now turn to consider the provisions of the Act relating to works made before the commencement of the Act of 1911. Inasmuch as it was held that the making of records was no infringement of copyright before the Act of 1911, some special provisions were obviously called for, unless, as was desired by the manufacturers of mechanical instruments, the Act was to be given no retrospective operation whatsoever.

The provisions which have been inserted in the Act relating to the matter in question are somewhat complicated. First of all, sect. 24 (1) in effect gives to every person who had copyright in his work at the date of the commencement of the Act—*i.e.*, the 1st July, 1912—in substitution for his then existing rights copyright in his work "as defined by this Act" (*k*). Such copyright includes, as we have seen, the right to reproduce the work in any material form, and particularly the sole right to make a record (*l*). The rights of the owner of the copyright are, however, in the case of all works, qualified by sect. 24 (1) (b), and, in the case of musical works, by sect. 19, sub-sects. (2) and (7). Sub-sect. (2) of sect. 19 is the sub-section already considered, giving the right in certain cases to make records without the consent of the owner of the copyright in the musical work, upon payment of royalties. Sub-sect. (7) provides that the provisions of (*inter alia*) sub-sect. (2) are to apply to musical works published before the com-

(*i*) Sub-sect. (7) (c), *post*, p. 271.

(*k*) This section is more fully considered in the Chapter on "Existing Works," *post*, Chapter VII.

(*l*) Sect. 1 (2) (d).

mencement of the Act, subject to the following modifications and additions:—

"(a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply:

"(b) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten:

"(c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives."

Any work, therefore, published before the 1st July, 1912, may be mechanically reproduced by anyone after giving the prescribed notice (*m*), notwithstanding that the owner of the copyright has never authorised reproduction in this manner: no royalty is payable in respect of any sales made before the 1st July, 1913, if any records were made or on sale before the 1st July, 1910, and in any other case a royalty at the rate of $2\frac{1}{2}$ per cent. only, instead of 5 per cent., is payable; and the right to receive the royalties belongs to the author or his personal representatives, and not to his or their assignee claiming under an assignment made prior to the passing of the Act—*i.e.*, the 16th December, 1911. But in the event of there having been such an assignment, the manufacturer of the record must not, even with the object of making that record, do any act which would be an infringement of the assignee's copyright (*n*).

(*m*) *Ante*, p. 264; *Chappell & Co.* v. *Columbia Gramophone Co.*, (1914) 2 Ch. 124.

(*n*) *Chappell & Co.* v. *Columbia Gramophone Co.*, (1914) 2 Ch. 124, *ante*, p. 269.

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Records actually made before July, 1910.

It is clear from the foregoing that after the 1st July, 1912, no records can be manufactured of musical works published before that date, unless either the consent of the author or his representatives has been obtained, or notices have been given under sub-sect. (2) of sect. 19, and the royalties, if any, are paid prior to sale. With regard, however, to records which were actually manufactured prior to the 26th July, 1910 (*o*), the general provisions of sect. 24 (1) (b) *primâ facie* apply to prevent, in any case where action has been taken before that date, whereby expenditure has been incurred in connection with the reproduction of a work in a manner which at the time was lawful, any retrospective operation of the Act from diminishing or prejudicing "any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date," without payment of compensation (*p*). But this provision is, in the case of musical works, qualified by sect. 19 (7) (*d*), which provides that "the saving contained in this Act of the rights and interests arising from, or in connection with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section."

Intention of the provisions.

It is, we think, probable that, in these provisions, the object of the draftsman of the Act was to provide that, notwithstanding that a record was *made* prior to the commencement of the Act, royalties should be payable if such record were *sold* after that date, except that in a case where records were made or on sale before the 1st July, 1910, such records were to be exempt from payment of royalties for a period of one year after the commencement of the Act, but the draftsman has certainly not used clear and unambiguous language to effect this probable intention.

Does the Act prohibit sale of copies lawfully made?

The real difficulty seems to arise from the fact that the sole right of *selling* copies of his works is no part of the general copyright of an author accorded to him by sect. 1, sub-sect. (2), of the Act (*q*). It is true that sub-sect. (2) of sect. 2 does provide that

(*o*) This was the date when the Copyright Bill of 1910 was first introduced. This Bill was dropped and re-introduced with some modifications in 1911. In sect. 19 (7) (b), however, the date is the 1st July, 1910—*i.e.*, two years before the Act came into operation: *Monckton* v. *Pathé Frères*, (1914) 1 K. B. 395, 402, 412.

(*p*) See *post*, Chapter VII., "Existing Rights," where these provisions are more fully considered.

(*q*) See *Hewitt* v. *Hall* (1862), 6 L. T. 348; *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418. The point is of importance, not only with regard to records, but

a sale under certain circumstances may be an infringement of copyright, but the sale must be of a copy which "infringes copyright," and it must do so to the knowledge of the seller. The Act, again, contains a definition of the expression "infringing," which, when applied to a copy of a work in which copyright subsists, means "any copy, including any colourable imitation made or imported in contravention of the provisions of this Act." Now it is doubtful whether a record made prior to the commencement of the Act can correctly be said to have been made "in contravention of the provisions of this Act," when the Act was not in force at the date when the record was made; the making of the record was perfectly lawful, and it is not, therefore, easy to see how the record can be regarded as a work which infringes copyright. What one would have expected to find in the Act are clear words making the sale after the Act of a record, lawfully manufactured prior to the Act, to be an infringement of the copyright in the musical composition.

Monckton v. *Pathé Frères.*

The difficulty here pointed out seems to have been entirely overlooked in the recent case of *Monckton* v. *Pathé Frères* (*r*). There the plaintiff had, in the year 1911, before the passing of the Copyright Act, 1911, composed and published a musical work called the "Mousmé Waltz." The defendants, who were manufacturers and retailers of gramophone records, after the passing of the Act, but before the 1st July, 1912—the date of the commencement of the Act—made in Belgium records of the plaintiff's musical work, and imported them into this country. After the 1st July, 1912, the defendants sold the records so made and imported, without the plaintiff's consent, and without paying royalties thereon. The question in the action was whether they were entitled so to do, and the Court of Appeal, reversing the decision of Phillimore, J., held that they were not.

Phillimore, J., in his judgment, stated his opinion to be that if sects. 1 and 2 were the only sections of the Act to be considered, their effect was that anybody might make records up to 1st July, 1912, without infringing any copyright given by the new Act, "and that records lawfully made before the commencement of the Act may be lawfully sold after the commencement of the Act" (*s*), but this latter proposition did not meet with the

also with regard to all works in respect of which copyright is more extensive under the new law than the old: sect. 24 (1), provisoes (a), (b); see *post*, Chapter VII., "Existing Works."

(*r*) (1914) 1 K. B. 395.

(*s*) (1914) 1 K. B. at p. 409.

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approval of the Court of Appeal. Lord Justice Kennedy said (*t*): "But on sects. 1 and 2 which I have cited in an abbreviated form, so far as they affect the present case, it is, in my judgment, plain that by selling after July 1st, 1912, when this Act came into operation, without the plaintiff's consent, records which were mechanical reproductions of his original musical work, the 'Mousmé Waltz,' the defendants did on the occasion of each sale commit an act which brought them, according to the express terms sect. 2, within the category of persons to be deemed to be infringers of the plaintiff's copyright." The Lord Justice was, of course, referring particularly to sect. 2, sub-sect. (2), which makes it to be an infringement of copyright for anyone to sell "any work which to his knowledge infringes copyright," but it is submitted that there are here no "express terms" making the defendants' act an infringement of copyright, unless the definition of "infringing" contained in the Act is to be ignored, and there be added to the words contained in the sub-section, "or would infringe copyright if it had been made within the part of His Majesty's dominions in . . . which the sale . . . took place" the additional words, "or if it had been made after the commencement of the Act."

It is, therefore, submitted with deference that a person can only be liable for selling after the commencement of the Act records lawfully made before the commencement of the Act if there are other provisions in the Act prohibiting such sale. It is thought that, without undue straining of language, such a prohibition may be inferred from sect. 19, sub-sect. (7). In the first place we find that that sub-section provides (*u*) that, in the case of musical works published before the commencement of the Act, for the royalty rate of $2\frac{1}{2}$ per cent. is to be substituted a rate of five per cent., "but no royalties shall be payable in respect of contrivances sold before the 1st day of July, 1913, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends, before the 1st day of July, 1910." Now, if no records made at any time before the commencement of the Act are to be liable to royalties, it was clearly unnecessary to specially exempt records made two years before that commencement from payment of any royalty up to the 1st July, 1913, and, on the other hand, it is an almost irresistible inference from the fact that such records are exempted from royalty, if sold before the 1st July, 1913, that the

(*t*) At p. 408.

(*u*) Sub-clause (b).

Act intended that all copies sold after that date should be subject to payment of royalty. We therefore draw the conclusion from this provision that where records were lawfully made before the 1st July, 1910, no royalty is payable in respect of any records sold before the 1st July, 1913, but that the intention of the Act is that royalties at the rate of $2\frac{1}{2}$ per cent. should be payable in respect of all records sold after the last-mentioned date, although that intention is not expressed in so many words.

Sub-sect. 7 (b) did not, however, cover the facts in *Monckton* v. *Pathé Frères* (*x*), because no records had been made prior to the 1st July, 1910, but there is an inherent improbability that the legislature should provide that records made before that date should be liable to pay royalties from which records made after that date, but before the 1st July, 1912, should be exempted (*y*). The learned Lords Justices who decided that case, proceeding upon the assumption that sects. 1 and 2 of the Act, taken alone, forbade the selling of the records, had little difficulty in determining that neither sect. 24 (1) (b) nor sect. 19 (7) (d) negatively deprived the plaintiffs of rights which they had under the earlier sections of the Act, but if the assumption referred to is—as has been suggested above (*z*)—erroneous, it is more difficult to interpret sects. 24 (1) (b) and 19 (7) (d) as affirmatively giving the plaintiffs rights which the other sections did not confer upon them. If sect. 19 (7) (d) had run "*nothing in this Act contained*" shall "be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section," it is submitted the section would have been clear and unambiguous, but, unfortunately, the opening words are not "nothing in this Act contained," but "the saving contained in this Act of the rights and interests arising from or in connection with action taken before the commencement of this Act shall not be construed," &c. It would seem that the "saving" which the draftsman was here referring to, is that contained in sect. 24 (1) (b), notwithstanding that, as a matter of fact, that section does not relate to action taken "before the commencement of" the Act, but to action taken "before the 26th day of July, 1910"—and this was the opinion of the Lords

(*x*) *Ubi sup.*
(*y*) See *per* Buckley, L. J., (1914) 1 K. B. at p. 404.
(*z*) *Ante*, p. 274.

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Justices (*a*). If sect. 19 (7) (d) only applied to the saving in sect. 24 (1) (b), it will be noted the defendants were not hit by it, because they had not "taken any action" before the 26th July, 1910, but the Court was of opinion that this was not its only application. "I also think," said Lord Justice Kennedy (*b*), "that, having regard to its collocation as part of sect. 19 and its reference to 'the commencement of this Act,' we ought to regard it as also referring to the almost immediately preceding enactments of sub-sect. 7 (a) and (b) of the same section. The protection afforded by those preceding sub-sections of sect. 19 to the interests of reproducers of musical works published before the commencement of the Act who are to pay only half of the standard royalty, and, further, if there has been a lawful making or placing on sale of such reproductions before July 1st, 1910, the grant of a right for twelve months after the commencement of the Act to sell without payment of any royalty, may, it seems to me, reasonably be treated as a 'saving of the rights and interests arising from or in connection with action taken before the commencement of this Act.' But, be this as it may, the important words in sect. 19, sub-sect. 7 (d), are 'contrivances, whether made before or after the passing of this Act.' They appear to me to create a very strong inference indeed, if inference be needed of the unsoundness of the defendants' contention . . . ." It is, of course, clear that records made before the 26th July, 1910, must have been made before the passing of the Act (*c*), and if sect. 19, sub-sect. 7 (d) were only to apply to the saving in sect. 24 (1) (b), the words, "whether before or after the passing of this Act," would have been unnecessary. Even, therefore, if the construction placed upon sect. 19 (2) in the case of *Monckton* v. *Pathé Frères* involves some straining of its terms, the decision itself is a fair one, and as the case is only of temporary importance, is not very likely to be challenged further.

Copyright in the records themselves.

Evidence was given before the British Copyright Committee, 1910 (*d*), that manufacturers of rolls and discs were in the habit of suffering considerable injury from having their rolls or discs pirated by other manufacturers. The original manufacturer might expend considerable skill and money in adapting a work for mechanical reproduction or in hiring a band or singer to play or sing with a view to the making of the record, and then another

(*a*) (1914) 1 K. B. pp. 404, 412.
(*b*) At p. 412.
(*c*) *I.e.*, 16th Dec., 1911.
(*d*) Minutes of Evidence taken before the Law of Copyright Committee (Cd. 5051).

manufacturer, without incurring any such labour or expense, might copy the first record, either directly or indirectly, from the original. The manufacturers, therefore, claimed that mechanical contrivances ought themselves to be made the subject of copyright, and the justice of this claim has been recognised by sect. 19 (1) of the Act of 1911, which is as follows:—

"Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts."

The intention of this provision can be readily conjectured, but its actual phraseology may possibly lead to unexpected results (*e*). The intention probably was simply to prevent one record from being copied directly or indirectly from another record, but the section goes much further than this, because it accords "copyright" in mechanical contrivances, "as if such contrivances were musical works." The term of copyright in the contrivance differs from that enjoyed by the work which has been adapted, being fifty years from the making of the original plate, and, further, a copyright may be acquired in respect of a mechanical adaptation of a non-copyright work. In respect of this copyright, the owner has apparently not merely the right to prevent copies of his record being made directly or indirectly from his plate, but also all the other exclusive rights conferred by sect. 1, sub-sect. 2 (*f*).

Copyright in record is subject to the rights of the composer of the original work.

It is, however, submitted that the copyright conferred upon the record is subject to the rights of the owner of the copyright in the original composition which has been adapted, except in so far as those rights have been interfered with by the express terms of the Act (*g*). For instance, it is submitted that a person who has manufactured a record under the compulsory powers of sect. 19 (2)

(*e*) As to "unpublished" records, see *ante*, p. 24.
(*f*) *Per* Buckley, L. J., *Monckton* v. *Pathé Frères*, (1914) 1 K. B. 395, at p. 405.
(*g*) *Chappell & Co.* v. *Columbia Gramophone Co.*, (1914) 2 Ch. 124.

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does not obtain the right to authorise, as against the owner of the copyright in the original work, a public performance of the work by means of the record, notwithstanding that by virtue of sect. 1 (2) the right of public performance is given to the owner of the copyright in the record. No doubt, sect. 19 (2) authorises the sale of records manufactured under the provisions of the clause, and the seller must have the implied right to authorise the use of the record by performance (*h*), but that performance can only be, it is submitted, of a private or domestic character. If the purchaser of a record were to give a public performance by means of the record he might, possibly, be exposed to two actions, one at the suit of the owner of the performing rights in the original work, and the other at the suit of the owner of the performing rights in the record, but the only section under which compulsory rights of public performance can be obtained appears to be sect. 4 of the Act. To hold the contrary would be manifestly unfair to the owner of the performing rights in the original work, who may be a different person from the owner of the literary rights, and who would have no right to share in any royalties payable by the manufacturer of the record.

Copyright in a record analogous to copyright in an adaptation.

The copyright in a record is, in fact, analogous to the copyright which, we have seen (*i*), is obtainable by any person who makes a substantially new arrangement or adaptation of a musical work composed by another. The rights of the adapter are subordinate to the rights of the composer, who can restrain the adaptation if his copyright is still subsisting (*k*). Sect. 19 (2) deprives the composer of the original work of any right to complain of the adaptation of his work for the manufacture and sale of records, but the clause goes no further, and does not, it is submitted, detract in any way from the performing rights of the composer. So, again, clearly the existence of copyright in a record manufactured by one manufacturer does not prevent another manufacturer from making a record of the same work either under the compulsory powers of sect. 19 (2), or by arrangement with the composer; or if the copyright in the original work has run out any manufacturer can freely make records of that work, notwithstanding that some manufacturer may still have an unexpired term of copyright in a record which he has made. But in each case the second manufacturer must make his record independently, and not copy from the first manufacturer.

(*h*) *Per* Buckley, L. J., *Monckton* v. *Pathé Frères*, (1914) 1 K. B. 395, at p. 403.

(*i*) *Ante*, p. 85.

(*k*) *Wood* v. *Boosey* (1868), L. R. 3 Q. B. 223.

It is further expressly provided that records themselves are not subject to the compulsory provisions of the Act (*l*).

No compulsory right to copy a record.

Notwithstanding that a record was made prior to the commencement of the Act, it may nevertheless be entitled to copyright, for sub-sect. (8) of sect. 19 provides as follows:—

Records made prior to the Act.

"Notwithstanding anything in this Act (*m*), where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act (*n*), copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

"Provided that—

"(i) the person who, at the commencement of this Act (*n*), is the owner of such original plate shall be the first owner of such copyright (*o*); and

"(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance."

(*l*) Sect. 19 (2), proviso (ii).
(*m*) Sect. 24.
(*n*) *I.e.*, 1st July, 1912.
(*o*) *I.e.*, notwithstanding any assignment.

CHAPTER VI.

CROWN AND UNIVERSITY COPYRIGHT.

Claims of the Crown.

It has already been noticed that printing, on its first introduction, was considered in England, as in other countries, to be a matter of State, and that the Crown claimed the right to authorise all species of publication whatsoever (*a*). When the Crown lost this prerogative, it still claimed the exclusive right to print certain works. The claim has been made in respect of the Authorised Version of the Bible (*b*), the Books of Common Prayer, Acts of Parliament (*c*) and other Government publications, law books (*d*), and even almanacks (*e*). The King's Printer and the Universities of Oxford and Cambridge hold patents from the Crown for the printing of Bibles and Prayer Books, and their right to prevent others from printing these works is well established (*f*). Various reasons have been given for the existence of this prerogative of the Crown. Some have given it as their opinion that it is founded on the circumstance of the authorised translation of the Bible having been actually paid for by King James, and its having thus become the property of the Crown. Others again have been of opinion that it is to be referred to another consideration, namely, to the character of the duty imposed upon the chief executive officers of the Government, to superintend the publication of the acts of the legislature and acts of state of that description; and also of those works upon which the established doctrines of our religion are founded, that it is a duty imposed upon the first executive magistrate, carrying with it a corresponding prerogative. That was the opinion of Lord Camden as expressed in the

Bibles and Prayer Books.

(*a*) *Ante*, p. 5.

(*b*) *Universities of Oxford and Cambridge* v. *Richardson* (1802), 6 Ves. 689; *Manners* v. *Blair* (1828), 3 Bli. N. S. 391; *Re Red Letter Testament* (1900), 17 T. L. R. 1.

(*c*) *Baskett* v. *Cambridge University* (1758), 1 W. Bl. 105.

(*d*) *Roper* v. *Streater* (1672), Skin. 234; *Millar* v. *Taylor* (1769), 4 Burr. 2303.

(*e*) *Stationers' Co.* v. *Partridge* (1709), 10 Mod. 105; see *Gurney* v. *Longman* (1806), 13 Ves. 508.

(*f*) See cases cited above in note (*b*).

case of *Donaldson* v. *Becket* (*g*), and of Chief Baron Skinner in *Eyre and Strahan* v. *Carnan* (*h*).

No attempt has ever been made to prevent any person from publishing a translation of one book, or of a part of the Bible, from the original text, and enjoying a copyright in his production. And, with respect both to Acts of Parliament and Bibles, any one is at liberty to print them either in whole, or in part, with notes, provided the notes are *bonâ fide* and not merely illusory (*i*).

Copyright in ordnance maps, blue books, &c.

With regard to other works prepared and published by or on behalf of the Government, such as ordnance maps, blue books, &c., there appear to have been no decisions under the old law, but it would seem that the Crown could only have been entitled to copyright therein under the general provisions of the Copyright Acts, which primarily gave the copyright to the author (*k*).

Provisions of Act of 1911.

The Act of 1911 now provides (*l*) that, without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of the Act (*m*), been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work is, subject to any agreement with the author, to belong to His Majesty, and in such case is to continue for a period of fifty years from the date of the first publication of the work.

Effect of these provisions.

This section, therefore, whilst preserving any special copyrights of the Crown, as in the case of the Bible and Prayer Book, vests the copyright in all other works prepared by or on behalf of the Government, in the Crown, whether or not the actual author of the work was under a "contract of service" with the Crown (*n*), and the period of copyright is to be a gross period of fifty years "from the date of the first publication of the work." This is the only case under the Act in which copyright dates from publication. There are no express provisions in the Act relating to unpublished works belonging to the Crown, but any copying of these would probably be in breach of confidence (*o*).

Treasury Minutes of 1887 and 1912.

The rights of the Crown in Government publications would be enforced by the Treasury (*p*), but the Treasury does not, in

(*g*) (1774), 4 Burr. 2408.
(*h*) Exchequer, 1781, cited 6 Ves. 697, and reported in 6 Bac. Abr. *tit.* Prerogative, 509.
(*i*) *Baskett* v. *Cambridge University* (1758), 1 W. Bl. 105.
(*k*) *Ante*, p. 17. This is subject to sect. 18 of the Literary Copyright Act, 1842 (*ante*, p. 17).
(*l*) Sect. 18.
(*m*) *I.e.*, 1st July, 1912; see sect. 37.
(*n*) Sect. 5 (1).
(*o*) Sect. 31.
(*p*) This only applies to works belonging to the Crown in its corporate capacity. The King, in his personal capacity, has the same rights as the subject. (*Prince Albert* v. *Strange* (1849), 1 H. & T. 1.)

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practice, enforce all its rights. The practice with regard to Crown copyrights has been defined by two Treasury Minutes dated respectively the 31st August, 1887, and the 28th June, 1912. By the first Minute Government publications were divided into the following classes:—

1. Reports of Select Committees of the two Houses of Parliament, or of Royal Commissions.

2. Papers required by statute to be laid before Parliament, *e.g.*, Orders in Council, Rules made by Government Departments, Accounts, Reports of Government Inspectors.

3. Papers laid before Parliament by Command, *e.g.*, Treaties, Diplomatic Correspondence, Reports from Consuls and Secretaries of Legation, Reports of Inquiries into Explosions or Accidents, and other Special Reports made to Government Departments.

4. Acts of Parliament.

5. Official books, *e.g.*, King's Regulations for the Army or Navy.

6. Literary or quasi-literary works, *e.g.*, the Reports of the "Challenger" Expedition, the Rolls Publication, the State Trials, the "Board of Trade Journal."

7. Charts and Ordnance Maps.

According to the Minute of 1912 (*q*) the Crown copyright in works falling within any of the last three classes will generally be strictly enforced, and such works will bear an indication on the title page that the copyright is reserved. In the case of publications falling within any of the first four classes, no steps will ordinarily be taken to enforce the rights of the Crown in respect of copyright, but without prejudice to the right to take proceedings in exceptional circumstances. Acts of Parliament must not, however, except when published under the authority of the Government, purport on the face of them to be published by authority (*r*).

Copyright at the universities and colleges.

Upon the introduction of the art of printing into England by Henry VI. a press was set up in Oxford; and an important dominion over the publication of books was, for many years, very naturally assumed by that learned body. The sway was extended

(*q*) Set out in full in Appendix E.

(*r*) On the 23rd October, 1913, a person was convicted at the Guildhall of piracy of the four mile Ordnance survey map and ordered to pay a fine of 40*s.* with 15 guineas costs, and also to give up or destroy all remaining copies. (*R.* v. *Mutch, Times,* 24th Oct. 1913.)

to the sister university, and increased in power by charters and grants conferred upon them by the liberality and bounty of several kings.

Immediately after, and in consequence of, the decision of *Donaldson* v. *Becket* (*s*), the universities hastened to Parliament, and in the same year obtained an Act (*t*) for enabling the two universities in England, the four universities in Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to them for the advancement of useful learning and other purposes of education.

The right was to exist in all such books as had, before the year 1775, or should thereafter, be given or bequeathed by the authors of the same, or their representatives, to or in trust for those universities, or any college or house of learning within them, or to or in trust for the colleges of Eton, Westminster, and Winchester, or any of them, for the beneficial purpose of education within them or any of them.

The exception in favour of the universities and colleges was to extend only to their own books, so long as they are printed at the college press and for their sole benefit; and any delegation of the right was to work a forfeiture, and the privilege become of no effect.

As to printing and sale.

A power was given by the Act to the universities to sell or dispose of the copyrights given or bequeathed to them, but if they should delegate, grant, lease, or sell the copyright of any book, or allow any person to print it, their privilege was to cease to exist. The copyright of any work presented to the universities was required to be registered at Stationers' Hall within two months after any such gift should come to the knowledge of the officers of the universities. And special penalties were imposed for any infringement of copyright.

By an Act passed in the forty-first year of Geo. III. c. 107, a similar copyright was given to Trinity College, Dublin, and by the 27th section of the Literary Copyright Act, 1842 (*u*), the rights of the respective universities and colleges above enumerated were saved from the operation of that Act.

Provisions of Act of 1911.

It is now provided by sect. 33 of the Copyright Act, 1911, that nothing therein contained is to deprive any of the universities

(*s*) (1774), 4 Burr. 2408, *ante*, p. 3.
(*t*) 15 Geo. III. c. 53.
(*u*) 5 & 6 Vict. c. 45.

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and colleges mentioned in the Copyright Act, 1775 (*x*), of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright is to be under the Act of 1911 and not under the Act of 1775. The effect of this provision is to preserve all existing perpetual copyrights, subject to the old conditions against sale and as to printing, but to prevent any new perpetual copyrights being created.

(*x*) No mention is made of the 41 Geo. III. c. 107, which, however, is not repealed.

CHAPTER VII.

WORKS IN EXISTENCE BEFORE THE ACT OF 1911.

Protection of existing rights.

THE Act of 1911 having repealed all previous statutes conferring copyright (*a*), and it being provided that no person is to be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of the new Act (*b*), it was necessary to make special provisions with regard to works which were at the date when that Act came into operation entitled to protection against piracy. Accordingly, sect. 24, sub-sect. 1, enacts that "where any person is immediately before the commencement of this Act (*c*) entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that Schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder."

The substituted rights.

The Schedule referred to in this clause provides that, where "copyright" exists in any work, other than a dramatic or musical work, or where, in the case of a dramatic or musical work both "copyright" and "performing right" exist in the same person, the substituted right is to be "copyright as defined by this Act." For the purposes of this Schedule "copyright" in the case of a

(*a*) Sect. 36.
(*b*) Sects. 31 and 24 (3).
(*c*) *I.e.*, 1st July, 1912 (s. 37 (2)). In applying the Act to foreign countries, an Order in Council may make any modifications which may appear to be necessary with regard to existing works (sect. 29 (1) (vi)), but none of the Orders in Council which have so far been made has altered the date in this portion of the section. Consequently, even the works published in countries (*e.g.*, Denmark) which have only obtained Orders in Council after the 1st July, 1912, become retrospectively entitled to copyright from that date; but by a shifting of the date in sect. 24 (1), proviso (b), to the date of the Order in Council, the rights of persons who have incurred expenditure, &c. are preserved.

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work which, according to the law in force immediately before the commencement of the Act of 1911 has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work; and "performing right" in the case of a work which has not been performed in public before the commencement of the Act, includes the right at common law (if any) to restrain the performance thereof in public. The Schedule goes on to provide that a person who has vested in him at the commencement of the Act the "copyright," but not the "performing right," in a musical or dramatic work is to obtain in substitution for his old rights "copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public"; and, *vice versâ*, a person who has the "performing rights," but not the "copyright," in such a work is to obtain "the sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act." The general effect, therefore, is to attach any new rights given by the Act, such as the rights of converting a dramatic work into a novel and making records, perforated rolls, cinematograph films (*d*) and so forth, to the owner of the "copyright," in preference to the owner of the "performing rights." In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature before the commencement of the Act, the substituted "copyright" conferred by the Act is to be subject to any right of publishing the essay, article or portion in a separate form to which the author was entitled at the commencement of the Act, or would, if the Act had not been passed, have become entitled under sect. 18 of the Copyright Act, 1842 (*e*).

Section only applies to works protected on the 1st July, 1912.

The crucial date under sect. 24 is the 1st July, 1912—the date of the commencement of the Act. With the sole exception of "records" (*f*), no works which were not entitled to either common law, or statutory, copyright on that date receive any protection under the new Act (*g*). For the purpose, therefore, of

(*d*) As to the application of these provisions to cinematography, see *ante*, p. 253; and as to the special provisions of the Act relating to "records" made before the Act, see *ante*, p. 270.

(*e*) See note to First Schedule of the Copyright Act, 1911. As to sect. 18 of the Copyright Act, 1842, see *ante*, p. 17.

(*f*) *Ante*, p. 279.

(*g*) This is contrary to Art. 18 of the Berlin Convention, which requires that all works shall be protected unless at the date when the Convention comes into force they have ceased to be protected in their country of origin "through the expiration of the term of protection," and, *semble*, for no other

ascertaining whether or not a work was, prior to the 1st July, 1912, entitled to protection or not, it will be necessary to refer to the old law. A general *résumé* of that law has been given in a previous chapter (*h*), and the same may be conveniently summarized as follows:—

1. Unpublished works were protected at common law, and any work (*i*) unpublished on the 1st July, 1912, is, therefore, protected under the new Act.

2. Literary works, including the literary rights in musical and dramatic works, were protected during the life of the author and for a period of seven years after his death, or during a gross period of forty-two years from publication, whichever was the longer period. Any such work published after the 1st July, 1870, or any work of which the author died on or after the 1st July, 1905, is, therefore, protected under the new Act, notwithstanding that there had been no registration of the copyright (*k*). Inasmuch, however, as registration was necessary before any action could be brought in respect of infringement of copyright, it has been held that no action will lie under the new Act in respect of infringements which occurred prior to its commencement, unless the copyright had been registered under the repealed Act of 1842 (*l*).

3. Speeches and lectures delivered in public and without restrictions lost all right to protection, unless certain onerous formalities were complied with (*m*). But a *report* of a speech might be entitled to copyright (*n*).

4. Performing rights were only recognized in the case of dramatic or musical works. The term of copyright, if these works were published in manuscript, was for the life of the author and seven years after his death, or for a gross period of forty years from the date of the first public performance of the work. If the work had not been published in manuscript, the term of the performing rights was uncertain (*o*). In the case of musical works—not of dramatic works—it was essential to the preservation of performing rights that a notice of reservation of those rights should be printed on the title page of every publication

reason whatsoever. Great Britain, therefore, in adhering to the Berlin Convention has stipulated that she shall not be bound by Art. 18. See Chapter on "International Copyright," *post*, Part IV. Chapter I.

(*h*) Part I. Cap. III.

(*i*) But as to paintings, drawings and photographs, see p. 288.

(*k*) *Savory* v. *World of Golf* (1914), 83 L. J. Ch. 824.

(*l*) *Evans* v. *Morris*, (1913) W. N. 58.

(*m*) *Ante*, p. 18.

(*n*) *Walton* v. *Lane*, (1900) A. C. 539.

(*o*) *Ante*, p. 18.

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of a work published after 1882. No musical work, therefore, published after 1882, but before the 1st July, 1912, which omitted to print such notice of reservation obtains any performing rights under the new Act (*p*).

5. Engravings were protected for a period of twenty-eight years from the day of first publication, provided the name of the author and the date of first publication was printed on each copy. In order, therefore, to be entitled to protection under the new Act, engravings must have been published since the 30th June, 1884, and have had the name of the author and date of first publication printed on every copy (*q*).

6. Sculptures were protected for fourteen years after first publication, and for a further fourteen years if the sculptor was still living at the expiration of the first period and had not assigned his copyright, but the name of the sculptor and date of first publication had to be put upon the work (*r*). The following works of sculpture, therefore, receive no protection under the new Act, viz.: (a) all works published before the 1st July, 1884; (b) all works published between the 30th June, 1884, and the 1st July, 1898, unless the author were living fourteen years after first publication and had not assigned his copyright; and (c) all works published before the 1st July, 1912, which did not bear the name of the sculptor and date of first publication.

7. The law with regard to paintings, drawings, and photographs was peculiar (*s*). The statutory term was during the life of the author and for seven years after his death, and this statutory copyright commenced from the date of the making of the work, whether the same was published or unpublished, and although, if the work were unpublished, a common law copyright existed alongside the statutory copyright, probably the common law copyright ran out at the same time as the statutory copyright. Further, except in the case of works executed on commission, copyright was liable to be destroyed if the author did not, upon the occasion of the first sale of his work, reserve the copyright to himself in writing. It consequently follows that no painting, drawing or photograph made before 1st July, 1912, will be entitled to protection under the new Act (a) if the author died before 1st July, 1905, or (b) if the author failed to reserve the copyright in his work on the occasion of the first sale of his work, and the work was not executed on commission. No action could be brought

(*p*) But would seem to be entitled to protection in countries belonging to the Copyright Union under Art. 18 of the Berlin Convention.

(*q*) *Ante*, p. 19. (*r*) *Ante*, p. 20. (*s*) *Ante*, p. 20.

in respect of any infringement committed prior to the date when the copyright was registered, but the copyright itself was not imperilled by failure to register. Therefore the owner of the copyright can sue in respect of any infringement committed after (*t*), but not before (*u*), the 1st July, 1912, notwithstanding that the copyright was not registered under the Act of 1862.

8. Works of architecture (except architects' plans, which were protected as artistic works), choreographic works, pantomimes, and mechanical contrivances for reproducing sounds (*x*) were not entitled to any protection before the Act of 1911, and, with the exception of mechanical contrivances (*y*). none of these works, if made or published before the 1st July, 1912, will be entitled to protection under the Act of 1911.

Existing rights entitled to benefit of increased protection.

Although no right which has expired before the 1st July, 1912, will be revived, any right existing on that day will receive the benefit of the more generous treatment given by the new Act, both as regards length of term and increase of protection. The substituted right or interest in that right vests in the first instance in the person in whom the old right or interest was vested immediately prior to the 1st July, 1912, and such substituted right is to "subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been entitled to copyright thereunder," subject, however, to the modification referred to in sect. 3 to the effect that in the case of a work in which copyright subsisted on the 16th December, 1911—the date of the passing of the Act (*z*)—the date when the right to reproduce the work upon payment of a royalty—assuming it to be a work to which the proviso to sect. 3 applies (*a*)—is to be thirty years, instead of twenty-five years, after the author's death.

New Act may operate in derogation of existing rights.

These provisions may operate in derogation of existing rights. Thus, under the old law, a photograph was entitled to copyright during the life of the author and for seven years after his death, whereas under the Act of 1911 the period of copyright in a photograph is fifty years from the making of the negative (*b*). The

(*t*) *Savory* v. *World of Golf* (1914), 83 L. J. Ch. 824.
(*u*) *Evans* v. *Morris*, (1913) W. N. 58.
(*x*) *Quære* as to cinematograph works, see *ante*, p. 248.
(*y*) *Ante*, p. 270.
(*z*) N.B.—Not the date of the "commencement" of the Act. In the case of a work made between the 16th December, 1911, and the 1st July, 1912, the period of restricted copyright will begin twenty-five years after the author's death.
(*a*) As to which, see *ante*, p. 102.
(*b*) Sect. 21, *ante*, p. 100.

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copyright in a photograph made more than fifty years before the 1st July, 1912, therefore, instantly lost its copyright although its author might still have been living or have died since the 1st July, 1905. Again, under the old law, the owner of the copyright had an exclusive copyright during the entire period allowed by the law, but, under the new Act, the copyright is only a qualified one after thirty years have elapsed since the author's death. The author of a literary or dramatic work had, under the old law, a period of exclusive copyright lasting for at least forty years from the date when he first published his work. If, therefore, an author published a book in 1880, and died on or before the 1st July, 1882, under the old law the book would have been entitled to an exclusive copyright until the year 1922, but the effect of the new Act would be that immediately upon the commencement of the Act, anybody would have the right to reproduce the book upon payment of a royalty (*c*).

Cases in which existing rights gain greater benefit than if made after the new Act.

On the other hand, there appears to be at least one case in which an author who has made his work prior to the commencement of the Act is better off than if he had made it after that date, namely, a foreign author who was not resident in any place to which the Copyright Act, 1911, extends at the time of his making his work. We have seen that such a person, if he made his work after the commencement of the Act, would be entitled to no protection under the Act until he published his work (*d*). There seems to be no ground for thinking that a foreigner was not entitled, under the old law, to common law copyright in England for his unpublished works, and, therefore, the effect of sect. 24 (1) of the new Act seems to be to give to all foreigners whose works were made before the commencement of that Act copyright in their works until first published elsewhere than in a place to which the Act extends.

No action lies for an infringement prior to the Act, which was not an infringement under old law.

It is to be noticed that under sect. 24 (1) it is only in relation to the term of copyright that the Act is to be deemed to have been "in force at the date when the work was made." The Act of 1911, however, as has been pointed out, not only generally gives a longer period of protection than under the old law, but it also makes certain dealings with a work to be infringements of copyright which were not infringements under the old law, *e.g.*, dramatization of a novel, making cinematograph films or mechanical contrivances for reproducing musical works (*e*). It is clear that the owner of the substituted right conferred by sect. 24 cannot

(*c*) Sect. 3, proviso. (*d*) *Ante*, p. 27.
(*e*) The rights of owners of existing works in relation to making of records are specially dealt with by sect. 19; see *ante*, p. 270.

sue in respect of any act committed prior to the commencement of the Act of 1911 which was not an infringement of copyright at the date when the act was committed. Under the new Act, however, copyright is infringed not merely by the act of copying a work, but also by such acts as publicly performing a work, or selling, distributing or importing copies of works which are known to infringe copyright (*f*). The draughtsman of the Act would appear to have been under the impression that the vendor or importer of an article which did not infringe copyright at the date when it was made, but which would have infringed copyright if it had been manufactured after the Act, would be exposed to an action for infringement under sect. 2 (2) of the Act. The case of *Monckton* v. *Pathé Frères* (*g*) supports this view, but we have seen reasons for doubting whether this case correctly decided the point in question (*h*), particularly having regard to the section of the Act which defines an "infringing" copy as one "made or imported in contravention of the provisions of this Act" (*i*).

Protection of vested interests.

Whether this be so or not, the Act contains special provisions, inserted with the object of preventing persons who have incurred expense before the Act from suffering loss by reason of the increased protection given by the Act. By proviso (b) to sect. 24 (1) it is enacted as follows:—

> "Where any person has, before the twenty-sixth day of July nineteen hundred and ten (*k*), taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration."

(*f*) Sect. 2 (2).
(*g*) (1914) 1 K. B. 395.
(*h*) *Ante*, p. 273.
(*i*) Sect. 35 (1).
(*k*) This was the date when the Copyright Bill of 1910 was first introduced into Parliament. The Bill was subsequently dropped, but manufacturers then became aware of the Government's intentions. In the application of this provision to foreign countries which obtain hereafter Orders in Council under sect. 29, this date will probably be altered to the date of the particular Order in Council (see Order of 17th March, 1913, applying the Act to the Netherlands, Appendix E., *post*).

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Comparison of this section with sect. 6 of 49 & 50 Vict. c. 33.

The International Copyright Act, 1886 (*l*), contained a provision somewhat similar to the above. That Act was passed in order to enable England to give protection to works published in foreign countries by means of Orders in Council extending the benefit of the British Copyright Acts then in force to such countries. Sect. 6 provided that the author and publisher of any literary or artistic work first produced in a foreign country prior to any Order in Council applicable to that country having been made should be entitled to the same rights and remedies as if the provisions of the Copyright Acts had applied to that country at the date of the said production; but this right was subject to the following proviso:—"Provided that, where any person has, before the date of the publication of an Order in Council, lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date."

Sect. 24 (1) (b) of the Act of 1911 appears to have a wider scope than sect. 6 of the International Copyright Act, 1886. The latter section applied only when a work had been "lawfully produced," whereas, in order that the former section shall apply, it is not necessary for the work to have gone so far as actual production, for it is to apply whenever any person has, before the 26th July, 1910, "taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful or for the purpose of, or with a view to, the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful." Again, under the Act of 1911 it is contemplated that the owner of the new rights is to have the right to compulsorily buy up the rights and interests which are preserved, a feature which is absent from the International Copyright Act, 1886.

On the other hand, the words "nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which was subsisting and valuable at the said date" are practically identical with those contained in the earlier Act, and the question of the meaning of these words in that Act came before the Courts in several cases.

Moul v. *Groenings.*

In the case of *Moul* v. *Groenings* (*m*), the plaintiff, a French subject, had composed and first produced in France a musical

(*l*) 49 & 50 Vict. c. 33, s. 6.

(*m*) (1891) 2 Q. B. 443.

composition called the "Caprice Polka," which did not become entitled to copyright in England until after an Order in Council dated the 28th November, 1887. Before the date of that Order, an English publisher, named Lafleur, had printed and published the plaintiff's work in England, and the defendant, a bandmaster, had purchased a copy for 5*s*. for the use of his band, and had played it by his band both before and after such date. In an action for damages for the infringement of copyright and for an injunction, it was held by the Court of Appeal, affirming the judgments of A. L. Smith and Grantham, JJ., that there was evidence to warrant the finding that the defendant had an interest arising from or in connection with the lawful production of the work in the United Kingdom which was subsisting and valuable when the Order in Council was published, and that he was, therefore, protected by the proviso to sect. 6 of the Act of 1886.

Mr. Justice A. L. Smith, in his judgment in the Divisional Court, pointed out that the Legislature contemplated a distinction between "rights" and "interests." He considered that the word "rights" applied to the case of a person who had bestowed original labour upon a work, such as an English adapter or translator of a foreign work, who acquired a "right" to prevent any other person from copying his translation or adaptation, and was of opinion, accordingly, that Lafleur had no such "rights." "But," he proceeded (*n*), "had not Lafleur *an interest* arising from or in connection therewith? If the publisher of a work had invested capital in its production, and depended for the return of that capital upon the sale of copies in stock, or it may be upon the proceeds of a second edition, and was in such a position upon December 2, 1887, why, I ask, has he not an 'interest arising from or in connection with the production of the work subsisting and valuable' upon December 2, 1887? In my judgment he has, and that it was to meet cases such as these, that the word 'interests' was inserted in the proviso in contradistinction to the word 'rights.' He has a direct subsisting pecuniary interest in the continuation of the production or, in other words, in connection with the production; and sect. 6 enacts that this interest is not to be diminished or prejudiced, which a foreigner could distinctly do if he could in such a case, by means of the Act of 1886, stop the further production of the work. This instance of a publisher by no means exhausts the examples which might be given as to whom the proviso would apply, but it suffices to

(*n*) (1891) 2 Q. B. at p. 449.

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accentuate the points now in hand. I hold, therefore, that Lafleur would have an interest within the true reading of the provi assuming that he was in the position suggested on December 2, 1887. Now comes the question as to the defendant. Why had not he, on December 2, 1887, an 'interest arising from or in connection with the performance' of the polka then subsisting and of value? For the reasons above given he had no 'rights' within the proviso; but why not an '*interest*'? The learned County Court judge held that there was evidence that he had an interest subsisting and of value. In my judgment there was evidence that he had an interest then subsisting, viz., an interest to recoup and to obtain a return for the outlay he had been put to in purchasing the piece, in training his band in its performance, and possibly in adapting it to different parts for his men, and that this interest was of value. Whether there be such an interest of value must in each case depend upon the facts of each case. There is also another point, which is this: if all the bandsmen in the kingdom and all others are to be prevented from playing this polka, it might well be that Lafleur's interest in his unsold copies, if such there be, would be seriously affected, and it seems to me that this would also prevent this action from succeeding, if it were proved that Lafleur was in such a position on December 2, 1887."

Mr. Justice Grantham likewise was of opinion that an English publisher of a foreign book would clearly have the right under the section in question to sell all copies unsold at the date of the Order in Council, at least until his present edition was sold out, and he gave some further illustrations of cases to which he considered the section would apply. "Next," he said (*o*), "let us take the case of a manager of a theatre. He translates and produces on the stage a French comedy before the passing of the Act. Can it be said that he ought or was likely to be prejudiced by *ex post facto* legislation, and that, though perhaps only one or two performances had been given and none of the initial expenses of reproduction recouped to him, yet he had no interests arising out of that production which were subsisting and valuable at the date of the coming into operation of the Order in Council giving the foreigner this new right? Next take the case of a composer or publisher of music who incurs considerable expense in printing some musical compositions for a band, and has only sold a few copies, and is dependent on the performance of the

(*o*) At p. 452.

music by those who have already bought it to popularise the music, and so sell the remainder of his edition. He was completely within his legal rights in the publication here of the music. Has he no interests in that publication which would be legal as against an English composer who had delayed the claim of and thus lost his copyright? And if he has as against him this right, he should have the same right as against the foreigner who for the first time was being treated in the same position as the home producer. If the publisher has this right, why then has not the performer of the music the same right apparently reserved to him in the same spirit by this proviso? He might have spent days in teaching his band this music. He might have spent pounds where in this case shillings were spent in the purchase of the music, and he intended probably, as in this case, to continue the performance to recoup himself for his outlay, and to enjoy the valuable interests he had in this music from its great popularity. Would it not be right to preserve his vested interests as well as those of the publisher of the book first mentioned, or the theatrical manager who prepared a French play for the English stage? For these reasons my judgment must be for the defendant, the respondent."

Schauer v. Field.

This case was followed by Mr. Justice Chitty in *Schauer* v. *Field* (*p*). The plaintiff, a German, claimed to have the photographic copyright in an oil painting called "Lisette," produced in Germany before December, 1885, and also the copyright in a photograph of "Lisette" as a distinct work of art. In January, 1887, some months before the Order in Council extending the benefit of the International Copyright Act, 1886, to Germany came into operation, the defendants registered as their trade mark for candles, a photograph of "Lisette" on a small scale, with their name and the words "trade mark" across the picture. This trade mark was extensively used by the defendants on their goods; it was also reproduced by them in various sizes and colours by chromolithography on show cards and trade lists for the purposes of advertisements. It was held that the defendants, as the proprietors of the trade mark had an "interest" in advertising it, as they had done, by means of the show cards and trade lists; that this was an "interest" arising from or in connection with the trade mark itself, which was subsisting and valuable at the date of the publication of the Order in Council, and that the defendants were consequently protected by sect. 6 of the Act, and that it was not material to consider the date at which these show

(*p*) (1893) 1 Ch. 35.

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cards were produced; neither was it material that there was a trifling difference between the show cards and the trade mark, so long as the substance of the trade mark had been honestly advertised.

Hanfstaengl v. Holloway.

This case must be distinguished from *Hanfstaengl Art Co.* v. *Holloway* (*q*), where a German picture had been used for the purpose of advertising the defendant's well-known pills, but not as a trade mark. It would appear—though it is not distinctly stated in the report—that all copies printed before the Order in Council came into operation had been exhausted and that the plaintiff's complaint was in respect of those subsequently printed. Mr. Justice Charles held that the defendant had not such a "direct subsisting pecuniary interest" in the continuation of the advertisement as to bring his case within the proviso to sect. 6, and he granted an injunction and damages to the plaintiffs.

The right or interest must have been valuable.

The right and interest must not only have been subsisting at the crucial date, but must have been of some substantial value. This was decided in a case which came before Mr. Justice Scrutton in the year 1913 (*r*). Strauss' opera "Die Fledermaus" was first published in Austria in the year 1877, at a time when there was no copyright treaty between Great Britain and Austria; but on the 24th April, 1893, such a treaty was signed (*s*), which came into force in 1894, and thereupon the work became entitled to protection in Great Britain, subject to the saving contained in sect. 6 of the International Copyright Act, 1886, in favour of "rights and interests" which were "subsisting and valuable" at that date. In or about the year 1877 the defendants printed and published 500 copies of a waltz taken from the opera, and all these copies were sold before 1881. In 1881 they printed another 100 copies, and in 1882 they had fifty copies still in stock. After that date there was practically no demand for the work, and no further copies were printed until about the year 1912, at which date the defendants still had a few soiled copies in stock. The original plates had disappeared. The defendants had, also, in the year 1878 published "Die Fledermaus" in an album of dance music. In 1880 they printed 100 copies of this album, and they had sixty-three copies on hand in 1912. The learned judge was clearly of opinion that there was no sale for the album between 1882 and 1894. In 1910,

(*q*) (1893) 2 Q. B. 1.

(*r*) *Cranz & Co.* v. *Sheard & Co.* (28th May, 1913, K. B. D.). The Editor has not been able to find any report of this case except in "Le Droit d'Auteur," 1914, p. 69, and the extracts from the judgment here given are re-translated from that report.

(*s*) Appendix B., *post*.

or 1911, a new libretto was written for the old music of the opera, and performed under the title of "The Night Birds," and this brought the music into vogue once again, and thereupon the defendants published 500 copies of the waltz, printed not from the old plates, but from a photograph taken from an old copy. The plaintiffs, in whom the copyright in the work was vested, thereupon brought an action for infringement of the copyright, and the defendants sought to justify their actions under the proviso to sect. 6 of the International Copyright Act, 1886, but the Court held that this proviso did not avail them, and granted an injunction with £5 damages.

In reference to the section of the Act of 1886, Mr. Justice Scrutton remarked:—"According to the terms of the Act the rights and interests must be 'subsisting' and 'valuable.' It is not sufficient that the interest be 'subsisting,' it must also be 'valuable.' An 'interest' is less than a 'right.' One understands by it something which does not create any right recognised by the law, but which would, or might, be transformed into such by an expenditure of capital which my judgment would render useless. If you produce an edition of any size at a time when you lawfully may do so, and if a decision intervenes which prevents you from selling it, it is clear that your interest is diminished or prejudiced. It seems to me that any interest of this kind would have some value, having regard to the above definition of the meaning of 'interest'; but Parliament uses the words 'interests which are subsisting and valuable,' and I read the word 'valuable' as implying substantial value. If any value is sufficient the word 'valuable' was mere surplusage, because any subsisting interest would have some value, even though it might be worth only a farthing, and Parliament does not intend to allow an interest not worth a farthing to affect the issue. The interest must be both 'subsisting and valuable.'" After reviewing the facts above set out the judge proceeded:—"Can it be alleged from these facts that any rights or interests arose from such publication? There existed no 'rights,' that is admitted; but did any 'interest' exist? In 1894 there did exist an interest, because the defendants were in possession of a certain number of copies, the exact number has not been proved, but I believe they were less than 100. I think that was sufficient to create an interest. I incline to think, therefore, that there was a 'subsisting' interest in 1894, but I am sure that that interest could not be recognised as having any positive value. I do not think that at that time any musical publisher in England would have given Mr. Sheard sixpence for all the unsold copies he then

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had in stock, the piece was out of fashion, like so many others, and it remained out of fashion during the ensuing twenty years, and it only came into favour when Mr. Beecham once again introduced 'Die Fledermaus' into England, where the work had been forgotten for twenty years. I consider, then, that in 1894, when the Order in Council relating to Austria came into force, that there was no existing interest which could be regarded as 'valuable.'"

Application of these cases to the new Act.

The cases above referred to may be taken as illustrating the nature of the "rights" and "interests" which are to remain unprejudiced under the Act of 1911. It is to be remarked that the proviso to sect. 24 applies to a case where "any person" has incurred expenditure or liability, so that not only the rights and interests of the person who actually incurred the expenditure or liability are safeguarded, but also the rights and interests of all persons deriving title under such person. Thus, it was suggested in *Moul* v. *Groenings* (*t*) that not only were the interests of the publishers of the music protected, but also the interests of all persons who purchased copies of the piece, even though they purchased after the original work became entitled to protection, so that purchasers could lawfully perform in public from the copies purchased by them. The ground given for this suggestion was that otherwise the interests of the publisher in his copies would be prejudiced, for purchasers of music purchase them with a view of performance, and to deprive the publisher of his market amongst public performers would reduce his chances of clearing off his stock (*u*). The same argument would apply with almost equal force to purchasers of dramatic works which were lawfully published before the 26th July, 1910, but it is submitted that although prior to the Act of 1911 it was no infringement of copyright to dramatize a novel (*x*), the effect of the proviso to sect. 24 is not to give to purchasers of books purchased from a stock in existence before the above-mentioned date any right to dramatize the same after that date. Novels are not usually purchased with the object of dramatizing them, and to deprive the publisher of his power to sell a novel with a right to dramatize the same could hardly restrict his market or operate to the prejudice of any right or interest of his which was subsisting or valuable on the date in question. On the other hand, if a person had before the 26th July, 1910, incurred expenditure or liability in actually dramatizing a novel, then his

(*t*) (1891) 2 Q. B. 443, 453.
(*u*) *Per* A. L. Smith, J., (1891) 2 Q. B. at p. 450.
(*x*) *Ante*, p. 19.

rights or interests would be protected under the proviso to sect. 24.

Can works lawfully made prior to the Act be lawfully sold after the Act?

The sale, after the commencement of the Act, of an article which was made prior to that date, is clearly legalised by this proviso (b), provided the making of it was no infringement of copyright at the time when the article was made. Whether, therefore, in the absence of that proviso there is anything in the Act which would have prohibited such a sale is not, perhaps, a matter of great importance; but we have already given reasons for doubting whether a sale of any article which has been lawfully made can be restrained under the general provisions of the Act (*y*), and it is not easy to find any words in sect. 24 specially forbidding the sale of works lawfully made prior to the commencement of the Act (*z*). Proviso (b) does indeed suggest that, under certain circumstances, the owner of the copyright is to be entitled to restrain the "reproduction" or "performance" of a work in respect of which expenditure or liability has been incurred prior to the Act, but a sale is neither "reproduction" nor "performance" (*a*).

Compulsory acquisition of rights and interests preserved by sect. 24 (1) (b).

The rights and interests which are preserved by proviso (b) to sect. 24 must not be exercised if "the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration." Inasmuch as all that the owner of the copyright has to do is to "agree" to pay the compensation (*b*), presumably as soon as he gives notice to the owner of the right or interest preserved of his willingness to compensate him the latter will be unable to continue to reproduce or perform the work in which he has such right or interest, except at the peril of an action for infringement of copyright. The Act gives no guide as to the elements to be considered in assessing the amount of compensation payable, but, presumably, the person compensated has a right to receive an amount which will be sufficient not only to indemnify him against all costs and liability actually incurred, but also to compensate him for loss of profits, if reasonably capable of assessment.

(*y*) *Ante*, p. 273.

(*z*) "It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction: and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to give a greater retrospective operation than its language renders necessary": *per* Lindley, L. J., *Lauri* v. *Renad*, (1892) 3 Ch. 402, at p. 421.

(*a*) It will be remembered that the rights of composers of music published prior to the Act in respect of mechanical reproduction are dealt with by another section. See *ante*, p. 270.

(*b*) Cf. sect. 3 (proviso) and sect. 19 (2) (b), where the expression is "has paid."

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Assignments prior to the new Act.

It is reasonably clear that if the copyright in a work existing prior to the commencement of the Act has been assigned, the assignee, and not the assignor, will *primâ facie* become entitled to all the new rights, such as the right of authorising adaptations for cinematograph purposes (*c*), dramatizing novels, and publicly performing works other than dramatic works, but the increased term of copyright is to belong to the author. This is provided for by proviso (a) to sect. 24 (1), which is as follows:—

> "If the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine."

Partial assignment.

The above provision only applies to the case of an assignment or grant of an interest covering the whole term of copyright. If the author had parted with his copyright for a period less than the whole original term, he would have a reversionary interest which would automatically confer upon him, by virtue of the earlier provisions of the section, the substituted right which would become exerciseable by him upon the falling in of his reversion. If, however, the author had granted a licence to one person for a portion of the old term, and then to another for the residue of that term, it is conceived that he would have granted an "interest" in his copyright "for the whole term," within the meaning of the proviso.

Assignment by a person, other than the author, carries the extended term.

It is, however, important to observe that the proviso only applies to a case where the assignment or licence has been made or granted by "the author" of the work. If, in any case, the copyright vested in the first instance in any person other than the author (*d*), then an assignment or licence by such person would *primâ facie* pass to the assignee or licensee the benefit of the extended time conferred by the new Act.

(*c*) As to cinematographs, see *ante*, p. 253. The right of making records of works in existence before the Act is specially dealt with by sect. 19 (7), *ante*, p. 271.

(*d*) *E.g.*, in the case of collective works (*ante*, p. 17) or works of art executed upon commission (*ante*, p. 20). In the case of collective works, the right of the author to publish his article separately after twenty-eight years (5 & 6 Vict. c. 45) is expressly reserved by the note to the First Schedule of the Act.

Effect upon existing agreements where the Act reduces the term of copyright.

It has been pointed out that in some cases the new Act may have the effect of reducing the term of copyright (*e*), and the Act contains no provisions as to how this is to affect previous assignments or licences. If an author has sold his copyright outright, and the transaction has been completed, the purchaser would appear to have no equity to demand a return of any portion of his purchase-money; a purchaser must take subject to the risks of any future Act of Parliament causing a depreciation in the subject-matter of his purchase. Moreover, if the Act has only the effect of reducing the period of exclusive copyright, the assignee will have the right to receive during the balance of the original term of copyright the royalties payable by any person who, under the proviso to sect. 3, compulsorily reproduces the work, for subsect. (2) of sect. 5 only prohibits any assignment of the reversionary period of copyright when made after the passing of the new Act (*f*). But if the author has arranged with a publisher that he should have the sole and exclusive right of publishing his work during the entire term of copyright, the author might, by reason of the proviso to sect. 3, or some other provision of the new Act, become unable to give the sole and exclusive right which he has contracted to give. In that case, it is thought that the agreement will generally be avoided as from the date when the author ceases to be able to give the sole and exclusive right, upon the ground that the agreement has become impossible of performance by reason of an alteration in the law (*g*).

Rights of assignee or licensee where extended term vests in the author.

Although, as we have seen, the benefit of any extended term of copyright conferred by the new Act *primâ facie* vests in the original author of the work, and not in his assignee or licensee, it would obviously be unfair to deprive the assignee or licensee of the right to reap any advantage from the market which he has created. It often happens that the publisher to whom the copyright belonged during the period of its existence still retains an advantage over his trade competitors, after the period of copyright protection has ceased. The Act recognises this by providing that the person who immediately before the date when the copyright would have expired under the repealed statutes, was the owner of any right or interest in the copyright is to be entitled at his option either:—

"(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest

(*e*) *Ante*, p. 289.
(*f*) *I.e.*, 16th December, 1911.
(*g*) *Baily* v. *De Crespigny* (1869), L. R. 4 Q. B. 180.

therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment."

The notice referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the "author" (*h*), or, if he cannot with reasonable diligence be found, advertised in the "London Gazette" and in two London newspapers (*i*).

First option.

It is submitted that the true construction of the first option given is, that a person who has obtained an assignment of the old term of copyright is entitled to an assignment of the new right, but not to the grant of a licence; and, *vice versâ*, that a person who has obtained a licence for the whole of the old term is entitled to a "similar" licence for the residue of the new term, but not to an assignment of the right. As a matter of fact, however, the proviso to sect. 3, under which any person is entitled to reproduce a work, when thirty years have elapsed since the author died, upon payment of a royalty, must in many cases operate to prevent the grant of a licence "similar" to the expired licence, if that licence were originally exclusive, but this would not apply to a licence to perform a work, nor, *semble*, to a licence to reproduce a photograph (*k*). But if an assignee of the old term is in a position to require the assignment of the extended term to him (*l*), such assignment will be subject to the rights of others to manufacture under the proviso above referred to, but

(*h*) This expression includes his personal representatives (sub-sect. (2)).

(*i*) The giving of this notice presumably binds the person giving it to purchase the right or interest. It is not clear how the assignment or grant, as the case may be, is to be obtained if the author or his personal representatives cannot be found. The person giving the notice, however, will obtain an equitable title.

(*k*) *Ante*, pp. 103, 106.

(*l*) Practically, the right to require an assignment will not arise during the author's lifetime, so that the proviso to sub-sect. (2) of sect 5 will not apply.

with the benefit of any royalties payable by such other manufacturers.

Second option.

If the assignee elects to adopt the second option given him by the proviso, he is not required to give any notice to the proprietor of the copyright, who will forfeit any right to royalties if he fails to demand them within three years after the date when the old copyright would have expired. That this term should run, not from the date when the assignee actually exercises his right to continue to reproduce or perform the work, but from the date when the old term of copyright would have expired, seems a little unfair. The effect is to impose upon the author, or his personal representatives, an obligation to demand from the assignee payment of royalties whether such assignee does or does not propose to continue reproduction or performance; for otherwise, if no further reproduction or performance by the assignee occurred for three years after the expiry of the term, upon a strict construction of the proviso the assignee would be at liberty to reproduce or perform without being liable to make any payment to the author or his representatives. The right, however, is only to reproduce "in like manner as theretofore," so that the assignee has not the right to publish or perform the work in any manner he may please, as he would have if he accepted the first option given him by the proviso.

In the case of any work falling under the proviso to sect. 3, it seems probable that the royalties payable by an assignee or licensee who adopted option number two would be fixed at the same rate as the royalties payable by any other member of the public, namely, at the rate of ten per cent. on the price at which he publishes the work after the expiration of his original term. The advantage that the assignee, in that case, has over the general public is that he is under no obligation to give the notices prescribed for the general public (*m*).

Sale of stock on hand.

The point again arises as to whether, if the assignee elects to take neither of the options conferred upon him by proviso (a), he is at liberty to sell any stock remaining on hand, without any payment to author or his personal representatives. The question turns upon whether or not there are any provisions in the Act which render a sale of copies, lawfully made, an infringement of copyright, and has already been considered (*n*).

Collective works.

It is provided by proviso (a) that where a work, the copyright in which was assigned before the commencement of the Act, is

(*m*) *Ante*, p. 103.

(*n*) *Ante*, pp. 165, 272.

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incorporated in a collective work, and the owner of the assigned right or interest is the proprietor of that collective work, such proprietor is to be entitled, during the extended term of copyright, to continue to reproduce the work without any payment to the author or his personal representatives. He can, however, only reproduce "in like manner as theretofore," so that he cannot reproduce, without payment, an article contributed to the collective work, except as part of that collective work. Under sect. 18 of the Literary Copyright Act, 1842 (*o*), it often happened that the copyright of an article contributed to a collective work vested *ab initio* in the proprietor of the work (*p*). In that case there would have been no assignment by "the author," and therefore proviso (a) has no application: the extended term of copyright will belong to the proprietor of the collective work, subject to the concurrent right of the author, if the collective work was of a periodical nature—not otherwise—to publish his article in "separate form" when twenty-eight years have elapsed since the original publication (*q*). If, however, either because the author expressly reserved the copyright in his article or for any other reason, the copyright did not originally vest in the proprietor of the collective work, but became the property of the author, then, notwithstanding any subsequent assignment or grant of licence to publish during the whole period of the old copyright made or given by him, the benefit of the extended term will belong to the author or his personal representatives, but the proprietor of the collective work will have the right, as against the author or his representatives, to continue to publish the article "in like manner as theretofore" without payment.

(*o*) *Ante*, p. 17.
(*p*) *Lawrence* v. *Aflalo*, (1904) A. C. 17.
(*q*) See note to First Schedule to the Act of 1911.

PART IV.

INTERNATIONAL AND COLONIAL COPYRIGHT.

CHAPTER I.

INTERNATIONAL COPYRIGHT.

Copyright primarily a matter of municipal law.

"THE actual law of nations," observes Mr. Curtis (*a*), "knows no exclusive right of an author to the proceeds of his work, except that which is enforced by the municipal law of his own country, which can operate nowhere but in its own jurisdiction. As soon as a copy of a book is landed in any foreign country, all complaint of its republication is, in the absence of a treaty, fruitless, because no means of redress exist, except under the law of the author's own country. It becomes public property, not because the justice of the case is changed by the passage across the sea or a boundary, but because there are no means of enforcing the private right."

Originally, a book written by a foreigner and published abroad, could obtain no protection in this country (*b*).

International copyright formerly regulated by treaties.

Prior to 1886, international copyright was regulated by treaties: in England the Crown being authorised by the International Copyright Act, 1844 (*c*), and various amending Acts (*d*), by Order in Council, to direct that foreign works should be entitled to copyright in the United Kingdom. Pursuant to these Acts a large number of Orders in Council were promulgated, and various European countries had copyright treaties *inter se*. The general purport of these was to give the authors of works first published in one of the federated States the same privileges in the other States as would have been enjoyed if the work had been first published there.

(*a*) "Copyright," p. 22; *Morocco Bound Syndicate* v. *Harris*, (1895) 1 Ch. 534.
(*b*) *Guichard* v. *Mori* (1831), 9 L. J. Ch. (O. S.) 227.
(*c*) 7 & 8 Vict. c. 12.
(*d*) 15 & 16 Vict. c. 12; 25 & 26 Vict. c. 68; 38 & 39 Vict. c. 12.

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The Berne Convention, 1887.

A complicated state of circumstances arose, for the rights of an author in foreign countries varied according to the particular treaty or Order in Council, and in 1885 an attempt was made by several of the great Powers meeting in Conference to secure uniformity throughout their dominions. Great Britain was a party to this Conference, which resulted in the framing of a Convention, known as the Berne Convention, whereby the contracting States were constituted into a Union for the protection of the rights of authors over their literary and artistic works" (*e*). To enable Great Britain to give effect to this Convention by Orders in Council the International Copyright Act, 1886 (49 & 50 Vict. c. 33), was passed.

Additional Act of Paris, 1896.

In the year 1896 another Conference of the Powers was held in Paris to consider certain modifications of the original Convention which experience had shown to be necessary or expedient. This Conference resulted in what was called the "Additional Act of Paris, 1896," which was adopted by Great Britain on the 7th March, 1898: but Great Britain was then unable to accept an "Interpretative Clause" that was agreed to by the other Powers (*f*).

The Revised Berne Convention of Berlin, 1908.

In the year 1908 a further Conference of the Powers was held in Berlin, the object of which was "to secure, if possible, a general agreement to such a revision of the Berne Convention and the Additional Act of Paris as would enable the contracting States to sign a single new instrument containing stipulations of a more complete and simple character, with a view not only to afford a more effectual protection to the author, but also to remove the more salient difficulties which had been encountered in the working of the existing arrangements" (*g*). The result of this Conference was the Revised Berne Convention, 1908, which now replaces the original Convention of 1887, and the Additional Act of Paris, 1896, except that States who were signatories of the original Convention and the Additional Act of Paris may still elect to be bound by the provisions of these Conventions in preference to those of the Revised Convention (*h*). Great Britain has now adhered to the Revised Convention of 1908 (*i*). An additional Protocol was agreed to on the 20th March, 1914 (*k*).

(*e*) Berne Convention, 1887, Art. 1. See text of this Convention, Appendix B. Great Britain adhered to this Convention on 28th November, 1887.
(*f*) See text of "Additional Act of Paris" and "Interpretative Clause," Appendix B.
(*g*) Report of British Commissioners, Blue Book, 1909, Miscellaneous (No. 2) Cd. 4467, p. 5.
(*h*) Revised Convention, Art. 27. See text of Revised Convention, and a comparison between the terms of this and the previous Conventions, Appendix B.
(*i*) Order in Council, 24th June, 1912, Appendix C. (*k*) *Post*, p. 310.

The system adopted in 1885.

The promoters of the International Conference in 1885 had two possible systems open to them in framing a Convention: the system of a uniform Code for all countries who should join the Union, and the system of national treatment, leaving each country to apply its own laws to the works of foreigners. The first system was rejected as impossible at that time, having regard to the very divergent laws of the countries represented at the Conference, and a mixed system was adopted. Every State joining the Union was to accord to authors who were citizens of, or who published their works in, any country of the Union the same treatment as that accorded to their own citizens, whilst, at the same time, certain uniform rules as to protection were laid down, limited, however, to certain matters (*l*). The tendency of subsequent revisions of the original Convention has been towards the establishment of a uniform Code for all countries, although the time has not yet arrived for a complete abandonment of the mixed system.

Fundamental principle of Convention.

The fundamental principle of the original Berne Convention is to be found in Articles 2 and 3, which provided that authors of any of the countries of the Union or their lawful representatives should enjoy in the other countries for their works, either not published or published for the first time in one of those countries, the rights which the respective laws did then or might hereafter grant to natives; and that the stipulations of the Convention were to apply equally to the publishers of literary and artistic works published in one of the countries of the Union, even though the authors belonged to a country which was not a party to the Union. Thus the rights of foreigners were to be assimilated to the rights of natives.

This fundamental principle is now to be found in Articles 4, 5, and 6 of the Revised Convention, the phraseology of which is clearer than that used in the original Convention. Article 4 provides as follows:—

"Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries, *other than the country of origin of the work*, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives as well as the rights specially granted by the present Convention."

The above Article, it will be noticed, protects an author in

(*l*) See speech of M. Osterrieth delivered at the assembly of the Powers at Berlin in October, 1908. Blue Book, 1909, Cd. 4467, pp. 64 *et seq.*

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countries other than the country of origin of the work. The following Article (5) confers protection in the country of origin:—

"Authors being subjects or citizens of one of the countries of the Union, who first publish their works in another country of the Union, shall have in this latter country the same rights as native authors."

Articles 4 and 5 relate only to the works of citizens of a Unionist country. Article 6 protects persons who are not citizens of a Unionist country, and is as follows:—

"Authors not being subjects or citizens of one of the countries of the Union who first publish their works in one of those countries shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by the present Convention."

Rights of citizens of a Unionist country.

The result of the above Articles is that citizens of a Unionist country are to be accorded national treatment in every Unionist country for (a) unpublished works, (b) works published in the Unionist country in which protection is sought, and (c) works published in another Unionist country; but, subject to the provisions as to simultaneous publication hereafter referred to, they lose all protection in the Union if they publish their works in a non-Unionist country. Thus, a British subject can claim in, say, France, national treatment for his unpublished works and for his published works if they were first published in Great Britain, France, or any other Unionist country. Similarly, if he is a French subject who has published in England, he can claim protection in France as well as in England. This last point, viz., that a citizen of one Unionist country publishing in another Unionist country could claim protection in his own country was not expressly provided for by the original Convention, which only spoke of a Unionist author being protected in *other* Unionist countries, although a British author publishing in a Unionist country was granted protection in Great Britain by virtue of para. 3 of the British Order in Council of 28th November, 1887, which adopted the Berne Convention (*m*).

Rights of citizens of a non-Unionist country.

Turning next to the position of authors who are not citizens of any Unionist country, but who first publish in a Unionist country, we find that according to the text of the Revised Convention there are to be accorded (a) in the country of first publication, "the same rights as native authors"; (b) in other countries of the Union, "the rights granted by the present Convention." No protection is accorded by the Convention to the unpublished works

(*m*) Report of Copyright Committee, 1909, p. 12.

of citizens of a non-Unionist country, wherever they may be resident at the time of the making of their works (*n*). An American author therefore gains no copyright in France under the Convention for his unpublished works, but if he were to publish his works first in France, England, or any other Unionist country, the country of publication, and all other Unionist countries were, under the original text of the Revised Convention, bound to accord protection to the works.

Objections to Article 6.

The fact, therefore, that Article 6 of the Convention required that non-Unionist authors should be given "the same rights as native authors" in the country of first publication operated to prevent such country from discriminating against any particular non-Unionist country. For instance, America requires that any books in the English language shall, under the notorious "manufacturing clause," be printed in America in order to gain copyright there (*o*). It was impossible for England, without infringing the Convention, to retaliate by requiring that American books must be printed in England, for she would not then accord to Americans "the same rights as native authors." England herself has probably no desire to retaliate (*p*), but at the Imperial Copyright Conference, which the home Government held in the year 1910 with the colonial representatives then in England, their opinions were invited upon the subject of copyright generally, and in particular as to whether Great Britain and her colonies should adhere to the Revised Berne Convention. A resolution was passed by those representatives that "the Conference is of opinion that, if possible, it should be made clear on ratification that the obligations imposed by the Convention on the British Empire should relate solely to works the authors of which are subjects or citizens of a country of the Union, or *bonâ fide* resident therein; and that in any case it is essential that the above reservation should be made in regard to any self-governing dominion which so desires" (*q*).

Copyright Act, s. 23.

It was, no doubt, owing to this resolution that sect. 23 was introduced into the British Copyright Act, 1911, which section is as follows:—

> "If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection

(*n*) In this respect the British Copyright Act, 1911, is more generous than the Convention requires (sect. 1 (1) (b)).

(*o*) See United States, *post*, Part V.

(*p*) A clause which it was proposed to insert in the Copyright Bill to this effect was defeated in the House of Commons. See, however, sect. 23 of the Act.

(*q*) Report of Imperial Copyright Conference, 1910 (Cd. 5272).

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to the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works."

Additional Protocol, 1914.

Great Britain did not, upon ratifying the Revised Berne Convention, make any such reservation as was suggested by the above resolution of the Imperial Copyright Conference (*r*), and it is obvious that if the Crown had made any such Order in Council as is authorised by this section, it would have violated Article 6 of the Revised Convention. Great Britain, therefore, opened up negotiations with the other Powers who had adhered to the Convention with a view to obtaining their consent to a modification of this Article, and eventually an Additional Protocol to the Convention was, on the 20th March, 1914, unanimously agreed to by the countries concerned. Article 1 of this Additional Protocol (*s*) provides as follows:—

"Whenever any country outside the Union fails to give adequate protection to the works of authors who are the subjects or citizens of one of the countries of the Union, nothing in the provisions of the Convention of the 13th November, 1908, shall be deemed to prejudice in any manner whatsoever the right of the Contracting States to impose restrictions upon the protection accorded to works whose authors, at the time when such works are first published, are subjects or citizens of any such country outside the Union and are not actually domiciled in one of the countries of the Union."

Whether any country does or does not take advantage of the liberty given by this Article to impose restrictions upon the protection given to the works of foreign authors is, of course, entirely optional, and at the time of writing it is believed that no country has taken any steps to do so, although the way is now clear for Great Britain to put sect. 23 of the Act of 1911 into force if she desires to do so. The Protocol is not to have retrospective effect (*t*); it is to be ratified within twelve months from the 20th March,

(*r*) See Order in Council, 24th June, 1912, Appendix C., *post*.

(*s*) A full translation of this Additional Protocol will be found in Appendix B., *post*. The Editor has not, however, been able to obtain any official translation into English, and he has accordingly translated from the French original which will be found in "Le Droit d'Auteur," 1914, p. 45.

(*t*) Art. 3.

1914, and to come into force one month after ratification (*u*), and any country imposing restrictions is to notify the Swiss Government (*x*).

Country of origin.

Inasmuch as an author's rights may vary according to what country happens to be the country of origin of his work, it is provided by Art. 4, § 3, of the Revised Convention that "the country of origin of the work shall be considered to be, in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several (*y*) countries of the Union, the country the laws of which grant the shortest period of protection. In the case of works published simultaneously (*z*) in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin." This Article is practically a reproduction of Art. 2, § 3 and § 4, of the Berne Convention, except that the case of simultaneous publication in a Unionist and a non-Unionist country has been, at the suggestion of the English delegates, for the first time expressly provided for.

It will be noticed that this paragraph of Art. 4 provides for three cases: (i) unpublished works; (ii) works simultaneously published in two or more Unionist countries; (iii) works published simultaneously in a Unionist and a non-Unionist country. In the first case the country of origin of the work is the country to which the author belongs (*a*), in the second case, the country which gives the shorter period of protection, in the third case, the Unionist country.

What is "publication"?

Roughly, therefore, copyright under the Revised Convention depends, in the case of an unpublished work, upon the nationality of the author; in the case of a published work, upon the nationality of the work. Para. 4 of Art. 4 of the Convention defines "publication" as follows: "By 'published works' must be understood, for the purposes of the present Convention, works, copies

(*u*) Art. 5.
(*x*) Art. 4.
(*y*) No doubt this word is equivalent to "two or more."
(*z*) By virtue of sect. 35 (3) of the English Act of 1911 works are to be deemed to be simultaneously published in two places if the period between the two publications does not exceed fourteen days; but this might not be considered simultaneous publication according to foreign law. If, therefore, a British author publishing in, say, America and England, desires foreign protection for his work, publication in England should not be delayed beyond the day of publication in America.
(*a*) The English Act (sect. 1) confers British copyright upon an author of an unpublished work who is resident (*i.e.*, domiciled, sect. 35 (5)) in the British Dominions, but this is to be more generous than the Convention requires.

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of which are issued by a publisher. The representation of a dramatic or dramatico-musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication."

This definition is "for the purposes of the present Convention" only, and does not prevent a Unionist country from prescribing other rules for its own citizens. The Report of the British Copyright Committee, 1909 (*b*), doubts the correctness of the English translation of the above paragraph, and suggests that the word translated "publisher" would have been better translated by words including "anyone who issues copies" (*c*), and the definition of "publication" in the British Act has been framed in accordance with this opinion (*d*). The definition is one that presents difficulties of construction (*e*), and is, of course, important because a citizen of a non-Unionist country has not, under the Convention, any copyright in his unpublished works; in order to gain such protection he must first publish in a Unionist country. An American citizen has no rights, under the Convention, in France for his unpublished works, and a British subject publishing in Austria has no copyright, under the Convention, in any of the Unionist countries. Publication must, it is thought, be substantial and *bonâ fide* (*f*). It would not be sufficient, for instance, merely to print a foreign publisher's name on the title page of a book, although it would not, it is thought, be necessary to ensure publication in a particular country that the book should be printed in that country. It is to be particularly noticed that the representation of a dramatic work, performance of a musical work, exhibition of a work of art, and the construction of a work of architecture do not constitute publication. How then can such works be published? In the case of a dramatic work and a musical work, by printing and publishing the libretto or score. In the case of a work of art, such as a picture, presumably by publishing sketches, photographs, &c. of the work. The English Act has, however, expressly provided that "the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works" (*g*). The ground of this distinction between works of sculpture and

(*b*) p. 14.
(*c*) This paragraph in the original French reads: "Par œuvres publiées, il faut dans le sens de la présente Convention, entendre les œuvres éditées."
(*d*) Sect. 1 (3).
(*e*) See as to some of these difficulties, *ante*, p. 37.
(*f*) See sect. 35 (3) English Act; *Day* v. *Fieldman*, (1914) W. N. 258.
(*g*) Sect. 1 (3), and see sect. 2 (1) (iii).

of architecture, on the one hand, and other works of art, such as pictures, on the other hand, would appear to be because it was considered that the reproduction in the flat of a work in the round or in relief could not truly be a "copy," but it is not clear why this should be so (*h*), and it is doubtful whether any such distinction is sanctioned by the Convention.

Some results of the provisions as to publication.

Somewhat curious results follow from these provisions as to publication. For instance, a non-Unionist author is not protected, as regards performing rights, if he performs his play without publishing any copies thereof, but he acquires protection for his performing rights in all Unionist countries if he first publishes his play in a Unionist country. Presumably, however, he could not sue for infringements of his performing right prior to publication. On the other hand, a Unionist author is protected in all Unionist countries so long as he only performs his play, but if he first publishes his play in a non-Unionist country he immediately loses all rights in Unionist countries.

Publication must be authorised.

It is, of course, understood that there can be no publication of a work within the meaning of the Convention unless the same be an authorised publication. Articles 5 and 6 both refer to "*authors* . . . who first publish their works," &c. (*i*).

No formalities.

It was provided by Article 2 of the original Berne Convention that enjoyment of the rights conferred by the Convention should be "subject to the accomplishment of the conditions and formalities prescribed by the law of the country of origin of the work," and in order to make it clear that the formalities of the country in which protection was sought need not be complied with the Interpretative Declaration of Paris provided that the copyright should depend upon these conditions and formalities "solely." It followed from these provisions that it was always necessary where a foreigner sought protection in a country other than that in which he first published his work, to inquire as to what formalities were prescribed by the country of origin of the work, and, moreover, the question was raised whether if a work was totally unprotected in its country of origin it could claim any protection in other Unionist countries. Obviously, such questions might involve inquiries into difficult points of foreign law upon which the local tribunal might find it

(*h*) In America it has been held that the copyright in a statue can be infringed by a photograph (*Bracken* v. *Rosenthal* (1907), 151 Fed. R. 136), and sect. 2 (1) (iii) of the English Act seems to imply that this would be so in England. See *ante*, p. 191.

(*i*) See sect. 35 (2) of British Act.

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hard to pronounce a correct decision (*k*). The Revised Convention, however, marks a considerable advance in principle by providing, in Art. 2, para. 2, that "the enjoyment and exercise of" copyright in the various countries "shall not be subject to the performance of any formality," and that "such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work"—that is to say, there are not to be any formalities precedent to obtaining copyright, such as mention of reserve of copyright, &c., nor any formalities precedent to the bringing of an action for infringement, such as the registration which was necessary, under the repealed English legislation, prior to the commencement of proceedings to enforce copyright in a literary work. "Consequently"—as the paragraph proceeds—"apart from the express stipulation of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights shall be governed exclusively by the laws of the country where protection is claimed." Again, however, it is to be noted that this paragraph only applies for international purposes—any country is at liberty to impose any restrictions it pleases upon works published in that country; but it cannot impose conditions upon foreign works.

The term of protection.

Under the Revised Convention the only case in which it is necessary to refer to foreign law is in order to determine the period for which a work is entitled to protection. By Art. 2, para. 2, of the original Convention it was provided that copyright "must not exceed, in the other countries, the duration of the protection granted in the said country of origin." At the meeting of the representatives of the Powers at Berlin in 1908, an effort was made to induce the Powers to agree to a uniform term of protection as a condition of membership of the Union. This effort did not, however, entirely succeed, and Article 7 of the Revised Convention was agreed to as a compromise. This Article is as follows:—

"The term of protection granted by the present Convention

(*k*) For instance, the point was raised in the German Courts as to whether Oscar Wilde's work, "Salome," would have been debarred from copyright in England upon the ground that the work was blasphemous. In England it was provided by sect. 2 (3) of the International Copyright Act, 1886 (now repealed), that "the International Copyright Acts and an Order made thereunder shall not confer on any person *any greater right* or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first published." As to the difficulties that arose upon the words "any greater right," see *Hanfstaengl* v. *Empire Palace*, (1894) 3 Ch. 109; and as to compliance with the conditions of the country of origin, *Sarpy* v. *Holland*, (1908) 2 Ch. 198.

shall include the life of the author and fifty years after his death.

"Nevertheless, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be regulated by the law of the country where protection is claimed, and must not exceed the term fixed in the country of origin of the work. Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their domestic laws.

"For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work."

Although this Article provides that where the periods of copyright in two countries do not agree, the protection in the country where protection is sought "must" not exceed the term fixed in the country of origin of the work, the British Copyright Committee (*l*) are, no doubt, correct when they interpret this expression to mean that, though a country is bound to accord the lesser period, it is at liberty to give as much longer protection as it considers fit to do.

Effect of Art. 7.

The effect of Art. 7 is to establish the life of an author and a period of fifty years after his death as the ideal period of copyright for works other than photographs, but at the same time, not to exclude from the Union a country which accords a lesser period of protection. If any country does accord a lesser period of protection to native works, then that country is not obliged to accord to foreign works a longer period of protection than that allowed by its domestic laws, and works published in that country cannot claim in other Unionist countries longer protection than that allowed in the country of origin.

No difference between published and unpublished works.

It is to be noticed that the Convention does not—as the English Copyright Act does—draw any distinction between published and unpublished works, and neither are required to be protected for any longer period than the life of the author and fifty years from his death.

Protected works.

We now turn to consider what are the works which must be protected. Article 1 states that the Contracting States are con-

(*l*) Report of Copyright Committee, p. 18.

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stituted into a Union for the protection of the rights of authors over their "literary and artistic works." Art. 2 then provides that the expression "literary and artistic works" shall include any production in the literary, scientific, or artistic domain, whatever may be the mode or form of reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, choreographic works the acting form of which is fixed in writing or otherwise (*m*), musical compositions with or without words; works of design, painting, architecture, sculpture, engraving or lithography; illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture or science. Prior to the Revised Convention, there was no obligation to protect choreographic works or works of architecture, but in countries where such works received protection the other Unionist countries were entitled to the benefit of such protection.

Adaptations.

Art. 2 of the Convention then goes on to provide that "translations, adaptations, arrangements of music and other reproductions in an altered form of a literary or artistic work, as well as collections of different works, shall be protected as original works, without prejudice to the rights of the author of the original work. The contracting countries shall be bound to make provision for the protection of the above mentioned works. Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows."

The provisions of Art. 2 as to adaptations must be read in conjunction with Art. 12, which declares that amongst unlawful reproductions must be "specially" included "unauthorised indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, tale, or piece of poetry into a dramatic piece, and *vice versâ*, &c., *when they are only the reproduction of that work in the same form or in another form, without essential alterations, additions, or abridgements, and do not present the character of a new original work.*" The italicised words are unfortunate, as they seem to imply that if a copyist has added new matter which gives to his work the character of a new original work, he is not guilty of piracy.

Translations.

It will be noticed that translations are to be protected, and this, apparently, whether the same are authorised or not, subject to the rights of the author of the original work. Art. 8 deals with the rights of the author of the original work, stipulating that "the

(*m*) As to the meaning of this expression, see *ante*, p. 81.

authors of unpublished works, being subjects or citizens of one of the countries of the Union, and the authors of works first published in one of those countries, shall enjoy in the other countries of the Union, during the whole term of the right in the original work, the exclusive right of making or authorising a translation of their works."

The question of translations is of prime importance from the international point of view, for it is only by means of translations that an author of a literary or scientific work can practically make his work known in a country speaking another language than his own. Complete liberty of authorising translations has only been gained for the first time under the Revised Convention. The original Convention only gave the exclusive right of translation for a period of ten years from publication of the original work, and this only to authors who were subjects of a Unionist country. The Additional Act of Paris gave to such authors the exclusive right of translation during the whole period of copyright in the original article, subject, however, to the condition that an authorised translation, in the language for which protection was claimed, should be published in a Unionist country within ten years from the first publication of the original work. Under the Revised Convention authors—whether citizens of a Unionist country or not—who first publish in a Unionist country enjoy the exclusive right of authorising a translation during the entire period of copyright in the original work, free from any such condition as to publication of an authorised translation. Citizens of non-Unionist countries, however, have no right to protection against translations of their unpublished works.

Photographs.

Photographs are specially dealt with by Art. 3, which provides that "the present Convention shall apply to photographic works and to works produced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection"; but, by Art. 7, the term of protection for photographs is to be regulated by the law of the country where protection is claimed, provided that such term is not to exceed the term fixed in the country of origin of the work. There are no provisions for determining who is the "author" of a photograph.

These provisions as to photographs mark a considerable advance, for under the original Convention and the Additional Act of Paris, these works were only protected so far as the domestic laws of the various countries admitted such works to protection.

As pointed out above, the last paragraph of Art. 4 provides that

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the exhibition of a "work of art" does not constitute a publication of the work, but, photographs being separately dealt with, it is not clear that they are "works of art" within the meaning of this Article.

Anonymous and pseudonymous works.

The period of protection for anonymous and pseudonymous works is to be regulated by the law of the country where protection is claimed, but is not to exceed the term fixed in the country of origin of the work (Art. 7). In the case of such works the publisher whose name is indicated on the work is to be "entitled to protect the rights belonging to the author," and he is to be deemed, "without other proof," to be the legal representative of the anonymous or pseudonymous author (Art. 15).

The effect of author's or publisher's name appearing on the work.

The object of this last clause is to preserve the anonymity of the author. The first part of the same Article provides that, "in order that the authors of works protected by the present Convention may, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner." It is not, of course, essential that either the author's or the publisher's name should appear upon a work, for copyright is not to be "subject to the performance of any formality" (*n*), but the author or publisher, as the case may be, acquires certain advantages by reason of his name so appearing in any proceedings that he may take in any country for protecting his rights, the author not having to prove his proprietorship of the copyright and the publisher (in the case of anonymous or pseudonymous works) not having to prove his authority to institute proceedings on behalf of the author. The defendant is at liberty, however, in either case to prove that the plaintiff in fact has no rights. If the name of the author or publisher, as the case may be, does not appear upon the work, the plaintiff must in all cases prove his title in the usual way (*o*).

Newspapers.

Art. 9 relates to newspapers. Newspaper contributors are divided into three classes: (1) "serial stories, tales and all other works, whether literary, scientific or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union"; (2) newspaper "articles" (*p*), other than serial stories and tales; and (3) news of the day, and miscellaneous information which is simply of the nature of items of news.

(*n*) Art. 4.
(*o*) See sect. 6 (3) of the British Copyright Act, and *ante*, p. 207.
(*p*) Not "pictures," therefore.

The first class receive absolute protection, and may not be reproduced without the consent of the authors. It is to be noticed that *all* contributions to *periodicals* fall within this class. The reproduction of the second class of contribution may be expressly forbidden, but, if not so forbidden, may be reproduced "by another newspaper" (*q*), subject to the condition that "the source" be indicated, which expression is intended to include mention of the author's name, if the article is signed (*r*). The legal consequences of an omission to indicate the source is to be determined by the laws of the country whe e protection is claimed. To the third class "the protection of the present Convention shall not apply"—that is to say, whilst the piracy of news is not explicitly rendered lawful, mere news is not to be the subject of copyright. There is nothing, however, to prevent any country holding, on other grounds, the piracy of news to be prohibited.

Performing rights.

The performing rights of authors of dramatic and musical works, whether published or unpublished, are protected by Art. 11. Under the original Convention these rights had to be specially reserved by notice on the title page, if the work was published, but the Revised Convention provides that authors, to enjoy protection, shall not be bound to forbid the public representation or performance thereof. By the same Article, authors of dramatic or dramatico-musical works are to be protected during the existence of their right over the original work, against the unauthorised public representation of translations of their works. The wording of this clause seems to imply that the right of forbidding the public performance of an authorised translation of a dramatic work belongs to the author of the original work, unless, of course, such right has been assigned to the translator.

Gramophones, &c.

Protection against mechanical reproduction was accorded for the first time by Art. 13 of the Revised Convention. The original Convention had expressly provided by Art. 3 of the Closing Protocol that the manufacture and sale of instruments serving to reproduce mechanically "musical airs" in which copyright subsisted was not to be considered as constituting an infringement of musical copyright. Art. 13 of the Revised Convention is as follows:—

"The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can reproduce them mechanically; (2) the public performance of the said works by means of these instruments.

"Reservations and conditions relating to the application of this

(*q*) Not by a magazine.
(*r*) See Report to the Berlin Conference, Blue Book, Cd. 4467, p. 133.

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Article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.

"The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the present Convention.

"Adaptations made in virtue of paragraphs 2 and 3 of the present Article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country."

Art. 13 confined to "musical works."

It is important to notice that this Article only refers to "musical works." This restricted application is intentional. The framers of the original Convention appear to have been of opinion that all literary, dramatic and musical works would have been naturally protected, by virtue of Art. 4 of the Convention (*s*), against all mechanical reproductions, but for the provisions of Clause 3 of the Closing Protocol, which they considered to be in derogation of the author's rights. This Clause was inserted in the Closing Protocol in the interests of the Swiss manufacturers of musical boxes, which, of course, were only capable of reproducing tunes, not words. The Article, therefore, was confined to reproduction of "musical airs." Whether mechanical reproduction of literary and dramatic works was forbidden under the general terms of Art. 4 (*s*) of the original Convention, turns upon the meaning of the word "protection." In some countries it has been held that gramophones, &c. are infringements of copyright, in others the contrary has been held (*t*). The representatives of those countries in which it has been held that mechanical contrivances do infringe copyright considered, therefore, that Art. 13 of the Revised Convention was in derogation of the rights of authors, because by the second paragraph thereof, reservations and conditions may be imposed by domestic legislation, and these representatives were consequently unwilling that this Article should be given any wider application than Clause 3 of the Closing Protocol. Art. 13 was probably, therefore, not intended to apply even to the words of songs (*u*).

(*s*) Art. 2 of the Revised Convention.
(*t*) Including England, see *ante*, p. 256.
(*u*) See Correspondence respecting Revised Convention of Berne, 1909, Blue Book, Cd. 4467, pp. 142, 143. But see sect. 19 (2) (ii) of the British Act of 1911, *ante*, p. 261. Art. 13 is also silent upon the question of public performances of copyright works by means of mechanical instruments.

Reservations and conditions.

As pointed out above, power is given by the second paragraph of Art. 13 to any country to impose reservations and conditions as to mechanical reproductions of musical works, but the effect of any such reservations and conditions are to be strictly limited to the country which has put them in force. The effect of this is not, it is apprehended, to confine the operation of the particular reservations and conditions to native works. For instance, if a country adopts, as England has, the compulsory royalty system, such system, it is submitted, may, and does, apply to foreign works as well as to native works, but reproductions under such a system, in one country of the Union, will not render such reproductions lawful in any other country of the Union, and it is expressly provided by the last paragraph of the Article that such reproductions are liable to seizure, in the event of their being imported, without the authority of the interested parties (*x*), into a country where they would not be lawful.

Retrospective operation of Art. 13.

With regard to the paragraph relating to the retroactivity of Art. 13, the British Copyright Committee in their Report (*y*) remark that the paragraph is somewhat ambiguously worded. They state that the opinion of the Committee was "that the object of the paragraph is that manufacturers who have, at the time of the coming into force of the Revised Convention, lawfully adapted works (that is to say, adapted them without infringement of author's rights) to mechanical instruments, may still proceed to manufacture records in respect of the works which they have so adapted. But a difference of opinion arose as to whether, where there had been any adaptation to mechanical instruments of a work at the time of the coming into force of the Convention, that particular work would be free to be adapted by any manufacturer for any kind of instrument, or whether the manufacturer who had adapted it would be the only manufacturer who could produce the records of the work without the author's consent. A narrow majority of the Committee were in favour of the former view, which, in their opinion, is in accordance with the exact words of the latter part of the paragraph, and leaves all manufacturers upon an equal footing as regards works which by virtue of the paragraph might be reproduced without the author's consent, so that the effect of treating a manufacturer as having a vested interest in the work which he has adapted will be to give every other manufacturer practically the same freedom."

(*x*) That is to say, the author and any persons having exclusive rights of mechanical reproduction in the country into which the works are imported.

(*y*) p. 26.

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Protection of discs, rolls, &c.

There is no express provision in the Revised Convention protecting the mechanical contrivances themselves against piracy, but, indirectly, manufacturers may obtain such protection by virtue of the rights of the author in the original work under the Convention.

Cinematographs.

A separate Article is devoted to cinematograph productions. This is Art. 14, the first paragraph whereof protects authors of literary, scientific, or artistic works by conferring on them the "exclusive right of authorising the reproduction and public representation of their works by cinematography." But a cinematographic work may be an original creation, and so, by the second paragraph of the same Article, it is provided that "cinematograph productions shall be protected as literary or artistic works if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character." Again, an original work may have been employed in creating the scenes of a cinematograph production. If that is done without the consent of the author of the original work, it will be an infringement of the latter's copyright, but that has seemed to the authors of the Revised Convention no good ground for depriving the author of the cinematograph work of copyright in his work. Consequently, the third paragraph of Art. 14, in close analogy with the second paragraph of Art. 2, runs as follows:—"Without prejudice to the rights of the author of the original work, the reproduction by cinematography of a literary, scientific, or artistic work shall be protected as an original work." Finally, it is provided that "the above provisions apply to reproduction or production effected by any other process analogous to cinematography" (*z*). Art. 14 of the Revised Convention is entirely new.

Procedure.

The remedy of a person whose work has been pirated is to be governed by local law. It is provided by the second paragraph of Art. 4 that, "apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights, shall be governed exclusively by the laws of the country where protection is claimed" (*a*). However, seizure of the pirated copies is a

(*z*) See as to cinematography generally, *ante*, p. 247.

(*a*) An important and instructive case recently came before the Paris Court of Appeal which, affirming the decision of the Seine Civil Tribunal, held that the manager of the Paris branch and representative in Paris of an Argentine newspaper was liable in damages for putting on sale in France copies of the newspaper printed in Buenos Ayres, and containing pirated portions of a novel written by a French author. This liability, the Court stated, would

remedy which ought to be secured to authors by the legislation of every Unionist country, for Art. 16 provides as follows:—

"Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

"In such a country the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.

"The seizure shall take place in accordance with the domestic legislation of each country."

Notwithstanding the provisions of the Convention each Unionist country is to be at liberty "to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right" (Art. 17).

Retroactivity.

A notable alteration has been made as regards retroactivity in the Revised Convention. Under the original Convention it was provided that its provisions should apply to all works which at the time of its coming into force had "not yet fallen into the public domain in their country of origin." The Revised Convention (Art. 18) only excepts works which have, at the moment of its coming into force, fallen into the public domain in their country of origin "through the expiration of the term of protection." Works, therefore, which have, in the country of their origin, lost their protection owing to failure to comply with formalities, such as registration, notice of reserve of copyright, and so forth, are intended to be protected under the Revised Convention, as also, apparently, are works which were previously entitled to no protection whatsoever, *e.g.* (in some countries), works of architecture and photographs (*b*). The Article in question will also apply to works published in new countries adhering to the Convention (*c*). The effect of these provisions upon the translating right may be particularly observed. If a work has been published less than ten years prior to the entry into force of the Revised Convention, such works will be entitled to the benefit of the new protection. If, on the other hand, they were published

exist "even if the legislation of the country of publication accorded no protection to copyright": *Foley* v. *Cazaux*, "Le Droit d'Auteur," 1913, p. 100.

(*b*) It will be remembered that there are special provisions as to the retrospective operation of the clause relating to mechanical instruments: see *ante*, p. 321. The British Copyright Act does not comply with the provisions as to retroactivity, and in adhering to the Revised Convention Great Britain has made a reservation upon the point (see Appendix C.).

(*c*) See para. 4 of Article 18.

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more than ten years prior to the Revised Convention, then if any translation has been lawfully published in the country where protection is sought, the provisions of Art. 8 cannot be invoked by the proprietor of the copyright in the original work, but if there has been no such publication, the author will have the benefit of the new provisions (*d*).

The third paragraph of Art. 18, however, provides that the application of the principle laid down in the first and second paragraphs is to take effect according to the stipulations contained in special Conventions existing or to be concluded to that effect between countries of the Union, and that in the absence of such stipulations, the respective countries are to regulate, so far as they are respectively concerned, the manner in which the said principle is to be applied.

The Convention only provides a minimum of protection.

The Revised Convention only provides for a minimum protection, it is not intended to prevent any Unionist country which may feel more liberally disposed from granting more extensive protection. Art. 19, therefore, provides that "the provisions of the present Convention shall not prevent a claim being made (*e*) for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general." This clause operates to prevent a Unionist author from being in a worse position than a non-Unionist author; but it does not enable a Unionist author to claim more extensive rights than those accorded solely to natives, nor does the clause introduce the "most favoured nation" treatment, because a claim can only be made if the more extensive rights are accorded to foreigners "in general."

Existing treaties.

Art. 20 enables Unionist countries to conclude or maintain treaties conferring wider protection than that provided for by the Convention, but the present tendency is to discountenance such treaties as between Unionist countries as being superfluous and tending to complicate the law (*f*).

Rights of British authors in foreign countries.

If, then, an author belonging to one country of the Union desires to ascertain his rights in respect of his literary or artistic work in another country of the Union, he must consult the following four sources:—

1. The law of the country of origin of the work to ascertain the term of protection.

(*d*) See remarks of M. Renault, Blue Book of Correspondence, p. 147.
(*e*) Presumably this is to be taken as equivalent to giving a *right* to claim.
(*f*) *E.g.*, the treaty between Switzerland and Japan, previously in force with regard to copyright, was denounced in the year 1911.

2. The Revised Convention which stipulates a minimum protection.

3. The law of the country in which protection is sought, for everything relating to the nature of, and procedure for, enforcing the protection to which he is entitled, and, in particular, to see whether the local law is in any points more favourable than the Convention.

4. The particular treaties existing between the two parties to the Union, if they accord more extensive protection than the Convention (*g*).

No action in England for infringement abroad.

The English Courts have no jurisdiction to restrain a threatened infringement of copyright in a foreign country, even though that country be a member of the Copyright Union, but proceedings must be taken in the Courts and according to the law of the foreign country (*h*).

Present members of the Copyright Union.

At the moment of writing the following countries form the Copyright Union:—Belgium, Denmark, France with Algeria and her colonies, Germany, Great Britain with some of her colonies and dependencies (*i*), Hayti, Italy, Japan, Liberia, Luxemburg, Monaco, the Netherlands with the Dutch East Indies, Norway, Portugal, Spain, Sweden, Switzerland, Tunis (*k*). Although Italy and Sweden are members of the Union they have, neither of them, ratified the Revised Convention of Berne: Italy is bound by the original Convention of 1886, with the Additional Act of Paris, 1898, and the Interpretative Declaration of the same year (*l*), Sweden by the original Convention and the Interpretative Declaration, but not the Additional Act of 1898. It is, however, anticipated that Italy and Sweden will both, at an early date, ratify the Revised Convention (*ll*). Of the other countries of the Union Denmark, France, Tunis, Great Britain, the Netherlands, Japan and Norway have only ratified the Convention subject to certain reservations. The reservation in the case of Denmark is as to newspaper and magazine articles (remaining bound by Art. 7 of the original Convention as amended by the Additional Act); in the case of France and Tunis, as to works of art applied to

(*g*) Inasmuch as Great Britain has only one copyright treaty, and that with Austria, which is not a member of the Union, British authors are not concerned as to this last source.

(*h*) "*Morocco Bound*" *Syndicate* v. *Harris*, (1895) 1 Ch. 534.

(*i*) As to the Colonies of Great Britain, see "Colonial Copyright," *post*.

(*k*) It is anticipated that Hungary will shortly adhere to the Convention. Denmark joined the Union on 28th June, 1912, Holland on the 9th October, 1912, Portugal on 18th March, 1911. The other countries were all parties to the Union before 1908.

(*l*) *Ante*, p. 306.

(*ll*) Italy has now done so. *See* Addenda.

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industrial purposes (remaining bound by the provisions of the original Convention and Additional Act); in the case of Japan, as to (a) translating right (remaining bound by Art. 5 of the original Convention, as amended by the Additional Act), and (b) as to performing rights in musical works (remaining bound by Art. 9, para. 3, of the original Convention); in the case of Great Britain, as to the retrospective operation of the Convention (remaining bound by Art. 14 and para. 4 of the Final Protocol of the original Convention, as amended by the Additional Act); in the case of the Netherlands, as to translations and newspaper and magazine articles (being bound by Arts. 5 and 7 of the original Convention and the Additional Act); and in the case of Norway, as to works of architecture, newspaper and magazine articles, and the retrospective operation of the Convention (remaining bound by Arts. 4, 7 and 14 of the original Convention).

Power to extend the Act to foreign countries.

The powers enabling the Crown to ratify the Revised Convention are to be found in sect. 29 of the Copyright Act, 1911. By this section His Majesty is authorised by Order in Council to direct that that Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

" (a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which the Act extends;

(b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were British subjects;

(c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which the Act extends;

and thereupon, subject to the provisions of the Act and of the Order, the Act is to apply accordingly."

Conditions to be observed.

The right to make such Orders is subject to the following provisions:—

(i) before making an Order in Council under the section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty must be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it

appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I. of the Act;

(ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

(iii) the provisions of the Act as to the delivery of copies of books are not to apply to works first published in such country, except so far as is provided by the Order;

(iv) the Order in Council may provide that the enjoyment of the rights conferred by the Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

(v) in applying the provision of the Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country;

(vi) in applying the provisions of the Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section five of the International Copyright Act, 1886 (*m*).

It will be remembered that under sect. 1 of the Copyright Act, 1911, copyright subsists: (a) in works first published in those parts of His Majesty's dominions to which the Act extends; (b) in unpublished works the author of which was at the date of making the same a British subject; and (c) in unpublished works where, at the date of making the same, the author was resident in such parts of His Majesty's dominions as aforesaid. If, therefore, an Order in Council is made, under sect. 30, with regard to any particular country, copyright under the British Act is conferred upon: (i) works published in that country; (ii) unpublished

(*m*) 49 & 50 Vict. c. 33. It was provided by this section that if at the end of ten years after publication of a book or dramatic piece no authorised translation in the English language has been produced, the right to prevent the production in and importation into the United Kingdom of an unauthorised translation of the work is to cease. The various Orders in Council made under the section provide in the manner suggested by this proviso. See the Orders set out in Appendix C.

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works of citizens of that country; and (iii) unpublished works of persons resident in that country. The Act, therefore, more than satisfies the requirements of the Revised Convention, for the terms of that Convention do not require that protection shall be accorded to the unpublished works of a foreigner merely resident in a country of the Union at the time of making his work.

Order in Council of 24th June, 1912.

A general Order in Council was made on the 24th June, 1912, extending the benefit of the Act to the then members of the Copyright Union, with the necessary modifications in the case of those countries which had only partially adhered to the Revised Convention, and further Orders in Council have been made as fresh countries have adhered to the Convention. These Orders in Council will be found set out in Appendix C.

British colonies.

The position of the British Colonies and Dependencies with regard to countries belonging to the Copyright Union will be considered under Colonial Copyright.

Treaty with Austria.

Great Britain has a special copyright treaty with Austria, which differs in some respects from the Berne Convention (*n*). Under this treaty authors of literary or artistic works, which have been first published in the dominions of one of the contracting parties, are to have in the dominions of the other contracting party the same legal remedy against all infringements of their rights as if the work had been first published in the country where the infringement may have taken place, but these advantages are only to be reciprocally guaranteed to authors when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country is not to exceed that which is guaranteed to authors in the country where the work was first published.

This treaty first came into force on the 11th May, 1894, under an Order in Council made by virtue of the International Copyright Act, 1886 (*o*). Since the passing of the Act of 1911, a fresh Order in Council has been made under sect. 29 extending the provisions of that Act to Austria, subject to certain modifications (*p*).

Pan-American Convention.

In addition to the Berne Convention, there are other American Conventions—the Montevideo Convention and the various Pan-American Conventions. To none of these is Great Britain a party. The Montevideo Convention (11th January, 1889) adopts a wholly different principle to that of the Berne Convention,

(*n*) Set out in full in Appendix B.
(*o*) See *ante*, p. 306.
(*p*) The Order in Council will be found set out in Appendix C.

conferring upon an author belonging to one country of the Union in the other countries of the Union the rights which he enjoys in the country where he first publishes, not the rights which authors enjoy in the country where the infringement takes place, so that under this Convention the law of the country of origin follows the work into the other countries of the Union.

This Convention has only been ratified by Argentina (1894) (*q*), Bolivia (1903), Paraguay (1889), Peru (1889), and Uruguay (1892). The Pan-American Conventions are those of Mexico City (1902), Rio de Janeiro (1906), and Buenos Ayres (1910) (*r*). The later of these Conventions are both modifications of the original Convention of 1902, and all adopt the Berne principle of according national protection to works published in any of the countries of the Union, but under the Convention of 1902, in order to obtain copyright in another country, it is an "indispensable" condition that the author or his representatives shall address a petition to the official department of each government, claiming the recognition of the right. This has, however, been modified by the later Conventions, and under the Convention of 1910, it simply provided that "the acknowledgment of a copyright obtained in one State, in conformity with its laws, shall produce its effects of conferring full right in all the other States without the necessity of complying with any other formality, provided always there shall appear in the work a statement that indicates the reservation of the property right." The Convention of 1902 was ratified by Guatemala (1902), Salvador (1902), Costa Rica (1902), Honduras (1904), Nicaragua (1904), and the United States (1908). The Convention of 1906 was ratified by Guatemala (1907 and 1909), Salvador (1907), Nicaragua (1908), Costa Rica (1908), and Chile (1910). Twenty Powers, including all the South American countries, except Bolivia, were parties to the Convention of 1910, but it has so far been ratified only by the United States (1910).

International copyright with the United States.

There is no treaty between Great Britain and the United States on the subject of copyright, and it was not until 1891, after the passage of the Act commonly called the "Chace Act," that British authors could obtain any effective protection for their works in that country. The Chace Act is now repealed by the

(*q*) France adhered to the Convention on 3rd July, 1897, Spain on 29th Dec., 1899, Italy on 18th April, 1900, and Belgium in 1903. The adhesion of all four countries has been accepted by Argentina and Uruguay; that of Belgium by Paraguay also. For a case in which a Spanish author successfully invoked the aid of this Convention, see "Le Droit d'Auteur," 1913, p. 66.

(*r*) The full text of these Conventions will be found in Bowker on Copyright (American, published by Constable & Co., 1912), pp. 633 *et seq.*

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Copyright Act, 1909, under which British authors can obtain a certain measure of protection for their works, by virtue of a proclamation by the President of the United States, to the effect that the British law grants to citizens of the United States the benefit of copyright on substantially the same basis as its own citizens (*s*). American citizens are able to obtain copyright in their works by first publishing them in England, or simultaneously (*t*) in England and America; but, inasmuch as no Order in Council relating to the United States has been made under sect. 29 of the British Act of 1911, American citizens are not entitled to copyright in their unpublished works, or in their works first published in America only. They could, however, sue in England in respect of any publication in breach of trust or confidence (*u*).

(*s*) See *post*, "Copyright in United States of America," Part V.
(*t*) As to the meaning of this expression, see *ante*, p. 41.
(*u*) *Ante*, p. 30.

CHAPTER II.

COLONIAL COPYRIGHT.

Colonial Conference, 1910.

In the year 1910, during the presence of representatives of the British colonies and dependencies in England, a conference of those representatives was held upon the subject-matter of copyright in the British dominions. Mr. Sydney Buxton, the then President of the Board of Trade, urged upon the representatives the extreme desirability of obtaining a uniform code of copyright laws which should apply throughout the King's dominions. At this Conference certain resolutions were passed, generally recognising this desirability, but insisting, at the same time, that, at any rate, self-governing colonies ought not to be bound by any Imperial Copyright Act, or be made party to any Convention or treaty entered into by the home Government, without the assent of those colonies, and that all colonies ought to have the right to make local modifications in the law (*a*). Effect has been largely given to the recommendations of this Conference in the British Copyright Act, 1911, but as the process of obtaining a uniform code of copyright laws throughout the dominions is not yet completed (*b*), it is still necessary to understand the law as it existed prior to the Act of 1911.

Law prior to Act of 1911.

The Literary Copyright Act of 5 & 6 Vict. c. 45, expressly extended copyright to every part of the British dominions (*c*), but none of the Acts relating to artistic or dramatic copyright contained any similar provision. The Fine Arts Copyright Act, 1862, did refer to the British dominions, giving copyright in all works made in the British dominions or elsewhere (*d*), but it was held that there was nothing in that Act to extend the copyright throughout the British dominions, the provisions of sects. 8 and 10 providing for the recovery of the penalties in England, Scotland and Ireland, and forbidding the importation into the United

(*a*) Report of Colonial Conference, 1910 (Cd. 5272).
(*b*) See as to local legislation of particular colonies, Chapter III., *infra*.
(*c*) Sect. 29.
(*d*) Sect. 1.

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Kingdom of copies made in any part of the British dominions indicating a contrary intention (*e*).

Whilst, therefore, a British author publishing a literary work in the United Kingdom obtained under the Literary Copyright Act, 1842, an imperial copyright, extending throughout the British dominions, and was thus enabled to prevent piracies in any colony, a British artist first publishing in the United Kingdom obtained no imperial copyright, but, if he desired to prevent infringements in a colony, must have acquired local copyright according to the laws of the particular colony.

Rights of colonial authors in United Kingdom.

On the other hand, it was held that the Literary Copyright Act, 1842, did not confer copyright in the United Kingdom on works first published in the colonies (*f*); but this grievance was removed by the International Copyright Act, 1886 (*g*), which, by sect. 8, provided that the Copyright Acts should, subject to the provisions of the Act of 1886, apply to a literary or artistic work first produced in a *British possession* in like manner as they applied to a work first produced in the United Kingdom: provided (a) that the enactments respecting the registry of the copyright in such work should not apply if the law of such possession provided for the registration of such copyright; and (b) that where such work was a book the delivery to any persons or body of persons of a copy of any such work should not be required. If, therefore, in the particular colony there was no provision for registration, then the registration must have been effected in this country.

Result.

The result, therefore, was that any work produced in the colonies became entitled to the same copyright as it would have obtained if it had been first produced in the United Kingdom, but that although literary works published in the United Kingdom obtained copyright throughout the dominions, this was not the case with regard to artistic works.

Foreign reprints forbidden to be imported into colonies.

By sect. 17 of the Literary Copyright Act all persons, other than the proprietor of the copyright or persons authorised by him, were forbidden to import into any part of the British dominions, for sale or hire, any printed book first composed or written or printed and published within the United Kingdom, wherein there should be copyright, and reprinted in any country or place out of the British dominions, under penalty of £10, and double the value of the books (*h*). Complaints arose, especially from Canada, with

(*e*) *Graves & Co.* v. *Gorrie*, (1903) A. C. 496.
(*f*) *Routledge* v. *Low* (1868), L. R. 3 H. L. 100.
(*g*) 49 & 50 Vict. c. 33.
(*h*) And see the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36),

regard to this prohibition. It was contended that in the sparsely populated colonies, where the circulating library system did not prevail, the price of English books was practically prohibitive, whilst English publishers feared to issue special cheap colonial editions, because they would not be able to prevent their re-importation into Great Britain. With a view to remedy these grievances, in 1847 there was passed an Act, commonly known as the Foreign Reprints Act (*i*), enabling the Crown by Order in Council to suspend the prohibition against importation into the colonies of English copyright works, subject to their making suitable provisions for the protection of British authors. Under this Act numerous Orders in Council were issued by virtue of which cheap foreign reprints of copyright works were permitted to be imported into various colonies.

Provisions of Act of 1911.

The provisions of the Copyright Act, 1911, relating to the British possessions are contained in sects. 25 to 28. The countries subject to the Crown are divided into three classes: (a) dominions of the Crown other than self-governing colonies; (b) self-governing colonies, meaning thereby the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and Newfoundland (*k*); and (c) protectorates and Cyprus.

Non-self-governing colonies and protectorates.

The provisions of the Act relating to colonies, other than the self-governing dominions, and to the protectorates and Cyprus, are comparatively simple. Sect. 25 (1) enacts that the Act, "except such provisions thereof as are expressly restricted to the United Kingdom (*l*), shall extend throughout His Majesty's dominions," subject to a saving in respect of a self-governing dominion; and sect. 28 enables His Majesty by Order in Council to extend the Act to any territories under his protection, and to Cyprus, "and on the making of such Order this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies, or Cyprus, were part of His Majesty's dominions to which this Act extends." The legislature of any British possession to which the Act extends has, however, power to modify, or add to, any of the provisions of the Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they are only to apply to works the authors whereof were, at the time of the making of the

ss. 151, 152; and *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184; (1905), 21 T. L. R. 540, under "Canada," *post*, p. 342.

(*i*) 10 & 11 Vict. c. 95. Its official title is the Colonial Copyright Act, 1847.

(*k*) Sect. 35 (1).

(*l*) *I.e.*, sects. 11 and 12 relating to summary remedies.

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work, resident in the possession, and to works first published in the possession (*m*).

Thus, for the purposes of copyright, the colonies, other than the self-governing colonies, are treated as parts of the United Kingdom, and British copyright will extend to all such colonies, and *vice versâ* colonial copyright will extend to the United Kingdom, except those modifications and additions to the British Act which the legislature of any colony may make, those only applying locally (*n*). Similarly, the following protectorates, to which by an Order in Council dated the 24th June, 1912, the British Act was extended, are equally considered for copyright purposes to be part of the United Kingdom, namely, Cyprus, the Bechuanaland Protectorate, East Africa Protectorate, Gambia Protectorate, Gilbert and Ellice Islands Protectorate, Northern Nigeria Protectorate, Northern Territories of the Gold Coast, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia, Sierra Leone Protectorate, Somaliland Protectorate, Southern Nigeria Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Weihaiwei.

Self-governing dominions.

The position of the self-governing dominions is, under the Act, rather more complicated. The Act does not apply to such dominions without their consent, and the Act leaves it open to any such dominion to take any one of the following five courses:—

1. It may take no steps whatever. In this case the enactments which are repealed by the Act, so far as they are operative in the dominion, continue in force (*o*). At the time of writing, neither Canada nor the South African Union has taken any steps in the matter, and the repealed statutes, therefore, remain in force in those colonies.

2. It may repeal the old statutes (*p*). No colony has taken this course. If any colony were to do so, British authors would have no protection in that colony, except such as might be accorded by local legislation.

3. It may declare by its legislature the British Act to be in force in its territory either with or without any modifications or additions (*q*), but such modifications or additions, except in so far

(*m*) Sect. 27.

(*n*) India has passed an Act containing local modifications, and also providing for summary remedies for infringement (see *post*, Chapter III.); Jersey provides summary remedies (Law of 14th Jan., 1913), as also does the Isle of Man (Law of 5th July, 1912). The Copyright Act comes into force in the different colonies on varying dates, see sect. 37.

(*o*) Sect. 26 (2), but *quære* whether the author's unpublished works are protected: sect. 26 (3).

(*p*) Sect. 26 (1). (*q*) Sect. 25 (1).

as they relate exclusively to procedure and remedies, or are necessary to adapt the Act to the circumstances of the dominion, must apply only to (a) works of authors resident in the dominion, and (b) works first published in the dominion (*r*). Newfoundland has adopted the Act without, and the Commonwealth of Australia with, such modifications and additions (*s*). Newfoundland and Australia are, therefore, to be considered as part of the United Kingdom for copyright purposes, subject, in the case of Australia, to the local modifications for colonial authors.

4. It may pass legislation giving to British authors resident elsewhere than in the colony, and to foreign authors resident in the parts of the King's dominions to which the Act extends (*t*), rights within the colony "substantially identical" with those conferred by the Act, and the fact that "the remedies for enforcing the rights or the restrictions on importation of copies of works manufactured in a foreign country under the law of the dominion, differ from those under this Act" is not to prevent the rights from being "substantially identical" (*u*). In this case, upon a certificate by "the Secretary of State" (*x*) that the above conditions exist, the particular dominion is, for the purposes of the rights conferred by the Act of 1911, to be treated as if it were a dominion to which the Act extended. Colonial authors will thus obtain protection under the British Act; British authors will obtain protection under the local Act. The object of this fourth alternative is to enable a self-governing dominion, whilst giving full protection to British authors, to differentiate against foreign authors. At the conference of the colonial representatives previously referred to (*y*) a resolution relating to international copyright was passed declaring that, in the opinion of the conference, first, save in so far as it may be extended by Orders in Council, copyright under the new Imperial Act should subsist only in works of which the author is a British subject, or is *bonâ fide* resident in one of the parts of the British Empire to which the Act extends: and that such copyright should cease if the work be first published elsewhere than in such parts of the Empire; and secondly, that "if possible, it should be made clear on ratification that the obligations imposed by the convention on the British Empire should relate solely to works the authors of

(*r*) Sect. 27.
(*s*) See *post*, Chapter III.
(*t*) N.B.—Not necessarily to foreign authors resident elsewhere, even if they first publish their works in Great Britain.
(*u*) Sect. 25 (2).
(*x*) *Quære*, which?
(*y*) *Ante*, p. 331.

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which are subjects or citizens of a country of the Union or *bonâ fide* resident therein, and that in any case it is essential that the above reservation should be made in regard to any self-governing dominion which so desires." Under this third alternative, then, a self-governing dominion might by its legislation discriminate against certain foreign countries and refuse protection to the works of authors who are citizens of such countries, and thus to provide against the importation of works "manufactured in a foreign country" (*z*) into the colony, notwithstanding that the works might be the subject of copyright protection in some parts of the Empire. The difficulty in taking such a course has hitherto been that it would have constituted an infringement of Article 6 of the Revised Berne Convention, which provided that authors, not being subjects or citizens of one of the countries of the Union who first publish their works in one of those countries, should enjoy in that country the same rights as native authors, but this difficulty has been removed by the recent Additional Protocol of 1914 (*a*). No self-governing dominion appears to have adopted this fourth alternative, but it is possible that Canada may shortly do so.

5. It may pass legislation giving "adequate protection" (*b*) within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere "than in the particular dominion" (*c*). Under this alternative the self-governing colony is not required to give any protection to foreigners wherever resident or wherever they may first publish their works, and the colony does not become a dominion to which the Act of 1911 extends; the position is simply that the colony comes into a position under which it may negotiate with the home Government and each other self-governing dominion as to the mutual protection to be given to their works. The Crown in Council may, for the purpose of giving reciprocal protection, direct that the Imperial Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of the Crown's dominions to which the Act extends (including a dominion which is for the purposes of the Act to be treated as if it were a dominion to which the Act extends), apply to works the

(*z*) N.B.—A self-governing dominion, it will be noticed, is not, under this alternative, to be at liberty to legislate against the importation of works manufactured in Great Britain. The proprietor of the copyright could prevent this if he chose, under sect. 14 (7) of the Imperial Act.

(*a*) See *ante*, p. 310.

(*b*) "Substantially identical" are the words in sub-sect. 2 of sect. 25.

(*c*) Sect. 26 (3).

authors whereof were, at the time of the making of the work, resident in the particular self-governing dominion and to works first published in that dominion. Similarly, the Governor in Council of any self-governing dominion to which the Act extends (including as aforesaid) is authorised to confer within that dominion the like rights as the Crown in Council is authorised to confer within other parts of His Majesty's dominions (*d*). It is further provided that, save as provided in any Order in Council, works the authors whereof were resident "in a dominion to which this Act does not extend" are not, whether they are British subjects or not, to be entitled to any protection under the Imperial Act, except such protection as is by the Act conferred on works first published within the parts of His Majesty's dominions to which the Act extends (*e*). The unpublished works, therefore, of a British author resident in a colony which has adopted this fifth alternative are only protected so far as the Order in Council directs. In fact, under this alternative, colonial authors must have regard to the Order in Council as well as the Act in order to discover their rights in Great Britain, and British authors must look to the local legislation and the order of the Governor in Council in order to discover their rights in the colony. This fifth alternative appears to be the one which has been adopted by New Zealand.

Importation into and from the colonies.

It is important to observe that, whichever alternative has been adopted, it is open to the proprietor of the copyright to prevent the importation into any colony of copies of his work made out of that colony, so that, if a British author were to assign his colonial copyright, the assignee could prohibit the importation of British-made copies into the colony (*f*); and similarly, the British author could prevent the importation of colonial copies into Great Britain, for those copies "if made in the United Kingdom would infringe" his copyright (*g*). The same rules would apply, *mutatis mutandis*, if a colonial author were to assign his British rights (*h*), but, as it is only the "owner of the copyright" who can prevent importation either into the United Kingdom or the colonies, licensees should be careful to recognise their position. A British author who has given a licence to publish a colonial edition can prevent colonial copies being imported into Great Britain (*i*), but the licensee cannot prevent British copies from being imported into the colony;

(*d*) Sect. 26 (3).
(*e*) *Ib.*
(*f*) Sect. 14 (7).
(*g*) Sect. 14 (1); see *ante*, p. 201.
(*h*) Sub-sect. (7).
(*i*) Sub-sect. (1).

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and *vice versa*, a colonial author who has given a licence to publish a British edition can prevent British copies from being imported into the colony (*k*), but the licensee cannot prevent colonial copies from being imported into Great Britain.

International arrangements.

With regard to any international arrangements which may be made by the Mother Country, it is provided that any Order in Council made under sect. 29 of the Act (*l*) is to apply to all His Majesty's dominions, except the self-governing dominions and any other possession specified in the Order (*m*). Accordingly, the various Orders in Council which have been made under that section (*n*) have applied the Convention to all the dominions, colonies and possessions of the Crown, with the exception of the self-governing dominions, and also to Cyprus and the Protectorates to which the Copyright Act was by Order in Council extended (*o*). With regard to the self-governing dominions the Act authorises the Governor in Council of any such dominion to which the Act extends to make, as respects that dominion, the like Orders as the Crown in Council is, under sects. 29 and 30, authorised to make with regard to dominions other than self-governing dominions, and the provisions of those sections are, with the necessary modifications, to apply accordingly (*p*). Orders in Council have, under this power, been made by Australia, New Zealand, and Newfoundland. It will thus be seen that the Revised Convention of Berne applies throughout the dominions, with the exception of Canada and the Union of South Africa. These last-mentioned dominions, in the meantime, remain bound under the International Copyright Act, 1886, by the original Berne Convention as modified by the Interpretative Declaration of Paris (*q*).

(*k*) Sub-sect. (7).
(*l*) See *ante*, p. 326.
(*m*) Sect. 30 (1), (3).
(*n*) See these Orders set out in Appendix C.
(*o*) See the list given on p. 334, *ante*.
(*p*) Sect. 30 (3).
(*q*) *Mary* v. *Hubert* (1906), 15 Quebec R. 381.

CHAPTER III.

LOCAL COPYRIGHT LAWS OF BRITISH COLONIES AND POSSESSIONS.

(a) *Canada.*

Canadian difficulties.

THE unsatisfactory condition of the copyright laws as they affect Canada, referred to in the last edition of this work, still continues at the moment of writing, but there is foundation for the hope that Canada will shortly pass a Copyright Act which will place the law in a more satisfactory position.

The difficulty experienced by Canada in falling into line with the other colonies and dependencies of the United Kingdom is due almost entirely to her proximity to the United States, the enterprise of whose publishing firms has threatened to strangle the native book-producing industry. The following is a short history of the Canadian Copyright legislation.

Acts of 1875 and 1886.

The fundamental Act is the Canadian Copyright Act, 1875 (*a*), which gives copyright for twenty-eight years from the time of recording the copyright as therein directed to any person domiciled in Canada, or in any part of the British dominions, or being the citizen of any country having an international copyright treaty with the United Kingdom (*b*), who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statue, sculpture, or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched, or made from his own design any print or engraving, and the legal representatives of such person, the sole right and liberty of printing, reprinting, publishing, reproducing and vending such literary, scientific, or artistic works or compositions, in whole or in part, and of allowing

(*a*) Substantially re-enacted with some alterations, first by the Revised Statutes, 1886, c. 62, and later by Revised Statutes, 1906, c. 70. The earlier Acts, with the later Act of 1900 hereafter referred to, will be found set out in full in the Appendix to the fourth edition of this work.

(*b*) These words cover the case of any country which is a party to the Berne Convention. They also cover Austria, which has a copyright treaty with Great Britain, though Canada is not included in that treaty, but Canada contends that the words do not cover the United States, see *infra*. The Act of 1889 proposed to limit the words by adding "in which Canada is included."

translations to be printed or reprinted and sold of such literary works from one language into other languages (*c*).

Term of copyright and in whom vested.

If at the expiration of the term of twenty-eight years, the author or any of the authors (when the work has been originally composed and made by more than one person) be still living, or being dead have left a widow or a child or children living, the same exclusive right is continued to such author, or if dead, then to such widow and child or children, as the case may be, for the further term of fourteen years, provided that within one year after the expiration of the first term the title of the work be again recorded, and all other regulations required to be observed in regard to original copyrights are complied with in respect to such renewed copyright (*d*).

Conditions on which copyright depends.

In order to entitle an author to the benefit of copyright under this Act, the following conditions must be complied with:—

1. Such literary, scientific, or artistic works must be printed and published or reprinted or republished in Canada, or in the case of works of art, must be produced or reproduced in Canada, whether so published or produced for the first time or contemporaneously with or subsequently to the publication or production elsewhere (*e*).

2. In the case of a book, map, chart, musical composition, photograph, print, cut, or engraving, two copies must be deposited at the office of the Minister of Agriculture; and so in the case of paintings, drawings, statuary and sculpture, unless a written description of such works is furnished to the Minister of Agriculture (*f*).

3. Information must be given of the copyright being secured, by causing to be inserted in the several copies of every edition on the title-page, or on the page immediately following, if it is a book, or if it is a map, chart, musical composition, print, cut, engraving, or photograph, by causing to be impressed on the face thereof, or if a volume of maps, charts, music, engravings or photographs upon the title-page or frontispiece thereof, the following words, "Entered according to Act of Parliament of Canada in the year , by A. B., at the Department of Agriculture" (*g*). As regards paintings, drawings, statuary, and sculptures, the sig-

(*c*) Sect. 4, Act of 1875; and Act of 1886.
(*d*) Sect. 5, Act of 1875; sect. 17, Act of 1886.
(*e*) Sect. 4 (2), Act of 1875; sect. 5 (1), Act of 1886. The section places no limit on the time within which republication must be effected.
(*f*) Sect. 7, Act of 1875; sect. 9, Act of 1886.
(*g*) Under an amending Act of 1908, the following short form of copyright notice is now substituted, "Copyright, Canada, 19 , by A. B."

nature of the artist is deemed sufficient notice of the proprietorship (*h*).

4. Whenever the author of a literary, scientific, or artistic work or composition which may be the subject of copyright has executed the same for another person, or has sold the same to another person for due consideration, such author will not be entitled to obtain or retain the proprietorship of such copyright, which is by the said transaction virtually transferred to the purchaser, who may avail himself of such privilege unless a reserve of the said privilege be specially made by the author or artist in a deed duly executed (*i*).

Interim copyright.

Pending the publication or republication in Canada of a literary, scientific, or artistic work, the author may secure interim copyright (*i.e.*, for one month from the date of the original publication elsewhere) by depositing a copy of the title or a designation of the work intended for publication or republication in Canada. The author must publish the registration of this interim copyright in the "Canada Gazette" (*k*). When interim copyright is secured the work must be published in Canada within one month of its original publication elsewhere under a maximum penalty of 100 dollars (*l*).

Piracy.

Offenders forfeit the plate and every sheet copied, and are liable to a penalty varying from ten cents to a dollar for every sheet—half to the proprietor and half to the Crown.

Assignment.

The right is assignable either as to the whole or in part by an instrument in writing made in duplicate and recorded in the Office of the Minister of Agriculture (*m*).

Importation.

Sect. 15 (*n*) of the Act provides that "works of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada under any Canadian or Provincial Act, shall upon being printed and published, or reprinted and republished in Canada, be entitled to copyright under this Act; but nothing in this Act shall be held to prohibit the importation from the United Kingdom of copies of such works legally printed there."

If, on the other hand, a work be copyrighted in Canada, then such importation into Canada is forbidden (*o*); and by sect. 4 of the Imperial Act (38 & 39 Vict. c. 53), which authorised the

(*h*) Sect. 9, Act of 1875; sect. 12, Act of 1886.
(*i*) Sect. 16 in both Acts.
(*k*) Sect. 10, Act of 1875; sect. 13, Act of 1886.
(*l*) Sect. 17, Act of 1875; sect. 33, Act of 1886.
(*m*) Sect. 18, Act of 1875; sect. 15, Act of 1886.
(*n*) Sect. 6, Act of 1886.
(*o*) Sects. 11 and 13, Act of 1875; sects. 30 and 32, Act of 1886.

Crown to assent to the Canadian Act of 1875, it was provided that when any book in which there is imperial copyright becomes entitled to copyright in Canada "it shall be unlawful for any person, not being the owner in the United Kingdom, of the copyright in such book, or some person authorised by him, to import into the United Kingdom any copies of such book reprinted or republished in Canada."

British works entitled to copyright in Canada.

In order to appreciate the effect of this legislation as regards British and foreign authors, it must be remembered that the Imperial Copyright Act, 1842 (*p*), conferred upon any person first publishing a literary work in the United Kingdom copyright not only in the United Kingdom, but in the colonies and dominions of the Crown. On the other hand, the Fine Arts Copyright Act, 1862 (*q*), did not confer any imperial copyright, and a British artist could only obtain copyright in his pictures under the Canadian Act (*r*). It has been held that the Canadian Act of 1875 did not abrogate, so far as Canada was concerned, the Imperial Act of 1842 (*s*).

Foreign reprints may not be imported into Canada.

Canada at first took advantage of the Foreign Reprints Act, 1847 (*t*), but later she declined to make the collection of *ad valorem* duties required by the Act, and thereupon it ceased to have any force in Canada, and it became illegal under the Imperial Act of 1842, s. 17, to import into Canada any books, wheresoever printed, which had British copyright, and this notwithstanding that the notices to the Customs authorities required by sect. 152 of the Customs Consolidation Act, 1876 (*u*), had not been given, for that section has no application where a colony makes, as Canada does, its own Customs arrangements (*x*).

Complaints of Canadian publishers.

This state of the law as to copyright gave great dissatisfaction to Canadian printers and publishers. They complained that they were damaged, on the one hand, by authors belonging to the United States publishing in Great Britain and thus securing copyright in Canada, and, on the other hand, by British authors making arrangements with United States publishers whereby the latter secured the Canadian, as well as the United States, market, the consequence being that Canada was flooded with cheap

(*p*) 5 & 6 Vict. c. 45.
(*q*) 25 & 26 Vict. c. 68.
(*r*) *Graves* v. *Gorrie*, (1903) A. C. 496.
(*s*) *Smiles* v. *Belford* (1877), 1 Ont. App. R. 436; *Morang* v. *Publishers' Syndicate* (1900), 32 O. R. 393; *Black* v. *Imperial Book Co.* (1903), 5 Ontario L. R. 184; (1905), 21 T. L. R. 540; *Hawkes* v. *Whaley, Royce & Co.*, "The Author" for 1913, p. 202.
(*t*) 10 & 11 Vict. c. 95, *ante*, p. 332.
(*u*) 39 & 40 Vict. c. 36.
(*x*) *Black* v. *Imperial Book Co.*, *supra*; see *ante*, p. 333.

American reprints which Canada had no power to exclude, to the great detriment of their trade. The Berne Convention only added to these grievances; as it enlarged the class of persons who could obtain copyright in Canada without republishing there.

In the year 1889 the Dominion Parliament, in order to remedy these grievances, passed an Act to amend the Copyright Act, 1875, but the assent of the Crown was refused, and the Act has never become effective law. After some continuous controversy, however, between the colony and the home Government, a compromise was effected, and a Canadian Act was passed in the year 1900 amending the Act of 1886, and this Act duly received the assent of the Crown (*y*). By sect. 1 of this amending Act it is provided that if a book "as to which there is subsisting copyright under the Copyright Act" has been first lawfully published in any part of the British dominions other than Canada, and if it is proved to the satisfaction of the Minister of Agriculture that the owner of the copyright so subsisting and of the copyright acquired by such publication has lawfully granted a licence to reproduce in Canada, from movable or other types, or from stereotype plates, or from electroplates or from lithograph stones, or by any process for facsimile reproduction, an edition or editions of such book designed for sale only in Canada, the Minister may, notwithstanding anything in the Copyright Act, by order under his hand, prohibit the importation, except with the written consent of the licensee, into Canada of any copies of such books printed elsewhere. Two copies may, however, be specially imported for the *bonâ fide* use of any public free library or any university or college library, or for the library of any duly incorporated institution or society for the use of the members of such institution or society.

Act of 1900.

By sect. 2, the prohibition against importation may be revoked if (a) the licence to reproduce in Canada has terminated or expired; or (b) the reasonable demand for the book in Canada is not sufficiently met without importation; or (c) the book is not, having regard to the demand therefor in Canada, being suitably printed or published; or (d) any other state of things exists on account of which it is not in the public interest to further prohibit importation.

Effect of the Act of 1900.

This Act applies to books only, and further, only to books that are copyright in Canada, for the "Copyright Act" mentioned in sect. 1 means the Canadian Copyright Act of 1886. The objec-

(*y*) 63 & 64 Vict. c. 25 (Canadian), commonly known as "the Fisher Act."

tionable feature of the 1889 Act, whereby an author practically would have lost his copyright in Canada, unless he acquired local copyright also, is dropped. The Act does not touch imperial copyright, and whether a British author takes advantage of the Act, or does not, rests entirely with himself. If he desires to do so, he must make arrangement with a local publisher, and a special Canadian edition must be printed in Canada, though the type need not be set there. Thereupon the Canadian publisher will acquire local copyright for the Canadian edition, and the author or anybody else will be prohibited from importing copies of the work into Canada, but otherwise the author's imperial copyright will not be affected, so that the local copyright is in addition to and concurrent, though not coterminous, with imperial copyright, and affords additional protection and relief. If, on the other hand, the author does not desire to take advantage of the Act of 1900, his imperial copyright remains unaffected.

Present state of the law.

Such is the state of the law at the present time. Canada is, of course, one of the self-governing dominions, and sect. 25 (1) of the Imperial Act of 1911 does not, therefore, apply to her. Until such time as she either adopts the Act of 1911, or passes legislation of her own giving such rights "substantially identical with the provisions of that Act or such adequate protection" as will entitle her to an Order in Council under sect. 26 (3) (*z*), the old statutes, including the Literary Copyright Act, 1842, still apply (*a*), so that literary works entitled to imperial copyright under that Act are entitled to protection in Canada; but, on the other hand, pictures, drawings, and photographs are not entitled to any such protection. Some doubt has further arisen as to whether books published after the commencement of the Act of 1911 (*b*) are protected in Canada, inasmuch as under the Act of 1842 registration at Stationers' Hall was necessary before any action for infringement could be brought (*c*), and such registration is no longer possible (*d*).

Desirability of copyright legislation in Canada.

It will be seen, therefore, that Canadian legislation bringing that colony into line with the Mother Country is eminently desirable, and it seems probable that some such legislation will be passed at an early date. In fact, in the year 1911, a bill was introduced into the Canadian Parliament following generally the lines of the Imperial Copyright Act, 1911, but for the moment the bill has

(*z*) *Ante*, p. 336.
(*a*) Sect. 26 (2).
(*b*) *I.e.*, 1st July, 1912.
(*c*) *Ante*, p. 16.
(*d*) Cf. *Evans* v. *Morris*, (1913) W. N. 58.

been dropped. The Canadian grievance is mainly against the United States, because American authors are able to acquire British copyright by publishing their works simultaneously in America and England. The works then become entitled to copyright in Canada, and can be imported into Canada without infringement of copyright. The desire of Canada is that such works shall only be entitled to copyright in that country if they have been printed there—in other words, to retaliate upon the United States for the presence of the "manufacturing clause" in their copyright code (*e*). Hitherto the home Government has felt constrained to refuse assent to any Canadian legislation which would have any such effect, because in doing so they would have acted in contravention of Art. 6 of the Revised Convention of Berne, which required that every country of the Copyright Union should accord to authors not the subjects or citizens of any one of the countries of the Union, who first publish their works in this country, "the same rights as native authors." Now, however, that Article 6 of the Revised Convention has been modified by the Additional Protocol of 20th March, 1914 (*f*), it seems probable that a Canadian Act will be passed discriminating against the United States, but giving greater security to British works.

(b) *Newfoundland.*

Newfoundland has taken the third course referred to on p. 334 as open to the self-governing dominions, and has adopted the British Copyright Act, 1911, and declared that that Act, except those clauses which are expressly restricted to the United Kingdom, shall be in force in the colony (*g*), and her adhesion to the Revised Berne Convention has been notified to the countries of the Union, subject to the same reservation as to the retrospective operation of the Convention as was made by Great Britain (*h*). The adhesion dates from the 1st July, 1912.

(c) *South African Union.*

At the time of writing the Union has passed no copyright legislation, but it is anticipated that the Union will, at an early date, take advantage of the option given by sect. 25 (2) of the Copyright Act, 1911, and pass an Act conferring upon authors rights "sub-

(*e*) See "United States of America," Part V., *post*.
(*f*) See *ante*, p. 310.
(*g*) An Act respecting copyright, 1912 (2 Geo. V. c. 5).
(*h*) See *ante*, p. 286, n. (*g*).

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stantially identical" with those accorded by the Imperial Act (*i*). In the meantime, however, the laws of each particular colony remain in force locally, though imperial copyright will be regulated by the old imperial statutes (*k*).

Cape Colony.

Cape Colony has four copyright statutes dated respectively 1873, 1888, 1895, and 1905. The Act of 1873 relates to books, musical works, and maps, the period of protection being the life of the author and five years or a gross period of thirty years, whichever shall be longer. The Act of 1905 relates to artistic works, the period of protection being, in the case of works of painting or sculpture, the life of the author and thirty years; in the case of engravings, not published or incorporated in books, thirty years from the end of the year of first sale, exposure for sale, or registration. Registration in the case of books seems to be optional, but in the case of artistic works compulsory, and four copies of any book published in the colony must be delivered to the Registrar of Deeds within a month, to be transmitted by him to certain named libraries (*l*). Under the Act of 1873 the proprietor of the copyright is given an action for damages, and under the Copyright Protection Act, 1895, the importation of reprints of books registered under the Act of 1873 is prohibited, provided notice be given to the Collector of Customs.

Natal.

Natal, under Acts of 1897 and 1898, grants protection to literary and artistic works for the life of the author and seven years after his death, or for forty-two years, whichever period is the longer, two copies to be deposited for registration within three months from publication.

Transvaal.

The Transvaal, by an Act of 1887 (*m*), gives protection to literary and artistic works for a period of fifty years from the first publication, dating from the time of registration, or if the author survives that period during the residue of his life. The work must be printed in the colony, and three copies thus printed must be deposited with the Registrar, but by a resolution of the Volksraad in 1895, this printing condition may be waived in the case of countries giving reciprocal advantages.

Orange Free State.

The Orange Free State has no copyright law.

(*i*) A copyright committee appointed by the legislature made an interim report and drafted a proposed Bill, but the same remains in abeyance for the present.

(*k*) Copyright Act, 1911, s. 26 (2), *ante*, p. 334.

(*l*) Books Registry Act, 1888.

(*m*) This Act will be found set out more fully in the fourth edition of this work, p. 524.

(d) *The Australian Commonwealth.*

Copyright Act, 1912.

The Commonwealth Copyright Act, 1912 (*n*), declares the British Act to be in force in the Commonwealth, subject to certain modifications. Sect. 10 empowers the seizure of infringing copies imported into the Commonwealth in substantially the same language as that employed in sect. 14 of the British Act. Sect. 11 enables the Governor-General in Council to direct that the British Act and the Commonwealth Act shall extend to literary, musical, dramatic, and artistic works first produced or published in any part of the King's dominions to which the British Act does not extend in like manner as if the works had been first published or produced in the Commonwealth, subject substantially to provisoes similar to provisoes (i) to (vi) in sect. 29 (1) of the British Act.

Summary remedies.

The Act further provides, in sects. 14 to 21, certain summary remedies for infringement of copyright. Sect. 14 is in language identical with that of sect. 11 of the British Act, except that sub-sect. (4), preserving the Musical (Summary Proceedings) Copyright Act, 1902, and the Musical Copyright Act, 1906, is omitted. The summary remedies in the Australian Act are, however, wider than those contained in the British Act. Sect. 15 enacts that "any person who, for his private profit, permits any theatre or other place of entertainment to be used for the performance in public of any musical or dramatic work, without the consent of the registered owner of the sole right to perform or authorise the performance of the work in the State or part of the Commonwealth where the theatre or place is situated, shall be guilty of an offence, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of the right to perform or authorise the performance of the work" (*o*)—penalty, £10. Sect. 17 provides that "the registered owner of the sole right to perform, or authorise the performance of, a musical or dramatic work in the Commonwealth, or any part thereof, or the agent of such owner appointed in writing may, by notice in writing, in accordance with the prescribed form, forbid the performance in public of the work, in infringement of his right, and every person to whom a notice has been given in accordance with this section shall refrain from performing or taking part in the performance in public of the work in infringement of the right of such owner,"

(*n*) No. 20 of 1912, set out in Appendix D. This Act repeals the earlier Copyright Act, 1905.

(*o*) Cf. sect. 2 (3) of the British Act.

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subject to a penalty of £10. Any person who, without just cause, gives notice in pursuance of this section is liable to a penalty of £20. These sections are calculated to be helpful in the case of piracies committed by travelling dramatic companies. Sect. 16 gives power to grant warrants authorising seizure of infringing copies offered for sale, and to search premises upon which it is suspected that there are infringing copies (*p*). Summary proceedings must be commenced within six months from the date of the offence, and a conviction is subject to appeal (*q*). The summary remedies do not apply to works of architecture, and the special remedies provided for by sects. 15, 16, and 17 can only be taken advantage of by owners who have registered their copyright under the Act (*r*).

Registration.

The Act provides for registration of copyright, and assignments and transmissions thereof, but such registration is entirely optional (*s*). The advantages of registration appear to be, first, that the summary remedies prescribed by sects. 15, 16, and 17 in case of infringement are open only to a registered owner, and, secondly, because the register is to be *primâ facie* evidence of the particulars entered therein (*t*). Whether registration is sufficient if made before action is brought, as was held under the British Copyright Act, 1842 (*u*), or whether the remedies are only applicable if registration takes place before infringement, is a point that will probably have to be decided by the Courts. Two copies of any book the copyright in which is sought to be registered must be deposited with the Registrar (*x*), and one copy of every book which is first published in the Commonwealth must be sent by the publisher to the Librarian of Parliament within a month after publication (*y*).

Rules have been made under this Act prescribing the method of registration and forms of application; also with regard to the collection of royalties under sects. 3 and 19 (2) of the British Act of 1911 (*z*). These rules follow, generally, the rules made by the Board of Trade in England under the same sections (*a*).

(*p*) These powers are not confined, as in the British Musical Copyright Act, 1906, to musical works.

(*q*) Sects. 19, 20.

(*r*) Sect. 26.

(*s*) Sects. 26, 29.

(*t*) Sect. 33, but even without registration the copyright owner will have the benefit of the presumptions contained in sect. 6 (3) of the Imperial Act: see *ante*, p. 207.

(*u*) See *ante*, p. 16.

(*x*) Sect. 38. All correspondence should be addressed to "The Registrar of Copyrights, Commonwealth Offices, Treasury Place, Melbourne."

(*y*) Sect. 40.

(*z*) Statutory Rules of 1913, No. 338.

(*a*) Appendix E., *post*.

Notice has been given to the countries concerned of the adhesion of the Commonwealth of Australia with Papua and Norfolk Island to the Revised Convention of Berne, subject to a reservation as to the retroactive provisions of the Convention. The adhesion dates, in the case of the Australian Commonwealth and Norfolk Island, from the 1st July, 1912; in the case of Papua from 1st February, 1913.

(e) *New Zealand.*

Copyright Act, 1913.

New Zealand has recently passed a Copyright Act (*b*), which came into force on the 1st April, 1914, and is based upon the British Act of 1911, together with modifications as to registration, summary remedies, and otherwise, similar to those contained in the Australian Act of 1912 (*c*). The Act, in fact, repeats, in a different order, but in similar language, the sections of the British Act with the following modifications. Sect. 3, which corresponds with sect. 1 of the British Act, provides that copyright shall subsist in New Zealand in every original literary, dramatic, musical, and artistic work if (a) in the case of a published work, it was first published in New Zealand; and (b) in the case of an unpublished work the author was, at the date of the making of the work, a British subject or resident in New Zealand, but in no other works, except so far as the protection conferred by the Act is extended by the Governor in Council thereunder. Sect. 28 (*d*) authorises the Governor in Council to direct that the Act shall extend, subject to the provisions of the section and the Order, (a) to works first published in any part of the British possessions to which the Order relates in like manner as if such works were first published in New Zealand; (b) in respect of residence in any part of the British dominions to which the Order relates in like manner as if such residence were residence in New Zealand. It is further provided (*e*) that any Order made under the section may provide (a) that the term of copyright shall not exceed that conferred by the law of that part of the British dominions to which the Order relates; (b) that the enjoyment of the rights conferred by the Order shall extend to New Zealand only, and shall be subject to the accomplishment of such conditions and formalities as may be prescribed by the Order; (c) for the modification of any provision of the Act as to ownership of copyright or otherwise, having regard to the law of the part of the British dominions to which the Order relates; (d) that the

(*b*) 22nd Nov., 1913.
(*c*) *Ante*, p. 347.
(*d*) Cf. sect. 29 of the British Act.
(*e*) Sect. 28 (2).

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Act may extend to existing works protected in the part of the British dominions to which the Order relates, but subject to the modifications, restrictions, and provisions set out in the Order. But no Order is to be made under this section unless the Governor in Council is satisfied that the part of the British dominions in relation to which the Order is proposed to be made, has made, or undertaken to make, such provisions, if any, as he thinks sufficient for the protection of works first produced or published in New Zealand and entitled to copyright therein (*f*).

Protection of British works.

It will thus be seen that the Act itself only accords copyright to works first published in New Zealand and to the unpublished works of persons who are British subjects or resident in New Zealand. But under sect. 28 the Governor in Council may extend the benefit of the Act to works first published in any other part of the British possessions and to the works of authors resident in any other part of the same possessions. A colonial Order has been made extending the Act to Great Britain, and an Order in Council under sect. 26 (3) of the British Act will doubtless extend the benefit of that Act to New Zealand works, so that there may be mutual protection in the two countries.

Protection of foreign works.

With regard to foreign works generally, sect. 33 of the New Zealand Act confers upon the Governor in Council similar powers, and subject to similar conditions, as are conferred upon the Crown in Council by sect. 29 of the British Act. An Order has been made, accordingly, extending the provisions of the Act to countries belonging to the Copyright Union and Austria as from the 1st April, 1914, from which date New Zealand may be regarded as a party to the Revised Berne Convention.

The New Zealand Act further contains sections similar to sects. 14 to 21 of the Australian Act conferring summary remedies for infringement of copyright, and it also provides for optional registration of all works, with similar advantages to those given by the Australian Act, repeating, in effect, sects. 28 to 40 of that Act (*g*).

In applying sect. 14 of the British Act relating to importation of infringements, the New Zealand Act provides that notices against importation given to the Commissioners of Customs and Excise in the United Kingdom, and by them transmitted to the

(*f*) General rules have been made under the Act dated 27th March, 1914. These rules are very similar to the rules made by the Australian Commonwealth. Official correspondence should be directed to "The Registrar of Copyright, Wellington."

(*g*) See *ante*, p. 348.

Customs authorities in New Zealand, shall be considered as given by the owner of the copyright to the Minister of Customs in New Zealand (*h*).

(f) *British India.*

The Indian Government has taken advantage of the power conferred by sect. 27 of the British Act and has by a recent Act (*i*) introduced local modifications and additions to the British Act. The most important modification is contained in sect. 4, which provides, with regard to works first published in India, that the right of producing, reproducing, performing, or publishing a translation shall be restricted to a term of ten years from the day of first publication of the work, but that if during this period the author or any person authorised by him shall have published in any language whatsoever a translation of such work, the exclusive right of producing, reproducing, performing, or publishing a translation in that language shall not be subject to the above restriction (*k*). A musical work is defined as "any melody or harmony, combined or not, fixed by writing" (*l*). Sects. 7 to 12 provide certain summary remedies for infringement of copyright, similar to those contained in sect. 11 of the British Act.

(*h*) Sect. 2.
(*i*) Indian Copyright Act, 1914 (No. 3 of 1914).
(*k*) Cf. sect. 5 of the International Copyright Act, 1886 (49 & 50 Vict. c. 33).
(*l*) Sect. 5.

PART V.

COPYRIGHT IN FOREIGN COUNTRIES.

France.

The French copyright law stands sadly in need of codification, the laws on the subject numbering about a score.

Before entering into any details of the law of copyright under the different heads of literature, the drama, music, and art, it will tend to make the subject clearer, and will be more useful for reference, first, to give an account of the principal laws on the subject in their order of date, and then touch upon the application of these laws.

Decree of 13th Jan., 1791.

The first decree on copyright is that of 13th—19th January, 1791, concerning public performances.

Art. 1. Any citizen may open a public theatre and give representations of pieces of every kind on condition of making a declaration, previously to the establishment of his theatre, at the local municipality (*a*).

Art. 2. The works of authors dead five years or more before the date of this decree are public property, and may, notwithstanding all ancient privileges, which are abolished, be represented in any theatre.

Art. 3. The works of living authors cannot be represented in any public theatre throughout France without the formal consent in writing of such author under penalty of confiscation of the gross receipts from such representations for the benefit of the authors (*b*).

Art. 4. The provision of Art. 3 applies to works already represented, whatever the former regulation may have been; nevertheless agreements which may have been made between comedians and living authors or authors dead within five years shall be performed.

(*a*) The liberty was suppressed in 1806, and not re-established till the decree of the 6th Jan., 1864.

(*b*) The provision as to confiscation of receipts is reproduced in Art. 428 of the Penal Code now in force.

Art. 5. The heirs or assigns of authors shall be the proprietors of their works for the period of five years after the death of the author (*c*).

Then follows a further decree on the same subject dated 19th July—6th August, 1791.

The drama. Decree, 19th July, 1791.

Art. 1. Conformably to the provisions of Arts. 3 and 4 of the decree of 13th January last, concerning public performances (*spectacles*), the works of living authors, although represented before that date, whether engraved or printed or neither, cannot be represented in any public theatre throughout the kingdom without the formal written consent of the authors, or in the case of authors dead within five years before the 13th day of January, that of their heirs or assigns, under penalty of confiscation of the gross receipts from such representations for the benefit of the author, his heirs, or assigns.

Art. 2. Agreements between authors and managers (*entrepeneurs*) shall be free.

Then follows the decree of the National Convention of 19th—24th July, 1793, relating to the right of property of authors in works of literature (*écrits*) of all kinds, of composers of music, of painters and draughtsmen (*dessinateurs*). This may be looked upon as the fundamental law on copyright although the majority of its provisions have been modified by subsequent legislation. They are as follows:—

Literary copyright. Decree, 19th July, 1793.

Art. 1. The authors of writings (*écrits*) of all kinds, composers of music [architects, sculptors] (*d*), painters and draughtsmen, who engrave pictures or drawings, shall enjoy during their whole life the exclusive right to sell, and distribute their works within the territory of the Republic, and to assign their property in such right in whole or in part. [Sculptors and ornamental designers are to have the same rights, whatever may be the merit or destination of the work.] (*e*).

Duration.

Art. 2. Their heirs or assigns shall enjoy the same right for the space of ten years after the death of the author (*f*).

(*c*) The duration of the right has been extended by the law of 14th July, 1866.

(*d*) These words were inserted by the law of 11th March, 1902.

(*e*) This provision is also new (law of 11th March, 1902). The enumeration contained in this article is not exclusive: it applies to all works of art, and was held to apply to manufacturing designs until the law of 18th March, 1806. "Lois françaises et étrangères," by M. Lyon-Caen. Paris, 1889.

(*f*) The time has been successively increased by the laws of the 5th Feb., 1810, the 8th April, 1854, and the 14th July, 1866.

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Art. 3. The magistrates (*officiers de paix*) (*g*) shall be bound to confiscate for the benefit of the authors, composers, painters or draughtsmen and others, their heirs or assigns, all copies of editions printed or engraved without the formal permission in writing of the authors.

Art. 4. Every infringer (*contrefacteur*) shall be bound to pay to the true proprietor a sum equivalent to the price of 3,000 copies of the original edition (*h*).

Art. 5. Every seller of a pirated edition, if not convicted of being the infringer, shall be bound to pay to the true proprietor a sum equivalent to the price of 500 copies of the original edition (*h*).

Art. 6. Every citizen who produces a work, whether of literature or engraving of whatever kind, must deposit two copies at the National Library or at the Stamp Office of the Republic, for which he will get a receipt duly signed, failing which he can have no right of action against an infringer (*i*).

Art. 7. The heirs of an author of a work of literature or engraving, or of every other production of the intellect or genius which can be classed as a work of art, shall have the exclusive property of such work during ten years (*k*).

Posthumous works.

Proprietors by descent, or any other title, of posthumous, literary, and dramatic works have the same rights as the author; and the provisions of the law concerning the exclusive property of authors and its duration are applicable to such proprietors (*l*).

Law of 1st Sept., 1793.

A further law was enacted on the 1st September, 1793, in relation to theatres and to the right of representation and performance of dramatic and musical works. By this law the decree of the 30th August, 1792, was repealed, and all the provisions of the laws of the 13th January, 1791, and the 19th July, 1793, were made applicable, and the supervision of public performances was declared to continue to belong exclusively to the municipal authorities. Managers or partners were directed to keep a register in which they should enter (the entries to be signed by the police officers on duty) at every performance the pieces played to show the number of performances of each piece.

Law of 22nd March, 1805.

Posthumous works are dealt with by the law of the 22nd

(*g*) By the law of June, 1795, these functions were transferred to (*commissaires de police*) police superintendents, or where there were none to the magistrates (*juges de paix*).

(*h*) But see the Penal Code of 1810.

(*i*) The deposit is now regulated by the law on the liberty of the press of the 29th July, 1881. See p. 357.

(*k*) The time was successively increased by the laws of the 5th Feb., 1810, and 8th April, 1854, and is now fifty years under the law of the 14th July, 1866.

(*l*) Decrees, 8th Dec., 1805, 8th June, 1806; see also decree of 15th Oct. 1812.

March, 1805, which enacted "that the owners, by inheritance or any other right, of a posthumous work have the same rights as the author, and the provisions of the laws on the exclusive property of authors and on their duration are applicable, provided that the posthumous works are printed separately and without being joined to a new edition of works already published and become public property" (*m*). Books of the church were specially dealt with by the law of the 29th March, 1805, and official documents by the law of 20th February, 1809.

Law of 8th June, 1806.

Under the law of the 8th June, 1806, authors and managers are to be free to fix by mutual agreement the remuneration payable to the former, either in a fixed sum or otherwise.

The local authorities are to keep a strict eye on the performance of these agreements.

The proprietors of posthumous dramatic works have the same rights as the author, and the provisions relating to the property of authors and its duration are applicable to such works as is provided by the law of the 22nd March, 1805.

Law of 5th Feb., 1810.

Under the law of the 5th February, 1810, confiscation and fine for the benefit of the State, without prejudice to the provisions of the penal code, will take place in the following cases:—

If there is a piracy, that is to say, if a work is printed without the consent and to the prejudice of the author or publisher or their representatives.

In this case this shall be in addition to the damages to the author or publisher or their assigns; and the edition or the pirated copies shall be confiscated to their profit (*n*).

The penalties and the damages shall be decided by the police or criminal court according to the circumstances and the law.

Offences shall be reported by the inspectors of the press and of the book trade, police officials, and in addition by the officers in charge of the custom house as to books coming from foreign countries.

A law of the 20th February, 1809, regulated the publication of manuscripts belonging to libraries and other institutions.

Procedure and remedies.

The "Code Civil," Arts. 544, 1302, the *Code de Procédure Civile*, Arts. 59 and 1036, and the *Code d'instruction criminelle*, Arts. 637 and 638, define property in general, indicate the remedies and procedure of injured parties, and limit the time

(*m*) This law is applicable to musical works, and by the law of the 8th June, 1806, was declared to be applicable to dramatic works. "Lois françaises et étrangères," par M. Lyon-Caen.

(*n*) Repealed by the Penal Code of 1810.

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during which actions may be brought. These general provisions are also applicable to copyright.

Penal Code on piracy.

The *Code Pénal* of March, 1810, Arts. 425 to 429, makes piracy a misdemeanour (*délit*).

The drama. Law of 3rd Aug., 1844.

The law of 3rd August, 1844, provides that the widows and children of the authors of dramatic works shall have from that date the right during twenty years to authorise the representation and to confer the advantages arising from such works in conformity with the provisions of Arts. 39 and 40 of the imperial decree of the 5th February, 1810 (*o*). Art. 39 of that decree made the widow's right dependent on the marriage agreement. Art. 40 provided that authors, whether natives or foreigners (*p*), of every work printed or engraved, might assign their right to a printer or bookseller or any other person who would then be substituted in their place, for them and their representatives according to the preceding Article.

Reciprocity. Decree, 28th March, 1852.

By the decree of 28th March, 1852, it is made unlawful, without the permission of the author, to publish a work already published in a foreign country with which no copyright convention exists. This decree will be dealt with more fully hereafter (*q*).

Copyright law, 8th April, 1854.

By the law of 8th April, 1854, repealed by the law of the 14th July, 1866, the twenty years term of copyright vested in the children of the author was extended to thirty years.

On the 6th January, 1864, a new law was enacted in relation to theatres.

On the 16th May, 1866, the following provision was made with regard to mechanical musical instruments:—

The manufacture and sale of instruments mechanically reproducing musical airs which are private property, do not constitute the act of piracy provided and punished by the law of the 19th July, 1793 (*r*).

Copyright law, 14th July, 1866.

Then comes the law of the 14th July, 1866, by which protection of copyright is given to all heirs of an author for fifty years after his death. The provisions of this law are as follows:—"The duration of the rights given by former laws to the heirs, irregular successors (*successeurs irréguliers*), donees, and legatees of authors, composers, or artists is extended to fifty years from the death of the author."

(*o*) Repealed by the law of the 14th July, 1866.
(*p*) Understood to be confined to works published in France. "Lois françaises et étrangères," par Lyon-Caen.
(*q*) *Post*, p. 366.
(*r*) This clause will be more fully considered under "Musical Copyright," *post*.

During this term of fifty years the spouse of such author, whatever may be the provisions of the marriage contract, and independently of the rights of such spouse under the *régime de la communauté*, has a life interest in the rights which the deceased spouse has not alienated by assignment during life or by will.

Nevertheless, if the author leaves *héritiers à réserve*, such life interest is reduced in favour of such heirs in accordance with the provisions of Arts. 913 and 915 of the Civil Code. The above laws for the most part deal with the duration of copyright and its mode of descent. In other respects the provisions are general and somewhat difficult to apply in particular cases. Reference to the decisions of the French Courts is, therefore, necessary for an elucidation of the law.

Law of 29th July, 1881.

On the 29th July, 1881, a law was passed relating to the liberty of the press: it provides that upon publication of any printed matter, the printer (*s*) shall, under penalty of a fine of 16 to 300 francs, deposit two copies for the national collections. The names and addresses of the proprietor and printer must also be given. In Paris this deposit shall be made at the Ministry of the "Intérieur"; at the *préfecture* for the chief town of the departments; at the *sous préfecture* for the county towns of the hundreds; and for other towns at the town clerk's office. *Bulletins de votes* (voting lists), commercial and trade circulars, and *les ouvrages dits de ville ou bilboquets* are excepted from this provision.

The preceding provisions are applicable to every kind of printed matter or reproductions intended to be published; but in the case of prints, music, and generally of reproductions other than printed matter, the deposit prescribed by the preceding Article is to be of three copies.

Laws of 1902 and 1910.

A law of 11th March, 1902, extended copyright protection to works of sculpture and architecture; and a law of 9th April, 1910, provided that the alienation of a work of art should not, in the absence of contrary agreement, carry the copyright.

Literary Copyright.

Literary copyright.

The works of literature protected by the copyright laws are comprised in the terms "*écrits en tout genre*" which occur in

(*s*) It has been suggested that the duty should be laid upon the publisher. The provisions as to deposit do not apply to works published in a foreign country which is a party to the Berlin Convention, 1908. See *post*, p. 367.

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the law of 19th July, 1793. The following are a few of the principal decisions on the meaning of this expression:—

What protected.

A compilation effected by an author by means of analysis and classification, such as a descriptive catalogue, a nautical almanac, or a dictionary, and having a scientific or literary character, is entitled to protection. A catalogue of works of art exhibited at the Palais de l'Industrie has been protected (*t*), but not a catalogue of postage stamps (*u*).

Newspapers.

A newspaper may reproduce news, whether telegraphic or not, received and published by another newspaper (*x*); but reports, *e.g.*, of public meetings, may be the subject of copyright (*y*); and literary articles and romances in a newspaper remain the property of the author, provided it be duly registered (*z*). Public dissertations and lectures of professors cannot be published without the consent of the authors (*a*). The publication of private correspondence is not allowed without the consent of the writer or his heirs (*b*).

Manuscripts and translations.

Manuscripts form a distinct category, and can only be published by the heirs or assigns, and not by the creditors of the author (*c*). A translation is the property of the translator, and cannot be copied (*d*), but it cannot be made without the consent of the author of the original or his legal representatives (*e*).

Duration.

Rights of author's widow.

The duration of literary copyright is regulated by the law cited above of the 14th July, 1866. By this law the surviving widow has a right of survivorship over the works left by her husband, even when by the marriage settlement and the law of succession she has no such right in respect of other property of her husband: if the author have assigned his rights the widow has no right of survivorship over the purchase-money (*f*).

Rights of widower of an authoress.

The widower of an authoress has the same rights in respect of her literary works as the widow of an author.

Posthumous works.

The proprietors of posthumous works who publish them have the same rights as authors, on condition that they do not publish such works in a collection with the other works of the author (*g*).

(*t*) Seine, 1st Aug., 1892, Société des artistes.
(*u*) Seine, 20th Dec., 1895, Mauret.
(*x*) Cass. 8th Aug., 1861, Havas.
(*y*) Nancy, 14th April, 1902, Société des gens de lettres.
(*z*) Cass. 29th Oct., 1830, Le Pirate.
(*a*) Paris, 18th June, 1840, Hérit. Cuvier; Lyon, 17th July, 1845, Marie; Seine, 9th Dec., 1902, Esmen.
(*b*) Paris, 11th June, 1875, Gentil.
(*c*) Dijon, 18th Feb., 1870, de Chapuys.
(*d*) Cass. 25th July, 1824, Ladvocat.
(*e*) Paris, 17th July, 1847, Leclerc.
(*f*) Fliniaux, l. c. p. 98.
(*g*) Fliniaux, l. c. p. 98. Law of 22nd March, 1805, *ante*, p. 355.

It is the opinion of M. Pouillet that, in the case of anonymous or pseudonymous works, the life of the publisher is substituted for that of the author (*h*).

The State. The State enjoys copyright in perpetuity over works published by its order or by its agents (*i*).

Registration and deposit. In order that an author may be fully protected, and have a right of action in cases of piracy, the printer must deposit two copies of the work at the Ministry of the Interior at Paris, and at the Prefecture for county towns: at the town clerk's office for other towns under the law of the 29th July, 1881 (*k*). A receipt is given as evidence.

The copyright of a MS., even of a play already performed, is protected without the deposit of copies, so long as it has not been made public by printing. But once printed, the author or publisher who neglects the formality of deposit in accordance with the provisions of the law, cannot prosecute infringers of his rights in either a civil or criminal court. The right does not depend upon deposit, but only the title to sue, and an author, after deposit, can sue in respect of infringements committed prior thereto (*l*).

Assignment. Assignment of literary copyright is regulated by the general law as to assignment of property. Heirs can assign their rights in the same way as an author, either in whole, or in part, for a consideration or not. An author who has assigned the right to publish an edition of one of his works, is bound not to publish a fresh edition before the former one is exhausted (*m*).

The assignment without any reserve of a work to which an author has put his name, does not give the person to whom it is assigned the absolute disposal of it to such an extent that he can alter it by changes or additions (*n*).

In those cases where an alteration in the law extends the term of copyright granted to the heirs of an author, the extended term is considered to belong to the family of the author in preference to his assigns, and the term vested in the persons to whom it has been assigned is that existing at the date of the assignment in conformity with the Civil Code, Art. 1153. Hence the extension of the term of copyright granted by the laws of 8th April, 1854, and the 14th July, 1866, is for the benefit of the author's heirs,

(*h*) Pouillet, Propriété Littéraire et artistique, 4th ed., sect. 147.
(*i*) Cass. 27th May, 1842, Gros; Paris, 5th May, 1877, Peigné.
(*k*) See *ante*, p. 357.
(*l*) Pouillet, sects. 432 *et seq.*
(*m*) Cass. 22nd Feb., 1847, Laurent. A publishing agreement is not assignable. Seine, 30th Nov., 1892, André.
(*n*) Paris, 14th Aug., 1860, Peigné. Seine, Tr. Civ. 12th Jan., 1875, Vve. Michelet.

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and not of the publishers to whom he may have assigned his works (*o*).

Piracy.

Piracy under the French law is the illegal reproduction of the works of another, literary or musical, not yet public property, which reproduction is made publicly with the intention to injure, whether by printing or public representation. Piracy gives rise, as a misdemeanour, to an "*action correctionnelle*"; if the intention to injure be not proved, the author of the work reproduced may bring a civil or commercial action for compensation in respect of the damage done to him. Piracy is committed although the offender may not have completed the printing of the work.

A literal copy (*la copie servile*) of about one-fourth of a work constitutes the offence of partial piracy. *Il y a également contrefaçon, quelle que soit la matière de la reproduction ou la qualité de l'auteur ou du propriétaire de l'ouvrage contrefait. Elle est indépendante des moyens à l'aide desquels elle est produite* (*p*).

Abridgments and compilations.

An abridgment is an infringement of copyright, but the rules relating to infringement must not be applied strictly when the work in question is an historical or biographical dictionary, works of this nature being necessarily compilations, of which the elements are either in the public domain or taken from the same sources and have always inevitable points of resemblance; but it is not permissible for an author of a new work of this character to copy his predecessors and appropriate their work (*q*). Acknowledgment of the source from which extracts have been taken will not necessarily excuse a piracy.

The following are a few decisions on cases of piracy: (1) Piracy is committed from the moment there is a violation of the absolute right of property given by law, no matter what be the merit or importance of the work pirated (*r*). (2) It is a piracy to copy without authorisation a work even of small extent and to annex it to another work of a different author (*s*). (3) The composers of airs or of musical works can prevent such airs from being inserted without their consent in other works, even though they may have tolerated such insertion for a longer or shorter period.

Piracy, whether whole or partial, forbidden.

The law prohibits piracy whether total or partial. There is no doubt that the protection of the law is extended to every work in its entirety, and to all its parts. It therefore follows that

(*o*) Paris, 12th July, 1852; Cass. Ch. Crim. 29th April, 1876, Pradier; Cass. Ch. req. 20th Nov., 1877, Degorce—Cadot.
(*p*) Code du Théâtre, &c. C. Le Seine, Paris, 1878.
(*q*) Seine, 12th Jan., 1893, Larousse.
(*r*) Paris, 11th March, 1869, aff. Godchau.
(*s*) Paris, 27th June, 1812, aff. St. Georges.

partial piracy is an offence of the same order as total piracy. The law has taken care expressly to provide for this, as may be seen from the words "*en entier ou en partie*," in Art. 425 of the Code Pénal (*t*).

Translation.

Owing to their generality the provisions of the law of 1793 apply to every sort of reproduction which infringes the right of property of another. The translation of a French book into a foreign tongue is such a reproduction (*u*).

The following points have also been decided:—

Points of note which have been decided.

(1) That it is piracy to borrow from a published work, its subject, general plan, and the development of its episodes (*x*); (2) that it is piracy to publish in the form of a pamphlet the analysis of a play, even when accompanied with critical remarks, if such publication would clearly interfere with the sale of the original work (*y*); (3) that it is piracy for a newspaper to give literally an analysis of all the chapters of a romance, even when accompanied by critical remarks, if it is clear that such reproduction will interfere with the sale of the original, by revealing the plan and most important details of the work (*z*); (4) that it is a piratical reproduction to publish and sell a faithful *résumé* of a play so as to injure its sale (*a*); (5) that it is piracy on the part of an author to give his work a title analogous to that of another work already published, when he follows the plan and borrows passages from it (*b*).

Dramatic and Musical Works.

Dramatic and musical copyright.

The publication of dramatic and musical works is regulated by the same laws as those relating to literary works.

Joint productions.

A work which consists of words and music by different authors is the joint property of the two, and cannot become public property until the rights of the heirs of each have expired: the unexpired rights of the heirs of one of the authors prolongs the existence of the rights of the heirs of the other author (*c*).

Taking plot of novel for drama.

It is lawful to appropriate the plot of a novel for the purposes of a drama, but the characters, situations, and episodes must be

(*t*) Pouillet, sect. 466.
(*u*) Paris, 17th July, 1847, aff. Lecointe.
(*x*) Paris, 20th Feb., 1872, aff. Sarlit.
(*y*) Nimes, 25th Feb., 1864, aff. Offray.
(*z*) Paris, 13th July, 1830, aff. Darthenay, Dall. 30, 2, 235.
(*a*) Paris, 12th March, 1845, aff. Durand.
(*b*) Cass. 26th Nov., 1853, Laurent de Villedeuil, Roland de Villargues, Art. 425, Code Pénal.
(*c*) Paris, 27th June, 1866, Gérard.

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changed so as to make a new work (*d*). The turning of a drama into a novel is an infringement (*e*).

Registration and deposit.

Published dramatic works must be deposited like other literary works—and the same with regard to music with a text. In the case of music without words there is no law compelling deposit, but in practice it is generally made. The law of deposit is now regulated by the law of the 29th July, 1881: three copies are required (*f*).

Representation.

The exclusive right of representation of dramatic and musical works is by the law of 14th July, 1866, secured to the author for life, and to his heirs for fifty years after his death, exactly as in the publication of works of literature.

The right of representation is distinct from the right of publication, each being guaranteed by different enactments, the former by the law of 1791 and Art. 428 of the Penal Code, the latter by the law of 1793 and Art. 452 of the Penal Code. All works intended for public performance are protected, as plays, operas, and musical compositions, whether vocal or instrumental, and dance music, as well as other compositions. The right of representation comprises, as regards the author, merely the right to authorise the representation of his work; the right of publication comprises the right to reproduce the work by copies printed, engraved, or written by hand for circulation from one person to another. Hence, it follows that the granting of one of these rights does not include the granting of the other. Therefore, the director of a theatre authorised to *represent* a dramatic work cannot contend that he is invested with the *right of publication*, and, consequently, with the right of copying it for the purpose of representing it (*g*). Cinematographs infringe the performing rights, rather than the literary rights (*h*).

An author who publishes his dramatic work in print does not lose thereby the exclusive right of representation.

Musical works.

The publisher of the music of an opera is not impliedly authorised by his contract with the composer alone to print the words with the music (*i*).

Gramophones, &c.

The law with regard to mechanical instruments stands in a peculiar position. By the law of 16th May, 1866, it is provided that the manufacture and sale of instruments mechanically re-

(*d*) Paris, 20th Feb., 1872, Delagrave.
(*e*) Seine, 23rd June, 1897, Heritiers de Dumas.
(*f*) See *ante*, p. 357.
(*g*) Pouillet, sect. 746.
(*h*) *Calmann-Lery* v. *Dumas*, Cour de Paris, 17th May, 1912.
(*i*) Trib. Corr. de la Seine, 2nd Aug., 1826.

producing "musical airs" which are the subject of copyright, shall not be deemed to infringe that copyright. This law was passed in order to enable France to comply with her treaty obligations with Switzerland, that country having stipulated for some such provision in the interests of her local "musical box" industry. The law in question has received a strict construction in France, and it has frequently been held to apply to musical "airs" alone, and not to authorise the reproduction mechanically of words as well as music. Under the Revised Berne Convention (Art. 13), to which France is a party, all musical works are to be protected against mechanical reproduction. It follows, therefore, that foreign musical composers have greater rights in France than those accorded to native authors, and, consequently, there is a strong movement in France for the repeal of the law of 1866, and it is probable that this movement will shortly meet with success. The right of public performance by means of mechanical instruments falls within the prohibition contained in the law of 1791, and the law of 1866 has not derogated from the rights of the musical composer in this respect (*k*).

As regards French plays not yet public property, their plan, subject, characters, arrangement of scenes and actions are of capital importance, independently of style, language, and composition. It is, therefore, piracy to write a similar work, even in a foreign language, without the sanction of the author of the original, and any such imitation may be confiscated and the performance stopped, unless a new work is produced.

The right which belongs to the author of a dramatic work of preventing the representation of an imitation of his work in a foreign language, is distinct from and independent of the right to prosecute for piracy committed by printing. Consequently, loss by prescription of the right of action against the person committing piracy, does not involve loss of the right to forbid the representation of such work (*l*).

Adaptations.

The following cases have been decided as to adaptations: (1) That it is piracy to adapt a novel for the theatre without the consent of the author (*m*); (2) That the transformation of a dramatic work in prose into an opera is also an act of piracy (*n*); (3) That it is piracy to modify a theatrical piece, so as to adapt it for use as an opera libretto, if the plot and arrangement of the

(*k*) Justice de Paix de Douai, 31st July, 1906.
(*l*) Code du Théâtre: C. Le Seine, Paris, 1878.
(*m*) Paris, 27th Jan., 1840, aff. de Musset; Dall. V. Prop. litt. No. 187.
(*n*) Paris, 6th Nov., 1841, aff. Victor Hugo.

scenes (*la disposition des scènes et la marche générale de l'ouvrage*) have not been altered (*o*).

Piracy of an unpublished play.

This principle applies also to unpublished works, and it has been decided that it is piracy to take down by shorthand during representation an unpublished play, for the purpose of having it printed (*p*).

Right of representation independent of deposit.

Deposit is only necessary in cases of works printed or engraved, and when a piece has been printed or engraved without the formality of deposit, it does not follow that the author loses his right to control the representation. He can always prosecute those who in contravention of his rights represent his works, whether printed or engraved, although no deposit has taken place (*q*).

Combined effect of laws of 1791 and 1793.

The combined effect of the laws of 13th of January and 6th August, 1791—19th July and 1st September, 1793, is to guarantee to the authors of dramatic works the right of property in such works, and the right to dispose of them during their lives, either for the double purpose of publication by printing and representation, or separately for either of these purposes (*r*).

Penalties.

Every infringement of the right of public representation is punishable by confiscation of the gross receipts for the benefit of the author. This principle is established by the law of July—August, 1791, and Art. 428 of the Code Pénal (*s*).

Artistic Copyright.

Artistic copyright.

The law of 19th July, 1793, puts "*les peintres et dessinateurs qui font graver des tableaux ou dessins*" on the same footing with "*les auteurs d'écrits en tout genre*"; and the law of 11th March, 1902, has expressly brought architects and sculptors within the law, and rendered any inquiry as to the merit or destination of their work unnecessary.

Duration.

The duration of the copyright is the same as in the case of other works, namely, the life of the artist and fifty years after his death.

Works protected.

Artists have a latitude which is not allowed to others. They may utilise the ideas and works of other people on condition that their work is not a servile reproduction, and that it possesses a certain amount of originality.

(*o*) Paris, 30th Jan., 1865, aff. Scribe.
(*p*) Paris, 18th Feb., 1836, aff. Fréd. Lemaître, Dall. V. Prop. litt. No. 345.
(*q*) Code du Théâtre, &c.: C. Le Seine, Paris, 1878.
(*r*) Etude sur la Prop. des Œuvres posthumes: E. Collett & C. Le Seine, Paris, 1879.
(*s*) Code du Théâtre, Lois, Règlements, Usages, Jurisprudence, par C. Le Seine, Paris, 1878.

It is not lawful to reproduce for sale an engraving or picture which belongs to another by sculpture, drawing, painting on porcelain, or by needlework, even though in the case of a picture, the colours be omitted (*t*); but a partial copying may be lawful, so long as the copyist does not do anything to endanger the reputation of the artist (*u*). Fraudulent placing of a name upon paintings, sculptures, designs and music is an offence dealt with by the law of 9th February, 1895.

Photographs.

Photographs, not being expressly dealt with by any legislation, have been a matter of controversy. Three theories have been propounded:—(a) that all photographs are protected under the law of 19th July, 1793; (b) that no photographs are protected; (c) that only photographs that have artistic merit are protected. Theory (b) is clearly incorrect, but, until recently, the Courts have generally leant in favour of the view that artistic merit is a condition of protection. It is doubtful, however, whether this is any longer so, particularly having regard to the fact that under the law of 1902, above referred to, architects and sculptors are entitled to copyright in their works "whatever be the merit or destination of the work" (*x*).

Alienation of material object does not convey copyright.

It was held in a series of cases decided by the French Courts that the assignment of an artistic work *primâ facie* carried with it the copyright. This has now been altered by the law of 9th April, 1910, which enacts that "the alienation of a work of art does not, in the absence of contrary agreement (*y*), include the alienation of the right of reproduction." There was, however, a departmental decree to the effect that when artistic works were purchased for the State, all rights of reproduction should pass to the State. A decree has been recently issued modifying the previous decree, the effect of the later decree being that, whilst the State reserves the right, in the case of artistic works commissioned for, or purchased by the State, to authorise the reproduction of the same by engravings or photographs in works or publications relating to artistic or historical education, and the copying of the works by students, artists are to have the right to prevent third persons from copying the works for commercial purposes. No work commissioned, or acquired by, the State may be repeated without the express authority of the Education Department (*z*).

(*t*) Fliniaux, l. c. p. 111.
(*u*) Paris, Cour d'Appel, 26th Nov., 1902, Trouillebert.
(*x*) See *Roland* v. *X.*, Trib. Civ. de la Seine, 30th Dec., 1911.
(*y*) "In the absence of express agreement to the contrary," were the words appearing in the Bill as originally drafted; but the word "express" was struck out during the passage of the Bill through Parliament.
(*z*) Decree of 18th March, 1913, "Le Droit d'Auteur," 1913, p. 74.

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Registration and deposit.

By the laws of the 19th July, 1793, and 9th January, 1828, engravings, lithographs, and other printed works of art had to be deposited at the National Library; and those artists who omit this formality cannot prosecute anyone for piracy. The deposit is now regulated by the law of 29th July, 1881, and three copies must be deposited by the printer. On the other hand, no such formality is required in the case of works of art executed on wood, marble, metal, and ivory (*a*).

Piracy.

Piracy of works of art is punishable in the same manner as literary piracy, and the pirated work is liable to seizure and confiscation.

Rights of Foreigners.

France has always been exceedingly liberal to foreigners in the matter of copyright (*b*).

In the absence of treaty.

A foreigner who publishes in a country with which France has no copyright treaty is now protected by the decree of the 28th March, 1852, but he can only sue for infringement if he complies with certain formalities. The decree is as follows:—

Art. 1. Piracy on French territory of works published abroad and comprised in Article 425 of the Penal Code constitutes a misdemeanour (*délit*).

Art. 2. The same holds good with regard to the sale, export, and consignment of pirated works. The export and consignment of such works are offences of the same kind as the introduction into French territory of works which, after having been printed in France, have been pirated abroad.

Art. 3. The offences referred to by the preceding articles are punishable in accordance with Articles 427 and 429 of the Penal Code, and Article 463 (*c*) is also applicable.

Art. 4. Nevertheless, a prosecution can only take place under the conditions imposed with respect to works published in France, notably by Article 6 of the law of 19th July, 1793, which relates to the formalities of deposit (*d*).

At first sight, this decree seems to assimilate the rights of foreigners to those of citizens, but in the year 1857 the Court of Cassation decided that, no mention being made, in the decree, of Article 428 of the Code Pénal, foreigners cannot complain of

(*a*) Paris, 26th Feb., 1868; Cass. 12th June, 1868, Mathias.
(*b*) Merlin, Questions de Droit, Contrefaçon, sect. vii.
(*c*) Art. 463 merely allows the reduction of penalties where there are extenuating circumstances.
(*d*) The deposit is now regulated by the law of the 29th July, 1881, *ante*, p. 357.

the representation of their works (*e*), and the majority of modern text writers are of opinion that a foreigner cannot claim a longer or more extensive right of translation or reproduction than in the country of first publication, and that if treaties less favourable have been concluded between France and any nation, these treaties have the effect of excluding the decree of 28th March, 1852. These questions have, however, lost much of their practical importance by reason of the treaties and conventions to which France has become a party.

Conventions and treaties.

France, with Algeria and her colonies, was one of the signatories of the Berne Convention of 1886 and the Additional Act of Paris of 1896. She has ratified the Revised Convention of 1908, subject to a reserve as to works of applied art, being authorised to do so by a law of 28th June, 1910. She is also a "proclaimed country," entitled to the benefit of the American Copyright Act, 1909, and has acceded to the Convention of Monte Video, though her accession has so far only been accepted by the Argentine Republic (3rd March, 1896) and Paraguay (7th April, 1900). A copyright law for Morocco is contemplated.

In the case of foreign works published in any country which is a party to the Revised Berne Convention, none of the formalities required for native works need to be complied with (*f*).

The following treaties are in force:—

Austria-Hungary	11th December, 1866.
Bolivia	8th September, 1887.
Brazil	16th December, 1913.
Congo	18th November, 1899.
Costa Rica	28th August, 1896.
Ecuador	9th May, 1898.
Germany	8th April, 1907.
Greece	22nd April, 1912.
Guatemala	21st August, 1895, 16th August, 1899.
Italy	9th July, 1884.
Japan	14th September, 1909.
Mexico	27th November, 1886.
Monaco	9th November, 1865.
Montenegro	24th January, 1902.
Netherlands	29th March, 1855, 27th April, 1860.

(*e*) Court of Cassation, 14th Dec., 1857, Verdi-Pataille, 58, 100; *contra*, Paulmier and Lacon, tom. ii., No. 677, pp. 234—236.
(*f*) *Magalhaes* v. *Munoz*, Trib. de Comm. de la Seine, 13th Nov., 1913.

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Portugal	11th July, 1866.
Roumania	6th March, 1907.
Russia	29th November, 1911.
Salvador	9th June, 1880.
Spain	16th June, 1880.

BELGIUM.

From 1791 to 1814 copyright in Belgium was the same as in France, the two countries being united during that time, and the French laws, subject to certain alterations made by local legislation, continued in force until 1886. The present law governing copyright in Belgium is a law of 1886, the provisions of which are substantially as follows:—

Part I. Of Copyright in General.

Copyright in general.

Art. 1. The author of a literary or artistic work has alone the right of reproducing it or of authorising its reproduction in any manner and in any form whatsoever.

Duration.

Art. 2. This right is prolonged for fifty years after the death of the author for the benefit of his heirs or assigns.

Copyright personal property.

Art. 3. Copyright is personal property, transferable and transmissible, in whole or in part, in conformity with the rules of the Civil Code.

Posthumous work.

Art. 4. The owners of a posthumous work enjoy copyright for fifty years from the day of publication, representation, performance or exhibition.

An Order in Council shall determine in what manner the date from which the term of fifty years shall run is to be ascertained (*g*).

Work in collaboration.

Art. 5. When the work is the result of collaboration, copyright exists for the benefit of all the persons entitled for fifty years from the death of the surviving contributor.

Art. 6. When there is joint copyright, the exercise of the right is subject to agreement. In default of agreement, no one of the co-owners can exercise it alone, the right of deciding in case of disagreement being reserved to the Court.

Nevertheless each of the owners is free to prosecute in his own name and without the intervention of the others, any infringement of the copyright, and to claim damages for his share.

(*g*) See Order in Council of the 27th March, 1886, and the ministerial decree of the 3rd April, 1886.

The Courts are empowered at all times to impose such limits on a permission to publish the work as they shall judge useful to prescribe; they shall be able, on the request of an opposing co-owner, to determine that he shall not participate in either the expenses or benefits of publication, or that the collaborator's name shall not appear on the work.

Anonymous work.

Art. 7. The publisher of an anonymous or pseudonymous work is considered, as regards third parties, to be the author.

As soon as the author discloses his identity, he regains full possession of his legal rights, *il reprend l'exercice de son droit.*

Limit to transferee's rights.

Art. 8. The transferee of copyright or of the object which (*matérialise*) represents a work of literature, of music, or of the draughting arts cannot modify the work, for the purposes of sale or profit, nor publicly exhibit the work modified, without the consent of the author or his representatives.

Protection from seizure.

Art. 9. Literary or musical works are not at any time while unpublished, and other works of art, while they are not ready for sale or publication, are not during the life of the author, liable to seizure.

Part II. Of Copyright in Literary Works.

Extent of literary copyright.

Art. 10. Copyright is applicable not only to writings of every kind, but to lectures, sermons, addresses, speeches, or to any other verbal expressions of thought.

Nevertheless, speeches delivered in deliberative assemblies, in the public sittings of the Courts, or in political meetings can be freely published; but the author alone has the right of printing them separately.

Public documents.

Art. 11. Official decrees or orders of the administration (*Les actes officiels de l'autorité*) are not the subject of copyright. All other publications made by the State or public administrative bodies are the subject of copyright, either for the benefit of the State or such public administrative bodies, during a period of fifty years from their date, or for the benefit of the author if he has not alienated his right in favour of the State or such administrative bodies.

An Order in Council is to determine the manner in which the date of publication is to be ascertained (*h*).

Translations.

Art. 12. Copyright in a literary work includes the right of making or authorising the translation of it.

(*h*) See *post*, the Order in Council of the 27th March, 1886, and the ministerial decree of the 3rd of April, 1886.

PART V. BELGIUM.

Quotations.

Art. 13. Copyright does not prevent the right of making quotations when used for purposes of criticism, argument, or instruction.

Newspaper articles.

Art. 14. Every newspaper may reproduce an article published in another newspaper on condition of indicating the source, unless the article bears a *special* warning that reproduction is forbidden (*i*).

Right of representation.

Art. 15. The right of representation of literary works is regulated in conformity with the provisions relating to musical works (*k*).

Part III. Of Copyright in Musical Works.

Musical works.

Art. 16. No musical work can be *publicly* performed or represented, in whole or in part, without the consent of the author (*l*).

Art. 17. Copyright in musical compositions includes the exclusive right of making arrangements on the *motifs* of the original composition.

Art. 18. In the case of works composed of words or libretti together with music, the composer and the author respectively shall not be able to bring out their work with a new collaborator. Nevertheless they shall have the right of independently turning it to account, by publications, translations, or public performances.

Part IV. Of Copyright in Artistic Works.

Plastic works.

Art. 19. The transfer of a work of art does not carry with it the transfer of the right of reproduction to the benefit of the purchaser.

Art. 20. Neither the author nor the owner of a portrait has the right to reproduce it or exhibit it publicly without the consent of the person portrayed or his representatives, during twenty years from his decease; with the said assent, the owner has the right of reproduction, but the copy must not bear an indication of an author's name.

Art. 21. The reproduction of a work of art by manufacturing processes, or by processes applied to manufactures, remains nevertheless subject to the provisions of the law.

(*i*) This article is recognised as applying to telegrams of literary or scientific merit.

(*k*) This is said to aim at public readings.

(*l*) This provision is open to abuse, and there is some agitation for its repeal or modification. It has been held that the proprietor of a *café chantant* is liable for music played at his *café*. Gramophones and instruments of a like nature come within this article and are infringements of the author's rights.

Parts V. and VI. Of Piracy and its Repression.

Arts. 22 to 35 relate to procedure and remedies civil and criminal. A pirate is liable to fine and damages, and infringing articles may be confiscated.

Part VII. provides for the rights of foreigners.

Part VIII. contains the transitory provisions.

Photographs.

No express mention is made in this law as to photographs. It is clear that some photographs are protected, but not all; in fact, the law seems to have adopted the unfortunate system of laying upon the Courts the burden of deciding in every case whether the particular photograph is "artistic," in which event alone it will be entitled to protection (*m*).

Posthumous works.

With reference to posthumous works a subsequent Order in Council, dated the 27th March, 1886, after stating that Art. 4 of the Act of 1886 applied to literary and dramatic works, musical, and dramatic musical compositions, and to plastic works, gave notice that special registers were open at the Department of Agriculture, &c., for the registration of (a) posthumous literary, musical, or plastic works published, represented, performed, or exhibited after the 5th April next, of which the proprietors or persons entitled should desire to obtain the benefit of Art. 4; (b) of publications made by the State or administrative bodies, the author's rights in which were reserved according to Art. 11 of the Act of 1886.

State publications.

Registration.

Such registration must, under penalty of forfeiture, be applied for within six months of publication, representation, or performance in the case of a literary, dramatic, or musical work, or of exhibition in the case of a work belonging to the plastic arts.

The persons interested shall receive a certificate of the registration applied for.

The forms of the registers, affidavits, and certificates are to be determined by the Department of Agriculture. Forms were appended to the Order. Further forms were issued by the department on the 3rd April, 1886, and the same department issued a circular to the provincial governors on the 30th April, 1886, calling their attention to the principal points in the new law.

(*m*) Sometimes pictorial cards are only protected if they have complied with the formalities necessary to obtain protection as designs: see *Bastyns* v. *Van Neck*, Antwerp, Trib. de Commerce, 22nd May, 1906; *Van Os* v. *Pauwels*, Antwerp, Trib. de Commerce, 15th June, 1906; "Le Droit d'Auteur," 1912, pp. 112, 113.

PART V. BELGIUM.

Rights of Foreigners.

Without treaty.

Art. 38 of the law of 1886 grants protection to foreigners, without any condition of reciprocity. Its provisions are as follows:—

Foreigners enjoy in Belgium the rights secured by the present law, but their rights shall have no longer duration than the duration fixed by Belgian law. And if their rights cease earlier in their own country, they shall cease at the same moment in Belgium (*n*).

Treaties and Conventions.

Belgium was a party to the Berne Convention of 1886, and she ratified the Additional Act of Paris and the Interpretative Declaration of 1896. She is also a party to the Revised Convention of 1908, to which, by a law of the 23rd May, 1910, "full and complete" effect is given; and in the year 1903 she acceded to the Monte Video Convention, though her accession has, so far, only been accepted by the Argentine Republic and the Republic of Paraguay. The United States have "proclaimed" Belgium as a country entitled to the benefit of the American Copyright Act, 1909, even as to mechanical music, and she has treaties in force with the following countries:—

Austria	7th December, 1910.
Congo	20th December, 1898.
Germany	16th October, 1907.
Holland	30th August, 1858.
Mexico	7th June, 1895.
Portugal	11th October, 1866.
Roumania	10th April, 1910.
Spain	26th June, 1880.

HOLLAND AND THE NETHERLANDS.

Copyright in Holland.

Previously to the French Revolution, Holland acknowledged the author's right as a perpetual one, capable of transmission to heirs or assigns for ever. Privileges were granted either by the Provincial Government or by the States General. These privileges, however, could be retracted as in the case of Rousseau in 1760, because "*le livre était impie, scandaleux, pernicieux et propre à démoraliser la jeunesse inexpérimentée de l'unique voie du salut.*" But this system was abolished under the influence of the French Revolution. The French laws put in force after the

(*n*) This clause is objectionable in that it imposes on the Belgian Tribunals the necessity of examining into foreign law.

junction of Holland to that country were abrogated in 1814, and in 1817 a new code was enacted, which remained in force until the passing of the Act of the 28th June, 1881 (*o*), which had for its object the regulation of copyright and was the governing law—except as to artistic works, which apparently were unprotected—until the passing of the recent law of 23rd September, 1912, which repealed all previous laws on the subject of copyright. This new law was passed expressly with a view to enable Holland to adhere to the Revised Berne Convention, and its provisions are largely based upon that Convention. The text of the material sections of the law is as follows (*p*):—

Part I. General Provisions.

Nature of copyright.

Art. 1. Copyright is the exclusive right of the author of a literary, scientific or artistic work, or his representatives, to publish or reproduce the same, subject to the provisions of this law.

Art. 2. Copyright is personal property. It may be transferred by succession, and may be assigned wholly or partially. All assignments, total or partial, must be under seal. Only the rights expressly, or by necessary implication having regard to the nature and object of the agreement, included, pass by the assignment. An author's copyright in a work, as well as the right of the heir or legatee of the author over any unpublished work, is not liable to execution.

Author of a work.

Art. 3. If the author is a married woman, her husband cannot, without her concurrence, deal with the copyright, and the marriage contract cannot derogate from this provision.

Art. 4. In the absence of proof to the contrary, the person who is indicated as such in the work, or in the absence of any such indication, the person who is named as such by the publisher at the time of publication, shall be considered the author of a work. If at the time of the delivery of a lecture or performance of a musical work, which has not previously been printed, no statement is made as to authorship, the lecturer or performer is, in the absence of proof to the contrary, to be deemed the author.

Collective works.

Art. 5. In the case of a literary, scientific, or artistic work consisting of the works of two or more individuals, the person editing or supervising the composition of the collective work, or

(*o*) It may be remarked that this law contained a *manufacturing clause* similar to the manufacturing clause of the American law.

(*p*) Translated from "Le Droit d'Auteur," 1912, p. 146.

PART V. HOLLAND.

failing any such person, the person who collects the separate works shall subject to the rights of individual contributors in their separate contributions, be deemed the author of the collective work. The reproduction or publication by any person, other than the author or his representatives, of any separate work incorporated in the collective work which is itself the subject of copyright, shall be deemed to be an infringement of the copyright in the collective work. If the separate work has not been previously published, its reproduction or publication by the author or his representatives shall, in the absence of contrary agreement, be deemed an infringement of the copyright in the collective work, if the reproduction or publication fails to mention the work of which the same forms a part.

Art. 6. If a work has been made according to the plans and under the direction and supervision of a third person, the latter shall be deemed to be the author.

Art. 7. If, according to his contract of employment, one person is obliged to produce certain definite literary, scientific, or artistic works, his employer shall, in the absence of contrary agreement, be deemed to be the author.

Art. 8. If a work is published as the production of a public institution, association, foundation, or commercial company, without indication of any real person as the author thereof, the institution, association, foundation, or company shall be deemed to be the author, unless it be proved that the publication, under the circumstances proved, was illegal.

Art. 9. In the case of anonymous or pseudonymous works, as against third persons the publisher whose name is indicated on the work or, failing him, the person who appears as printer, may enforce the copyright for the benefit of the true owner thereof.

Art. 10. The expression "literary, scientific, or artistic work" shall include the following:—

(a) Books, pamphlets, newspapers, collections, and all other writings;

(b) dramatic and dramatico-musical works;

(c) lectures;

(d) choreographic works and pantomimes, the mode of performance of which is fixed in writing or otherwise;

(e) works of design, painting, architecture, sculpture, lithography, engraving, and other figures;

(f) geographical charts;

(g) plans, sketches, and plastic works relative to architecture, geography, topography, or any other sciences;

(h) photographic and cinematographic works and works produced by any like process;

(i) works of art applied to industry;

and, generally, all productions in the literary, scientific, or artistic domain, whatever may be the mode or form of reproduction. Translations, adaptations, arrangements of music, and other reproductions in an altered form of a literary, scientific, or artistic work, as well as collections of different works, shall be protected as distinct works, without prejudice to the rights of the author of the original work.

Art. 11 relates to official publications as to which there is no copyright, unless specially reserved.

Publication.

Art. 12. Publication of a literary, scientific, or artistic work includes:—

(a) publication of a reproduction of the whole or part of a work;

(b) putting the whole or part of a work, or any reproduction thereof, into circulation, although it may not have been published by means of printing;

(c) recitation, delivery, performance or public exhibition of the whole or part of a work, or any reproduction thereof:

a work is to be deemed to be recited, delivered or performed in public, even though the recitation, delivery or performance takes place at a private club open to members upon payment either by the taking of a share or otherwise. The same applies to a public exhibition.

Reproduction.

Art. 13. Reproduction of a literary, scientific, or artistic work includes a translation, musical or dramatic adaptation, and generally any total or partial adaptation or imitation in any modified form which cannot be regarded as an original work.

Art. 14. Reproduction of a work capable of appeal to the ear includes the manufacture of cylinders, discs, and other objects intended to enable the whole or part of a work to be heard by a mechanical process.

Restrictions on copyright.

Art. 15. Copyright in a newspaper or periodical is not infringed by the reproduction in another newspaper or periodical of articles, of communications or other matters, provided their source is clearly acknowledged. But stories or novels appearing in newspapers or periodicals may not be reproduced without the authority of the author or his representatives. The like authorisation is needed in the case of other articles, when the author or editor expressly forbids reproduction in the number of the newspaper or periodical which contains the article. In the case of

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periodicals a general prohibition at the head of each number will be sufficient, but no prohibition is effective as regards political articles, news of the day, or miscellaneous news. The provisions of this clause apply to reproductions in languages other than the original (*q*).

Art. 16 Copyright in published literary, scientific, or artistic work is not infringed by the reproduction of short portions, compositions, or poems included in anthologies or other works of an educational or scientific character, or contained in advertisements or criticisms published in newspapers or periodicals, provided that the work from which they are taken and the name of the author, if disclosed, is mentioned. This provision applies to reproductions in languages other than the original. The works referred to in Art. 10 (e) may, in the like circumstances and under the like conditions, be reproduced in entirety, if by reason of its dimensions or process of execution, the copy clearly differs from the original; but when two or more of these works have been published together the reproduction of one only is permissible. A concise summary of a public lecture, not yet published in print, may be published as a report in a newspaper or periodical, provided the name of the lecturer be indicated.

Art. 17. The copyright in a literary, scientific, or artistic work is not infringed by the reproduction of a limited number of copies thereof intended exclusively for practice, study, or personal use and, in the case of works referred to in Art. 10 (e), the reproduction, by reason of its dimensions or process of execution, clearly differs from the original; but this provision does not apply to rebuilding of architectural works.

Art. 18. The copyright in any of the works referred to in Art. 10 (e) which are permanently exposed to public view is not infringed by a reproduction which, by reason of its dimensions or process of execution, clearly differs from the original and, in the case of works of architecture, is confined to the exterior aspect.

Art. 19. The copyright in a portrait is not infringed by a reproduction made by, or on behalf of, the person portrayed, or by, or on behalf of, his next of kin after his decease. If the portrait is composed of two or more likenesses the several persons portrayed have not, as regards the others portrayed, any right of reproduction, except with the consent of those others or, during a period of ten years after their decease, of their next of kin. Next of kin include ancestors to the first degree, a spouse, and children.

(*q*) This clause does not comply with the provisions of the Revised Convention of Berne.

Likewise the reproduction of a *photographic portrait* in a newspaper or periodical is no infringement of copyright, provided the reproduction be by, or with the consent of, any of the above-mentioned persons and that the name of the photographer, if indicated on the portrait, is mentioned. This article only applies if the portrait has been executed upon a commission given by, or on behalf of, the persons portrayed.

Art. 20. The owner of the copyright in a portrait may not, in the absence of agreement to the contrary, publish it without the consent of the person portrayed, or, during a period of ten years after his decease, without the consent of his next of kin. If the portrait is composed of two or more likenesses, the reproduction of the entire picture depends upon the consent of all the persons portrayed or, for a period of ten years after their decease, the consent of their next of kin. Next of kin has the same meaning as in Art. 19, and this article likewise only applies to commissioned portraits.

Art. 21. The owner of the copyright in a portrait which has not been executed upon a commission given by, or on behalf of, the person portrayed may not publish it so long as the person portrayed or, within a period of ten years after his death, certain relatives have any legitimate interest in opposing publication.

Art. 22. In the interest of public order and justice pictures of any kind may be publicly exhibited.

Art. 23. In the absence of agreement to the contrary, the owner of a work of design, painting, architecture or sculpture, or a work of art applied to industry may publicly exhibit it, or, for the purposes of sale, may reproduce it in a catalogue, without the consent of the owner of the copyright.

Art. 24. In the absence of agreement to the contrary, the painter of a picture may, notwithstanding that he has parted with the copyright, paint similar pictures.

Art. 25 imposes limitations upon the rights of owners of any of the works numbered (a) to (h) in Art. 10 to alter the works, or their titles, or their authors' names. Generally speaking, the permission of the author and the owner of the copyright will be necessary for any of these purposes.

Part II. Protection of Copyright and Penal Provisions.

Protection of copyright.

Art. 26. If the copyright in a work is vested in two or more persons in common, the exercise and protection of the copyright shall belong to all the owners of the copyright collectively, or

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by the person nominated by agreement between them, or, failing agreement, by the president of the Court to which the first of them may apply. There is no appeal from the decision of the Court. When a person has been nominated by agreement, he may be removed by the owners of the copyright and another nominated in his place.

Art. 27. Notwithstanding a total or partial assignment of the copyright, an action for damages will lie against an infringer at the suit of the author (*r*).

Procedure and remedies.

Arts. 28 to 36 relate to procedure and remedies. Generally, the infringer is liable to penalties and damages, and infringing articles may be confiscated.

Part III. Duration of Copyright.

Period of copyright.

Art. 37. Subject to the provisions of this Part of this law, copyright terminates at the expiration of a period of fifty years reckoned from the date of the death of the author of the work. In the case of a copyright belonging to two or more authors in common, the period is to be reckoned from the date of the death of the last survivor.

Art. 38. In the case of anonymous or pseudonymous works, copyright is to terminate at the expiration of a period of fifty years reckoned from the last day of the civil year in which the work is first published by or on behalf of the owner of the copyright. The same applies to works of which, under the provisions of Arts. 7 or 8 hereof, a public institution, association, foundation or commercial company is deemed to be the author, and also to works first published after the author's death.

Art. 39. The exclusive right of translating a printed work terminates at the expiration of a period of ten years reckoned from the last day of the civil year in which the work is first published by or on behalf of the owner of the copyright, so far as regards languages in which the author has not published or caused to be published any translation in any of the countries belonging to the Copyright Union. The exclusive right of delivering in public lectures, executions or performances of a work in a language other than the original lasts for the same period as the exclusive right of translation (*s*).

(*r*) This is a somewhat peculiar provision, but presumably the author will have to prove that he has suffered personal loss.

(*s*) This clause is contrary to the provisions of the Revised Berne Convention (see *ante*, p. 316), and has prevented Holland from giving full adherence to that Convention (see *post*, p. 380).

Art. 40. The copyright in photographic and cinematographic works or works obtained by similar processes terminates at the expiration of a period of fifty years reckoned from the last day of the civil year in which the work is first published by or on behalf of the owner of the copyright.

Art. 41. In applying the three last preceding Articles hereof, works appearing in incomplete parts are only to be deemed published upon the publication of the last part. As regards works consisting of two or more volumes, numbers or sheets, or appearing at intervals, and also as regards reports or communications issued by societies or privately, each volume, number, sheet, or report or communication is to be deemed a separate work.

Art. 42. Notwithstanding anything herein contained, copyright cannot be claimed, either in the European parts of the Kingdom or in the Dutch Indies, in a work the copyright in which has determined in the country of origin of the work.

Part IV. Modifications of the Bankruptcy and Penal Codes.

Bankruptcy and criminal proceedings.

Art. 43 modifies Art. 21 of the bankruptcy law, and provides that copyright is not to pass for the benefit of creditors only "if it is not liable to be taken in execution."

Art. 44 provides that an infringer of copyright shall be liable in certain cases to fine and imprisonment.

Part V. Application to Dutch Indies.

Dutch Indies.

Art. 45 applies the law to the Dutch Indies, except those portions of the law which relate to procedure and remedies criminal and civil; other provisions on these matters being substituted.

Part VI. Transitory Provisions.

Transitory provisions.

Art. 46 repeals the law of 28th June, 1881.

Art. 47. This law applies to all literary, scientific or artistic works published for the first time by or on behalf of the author in the European parts of the Kingdom or in the Dutch Indies, whether before or after this law comes into force, as well as to all unpublished works of which the authors are Dutchmen or Dutch subjects. For the purposes of this Article a work is deemed to be published when it has been issued by a publisher by means of printing or, generally, when reproductions thereof have been published. The representation of a dramatic or dramatico-musical

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work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication within the meaning of this clause. Provided always that no proceedings will lie for any acts which at the date when they were committed were not illegal by virtue of any existing law or convention.

Arts. 48 to 50. Works the copyright in which had expired at the date when the new law came into force are not to be protected thereunder, and articles lawfully manufactured under the old law, &c. may be sold, &c. for a period of two years only after the coming into force of the new law (*t*).

Art. 51. Assignments of copyright under certain circumstances are exempted from stamp duty.

Art. 52. This law may be cited as "The Copyright Law, 1912."

Art. 53. The law to come into force on the first day of the month following its promulgation.

Rights of Foreigners.

The above law, by its text, only applies to works first published on Dutch soil and to the unpublished works of Dutch subjects, but, by a law of 26th June, 1911, the Crown was granted the power to adhere, for Holland and her colonies, subject to reservations, to the Revised Berne Convention and to enter into treaties. Holland was not a party to the original Berne Convention, but she has recently, by royal decree of the 9th October, 1912, for herself, and by later decrees for her colonies of the Dutch Indies (1st January, 1913), Curaçoa (26th February, 1913) and Surinam (5th April, 1913), adhered to the Revised Berne Convention of 1908, subject, nevertheless, to reservations as regards: (a) translating rights, as to which she is bound by Art. 5 of the Convention of 1886, as modified by the Additional Act of Paris, 1896; (b) newspapers and reviews, as to which she is bound by Art. 7 of the Convention of 1886, as modified by the Additional Act of Paris, 1896; and (c) performing rights over translations of dramatic or dramatico-musical works, as to which she is bound by Art. 9, para. 3, of the Convention of 1886. Subject as aforesaid, the Revised Berne Convention is, by the law of 26th June,

(*t*) This limitation to a period of two years (expiring the 1st Nov., 1914) has caused some apprehension amongst Dutch publishers, particularly publishers of illustrated works. Until the new Act, artistic works were unprotected (see *ante*, p. 373). Petitions have been presented to alter Art. 50.

1911, given legislative operation in Holland. Holland is also a "proclaimed country" under the American Act of 1909. The only countries with which Holland appears to have any copyright treaties are Belgium (30th June, 1858) and France (19th April, 1884).

THE GRAND DUCHY OF LUXEMBOURG.

Copyright before 1898.

From the date of the French Revolution to 1817, the Duchy of Luxembourg was subject to French laws. These were replaced or modified by the Dutch law of the 25th January, 1817, and by various decrees of the Grand Duke made in execution of resolutions of the Germanic Diet. Under these laws the copyright in literary and artistic works lasted for the life of the author and thirty years after, and for life and ten years in the case of musical and dramatic works.

Law of 1898.

The legislation on the subject was defective and confused when in 1888 the government of Luxembourg was authorised to join the Berne Convention. After her adhesion to the Convention the necessity for a revision of her legislation became more pressing, and in the year 1898 a new law was passed which repealed all previous laws on the subject. This new law of 1898 is in fact a textual reproduction, with certain modifications, of the Belgian law which we have already set out and to which we would refer the reader (*u*).

The Luxembourg Copyright Law differs from the Belgian law in the following particulars only:—

Definition of literary and artistic works.

Art. 1, after enacting, as in the Belgian law, that the author of a literary or artistic work has alone the right of reproducing it or authorising its reproduction in any manner and in any form whatsoever, defines "literary and artistic works" as "books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; works of architecture; photographic works, and other works produced by a like process; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction."

Anonymous works.

Art. 7, relating to anonymous works, has the following addition: "If the true name of the author be disclosed by the

(*u*) *Ante*, p. 368.

PART V. LUXEMBOURG.

author, or his duly authorised representatives, the period of protection shall be calculated by the life of the author."

Translations.

Art. 12, relating to translations, is much more elaborate than the corresponding article in the Belgian law, and is as follows: "Authors and their assigns enjoy the exclusive right of making or authorising the translation of their works during the whole period of their copyright in the original work. Nevertheless, the exclusive right of translation shall be lost if the author neglect for a period of ten years from the publication of the original work to publish or cause to be published a translation into the language in respect of which protection shall be claimed.

"For works published in incomplete parts (*livraisons*) the period of ten years commences from the date of the publication of the last part of the original work.

"For works composed of many volumes published at intervals as well as for bulletins or collections (*cahiers*) published by literary or scientific societies or by private persons, each volume, bulletin, or collection is, with regard to the period of ten years, considered as a separate work.

"In the cases provided for by this present Article for the calculation of the period of protection, the 31st December of the year in which the work was published is to be taken as the date of publication."

Newspapers.

Art. 14, as to newspapers, differs from Art. 14 of the Belgian law, and is as follows: "Serial stories, including novels, published in newspapers or periodicals, may not be reproduced in original or translation without the sanction of the authors or their lawful representatives. This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or publishers shall have expressly declared in the newspaper or periodical itself in which they shall have been published that the right of reproduction is prohibited. In the case of periodicals, it shall suffice if such prohibition be indicated in general terms at the beginning of each number. In the absence of prohibition such articles may be reproduced on condition that the source is acknowledged. Articles of political discussion, news of the day, miscellaneous information, *and copies from literary or artistic works for publications intended for instruction, or having a scientific character, or for chrestomathies*, may be freely published."

Musical works.

Art. 16, relating to musical works, has the following addition: "The right of the author or his lawful representatives applies to the public performance of unpublished musical works as well as to published works, the public performance whereof has been

expressly prohibited by the author on the title-page or head of the work."

Art. 26 is new, and makes it an offence to add, erase, or alter the name upon manufactured articles.

Rights of Foreigners.

Luxembourg has always given liberal protection to foreign works. Works published in foreign countries are accorded protection, even in the absence of treaties. Art. 39 of the law of 1896 is as follows:—

"Foreigners enjoy in the Grand Duchy the rights conferred by this law, but the period of protection shall not exceed the period fixed for the work in question by the law of Luxembourg."

Luxembourg became a party to the Berne Convention in 1888, and she accepted the Additional Act of Paris and Interpretative Clause of 1896. On the 14th July, 1910, she adhered to the Revised Convention. She is a "proclaimed country," even with regard to mechanical instruments, under the American law of 1909, but she has no other treaty engagements.

THE GERMAN EMPIRE.

Recent copyright laws.

Literary and musical copyright was, until recent years, regulated in the German Empire by a law of the 11th June, 1870: artistic copyright by laws of the 9th and 10th January, 1876. In the year 1901 the law of the 11th June, 1870, was repealed and replaced by a law of the 19th June, 1901, which is the fundamental law governing copyright in literary and musical works at the present day. The Act of 1901 has, however, been amended by a law of the 22nd May, 1910, passed with a view to bringing the German legislation into conformity with the provisions of the Revised Berne Convention, 1908. The laws of the 9th and 10th January, 1876, relating to works of figurative art and photographs respectively were, in the year 1907, replaced by a law of 9th January, 1907, which, as amended by another law of the 22nd May, 1910, is the governing law upon artistic copyright.

Law of 19th June, 1901, as amended.

The law of 19th June, 1901, is very long and elaborate. The following is a summary of the law as modified by the law of 1910, the modifications introduced by the latter law being indicated in italics (*x*).

(*x*) The full text of the law as modified, will be found translated into French in "Le Droit d'Auteur," 1910, pp. 88 *et seq.*

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Works protected.

The persons entitled to protection under this law are: (1) authors of writings, lectures and speeches intended for education, instruction or amusement; (2) authors of musical works; (3) authors of scientific or technical illustrations, including plastic works, which, having regard to their principal object, cannot be regarded as artistic works (*y*). *Choreographic works and pantomimes are protected as literary works, even though their acting form is fixed otherwise than by writing* (*z*). (Art. 1.)

Definition of author.

The person who has created the work is to be deemed the author of it, the person who has translated a work is to be deemed the author of the translation, and the person who has adapted a work in any manner is to be deemed the author of the adaptation. *When a literary or musical work is applied to the parts of instruments used for reproducing sounds mechanically, by the personal intervention of a performer, the part so made is to be treated as an adaptation of the work. The same follows when the application is made by means of perforations, stamping, arrangement of points or any other like means, and the work done is of an artistic character. In the former case the performer, and in the latter case the person who has applied the work, is to be deemed the adapter of the work.* (Art. 2.)

Anonymous works.

In the case of anonymous or pseudonymous works, the publishers are, in the absence of stipulation to the contrary, to be reputed the authors. (Art. 3.)

Encyclopædias and collaborations.

In the case of encyclopædias and works of a similar character the proprietor (*Herausgeber*) or, if he be not named, the publisher (*Verleger*) is deemed the author of the entire work (Arts. 4 and 7); but collaborations, when the work of the individuals cannot be distinguished, are the property of the collaborators jointly. (Art 6.)

When a writing is accompanied by a musical setting or illustrations, the author of each of these creations is a distinct author. (Art. 5.)

Assignment.

Copyright passes to the author's heirs and may be freely assigned (Art. 8), but, in the absence of stipulation to the contrary, the assignee has no right to alter or modify the work, its title, or the name of the author (Art. 9), and the author reserves the exclusive liberty (a) of translation; (b) of reproducing a recitation in dramatic form or a scenic work by recitation; (c) of arranging a musical work, unless the arrangement consists only

(*y*) Artistic works being protected by the law of 1907, *post*.
(*z*) *E.g.*, by cinematograph film.

in making an extract or a transposition into another key or register; (d) *of utilising the work with the object of reproducing the same mechanically*; (e) *of utilising the work with the object of reproducing the same by cinematography*. (Art. 14.) Copyright is not liable to execution without the author's consent. (Art. 10.)

Period of protection.

The period of copyright granted by this law is thirty years from the author's death, or for not less than ten years after the date of first publication. When the publication does not take place until thirty years after the author's death, there is a presumption that the copyright has passed to the owner of the MS. (Art. 29.) (*a*). In the case of collaborations, the period is reckoned from the death of the last survivor. (Art. 30.) Anonymous and pseudonymous works are protected for thirty years from publication, but within that period the true name of the author may be revealed, and he will then become entitled to the full period of protection. (Art. 31.) So where copyright belongs to a *personne juridique*, thirty years is the period of protection. (Art. 32.)

In the case of books published in volumes at intervals, each part is considered a separate book; in the case of works published in parts, the period of protection dates from the publication of the last part. (Art. 33.) All periods are to be reckoned from the end of the calendar year in which the author dies or the work is published, as the case may be. (Art. 34.)

Rights of author.

During the above period the author enjoys the exclusive liberty of reproducing and multiplying copies of his work in the course of business; and so long as the essential contents of the work have not been communicated to the public the author has the sole right of making this communication. In the case of a dramatic or musical work the author's rights include the exclusive right of public representation and performance; and as long as a writing or speech is unpublished, the author has the exclusive right of recitation in public. (Art. 11.)

The exclusive rights given by Art. 11 apply equally to adaptations of the work. In particular the author has the sole right (a) of translation, including transposition into verse; (b) of re-translation into the original language; (c) of reproducing a recitation in a dramatic form or a scenic work in the form of a recitation; (d) of making extracts from musical works and of

(*a*) This is, of course, shorter than the term recommended by the Revised Berne Convention.

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arranging for orchestra or in parts; (e) *of adapting the work to the parts of instruments used for reproducing the work mechanically, particularly by means of discs, plates, cylinders, and interchangeable rolls* (*b*); (f) *of utilising a written work for performance by cinematography or any like process.* (Art. 12.)

What is piracy.

Any unauthorised reproduction is unlawful, whatever be the process employed, and it makes no difference whether a single copy or several copies be made; but single copies may be made for personal use only. (Art. 15.) Statutes and official documents may be reproduced (Art. 16), and, subject to the rights conferred on the author by Art. 12, a work may be freely used if a new work is produced. Nevertheless, the borrowing of a melody from a musical work in such a manner as to be recognisable, even though it serves as the basis of a new work, is expressly forbidden. (Art. 13.)

Not piracies.

The following are not piracies: (a) the reproduction in newspapers or reviews of speeches or discourses delivered in public deliberations; (b) reproduction of speeches or discourses delivered in the Courts, or at representative, political, and ecclesiastical gatherings. But speeches may not be reproduced in a collection containing mainly the speeches of one speaker. (Art. 17.)

Isolated articles in newspapers may be reproduced *in other newspapers*, unless the copyright is expressly reserved; but the source must be acknowledged and the sense not altered; but special articles of a scientific, technical, or amusing character may not be reproduced even if no mention is made of reservation of rights. News may be freely reproduced. (Art. 18.)

The following are not infringements of the copyright in literary works (but the source must be acknowledged, Art. 25):—

1. Citation of passages or small portions of a writing, speech, or discourse, after publication, in an independent literary work.
2. Reproduction of isolated articles of short length, or isolated pieces of poetry, after their publication, in an independent scientific work.
3. Reproduction of isolated pieces of poetry, already published, in a collection comprising works of various authors intended for musical performances.
4. Reproduction of isolated articles of short length, isolated pieces of poetry or small portions of a writing, in a

(*b*) This does not apply to musical works which have, prior to the 1st May, 1909, been lawfully adapted for mechanical reproduction (Art. 63a).

collection comprising various authors, intended for a work of an instructive, scholastic, or literary character. In this case, however, the consent of the author must be obtained, but such consent is to be deemed to be given if not refused within a month. (Art. 19.)

5. Reproduction of small parts of a poem, or pieces of poetry of short length, after their publication, as the libretto of a new musical work and in connection with it, provided the poems are not, by their nature, intended to be set to music; *but the first part of this paragraph is not to apply when words are intended to be reproduced along with the mechanical reproduction of a musical work.* (Art. 20.)
6. Taking isolated illustrations from a published work to explain the text. (Art. 23.)

The following are not infringements of the copyright in musical works (but the source must be acknowledged, Art. 25):—

1. Citation of passages from a musical work, in an independent literary work.
2. The insertion of published compositions of short length in an independent scientific work.
3. Reproduction of published compositions of short length in a collection comprising the works of various composers and intended for instruction in schools, other than schools of music. (Art. 21.)

Gramophones and mechanical instruments.

The following clauses relating to the reproduction of musical works by mechanical instruments have been inserted in the new law of 1910 in substitution for the earlier provisions of the law of 1901:—

Whenever the author of a musical work grants a licence to another to reproduce a work commercially with a view to the same being mechanically performed (see Art. 12 (e)), any other person, either having his principal place of business or being domiciled in the country, shall have the right, as soon as the work has been published, to require a like licence upon payment of a fair compensation (*c*), whether the author has granted to the former the right of reproduction with or without an assignment of the exclusive right belonging to him. The licence shall be effectual only so far as regards circulation in Germany, and exportation to countries in which the author is unprotected against mechanical reproduction of his work. In the case of a State to which

(*c*) The German law does not make any attempt to fix the amount which should be regarded as "fair compensation."

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reciprocity has been guaranteed by treaty, the Chancellor may declare, by publication in the Official Gazette, how far any third person having neither a place of business nor a domicile in the German Empire shall have the right to require such licence as aforesaid, and to declare that the same shall apply to exportation to the State in question. These provisions apply equally to any written words entitled to copyright which are associated with the musical work as the libretto, if the author thereof shall have agreed to their reproduction commercially with a view to mechanical performance. Provided always that the right and duty to grant such authority as aforesaid on behalf of the author of the words shall be vested in the author of the music, subject to his paying to the former a fair proportion of the remuneration. (Art. 22.)

The parts of instruments manufactured under any authority granted under the provisions of Art. 22 may, subject as hereinafter mentioned, be used for the public performance of the work without further permission, and when the author shall, prior to the date when this provision comes into force, have assigned the exclusive right of public performance to another he shall pay to the latter a fair proportion of the remuneration. This article applies also to the case where the author has of his own accord granted the right to adapt the work for mechanical reproduction. (Art. 22a (*d*).)

Notwithstanding a partial assignment of the exclusive right of mechanical reproduction the authority required to be given by Art. 22 hereof shall still be granted by the author, but in the case of an unlimited assignment, such authority shall be granted by the assignee. (Art. 22c.)

Public performance.

The rights of reproduction above permitted of literary and musical works of another without the consent of the proprietor of the copyright include the liberty of multiplying, representing, performing, and reciting in public (Art. 26); but the person who reproduces the works of another under the provisions of Arts. 19 to 23, must not make any modification in the parts reproduced, except that, where necessary for the object of the reproduction, translations of a literary work and arrangements of a musical work consisting only of extracts or changes to another key or intended to adapt the work for mechanical reproduction are permissible. Modifications of extracts inserted in a collection for use in schools may also be made with the personal consent of the author. (Art. 24.)

(*d*) This Article applies to literary and musical works made prior to the law of 1910, so far as such works were at that date protected against mechanical reproduction (Art. 63a).

Where the proprietors of the copyright are numerous, the consent of each one is necessary, except that in the case of an opera or musical work with libretto, the consent of the proprietor of the copyright in the music alone shall be necessary. (Art. 28.)

Remedies.

Arts. 36—53 relate to the remedies of the proprietor of copyright. It may be said, generally, that a person who infringes the author's rights knowingly or negligently is liable to indemnify the author, and if he does so knowingly he is liable to a fine and to imprisonment if the fine cannot be recovered. Infringing copies and plant may be ordered to be destroyed or delivered to the plaintiff even though there be no negligence or culpable intention on the part of the defendant.

Limitation of actions.

Proceedings for damages or penalties must be taken within three years, but the destruction of infringing copies or plant may be ordered at any time.

Registration.

No registration is compulsory under this law. By Art. 7 it is provided that there shall be a presumption that the person named in the title-page, the dedication, the preface, or the last page as the author, is the real author; but in the case of anonymous and pseudonymous publications, the real author can register his true name in a register kept at Leipsic, whereupon he will become entitled to the full period of protection. (Arts. 31, 56.)

Authors and publishers.

It should be here mentioned that Germany has made an experiment in legislation by attempting to regulate the mutual rights of authors and publishers of literary and musical works by law. The law in question is the law of 19th June, 1901, slightly modified by a law of 22nd May, 1910. This law is too lengthy and elaborate to be here set out, but it may be noted that by the terms of this law an author who has agreed with a publisher that the latter shall publish his work may not, during the pendency of the contract, reproduce his work in a manner prohibited to third parties, but the law reserves to him the right of translation, dramatization, arrangement of musical works, mechanical reproduction, and reproduction by cinematography. The author may also reproduce the particular work, after twenty years from its first publication, in a complete edition of his works. In the absence of agreement to the contrary, the publisher has only the right to make one edition, and unless a different number be named, an edition consists of 1,000 copies.

Artistic copyright—law of 9th Jan., 1907.

Artistic copyright in Germany is governed by the law of 9th January, 1907, as modified by the law of 22nd May, 1910. The law applies to all works of figurative art and photographs, and the following is a summary:—

Works protected.

The products of industrial art are included amongst works of

figurative art, also architectural works, provided they are of an artistic character. Plans for industrial products and architectural works of the above-mentioned character are also to be regarded as works of art (Art. 2), and the law of 1901 does not apply to such. (Art. 4.)

Photographs include works manufactured by similar processes. (Art. 3.)

Collections, collaborations, &c.

If a work is composed of a collection of distinct works of several collaborators the publisher (*Herausgeber*) or, if none is named, the editor (*Verleger*), is to be deemed the author of the entire work. (Art. 6.)

If a work of figurative art is combined with a photographic work, then, notwithstanding the combination, each author retains his rights, and the same applies where a work of figurative art or photography is combined with a literary or musical work, or with a protected industrial design. (Art. 7.) Collaborators are considered as tenants in common in the shares provided under the civil law if their individual works cannot be distinguished. (Art. 8.)

Presumptions.

There is a presumption that the person whose name is indicated or distinctly marked upon a work is the author thereof. In the case of anonymous or pseudonymous works, copyright may be protected by the publisher, or, if none is indicated, the editor. (Art. 9.)

Assignment.

Copyright passes to the author's heirs, and may be freely assigned, but in the absence of agreement to the contrary, the assignment of the material object does not carry the copyright (Art. 10), and the assignee has no right to make any alterations either in the work itself or its title, or the name of the author, except such modifications as the author would have no right fairly to object to (Art. 12), nor may any third person place the name or mark of the author on the work without his consent. (Art. 13.) In the case of a work accepted for publication in a newspaper, review, or periodical, the author has the right to dispose of the work in any way he pleases, unless the circumstances indicate an intention that the publisher should obtain the exclusive right of reproduction, in which latter case, in the absence of contrary agreement, the author has the right of free disposal of his work at the expiration of one year after the end of the year of first publication. Similar provisions apply to works inserted in a non-periodical collection, if the author is entitled to no remuneration. (Art. 11.) Copyright is not liable to execution without the author's consent, and the same applies to moulds, casts, stones, and other instruments intended to be used exclusively for the reproduction of the work. (Art. 14.)

The rights conferred upon an author are defined in Arts. 15 and 15a, the latter Article having been added by the law of 1910. These Articles are as follows:—

Rights of author.

"Art. 15. The author enjoys the exclusive right of reproducing the work, circulating the same commercially, and of exhibiting the same for profit by means of mechanical or optical apparatus, but this exclusive right does not apply to a loan. A simple reproduction is to be deemed a multiplication, as well as a rebuilding in reference to works of architecture or the plans therefor. The creator of a work of figurative art or photography by reproduction from another work, enjoys the like rights, provided always that he may not exercise the same without the consent of the author of the original work, if the author is entitled to the copyright in the latter work."

"Art. 15a. If a work reproduced by cinematography or any analogous process is such that, having regard to the arrangement of the acting form or the combination of incidents represented, the same ought to be regarded as an original work, the copyright shall extend to the pictorial execution, in its modified form, of the action represented, and the author has the exclusive right of publicly exhibiting the work."

Piracy.

Any reproduction of a work without the consent of the owner of the copyright is a piracy, whatever be the process employed, and whether the reproductions be few or many (Art. 17), but a work may be freely used if an original work is the result (Art. 16), and photographs, paintings, or drawings of works standing in public places may be copied, provided the copies are not applied to architectural works. As regards architectural works this right only extends to exteriors (Art. 20), and no unnecessary modification of the original work may be made. (Art. 21.)

It is no piracy to reproduce a work for personal use if it be made gratuitously, but this does not apply to a reproduction, upon a site, of a work of architecture. As regards portraits, the person who has ordered the same, or his representatives, may, in the absence of contrary agreement, reproduce the work, but if the picture be a work of figurative art, it may not be reproduced during the author's life otherwise than by photography, and, in any case, the name or description of the author of the original must not be placed on the reproduction in such a way as to cause confusion. (Art. 18.)

Again, it is no piracy to reproduce and circulate isolated works inserted in an independent scientific work or a literary work intended for use in schools or for instruction, if the object be merely

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to explain the text, but this permission does not extend to works which have neither been published nor exhibited in any permanent manner, and the source must be clearly indicated. (Art. 19.) Moreover, no unnecessary alterations must be made. (Art. 21.)

Portraits.

Portraits must not be circulated or publicly exhibited except with the permission of the person portrayed, but, in doubtful cases, such permission is deemed to have been given when the person portrayed has received valuable consideration for sitting. After the death of the person portrayed, the permission of certain relatives must be obtained during a period of ten years after death. (Art. 22.) Nevertheless, the following may be circulated or publicly exhibited without any such permission as aforesaid:—(1) portraits illustrating contemporaneous history; (2) pictures in which the persons portrayed only appear as accessories to a view or landscape; (3) pictures of meetings, processions, and like events in which the persons portrayed have taken part; (4) portraits which have not been executed on commission, provided their circulation or exhibition serve some superior artistic purpose: provided that the liberty hereby accorded is not to apply in any case where the legitimate interests of the person portrayed or his relatives after his death would be injured thereby. (Art. 23.) Any portraits may be circulated and exhibited in the interests of justice or public safety. (Art. 24.)

Period of protection.

The period of copyright protection for a work of figurative art is the same as in the case of literary and dramatic works, namely, the life of the author and thirty years after his death: in the case of corporations, for thirty years after first publication (Art. 25); but in the case of a photograph, protection is only given for a period of ten years after publication, or ten years after the death of the author if the same is not published during his lifetime. (Art. 26.) There are similar provisions as regards anonymous and pseudonymous works, as to collaborations, as to works published at intervals, and as to the reckoning of the periods of copyright protection, to those contained in the law as to literary copyright (*e*). (Arts. 27—30.)

Remedies.

Arts. 31 to 50 relate to the remedies of the copyright owner, and are similar to Arts. 36—53 of the law relating to literary copyright (*f*), with certain necessary modifications.

(*e*) See *ante*, p. 385.
(*f*) *Ante*, p. 389.

Rights of Foreigners.

In the absence of treaty or convention.

It is provided by Art. 54 of the law of 1901, relating to literary and musical copyright, that subjects or citizens of the Empire shall enjoy protection for all their works, published or unpublished, and by Art. 55 that authors who are not subjects or citizens of the Empire shall enjoy protection for any work published in German territory, if neither the work itself nor a translation thereof has been previously published abroad. The same Article further provides that, under the like conditions, any work of which a translation has been published in German territory shall enjoy protection, and in such case the translation is to be considered an original work. Similarly, it is provided with regard to artistic works, by Art. 51 of the law of 1907, that, whilst subjects or citizens of the Empire enjoy protection for all their works, published or unpublished, persons who are not subjects or citizens of the Empire only enjoy protection for such works as are published in the Empire, and have not previously been published elsewhere. A foreigner's work published simultaneously in Germany and abroad will, therefore, receive protection, and if a translation be published first in Germany it will be treated as an original work and not a translation, although the edition published abroad, whether simultaneously or later, may be the original edition.

By treaty

Germany has, however, adhered to the Revised Berne Convention, without any reservations, so that that Convention has full legislative effect in the country. Germany is also a "proclaimed" country, entitled to the benefit of the American Copyright Act, 1909, and by proclamation of December 8th, 1910, reciprocal relations as to mechanical music reproductions have been proclaimed between Germany and the United States.

Germany has also treaties with the following countries:—

Austria	30th December, 1899.
Belgium	16th October, 1907.
France	8th April. 1907.
Italy	9th November, 1907.
Russia	28th February, 1913.

AUSTRIA AND HUNGARY.

Austria and Hungary possess distinct laws.

The laws relating to copyright are different in Austria and Hungary. Austria is governed by a law of the 26th December, 1895, as modified by a law of 26th February, 1907; Hungary

by one passed on the 26th April, 1884. Since 1887 a treaty has existed on these matters between the two countries, by which authors of works of literature or art and their successors, including their publishers, reciprocally enjoy, in each of the two States, the advantages which are granted therein for the protection of works of literature or art (*g*). To this has been added a Protocol of 8th October, 1907, providing for the denouncement of the treaty in the event of either country adhering to the Berne Convention.

Earlier copyright laws.

Previously to the passing of the law of 26th December, 1895, copyright in Austria was governed by a law of 19th October, 1846, which gave a period of life and thirty years for literary and artistic works, and life and ten years for musical and dramatic works. On the 26th April, 1893, a transitory law was passed extending the term for the last-named works to life and thirty years, the cause of this temporary legislation being that the works of Wagner, who died in 1883, were on the point of falling into the public domain. The law of 26th December, 1895, which is retrospective in its operation (Art. 65), grants a similar period of protection to all works of literature, figurative art, and photography.

Law of 26th Dec., 1895.

The following are the principal provisions of the law of 26th December, 1895 (*h*):

Protection is granted to works of literature, art, and photography published in Austria. (Art. 1.)

Copyright extends to the whole and every part of a work. (Art. 3.)

The following are included amongst works of literature and art (Art. 4):

Definition of works of literature and art.

(a) Books, pamphlets, periodicals, collections of letters and all other writings (*i*), falling within the literary domain.
(b) Dramatic, dramatic-musical, and choreographic works.
(c) Designs, figures, maps, plans, plastic works, and sketches for literary purposes, where these works cannot, by reason of their destination, be considered works of art.
(d) Speeches for instruction, edification, or amusement.
(e) Musical works, with or without words.

(*g*) Treaty dated 10th May, 1887. The treaty extends to photographs: "Droit d'Auteur," 1897, p. 40.

(*h*) Taken from the French trantlation in "Le Droit d'Auteur," 1896.

(*i*) Not everything written is a "writing." Apparently there must be intellectuality and originality: Supreme Court, 7th Nov., 1900; but a directory requires intellectual effort: Cour de Cassation, 24th Sept., 1901, *Ippoldt* v. *Erben*.

(f) Works of art, such as pictures, designs, plans, and sketches for architectural works, engravings, sculptures, and plastic works, with the exception of architectural works.

Statutes and other official documents and speeches delivered in public assemblies are not protected; nor are trade announcements nor artistic works upon articles of industry if reproduced with the same object (*k*). (Art. 5.)

Collaborations, &c.

Collaborations belong to the authors jointly, but any one of the joint authors may sue for infringement. (Art. 7.)

In the case of publications comprising distinct works of several authors, copyright in the entire work belongs to the publisher, but copyright in the distinct articles belongs to the several authors, who, however, in case they publish separately, must indicate the work in which their article previously appeared (Art. 8); and in the absence of stipulation to the contrary, writers in reviews, annuals, and almanacs cannot, without the consent of the publisher, publish their articles separately till the expiration of two years. (Art. 9.)

Presumptions.

Primâ facie, the person named as the author of a work at its first appearance is the true author. When a work appears in many copies or reproductions, all must have the name inscribed upon the title-page, dedication, preface, or end of the work, and, in the case of publications composed of the works of several collaborators, at the beginning or end of each article. As regards works of art and photographs, it is sufficient to indicate the name upon the work itself or its mount. In the case of works performed, the name should be announced at the first performance. (Art. 10.) If a work appears without any indication of the true name of the author it will be considered an anonymous or pseudonymous work, and the publisher is authorised to exercise the author's rights. (Art. 11.)

Portraits and photographs.

The person who gives a commission is entitled to the copyright in commissioned works of art and photographs. Portrait photographs can only be reproduced with the consent of the person photographed or his heirs. The copyright in photographs taken for a commercial purpose belongs to the proprietor of the business. (Arts. 12 and 13.)

Assignment and publishing agreements.

Copyright, so long as it is retained by the author or his heirs, is free from execution (Art. 14), passes to the author's heirs (Art. 15), and may be assigned, with or without restrictions, by

(*k*) This clause gives rise to difficulties; but it has been held that pictorial post-cards may not be copied from each other: Supreme Court of Vienna, 20th Jan., 1903, *Wetzel* v. *Fuchs*.

PART V. AUSTRIA.

contract or will. A contract by an author to assign his copyright in all his future works, or all his works of a particular class, though a valid contract, may be repudiated within a year, unless a shorter time has been agreed. (Art. 16.)

Abandonment of a literary or musical work, or a work of art or photograph, to third persons without consideration does not, without special stipulation, pass the copyright, but if consideration is given a transfer of the copyright is implied, unless the circumstances indicate a contrary intention. (Arts. 17 and 18.)

If a publisher fails to fulfil his contract to publish within three years, the author can hold him to his contract and sue for damages or rescind the contract, without liability to repay anything he has received under the contract. (Art. 2.)

Art. 21 makes it an offence to unlawfully claim the rights of the author, and Art. 22 gives an author a right to damages and in some cases to an injunction if the title or appearance of his work is copied.

Extent of Copyright.

(a) *Literary Works.*

Meaning of copyright.

Copyright in a literary work includes the exclusive right of publishing the work, multiplying copies, causing it to be sold, and translating it; in the case of a scenic work it includes the right of public performance; in the case of speeches, not yet lawfully published, it includes the exclusive right of reciting in public. Translations are protected as original works. (Art. 24.)

Piracy.

The following in particular are piracies (Art. 24):—

(a) Publication of an unpublished work (*l*).

(b) Publication of a collection of letters without the consent of their author or his heirs.

(c) Publication of an extract or arrangement, unless it has the character of an original work.

(d) Reprinting a work by an author or publisher contrary to a publishing agreement.

(e) Manufacture by a publisher of a larger number of copies than agreed.

Public performance of a scenic work is piracy, even if it be an adaptation or unlawful translation of the original work. (Art. 30.)

(*l*) The Austrian Courts hold that public representation of a dramatic piece is not a publication of it: Cour de Cassation de Vienne, Oct., 1898, *Héritiers de Félix Bloch* v. *Stubenvoll*.

The following are not piracies (Art. 25):—

(a) Verbatim quotation of small portions of a previous work.

(b) Insertion of detached articles, sketches, or isolated designs in the body of a larger work of science, or in the body of a collection of the works of divers authors or collections for educational purposes; but the source must be acknowledged.

(c) A simple account of a published work or a public speech.

(d) Isolated copies not intended for sale.

(e) Reprinting words to accompany a musical score, providing the reprint is along with the music or is made solely with the view of being utilised at the performance of the musical work, and this object is indicated. The libretti of oratorios, operas, operettas, and vaudevilles are excepted from this clause.

Newspapers. Isolated articles, telegrams, and news may be reproduced. (Art. 27.)

Translations. If an author wishes to reserve his right of translation, he must state this clearly on the title-page, preface, or beginning of the work, and whether he reserves it in all or only in certain named languages. The right of translation reserved lapses if not exercised within three years. (Art. 28.) But without mention of reserve an author has the exclusive right of translation (a) as long as a work has not been lawfully published; (b) into a living language where the work has been originally published in a dead language; (c) into one of the languages in which a work has been originally published, where it was simultaneously published in several languages. (Art. 29.)

(b) *Musical Works.*

Copyright. Copyright in musical works includes the exclusive right of publishing a work, multiplying copies, causing it to be sold, and publicly performing it. (Art. 31.)

Piracy. Art. 24 (above) applies by analogy to musical works, and the publication of extracts, medleys, and arrangements is piracy (Art. 32); but the following are not piracies:—

(a) The publication of variations, transcriptions, fantasias, studies, and orchestrations, if they have the character of original works.

(b) Citation of isolated passages.

(c) Insertion of detached compositions, with acknowledgment of source, in larger works of science or collections of

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divers composers intended for use in schools other than schools of music.

(d) Making isolated copies not for sale.

Right of performance.

The author of a scenic work has the exclusive right of public representation, but in the case of musical works the right of public performance must be expressly reserved and clearly indicated on every copy. (Art. 34.) Mechanical instruments for producing tunes are not infringements of the composer's rights. (Art. 36.)

(c) *Works of Art.*

Copyright.

Copyright in figurative works of art includes the exclusive right of publishing the work, reproducing it, and causing the reproductions to be sold. The author of a work created by a lawful reproduction of another work of art has copyright in his work as though it were an original work if it has been reproduced by a different artistic process from the original work, but it is not permissible to reproduce the reproduction without the authorisation of the author of the original work. (Art. 37.)

Piracy.

Art. 24 (above) applies by analogy to works of art, and it is piracy (a) to reproduce by another process the same work; (b) to copy indirectly from a reproduction; (c) to apply the work to a work of architecture or industry (Art. 38); but the following are not piracies (Art. 39):—

(a) Creation of a new work in which a figurative work of art has been partly made use of.
(b) Copies not intended for sale; but the name or signature of the author must not be placed on the copy.
(c) Copies of a painting or drawing by plastic art or *vice versâ*.
(d) Copies of works of art permanently exposed to public view (*m*), with the exception of copies of plastic works by the same form of art.
(e) Insertion, with acknowledgment of source, of copies of works of art to illustrate the text of a literary work.

(d) *Photographic Works.*

Copyright.

Copyright in photographs includes the right of publishing, multiplying copies, and causing the copies to be sold, but, except in the case of portraits, the photographs or their mounts must

(*m*) Probably this provision only applies to works in the public streets and squares. See cases under a somewhat similar clause in the Swiss Copyright Law, *post*.

have placed on them visibly (a) the name, description (if any), and residence of the author; and (b) the year of publication. (Art. 40.)

Piracy.

It is not piracy (a) to make isolated copies not for sale; (b) to insert, with acknowledgment of source, isolated photographs to illustrate the text of a literary work. (Art. 41.)

The above provisions do not apply to photographs of protected works. (Art. 42.)

(e) *Duration of Copyright.*

Works of literature and art.

As a general rule copyright in works of literature and art expire thirty years after the death of the author. Posthumous works, if published within the last five years of this period, enjoy protection for five years. In the case of collaborations copyright expires thirty years after the death of the last survivor, but when the right of one author expires sooner, his share in the copyright passes to his co-authors. (Art. 43.)

Anonymous works enjoy protection for thirty years from publication, but this can be extended, before the thirty years have elapsed, to the full period by entry of the author's true name in a register to be kept by the Minister of Commerce. (Art. 44.)

Translation.

Corporations, societies, &c. are granted a period of thirty years from publication (Art. 46), and the exclusive right of translation expires five years after publication of a lawful translation. (Art. 47.)

Photographs.

Photographs are protected for ten years. (Art. 48.)

Works published in parts.

When a work is published in several parts copyright dates from each part, but if the parts ought to be considered as forming one whole, it dates from publication of the last part, but the parts must appear at intervals of not less than three years. (Art. 49.)

Remedies for Infringement.

Remedies.

In the case of wilful infringements, the author can take penal proceedings in which the defendant may be fined or imprisoned (Art. 51), ordered to pay damages (Art. 57), and the infringements confiscated (Art. 56). A civil action for damages can be brought against a person wilfully infringing; also against all persons who in a culpable manner make unlawful reproductions or copies, for valuable consideration. (Art. 60.) Even if the defendant has acted innocently, the proprietor of the copyright can bring a civil action to establish his right, restrain future in-

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fringements, and have the infringements confiscated. The defendant will also in this case be ordered to pay the plaintiff any profits he may have made. (Art. 61.) The law also imposes penalties for placing a name upon a work with a view to deceive (Art. 53), and for not acknowledging the source, when such source ought to be acknowledged. (Art. 52.)

Transitory provisions.

Arts. 66 and 67 are transitory clauses saving the rights of persons who have lawfully manufactured copies or lawfully represented musical and scenic works before the passing of this law.

HUNGARY.

Law prior to 1884.

Up to 1884, Hungary had no law of copyright, though the *judex curialis* published provisions in 1861 declaring that the products of the intellect were protected by law. The Austrian law of 1846 was never expressly applied, though the Hungarian Courts often acted on the provisions of that law (*n*). The law was, however, very uncertain, and in 1884 the law previously referred to was passed; this law is similar in many respects to the Austrian law of 1895, but grants a longer period of protection to the author. Its provisions are as follows (*o*):

Law of 1884.

Art. 1. The reproduction of a literary work by a mechanical process, its publication and offering for sale, constitute an exclusive right for the author during the period of protection fixed by law.

When the work has several authors, and the contribution of each cannot be distinguished, each author, in the absence of agreement to the contrary, has the right of reproduction, publication, and sale, after previously indemnifying the other authors.

The Court is to determine the indemnity according to the circumstances on the evidence of experts, if necessary. None of the authors can be compelled against their will to put their name on the work.

When the contribution of each author can be distinguished, the consent of each is necessary for the reproduction, publication, and offering for sale of the distinct portions pertaining to each.

Art. 2. In the case of literary works composed of articles by several persons and considered as forming one single whole, the editor takes the benefit of legal protection as an author.

Copyright in each separate article belongs to each collaborator.

(*n*) "Lois françaises et étrangères," par M. Lyon-Caen.
(*o*) This translation is made from the French translation of M. Lyon-Caen.

In the case of collective works considered as forming one single whole, and composed of writings or articles which have not as yet been published and are not, therefore, protected by this law, the editor enjoys the same legal protection as the author.

Art. 3. Copyright can be transferred by contract or by will with or without reservation. In the absence of any disposition, the right goes to the legal heirs of the author.

The right of the Crown to unclaimed estates on failure of heirs does not extend to copyright.

When one of the authors of a work composed in collaboration dies without heirs, his rights pass to the surviving collaborators.

Execution cannot be levied on copyright as long as it belongs to the author or his heirs or legatees.

Execution can only be levied on the material profits coming to the author or his heirs or legatees from the publication or public representation of the work.

Infringement.

Art. 5. The reproduction of a literary work in whole or in part by a mechanical process, or its publication or offering for sale in whole or in part without the consent of the lawful owner (*p*), are considered an infringement of copyright and are forbidden.

A copy by hand is to be treated as a reproduction by a mechanical process, when the copy so made is intended as a substitute for mechanical reproduction.

Art. 6. The following acts, in addition, are to be considered infringements:

(1) The reproduction, publication, and offering for sale without the consent of the author of an unpublished manuscript. The lawful possessor of a manuscript or of a copy of a manuscript cannot do these acts without the consent of the author.

The reproduction, &c. of verbal expositions or of lectures given for purposes of discussion or education.

Every publication made by either author or publisher contrary to the agreement between them or to the law.

Printing more copies of a work than agreed upon between the author and publisher.

The unlawful publication by one of the authors of a work written in collaboration.

The publication in one collection without the consent of the author of speeches delivered in debates or public deliberations in different circumstances on different subjects.

The unlawful insertion in any newspaper of telegrams and

(*p*) Arts. 1, 2, 3.

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information collected and reproduced solely for the purpose of being printed in newspapers. The provisions of Art. 9 (1) are to be applied to the insertion of such communications after their publication in any paper.

Translations.

Art. 7. A translation of an original work without the consent of the author is considered an infringement in the following cases:

When the work having appeared in a dead language is published in a translation into a living one.

When the work having appeared in several languages is published in a translation into one of those languages.

When the author has reserved the right of translation on the title-page or at the commencement of the original work, on condition that the (author's) translation has been commenced within a year from the publication of the original, and finished within three years. Protection ceases in the case of languages into which a translation has not been commenced in the first year. When the reservation is only made for certain languages, the work can be freely translated into any other.

In the case of original works appearing in several volumes or parts, each volume or part will be considered a separate work, and the reservation must be repeated on each volume or part. The periods relating to translations only run from the 1st of January after the publication of the original.

In the case of works intended for the stage, the translation must be finished within six months.

Information shall be given of the commencement and finishing of the translation for the purpose of being entered in a register in the period fixed by this law (*q*).

Translations of literary works not yet published and protected by this law (*r*), are to be considered an infringement of copyright.

Art. 8. Translations, like original works, are protected against unlawful reproduction and sale.

Acts which are not infringements.

Art. 9. The following acts are not considered infringements:

The literal citation of some passages or small parts of a work already published, or the insertion of small works already reproduced or published, in a work of greater size which has from its contents an independent scientific purpose, provided this insertion is made within limited bounds explained by the purpose in view, or such insertion is in a collection composed of extracts from several writers for use in schools, for religious or educa-

(*q*) Arts. 42, 44.
(*r*) Art. 6 (1), (2).

tional objects, on condition that the name of the author or the source be clearly shown.

The insertion of isolated communications extracted from papers and reviews other than literary and scientific works, or important communications bearing at their head a prohibition against reproduction.

The communication of public decrees and debates.

The reproduction of speeches delivered in public debates and deliberations.

The reproduction of a few articles extracted from the collective works referred to in Art. 2, par. 3.

Art. 10. The 53rd law of 1880 applies to the reproductions of laws and orders (*s*).

Duration of Copyright.

Duration of copyright.

Art. 11. Subject to the provisions contained in the following articles, the protection assured by the law against infringement lasts during the life of the author and fifty years after his death.

Art. 12. In the case of collaborative works, the period of protection runs from the death of the surviving collaborator.

In the case of collective works, the period of protection for each article varies according as the authors of the articles are named or not.

The collections mentioned in Art. 6 (6) enjoy legal protection for fifty years after the death of the author, but if a collection of speeches is not published during the life of the author or within five years from his death, publication cannot be made without the consent of his representatives.

Art. 13. Literary works which have appeared in the life of the author do not enjoy the protection fixed by Art. 11, unless the true name of the author or his recognised literary name appears on the title-page, under the dedication, or at the end of the preface.

In collective works it is sufficient for the protection of each article if the name of the author be indicated at the commencement or end of the article.

Anonymous works.

Pseudonymous or anonymous works which show the date of their first publication are protected for fifty years from this date. If, however, during this fifty years the name of the author has

(*s*) By which the exclusive right of publishing laws, &c. is reserved to the State: "Lois françaises et étrangères," par M. Lyon-Caen.

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been declared and registered, the period of protection is calculated according to Art. 11.

Posthumous works.

Art. 14. A posthumous work is protected for fifty years from the death of the author. If the work be published for the first time more than forty-five years from the death of the author, but within fifty years, it enjoys protection for fifty years from publication.

Academies.

Art. 15. Academies, universities, corporations, and other persons legally constituted, as well as educational establishments, enjoy, in so far as they can be considered authors of works published by them, protection for thirty years from the first publication.

Works in parts.

Art. 16. In the case of works appearing in several volumes or parts, the period of protection runs from the first publication of each volume or part.

In the case of works which treat of one and the same subject in several parts or volumes, and which consequently must be considered as forming a single whole, the period of protection runs from the publication of the last part or volume. If, however, more than three years have elapsed between the publication of different volumes or parts, the parts or volumes already issued will be considered as an independent work, and the subsequent parts or volumes as a new work.

Translations.

Art. 17. The prohibition against translation lasts, in the case of Art. 7 (2), for five years from publication of the original work, and in the case of Art. 7 (3) five years from the first publication of the authorised translation.

Art. 18. The period of protection fixed by the preceding articles runs from the 1st January after first publication or the death of the author.

Remedies and procedure.

Arts. 19 to 23 relate to remedies, and Arts. 25 to 35 to procedure. Proceedings must, generally, be instituted within three years after the offence has been committed. (Arts. 36, 37.)

Registration.

Registration.

Art. 42. The register, in which registration is to be made according to Arts. 7, 13, 55, and 65, is kept at the Ministry of Agriculture, Trade, and Commerce.

Art. 43. Registration is made on the verbal or written request of the interested [illegible] without preliminary examination into the truth or law[illegible] the facts stated.

Art. 44. Any person may inspect the register, and require verified extracts to be delivered to him.

The registrations effected are to be published in a paper to be determined by such minister.

The registration of works appearing in Croatia-Slavonia, as also the works of persons within the jurisdiction of those countries appearing in a foreign country are also to be published in a paper appearing in Croatia-Slavonia to be selected by the Ban.

It is the duty of the Minister of Agriculture, &c. to make rules for the registration procedure.

CHAP. II.—*Musical Works.*

Musical works.

Art. 45. The provisions of Arts. 1 to 6, and 9 to 14, apply to authors of musical works in reference to their rights of reproduction, publication, and sale.

Infringement.

Art. 46. The following are infringements: Every arrangement of a musical work published without the consent of the author which cannot be considered as a composition in itself, notably extracts from musical works; the transcription of a musical work for one or more instruments or voices; in addition, the reproduction without artistic variation of several motifs or melodies drawn from one and the same composition.

Art. 47. The following are not considered infringements: The quotation of isolated passages from a musical work which has already been published; further, the insertion of musical works of small extent, within limited bounds fixed by the end in view, in an independent scientific work, or in a collection of different works put together exclusively for schools and education. In addition, the author, or the source from which the *morceau* is taken, must be indicated. If this is not done, Art. 24 applies.

Art. 48. Further, the use of a published work as a text for a musical composition, when the text is printed with the composition, is not to be treated as an infringement.

Words which by their very nature are only intended to be set to music, such as the words of an opera, an oratorio, &c., are excepted. These can only be set to music with the consent of the author. The author is considered to have given his consent if he has handed over the text to a composer without any reservation.

For the publication of the text without music, the special permission of the author of the text or his assign is necessary.

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CHAP. III.—*Representation or Performance of Theatrical Works and Operas.*

Theatrical works.

Art. 49. The exclusive right of representation or performance of theatrical or musical works, or operas, belongs to the author.

Art. 50. Theatrical and dramatic musical works cannot be represented on the stage without the consent of the author, even if they have been printed or are to be found on the market.

Overtures, entr'actes, or other parts taken from these works may be performed off the stage without consent.

Art. 51. Musical works which have been reproduced and put on the market can be represented or performed publicly, even without the author's consent, when the author has not reserved the right of performance on the title page or at the beginning of the work.

Art. 52. When a work has several authors, pars. 2 and 3 of Art. 1 may be applied to the public representation or performance, with the qualification that for the performance of musical works accompanied by words, including operas, the consent of the composer is in general sufficient, and for the performance of these works without music the consent of the composer is not sufficient.

Art. 53. The person who lawfully translates a dramatic work enjoys legal protection as to the public representation of his translation.

Art. 54. The public representation of an unlawful translation (*t*) or arrangement (*u*) is considered infringement.

Art. 55. Arts. 11 to 18 are applicable in relation to the duration of the right of public representation or performance.

Pseudonymous works or works performed without indication of the author's name (*x*), enjoy, when they have not yet been published, protection for fifty years from their first representation.

But when either the author or the assignee of a pseudonymous or anonymous work, has declared the true name of the author, for purposes of registration, within fifty years, or when the author publishes within this period, his work under his true name, the duration of protection is calculated according to Art. 11.

Art. 56. The person indicated as author in the announcements of the representation may be considered as the author of dramatic,

(*t*) Art. 7. (*u*) Art. 46.
(*x*) Art. 13, par. 1.

musical, and dramatico-musical works not yet published, but already publicly represented or performed.

Art. 57. Any person who intentionally or negligently represents or performs publicly, without being entitled so to do, a dramatic, musical, or dramatico-musical work, in entirety or with unimportant alterations, is under the obligation to the author or his representatives of making good the damage, and is punishable with the fine fixed by Art. 19.

Art. 20 is applicable to the author of an unlawful representation or performance, but so that the amount of the confiscation shall be fixed in conformity with Art. 58.

Art. 58. The gross receipts from the unlawful representations or performances may be payable by way of damages, without deduction of expenses.

If the work has been represented or performed together with other works, the proportionate part of the receipts shall be taken as the amount of compensation.

When there have been no receipts, or their amount cannot be ascertained, the judge shall estimate the damages.

When there has neither been intention to infringe nor negligence on the part of the offender, no penalty is applicable, and he is only liable in damages to the extent of his profits.

Art. 59. Arts. 3, and 25 to 44, are also applicable to the public representation and performance of dramatic, musical, and dramatico-musical works.

CHAP. IV.—*Works of Art.*

Works of art.

Art. 60. The exclusive right of reproducing, in whole or in part, of publishing and selling works of the figurative arts, drawing, engraving, painting, and sculpture, belongs to the author.

Infringement.

Art. 61. The reproduction of such works shall be considered an infringement, when it takes place without the author's consent, and the copies are intended for sale.

Also, when the original work is reproduced in another art or style.

When the reproduction is not taken directly from the original, but from some copy.

When a work of the figurative arts is imitated in works of architecture, trade, or manufacture.

When the author or publisher makes a reproduction contrary to his agreement or the law.

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When the publisher causes a larger number of copies to be made than he is entitled to make under his agreement.

What not infringements.

Art. 62. The following are not infringements:—

(1) An arrangement by means of which one derives several new works from one original.

(2) Isolated copies not intended for sale. On such copies there must not be indicated the signature, the name, or the initials of the author's name, under the penalties fixed by Art. 19.

(3) The reproduction in another art, of works placed in perpetuity in streets, public squares, and other public places of the same kind (*y*).

(4) The reproduction of detached works of the figurative arts, within limited bounds fixed by the end in view, to explain a work essentially literary.

Art. 63. A person who lawfully reproduces the work of another in a different style will be considered an author in respect of the work created by him, even if the original work have become public property.

Art. 64. When an author alienates his work, the right of reproduction will not be considered as included in the alienation.

In the case of portraits and busts to order, this right belongs to the giver of the order.

The owner is not bound to send back the work to the author or his representative in order that he may reproduce it.

Art. 65. In other respects, Arts. 3, and 11 to 44, are applicable to creations of the figurative arts, to their authors, and to the publication of these works periodically or in a collection.

In respect to works already published, protection is allowed in conformity with Art. 13, varying with the rules according as the name of the author has been indicated on the work or not, and as the want of indication has been cured or not by registration.

Art. 66. The provisions of this law are not applicable to works of architecture or to works of the figurative arts transferred on to articles of manufacture.

(*y*) See cases decided under Art. 11 of the Swiss law of 1883, *post*.

CHAP. V.—*Geological or Geographical Charts, Drawings, and Diagrams of Natural History, of Geometry, of Architecture, and other Technical Drawings and Diagrams.*

Maps, technical drawings, &c.

Art. 67. Arts. 1 to 44 of this law apply to geological and geographical charts, drawings, and diagrams of natural history, of geometry, of architecture, when from their purpose they cannot be considered works of the figurative arts. But Arts. 60 to 66 of this law are applicable when from their purpose the works come under the latter head.

Art. 68. The insertion of drawings and diagrams in a literary work when they only serve to explain the text are not to be considered infringements, provided that the author or the source be expressly indicated.

CHAP. VI.—*Photographs.*

Photographs.

Art. 69. The exclusive right of reproducing by a mechanical process, of publication, and of offering for sale a work obtained by photography, belongs to the author of the original work during the period fixed by Art. 70.

For the existence of this exclusive right, there must be indicated on each copy of the impressions or reproductions (1) the name or firm and the address of the author or publisher of the original publication; (2) the year in which the impressions or reproductions were first published.

Duration.

Art. 70. The protection secured by this law belongs to the author of a photographic work or his representatives during five years from the expiration of the year in which the original first appeared.

If the impression or reproduction has not been published, the period of five years runs from the end of the year in which the original of the photographic publication was obtained.

The provisions of Art. 16 apply to photographs of works which have come out in several volumes.

Art. 71. The reproduction of a photographic work by a mechanical process without the consent of the rightful owner, and for a commercial purpose, is considered an infringement.

Art. 72. The right of reproduction of portraits obtained by photography belongs exclusively to the person who gives the order.

Art. 73. The following are not considered infringements: (1) Using a photograph so as to create new works different from the original work. (2) The reproduction of a photographic work

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by applying it to an industrial product. (3) The reproduction of a photograph in another article.

Art. 74. A person who reproduces a photographic work of another in a different art is considered as the author of the work created by him, agreeably to Art. 63.

Art. 75. Arts. 3, 8, 19 to 44, and 68, are applicable to photographs.

By Art. 79 it is provided that the law shall apply to the works of Hungarian citizens, even though they have appeared in a foreign country.

Rights of Foreigners in Austria-Hungary.

Neither Austria nor Hungary is a party to either the original, or the revised, Berne Convention. The right of either country to do so, independently of the other, is recognised by the Protocol of 1907 to the treaty of 1884 (*z*), but it is obviously desirable that, if possible, the two countries should act in concert. There is considerable agitation in favour of adhering to the Convention, and a new Hungarian law has recently been framed with a view to bringing the legislation of that country into line with the provisions of the Revised Convention, but in Austria the meagre protection afforded to translations by the law of 1895 (*a*) is the main obstacle in the way of her adherence to the Convention.

In the meantime, by Art. 2 of the law of 1895, the rights of foreigners in Austria are to be regulated solely by treaty (*b*). As regards Hungary, Art. 79 of the law of 1884 expressly declares that that law is not to apply to the works of foreigners, except (a) works of foreigners published by native publishers, and (b) works of foreigners who have lived in Hungary at least two years continuously and have paid taxes without break.

Austria is a "proclaimed" country entitled to the benefit of the American Copyright Act, 1909.

Austria and Hungary have joint treaties with the following countries:—

France	11th December, 1866.
Germany	30th December, 1899.
Great Britain	24th April, 1893 (*c*).
Italy	8th July, 1890.

(*z*) *Ante*, p. 394.

(*a*) *Ante*, p. 397.

(*b*) There is a slight modification in favour of German works, but this is of no present moment, as there is a subsisting treaty between Austria and Germany.

(*c*) The text of this treaty will be found in Appendix B., *post*.

Austria has concluded separate treaties with the following countries:—

Denmark	18th July, 1907.
Roumania	2nd March, 1908.
Spain	13th April, 1912.
Sweden	17th May, 1908.
Switzerland	10th July, 1914.

The only separate treaty negotiated by Hungary is one with the United States (30th January, 1912), whereby mutual protection is granted, subject to the fulfilment of the conditions and formalities prescribed by the law of the country in which protection is sought, the term of protection being likewise regulated by the same law.

NORWAY.

Legislation before 1893.

The law of literary and artistic copyright in this country was till 1876 very incomplete, the enactments on the subject being numerous, fragmentary, and passed at various dates between the years 1839 and 1875. The law of 8th June, 1876, and the two laws of the 12th May, 1877, consolidated the whole; but in the year 1893 these were repealed, and a new law was passed with a view to enabling Norway to become a party to the Berne Convention. The law referred to is a law of 4th July, 1893, which repealed all previous laws. In order to bring the Norwegian legislation into line with the provisions of the Revised Convention of 1908, this law was amended by a law of 25th July, 1910, and, as amended, its principal provisions are as follows (*d*):—

Origin and extent of copyright.

Within the limits of the present law, an author has the exclusive right of publishing his writings by copying his manuscript, by reproduction by means of mechanical or chemical process, including reproduction with the aid of mechanical instruments, by dramatic representation, and by cinematograph performance, or any other analogous performance, by recitation, or any other reproduction in aid of language. But if the work be published, an author must specially reserve the right of public recitation (other than of a dramatic character) by notice on the title page or commencement of the work. (Art. 1.)

Copyright also extends to (a) speeches; (b) musical compositions; (c) mathematical, geographical, and topographical designs,

(*d*) Taken from the French translation in "Le Droit d'Auteur," 1910, p. 146.

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natural, technical, and other histories, also graphic and plastic representations which cannot be considered as works of art; (d) cinematograph and analogous productions, which by their arrangement or combination of incidents represented, constitute essentially new and original works. (Art. 2.)

Publishers of journals, periodicals, and works comprising contributions by several collaborators have the exclusive right of publishing the whole work, but, in the absence of agreement to the contrary, the author preserves his copyright in his contribution. (Art. 3.)

Translation. Translation of a work is forbidden without the consent of the proprietor of the copyright. (Art. 4.)

Anyone who translates, dramatises or adapts a work in another manner, or who reproduces it by a cinematograph performance, or by the aid of mechanical instruments, obtains copyright in his translation, adaptation or reproduction, subject to the rights of the author of the original work. (Art. 5.)

Arts. 6 and 7 regulate the rights of co-authors *inter se*.

Copyright in public documents. There is no copyright in laws, ordinances, judicial decisions, and public documents; nor in speeches delivered in representative assemblies, political speeches, and such like. (Art. 8.)

Assignment of copyright. Copyright may be assigned in whole or in part. Assignment of the right to publish a work in a particular manner does not imply a right to publish in any other manner, nor to dramatise, translate, or adapt it. Nor may the transferee make alterations in the work without the author's consent. This clause also contains provisions regulating the rights of authors and publishers *inter se*. (Art. 9.)

A person to whom an author has granted the right of performing a dramatic or mimic or dramatico-musical work, or the right of public performance of a musical work, or the right of cinematograph exhibition, has, in the absence of stipulation to the contrary, the right to represent, exhibit or perform the work in what manner and at what times he pleases, but he cannot grant this right to others. In the like absence of stipulation to the contrary, the author preserves the right to grant similar rights to others and to represent, exhibit or perform the work himself. When an author grants the *exclusive* right of representation, exhibition or performance, if the assignee does not represent or perform, as the case may be, for five consecutive years, the author and his heirs can either themselves perform, exhibit or represent or grant these rights to others. (Art. 10.)

On the death of an author his copyright devolves in accordance

with the general law, and in the case of unpublished MSS. an author may, by will, give directions as to publication. (Art. 11.)

Creditors have no rights in respect of unpublished MSS., and only after the death of the author can they have the right to compel a re-edition. (Art. 12.)

Piracy.

Not only is the reproduction of an entire work a piracy, but also reproductions which take the form of abridgements, additions, or alterations, including dramatizations and adaptations, unless these result in producing an essentially new and original work. (Art. 13.)

The following are not piracies: (1) Insertions of short detached portions of published works in a work which, taken as a whole, constitutes an original work; (2) analogous utilization, after ten years, in collections from the works of various authors or composers intended for use in churches, schools, and for elementary or general education; (3) reprinting, as the libretti of musical compositions, or upon concert programmes, detached poems of short length, with a view to public performance of musical compositions, or of reproducing the same with the aid of mechanical instruments; (4) reprinting, as explanatory text to artistic illustrations, poems and short pieces of prose, provided the illustrations are the essential part of the work and that at least two years have elapsed since the first publication of the writing; (5) the public performance of songs, dance music, and isolated musical compositions of short length, otherwise than in a performance of a dramatic character, also gratuitous or charitable performances of other musical works.

In all the above cases the source must be clearly indicated. (Art. 14.)

Newspapers and reviews may reproduce, in the original language or in translation, detached articles or communications from other newspapers or reviews, unless the right of reproduction has been specially reserved (*e*). The source must be clearly indicated. (Art. 15.)

Remedies.

The penalty for not indicating the source as provided by Arts. 14 and 15 shall be a fine only. (Art. 20.)

Arts. 16 to 20 state the remedies against piracy, namely, a fine and destruction of copies and the instruments for manufacture thereof. If, however, the defendant has acted in good faith he can only be made to pay the amount of his profits, and infringe-

(*e*) It is not very clear whether this Article does or does not apply to short stories and tales.

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ments are to be sequestrated during the continuance of the copyright.

Duration of copyright.

The period of protection is during the life of the author and fifty years from the end of the year of his death. (Art. 21.) Anonymous and pseudonymous works are protected for fifty years from the end of the year of first publication, but the author can obtain protection for the full period by making known his true name in the manner prescribed. (Art. 22.)

Recitation of a work is lawful, provided it does not take the form of a dramatic performance, as soon as a period of three years has elapsed since the end of the year in which the work first appeared. (Art. 24.)

Artistic copyright.

Within the limits of the present law, an artist has the exclusive right of selling or publishing reproductions of his work or any part of it. It makes no difference whether the reproduction requires an artistic faculty or is by a purely mechanical or chemical process. No one can, without leave of the artist, utilise for an architectural work original architectural designs any more than designs, models, &c. which have been executed according to original designs. (Art. 25.) Works of architecture themselves are not protected.

Any one lawfully reproducing a work of art in another artistic form, has the same copyright in his reproduction as in an original work of art. (Art. 26.)

Art. 27 relates to the rights of co-artists *inter se*.

Assignment.

An artist can assign his copyright in whole or in part. In the absence of agreement to the contrary, the assignment of a work of art does not imply a right to make copies, but this right still belongs to the artist. In the case of commissioned portraits, however, whether paintings or sculptures, the artist cannot exercise his right without the consent of the person who has given the commission. The right to reproduce in a particular manner does not imply a right to reproduce in any other manner. When a work of art has been published in a journal or periodical, in the absence of contrary stipulation, the artist preserves the right to publish in any other way. (Art. 28.)

Unpublished works of art are protected from the artist's creditors. (Art. 30.)

Piracy.

Reproduction or utilization of a work of art belonging to another is not rendered lawful by reason of its being reproduced in another size or with other materials than the original, nor is it lawful to reproduce from a lawful copy or to reproduce with

modifications, additions, or curtailments, unless an essentially new and original work is thereby produced. (Art. 31.)

On the other hand, it is not a piracy to reproduce works of art detached and inserted in critical works or works of artistic history in connection with, and to explain the text. But the name of the artist must always be mentioned. (Art. 32.) The penalties are the same as in the case of literary copyright. (Art. 33.)

Duration.

The period of protection is the life of the author and fifty years from the end of the year of his death. In the case of collaborations the fifty years are reckoned from the death of the last survivor. (Art. 34.)

Actions for infringement can only be brought by the injured party, but in the case of anonymous or pseudonymous works the publisher is, until the contrary is proved, authorised to sue on behalf of the author. (Art. 35.)

Photographic copyright.

Copyright in photographs is regulated by a law of 11th May, 1909, repealing an earlier law of 12th May, 1877, of which the following are the main provisions:—

Copyright in a photograph gives the exclusive right to the author of reproducing the same by any process whatever, also of selling or otherwise circulating copies. In the case of photographs of works of art protected by the law of 4th July, 1893, the consent of the proprietor of the artistic copyright must be obtained. (Art. 1.)

Conditions.

Every copy must have either on the work itself or the mount the word "Eneret" (exclusive right) and the name of the proprietor of the copyright. (Art. 2.)

Commissioned photographs.

In the case of photographs executed to order, the person who orders the same obtains the copyright. Portraits can only be copied with the consent of the sitter. (Art. 3.)

If photographs are published in a collection the publisher has copyright in the complete collection, but the proprietor in the separate photographs, in the absence of contrary agreement. (Art. 4.)

Not piracy.

The following are not piracies:—

(a) Utilization of a photograph so as to produce an essentially new and original work;

(b) Reproduction for personal use only, but the copy must bear the word "Eneret" and the name of the proprietor of the copyright;

(c) Reproduction of isolated copies in books published for the use of schools or with a scientific object, but the copy

must, if possible, bear the word "Eneret" and the name of the proprietor of the copyright. (Art. 5.)

Portraits.

Portraits over which no copyright exists cannot be reproduced without the consent of the person represented, but they may be exhibited by the photographer in the way of business, unless expressly forbidden. Other photographs executed to order may be reproduced unless expressly forbidden. (Art. 6.) Portraits of actual or general interest, pictures in which the persons represented only appear as accessories, and photographs of assemblies, open-air processions, or of situations and events of general interest may be reproduced without the consent of the persons represented (Art. 7): likewise where required in the interests of justice or public security. (Art. 8.)

Copyright may be assigned. (Art. 9.)

Duration.

The term of copyright is the life of the author and fifteen years from the end of the civil year in which the first proprietor of the copyright dies, but in the case of joint proprietors the fifteen years is to be calculated from the end of the year in which the last of such proprietors dies. If, however, the photograph is of an artistic work protected under the law of 1893, copyright lasts so long as the copyright in the artistic work subsists, if the latter period exceeds that conferred by this present law. The copyright in photographs published by a firm terminates fifteen years after the expiration of the year in which the work was first published. (Art. 10.)

Remedies.

Arts. 11 to 15 relate to procedure and remedies for infringement which are similar to those provided in the case of piracy of a literary or artistic work.

Limitation of time for proceedings.

All proceedings, under either Act, must be brought within a year of discovery of the piracy, and, in any case, within two years from the illegal act being committed in proceedings for a penalty or within three years in other proceedings, except that confiscation may be ordered so long as the copyright subsists.

Retro-activity.

The laws of 11th May, 1909, and 25th July, 1910, both contain provisions relating to their retroactivity. The law of 11th May, 1909, applies to photographs produced both before and after the 1st January, 1910 (the date when the law came into force), but without prejudice to reproductions lawfully commenced prior to the passing of the law. The amending law of 25th July, 1910, came into force on the 9th September, 1910, and applies to works produced before and after that date, but the extended period during which the right of translation is now protected does not apply to books on sale more than ten years prior to the last-men-

tioned date: the provisions of Art. 14 (5) do not apply to musical publications previously published where the right of public performance is forbidden: and any work which had previously been adapted to mechanical instruments may be adapted by anyone in like manner, and copies may be sold, reproduced, and publicly performed (*f*).

Rights of Foreigners.

Literary and artistic works.

With regard to literary and artistic works, the 37th Article of the law of 4th July, 1893, as amended by the law of the 25th July, 1910, provides as follows:—

"The present law applies to all works of Norwegian subjects, and also to works of foreigners published by a Norwegian publisher. A publishing house is deemed Norwegian when all the partners or, in the case of companies, when all the directors are domiciled in Norway.

"Under conditions of reciprocity, the provisions of this law can be rendered applicable by royal decree to works published for the first time in other countries, to unpublished works of the subjects of such countries, and, according to circumstances, to all works protected in another country as though they were the works of natives."

Photographs.

Art. 17 of the law of 11th May, 1909, contains a similar provision as to photographic works of foreigners.

Norway adhered to the Berne Convention on the 13th April, 1896, but she did not ratify the Additional Act of Paris. She ratified the Revised Convention of 1908 on the 9th September, 1910, subject to reservations as to works of architecture, newspaper articles, and retroactivity, in which matters she relies upon the provisions of the Berne Convention. She has a treaty with France of the 30th December, 1881, and with Italy of the 9th October, 1884. Denmark enjoys copyright in Norway by virtue of a Declaration dated the 27th November, 1879, Sweden by virtue of royal decrees dated the 16th November, 1877, and 4th February, 1887, and the United States by a royal decree dated the 25th May, 1905. Norway is a "proclaimed" country in the United States, and entitled to "the benefit of the United States Copyright Act, 1909, both generally and in respect of mechanical music."

(*f*) The main alterations to the law of 4th July, 1893, made by the law of 25th July, 1910, are with regard to mechanical instruments, and to the right of translation (except into a dialect) being previously permitted after ten years from first publication (see Copinger, 4th ed. p. 607).

PART V. SWEDEN.

SWEDEN.

Literary copyright in Sweden.

Copyright in this country was formerly perpetual. Literary copyright is now regulated by the law of 10th August, 1877, as modified by the laws of the 10th January, 1883, and 28th May, 1897, 29th April, 1904, and 17th June, 1908. The law resembles in many points the laws of Norway and Denmark. Artistic copyright is governed by another law of the 28th May, 1897, and photographs by a third law of the same date. The law of the 10th August, 1877, modified as above mentioned, applies to works already published before the date of its coming into force or 1st January, 1878, and repeals previous laws. Its principal provisions are as follows:—

What protected.

Art. 1 (as modified by the law of 28th May, 1897). For the purposes of this law the following are assimilated to works of literature, viz., musical compositions, drawings of natural history, geographical and marine charts, maps, architectural drawings, and all works which, having regard to their principal object, cannot be classed as mere works of art.

Persons protected.

The author has the exclusive right to reproduce his works by printing, including photo-chemical processes, whether the works are already published or in manuscript.

Art. 2. The author's right recognized by Art. 1, includes also the exclusive right of reproducing by printing a translation of his work from one dialect into another of the same language. Swedish, Norwegian, and Danish in this respect are considered different dialects of the same language.

Translations.

Art. 3 (as modified by the laws of 16th January, 1883, and 28th May, 1897, and 29th April, 1904). Works of literature published by the author simultaneously in various languages, to be indicated on the title-page or the beginning of the work, are deemed to be written in each of these languages. Publication by means of printing into any other language without the author's permission, is forbidden for a period of ten years from the date of the original publication (*g*).

Art. 4. The translator of a work into another language enjoys in his translation the same rights as the author of an original work, provided such translation can, under the provisions of this law, be published without the author's consent, and subject to the right of any other person to translate the same original work.

(*g*) This clause as finally modified by the law of 29th April, 1904, conforms with the provisions of the original Berne Convention. This law applies to writings published before the date of its coming into force (1st July, 1904) with a saving for rights acquired previously.

During the period when the translation cannot be published without the author's consent, a translator having such consent has the rights of an author in his translation, subject to any restrictions imposed by the agreement with the author.

Publishers of periodicals.

Art. 5. The publisher of a periodical or other work composed of distinct articles by different authors, is considered as an author, but has no right to reproduce such articles separately. One year (*h*) after the publication of each article the author may reproduce the same.

Duration.

Copyright lasts for the life of the author and fifty years after his death. In a joint work, not consisting of several distinct articles, the fifty years begin to run from the death of the last surviving author. (Art. 7.)

Corporations.

Works published by learned societies or other associations, also works first published after the death of their author, are protected for fifty years (*i*) from date of first publication; and the same with regard to anonymous and pseudonymous works, the authors of which, however, on making themselves known before the expiration of the fifty years, either upon the title-page of a new edition or by declaration with the Minister of Justice, or by triple insertion in the official "Gazette," acquire the full period of protection. Until the author so discloses his identity, he is represented in the exercise of his right, by the person designated on the title-page as the publisher. (Art. 8, as modified by the law of 28th May, 1879.)

Works published in parts.

In the case of writings published in several parts or connected divisions, the period of protection runs from the beginning of the year of publication of the last part. If one part has been published more than two years (*i*) after the preceding part, the period of protection for that and earlier parts runs from the year in which the last of the previous parts was published. (Art. 9. A new clause under the law of 28th May, 1897.)

Registration.

There are no provisions as to registration in this law.

Alienation of copyright.

An author can transfer to others the rights given him by this law with or without conditions or restrictions. Failing such transfer, the right passes to his heirs at his death.

The person to whom an author grants the right to publish a work may not publish more than one edition of it, nor more than 1,000 copies in that edition. (Art. 6.)

(*h*) Counting from the 1st January after publication. (Art. 21.)
(*i*) Counting from the 1st January following publication. (Art. 21.)

Piracy and infringement.

It is forbidden as piracy, but subject to any provisions to the contrary in this and in the law on the liberty of the press, to print any work, in whole or in part, before the expiration of the term of copyright, without the consent of the owner of such copyright. Changes, abbreviations, or additions of no importance to a work, do not legalise such piracy.

Piratical translations.

The publication of a translation of an unprinted work, without the consent of the author, or of a translation contrary to Arts. 2 and 3, is an act of piracy. (Art. 10.)

What is not piracy.

It is no piracy to reproduce passages from another work in a new and original work, whether in full or abridged, for purposes of proof, criticism, or illustration, provided the source be acknowledged. The reproduction of passages, or even a whole writing, if of short length, in a collection composed of extracts intended for religious purposes or elementary instruction, or for historic exposition, is no piracy, nor is printing words as the libretto of a musical composition. *But none of these matters is lawful if the original was intended to be included in a like collection intended for elementary instruction, and a notice prohibiting reproduction has been placed at the top of such original* (*l*). But when the writing of another is taken for profit, the author must be quoted when his name is given in the original work. Neither is it piracy to reproduce in a periodical publication extracts from another periodical, provided the source be acknowledged. But scientific articles and *ouvrages d'esprit* of considerable extent are excepted, if the reservation of copyright be expressed at the head.

Representation of dramatic and musical works.

No dramatic or musical dramatic work, either in the original or in a translation which may not be published without the author's consent, can be publicly represented without the consent of the author or his representative. But the reading or public performance of a work is permitted if there be no scenic accompaniments, unless the work be unpublished or there be a reserve of the right of public performance on the copies of the work. An authorised translator exercises, in respect of his translation, the author's rights.

The person having a right of public representation may give as many representations as he likes, but may not transfer his privilege to another.

The proprietor of such work may grant the same authorisation to others if there be no agreement to the contrary. When a proprietor has granted the exclusive right of representation to another,

(*l*) The words in italics were added by the law of 1908.

and such grantee has failed to make use of his privilege for five consecutive years (*m*), the proprietor is again at liberty to grant the right of representation to others. (Art. 13, as modified by the law of 1897.)

Duration.

The above rights of the author or translator in respect of representation last for his life and thirty years (*n*) after his death. If the author or translator has not disclosed his identity the representation is open to any one at the end of five years from the first representation or the first publication. (Art. 14.)

Remedies.

Persons guilty of piracy under this law are liable to a fine, to confiscation of pirated copies, and to make compensation in respect of copies sold, or in case of infringement of dramatic or musical rights, to pay over the gross proceeds of the representation to the proprietor of the copyright. If it is impossible to assess the damages on the basis mentioned, the amount is to be determined on equitable considerations, but the minimum damages are to be twenty-five crowns.

General provisions.

When there are several proprietors of a work the consent of each is necessary for publication or representation. However, in the case of a musical dramatic work the consent of the author suffices if the text forms the principal part, and of the composer if the music forms the principal part.

Artistic copyright.

Artistic copyright in Sweden is now governed by another law of 28th May, 1897, replacing the earlier law of 3rd May, 1867. The law of 25th May, 1897, provides:

Art. 1. No one can reproduce original works of art for purposes of sale during the author's life without his consent, when the process of reproduction belongs to the same branch of art as the original. Reproduction is not made lawful by being in a different size, or in different materials, or with non-essential changes, so long as by its subject and contents it retains the character of a copy.

Art. 2. Every person has the exclusive right of causing the reproduction, in whole or part, for sale or public exhibition, of original works executed by him by printing, photography, casting, or other analogous means. This right lasts till the end of the tenth year after the artist's death, and can be assigned, with or without conditions or restrictions.

Art. 3. Reproduction is permissible in a scientific journal or

(*m*) Dating from 1st January after the last representation. (Art. 21.)
(*n*) Reckoned from the 1st January following death. (Art. 21.) The period was life and five years until the law of 29th April, 1904, was passed.

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a journal intended for instruction, provided the source be acknowledged.

Art. 4. If a work of art be sold, the artist or his representatives do not lose their rights, unless the sale be to the State or a Commune. A commissioned portrait may not be reproduced by the artist without the authority of the person who has given the commission. The provisions of this clause may, however, be raised or negatived by agreement.

Art. 5. Works of art exposed in public places or outside buildings may be reproduced (*o*).

The penalties and remedies provided by this law are similar to those provided in the case of infringement of literary copyright.

The law came into force on the 1st January, 1898, and is retrospective in its operation, subject to existing rights. All works of art acquired by the State or Communes before the 1st January, 1898, can be freely reproduced. (Art. 13.)

Photographs. Photographs were not protected in Sweden before the passing of a third law of 28th May, 1897:

Art. 1. Copyright for five years from the year of publication is granted to a photographer in respect of a photograph, but in order to obtain protection every copy of the photograph must have indicated upon it the name and address of the photographer and the year of first publication.

Art. 2. Reproduction is permissible in a scientific or educational work; but it must bear the same indications as provided in the last clause.

Art. 3. In the case of commissioned photographs (*p*), the copyright vests, in the absence of agreement to the contrary, in the person who gives the commission, and the photographer cannot reproduce it during the period of protection.

Similar penalties are provided by this law for infringement as in the cases of infringement of literary and artistic copyright.

This law came into force on the 1st January, 1898, and is not retrospective.

(*o*) The analogous clause in the repealed law of 3rd May, 1867, gave liberty to reproduce works of art belonging to the State or Communes. By Art. 13 this right is preserved in the case of works of art acquired before 1st January, 1898. As to the meaning of a "public place," reference to the decisions under the similar clause in the Swiss law (*post*) may be useful.

(*p*) Not confined, apparently, to portraits.

Rights of Foreigners.

The three laws of 28th May, 1897, apply to literary, artistic, and photographic works of foreigners published for the first time in Sweden, and on condition of reciprocity may, by royal ordinance, be extended to works of foreigners published abroad.

In the year 1904 Sweden joined the Copyright Union, according to the Berne Convention of 1886 and the "Interpretative Declaration" of Paris, 1896, but not to the "Additional Act" of Paris of the same year. She has not yet acceded to the Revised Convention of 1908, and international relations between Sweden and the other countries of the Copyright Union consequently are still governed by the original Berne Convention and the "Interpretative Declaration" above referred to.

Sweden has special treaties with Norway and Denmark (1877, 1879, 1881), with France (1881), and with Austria (1908). In the year 1911 she was "proclaimed" as a country entitled to the benefit of the United States Copyright Act, 1909.

DENMARK.

Literary and artistic (other than photographic) copyright in Denmark is governed by a recent law of the 1st April, 1912, which re-enacts, with certain alterations, an earlier law of the 19th December, 1902. Photographic copyright is governed by a law of 13th May, 1911, which repealed an earlier law on the subject of the 24th March, 1865. The chief provisions of the law of 1912 are as follows:—

Literary copyright.

Art. 1. Within the limits of this law an author has the exclusive right of publishing his writings or oral addresses by means of (a) manuscript copy; (b) reproduction by mechanical or chemical process; (c) dramatic representation, including mimic or cinematographic representation; (d) reproduction by mechanical instruments; (e) reading, recitation, or other analogous means, provided that this shall be permissible when the representation is not of a dramatic character, and has not expressly been forbidden on the title-page or heading of the work.

Art. 2. An author has the like rights in respect of (a) ballets, pantomimes, and other works of dumb show; (b) musical compositions (*q*); (c) mathematical, geographical, topographical designs, technical and other designs, which cannot be considered as works of art.

(*q*) But see Art. 14 (*g*) and (h).

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Art. 3. The publishers of newspapers, periodicals, and other collective works, have the copyright in the entire work, but, in the absence of stipulation to the contrary, the author of a particular contribution preserves his copyright in the same.

Translations.

Art. 4. A work may not be translated, without the author's consent.

Art. 5. Translations, dramatisations, collections, adaptations, &c., are protected as original works.

Arts. 6 and 7 deal with the rights of joint proprietors, whether originally or by devolution, and the method of determining disputes between them.

Art. 8. Laws, ordinances, decisions of the Courts, and other public documents are not the subject of copyright, nor are written or oral debates of constitutional, municipal, ecclesiastical, or other public assemblies.

Assignment of copyright.

Art. 9. Copyright may be assigned in whole or in part. Assignment for the purpose of publication in a particular manner does not imply a right to publish in another manner nor does it include the right to dramatise or to authorise translations or adaptations. The assignee may not publish in a modified form, without the author's consent, and a publisher has, in the absence of contrary agreement, the right to publish one edition only, not exceeding 1,000 copies.

Art. 10. Any one to whom is granted the right of public performance of a dramatic or musical work, including a mimic or cinematographic work, may, in the absence of contrary agreement, exercise his right when, and as often as he pleases, but he may not cede the right to others. In the like absence of agreement, the author may grant similar rights to others, or himself perform or execute his work. In any case, and even if he has granted the exclusive right, the assignment becomes void if no representation has been given for five years.

Art. 11. On an author's death his copyrights devolve according to the ordinary rules of law, and in the case of unpublished works the author may forbid, by will, their publication for a period not exceeding fifty years.

Art. 12. Unpublished works are protected from the author's creditors.

Infringements.

Art. 13. Besides reproduction of the entire work, abridgments, enlargements, or alterations, including dramatisations and adaptations, are piracies, unless they result in the production of an essentially new and original work. But advertisements (*anmeldelser*)

or succinct reports cannot in any case be infringements of the author's rights.

Art. 14. The following are not piracies: (a) insertion of short poems and detached fragments in a work constituting, on the whole, an original work; (b) utilization of short poems and detached fragments, two years after the end of the year of first publication, in reading and school books; (c) reprinting, for use in schools, of works previously published in foreign languages, or extracts therefrom, provided they be accompanied by translations of phrases or isolated words, or other annotations, and provided at least two years have elapsed since the work was first published; (d) reprinting, as the libretti of musical compositions, of isolated short poems, provided the same is not expressly forbidden; (e) reprinting, as the text of musical compositions or upon concert programmes, detached pieces of music of short length, to be used at the public performance of musical works; (f) reprinting poems and fragments of prose of short length to explain artistic illustrations, provided the illustrations are the essential parts of the work, and that at least two years have elapsed since the first publication of the work taken; (g) performances of dances or detached fragments of short length taken from published musical compositions, provided the performance does not partake of a dramatic character. The same as regards published songs when two years have elapsed since their first publication; (h) the performance, deprived of any dramatic character, of any published musical compositions when either the audience is admitted free, and the performance has not been organised for the purpose of exploitation, or when the receipts are to be devoted to charity and the performers are not paid. In all the above cases the source must be clearly indicated.

Art. 15. Newspapers and reviews may copy from others articles or detached communications, acknowledging the source, provided the copyright be not specially reserved, and the matter taken be not a serial story, or novel.

Arts. 16 and 17 provide for penalties and confiscation in the event of piracy.

Art. 18 provides that the unlawful performance or public exhibition of dramatic, dramatico-musical works, ballets, pantomimes, and other works of dumb action (*r*) shall, if done wilfully and intentionally, render the performer liable to fine and damages.

(*r*) It is believed that these words are intended to cover cinematographic works which are not otherwise protected against public performance.

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Art. 19. In cases where the defendant has acted in good faith, he is only liable to pay over his profits.

Duration.

Art. 21. The period of protection is the life of the author and fifty years after the end of the year of his death. In the case of collaborations, the fifty years date from end of the year of the death of the survivor.

Art. 22. Anonymous or pseudonymous works and works belonging to institutions and scientific societies are protected for fifty years from the end of the year of first publication, but the author of an anonymous or pseudonymous work can obtain the full period of protection by revealing his identity in the prescribed manner, before the fifty years have elapsed.

Art. 23. In the case of works published in parts the fifty years run from the publication of the last part, unless more than three years elapse between the parts.

Artistic Copyright.

Art. 24. Within the limits of this law an artist enjoys the exclusive right of publishing his original work of art, including works of architecture, or parts of the same, as well as any reproductions of the like works. The right applies to every kind of reproduction, whether the same implies artistic genius or is simply mechanical or chemical.

Art. 25. Lawful reproductions of original works of art enjoy protection as original works.

Art. 26 relates to the rights of collaborators *inter se*. The consent of all is required for publication or reproduction of the work.

Assignment.

Art. 27. An artist may assign his copyright, but in the absence of contrary stipulations, the transfer of a work of art does not include the right to publish reproductions, the artist retaining this right. Nevertheless, portraits may not be reproduced without the consent of the person represented or his relatives. The grant of a right to reproduce by certain named processes or manner does not confer the right to reproduce by other processes or in any other manner. When a work of art has been published in a newspaper or periodical, the artist has, in the absence of contrary agreement, the exclusive right of publishing in any other manner.

Art. 28. Upon the death of the artist, the rules laid down in Art. 11 apply.

Art. 29. Artistic works are not liable to the debts of the artist

unless he has, by exposing the same for sale or otherwise, indicated an intention to make the work public.

Infringement.

Art. 30. A reproduction is not rendered lawful by reason that it is of different size or materials from the original, or that it has been reproduced from a reproduction, or by reason of modifications, additions, or curtailments, unless an essentially new work is produced.

Art. 31. It is not piracy to reproduce detached works of art, in connection with letterpress and with the object of explaining it, in works of criticism, popular instruction, and artistic history, or in press reports of events of general interest; but the name of the artist must be mentioned. Views of streets or public places, or the exterior of public buildings, are not piracies.

Art. 32. Arts. 16, 17 and 19 apply to infringements of works of art.

Duration.

Art. 33. Works of art are protected for the life of the artist and fifty years after the year of his death, to be reckoned, in the case of collaborations, from the year of death of the longest liver.

Art. 34. In the case of anonymous and pseudonymous works, the editor-publisher named on the work is *primâ facie* authorised to protect the author's interests, and there is a presumption a person who is indicated to be such in the usual manner is the author.

Art. 35. Proceedings for infringement of copyright must be brought within a year of the discovery of the offence, and in any case criminal proceedings must be taken within two years, and other proceedings within three years from the date of the offence.

Photographs.

Copyright in photographs is regulated by a law of 13th May, 1911, which only gives a period of ten years for the protection of these works.

Art. 1 of this law is as follows:—

Whoever shall make on his own account an original photograph either from nature or from a work of art which is not protected by copyright shall have the right, during a period of ten years, to prevent any other person from reproducing for sale the photograph so made, provided that he presents at the time and in the manner prescribed by the Minister for Education a declaration reserving this exclusive right, and that he places at the same time on every copy his name and the word "Eneberettiget"

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(exclusive property). If the photograph is executed to order, the consent of the person who has ordered the same is necessary, not only for the acquisition of the above-mentioned right, but also the right of delivering copies of the photograph.

Art. 2 provides for penalties, damages and confiscation of plates in the event of any infringement, and Art. 4, that proceedings must be instituted within a year and a day.

Rights of Foreigners.

Rights in the absence of treaty.

Art. 36 of the law of the 1st April, 1912, provides that that law shall apply to the works of foreigners published by a Danish publisher. The same article also provides as follows:—

"Under condition of reciprocity, the provisions of the present law may be rendered applicable, in whole or in part, by royal ordinance, to works produced by the subjects of other countries, even if those works are not published by a Danish publisher. But no reciprocal arrangement involving pecuniary obligations can be concluded without the authorisation of the Diet."

Similarly, Art. 4 of the law of the 13th May, 1911, provides, with regard to photographs, that under conditions of reciprocity that law may be applied by royal ordinance "to photographs produced by the subjects (*s*) of another country."

Treaties and Conventions.

Denmark first became a party to the Berne Convention in the year 1903, and in the year 1912 she adhered to the Revised Convention of 1908, subject to a reserve as to newspaper articles and reviews, as to which she elected to remain bound by Art. 7 of the Convention of 1886, as modified by the Additional Act of Paris, 1896. Denmark is a "proclaimed" country entitled to the benefit of the United States Copyright Act, 1909, and she has treaties with Austria, France, Sweden and Norway.

Colonies.

Iceland has a local copyright law, dated 20th October, 1905, based to some extent upon the Danish law. Presumably, the Danish colonies are subject to the copyright laws of the mother country. In adhering to the Revised Berne Convention, Denmark included in her notice of adhesion the Faroe Islands, but excluded Iceland, Greenland and the Antilles.

(*s*) Not, apparently, therefore, to photographs first published in a foreign country by a person who is not a subject of that country. The official view, however, is, it is believed, that all persons entitled to the benefit of the Berne Convention are included in the phrase.

SPAIN.

Literary copyright.

Copyright in Spain is now regulated by a law on intellectual property, the draft of which was reported on to the Cortes on 4th January, 1877, and finally promulgated on the 10th January, 1879, replacing previous laws of 1834 and 10th June, 1847. The term of copyright before the passing of the new law was for the life of the author and fifty years after his death.

What protected.

The new law protects all scientific, literary, and artistic works which are capable of being published by any means whatsoever (*t*). (Art. 1.)

Persons protected.

The persons protected are authors, translators (*u*), persons who (with the permission of the author, if the work is Spanish) recast or copy original works, or make abridgments, epitomes, or reproductions of original works, publishers (*x*) (Art. 2), musical composers, authors of scientific charts, plans or drawings, authors of works of art, and the legal representatives of all these people, also the State and its corporations, and provincial and municipal corporations, scientific, literary, artistic, and other institutions. (Arts. 3 and 4.)

Anonymous and pseudonymous works.

The publishers of anonymous and pseudonymous works have the rights of authors and translators. But on proof of the identity of the real author or translator, such author or translator may regain his rights of ownership. (Art. 26.)

Intellectual property is governed by the common law, without other limitations than are fixed by that law. (Art. 5.)

Newspapers.

Proprietors of newspapers may assimilate their publications to literary works, by annually presenting three complete files to the Registry of Intellectual Property. (Art. 29.)

Works published in periodicals.

The authors of works published in periodicals have the right to publish such writings in a collected shape either selected or complete, unless there be an agreement to the contrary. Writings and telegrams published in periodicals may be reproduced in all other publications of the same kind, if the original publication does not carry at the head or foot of the article that reproduction is

(*t*) Under the Regulation of 3rd Sept. 1890, works protected include all those produced or published by process of writing, drawing, printing, painting, engraving, lithographing, photographing, or any kind of impression or reproduction known now or subsequently invented.

(*u*) Translators are protected if the original work is foreign and no international treaties forbid; but if the original is Spanish the translator is only protected if the work has become public property, or the consent of the author has been obtained.

(*x*) Publishers of unpublished works without known proprietor, or of an unpublished work, the author of which is known, but which has become public property.

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forbidden: in every case the source must be indicated. And the author or translator of various literary works may publish all or some of them in a collected shape, even after he has sold one of them to a third party. (Arts. 30—32.)

Lectures.

The author of lectures read in the royal academies or before any other corporation, may publish them in a collection or separately. Academicians have the same power in the case of other literary works brought out with the approbation or by the direction of such academies, except such works as belong indefinitely to any of these bodies as being intended for special and constant instruction at such academy (*y*). (Art. 32.)

Duration of copyright.

Intellectual property belongs to authors for life, and is transmissible to their heirs-at-law or testamentary heirs for eighty years. It is also transferable by donation *inter vivos*, and belongs to the purchaser during the life of the author, and eighty years after his death, if he does not leave heirs of necessity (*z*). If he does leave such, the right of the purchaser expires in twenty-five years after the death of the author, and the property passes to such heirs for the remaining period of fifty-five years (*a*). (Art. 6.)

Posthumous works are those which have not been published in the life of the author, or having been so published, have been left by the author at his death altered, enlarged, annotated, or corrected in such a manner that they deserve to be treated as new works. If this be disputed before the courts, the question shall be submitted to experts. (Art. 27.)

Laws, &c.

Laws, decrees, orders in council, rules, and other provisions issuing from public authorities can be inserted in papers and other works, where it is proper, by reason of their character or object, to cite, comment on, criticise or copy them verbatim, but no one may publish them separately, or in a collected form, without the express permission of the Government. (Art. 28.)

Infringement.

No person may reproduce another's works without permission, not even for purposes of annotation, augmentation, or improvement, but any person may publish as his exclusive property commentaries, criticisms, and notes referring to the works of others, inserting only so much of the text as is necessary.

In the case of a musical work this prohibition extends also to the total or partial publication of melodies, with or without accom-

(*y*) This is said, and seems, to imply that such institutions possess perpetual copyright.

(*z*) *Herederos forzosos, i.e.*, heirs who cannot be deprived of their rights by alienation.

(*a*) This is believed to be the official view.

paniment, transposed or arranged for other instruments, or with different words, or in short arranged in any other form than that published by the author (*b*). (Art. 7.)

The publication of works is not a necessary condition of legal protection. Consequently no one may without permission publish a scientific, literary, or artistic production, which has been taken down in shorthand, noted or copied during the reading, performance, or exposition, public or private, of such production. This applies to verbal explanations. (Art. 8.)

The alienation of a work of art, in the absence of agreement to the contrary, does not carry with it the right of reproduction, or the right of exhibiting the work publicly: these rights remain reserved to the author or his representative. (Art. 9.)

To be able to copy or reproduce, in the same or reduced dimensions, by any means, original works of art in public galleries during the life of the author, his consent must first be obtained. (Art. 10.)

Parliamentary speeches.

The author is the owner of his parliamentary speeches, which cannot be reproduced without the permission of himself or his representative, except in the Annals of the Chamber (*diario de la sessiones*) of which he is a member, and in political newspapers. (Art. 11.)

Foreign translations.

If a translation be first published in a foreign country, with which there exists a treaty on intellectual property, the provisions of the treaty shall be consulted in order to solve questions which may arise. This law shall apply to cases unprovided for by the treaty. (Art. 12.)

Art. 13. The owners of foreign works, the claim to protection of which is established in conformity with the laws of their country, shall also enjoy copyright in Spain; nevertheless they shall only enjoy the exclusive right of translation of these works as long as the right of translation of the original works is reserved to them in their own country by the laws thereof.

Art. 14. The translator of a work become public property, only enjoys the right of property in his translation and cannot oppose the work being translated afresh by others.

Art. 15. The rights conceded in Spain by Art. 13 to the owners of foreign works shall only apply to nations who treat owners of Spanish works with complete reciprocity.

Arts. 16 to 18 relate to the publication of documents used in

(*b*) Perhaps this Article is wide enough to cover adaptations to mechanical instruments.

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legal proceedings. The consent of the Court and of the parties interested must be obtained.

Dramatic and musical works.

No dramatic or musical work can be represented in whole or in part in any public place whatsoever, without previous consent of the author or his legal representative. This article applies to representations given by societies receiving any pecuniary contributions whatever. The rate of remuneration must be fixed by the author at the time of giving such consent, otherwise he must accept the scale fixed by government. (Art. 19.)

No one may, without the author's permission, make a copy of an unprinted dramatic or musical work after representation in public, nor sell or hire out such copy. (Art. 21.) In a musical dramatic work half the profits belong to the author of the libretto, and the other half to the author of the music. (Art. 22.) The author of the libretto and the composer of the music have each the right of publishing separately his part of the work. If the author of the libretto interdicts all representation, the composer may apply the music to a new dramatic work. (Art. 23.) Societies and private persons who give representations of such a work may not change its title in announcing it, or make changes or additions without consent of the author. (Art. 24.) The unauthorised representation of a dramatic or musical work in any public place is, independently of the penalties prescribed by the code, punished by the loss of the entire receipts, which must be handed over to the author of the work. (Art. 25.)

Duration.

The duration of the right of representation is the same as that of copyright in works of literature.

Works of art.

The law of copyright in works of art is the same as for literary property, but no registration or deposit is necessary in general for works of painting, sculpture, and the plastic arts.

Registration and deposit.

Art. 33. A general register of intellectual property shall be kept at the Ministry of Agriculture, &c. (*Fomento*).

Registers are also to be opened in the provincial libraries, or, if there be none, in the libraries of the Establishments of Secondary Education in provincial capitals. In these registers there shall be entered chronologically the scientific, literary, or artistic works presented for registration; also engravings, lithographs, architectural designs, geographical or geological maps, and all artistic or scientific designs.

Three signed copies of each work must be deposited. Half-yearly lists of the entries made, and the subsequent alterations must be sent to the General Department of Education to form the general register. (Art. 34.)

There is no charge for registration. Duty on assignments is to be fixed by the law. (Art. 35.)

Registration is essential to protection except in the case of works of art, and must take place within a year, but protection dates from the day of publication.

In the case of manuscript musical or dramatic works which have been publicly performed, it is sufficient to deposit a single manuscript copy of the literary portion and a manuscript copy of melodies with musical accompaniment (*c*). (Art. 36.)

Art. 38. If a work be not registered, it may be republished or reprinted by the State, scientific bodies or private persons, during a period of ten years from the failure to register. Forfeiture.

Art. 39. If at the end of this period, the author or his representative fails to register it within a year, the work becomes public property.

Art. 40. Works not republished by the owner for a period of twenty years become public property, and may be published by the State, scientific bodies, and private persons without alterations, but no person can prevent others from publishing.

Art. 41. A work shall not become public property even after the lapse of twenty years in the following cases:

(1) A manuscript dramatic, lyrical dramatic, or musical work after public performance and deposit at the registry.

(2) When the proprietor proves that he has exposed copies for public sale during the twenty years.

Art. 42. For a work to become public property under Art. 40, notice must first be given at the registry, and the government must then summon the owner to reprint it within one year.

Art. 43. In the case of works published in successive parts, the periods fixed by Arts. 38, 39, and 40, shall run from the completion of the work.

Art. 44. The provisions of Arts. 38, 39, and 40 are not operative, if the author, being still the proprietor, before the expiration of the periods mentioned, declares in solemn form his wish that the work should not be delivered up to publicity.

A like right is given to his heir, on condition that he acts in agreement with a family council to be held in manner prescribed.

Arts. 45 to 49 relate to remedies for piracy. The person liable is, in the first instance, the author, and, failing him, the publisher and printer successively, unless they prove their innocence. The Remedies and procedure.

(*c*) By Royal Decree of 31st Jan. 1896, registration is rendered not essential but optional in the case of foreign works.

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pirate is liable to penalties, and the piracies may be confiscated and sold for the benefit of the proprietor of the copyright.

Rules for the execution of this law were published on the 3rd September, 1880, giving further definitions of authors and owners, and as to other matters. Royal Ordinances have also been issued from time to time varying these rules and giving official interpretations of the law. These rules and Ordinances are of considerable importance, but they are too lengthy for insertion in this work (*d*).

Rights of Foreigners.

By Art. 47 of the above law penalties are imposed upon (*inter alios*) persons who reproduce in Spain works which are private property first printed in Spanish in a foreign country, and upon persons who import from foreign countries pirated works, and upon persons who by any of these means injure foreign authors when there is reciprocity between Spain and their country of origin. In addition to these Articles and Arts. 12 to 15 above set out, there are the following clauses relative to the rights of foreigners (*e*):—

Art. 50. Persons within the jurisdiction of States which concede to Spaniards the right of intellectual property according to the terms of this law, shall enjoy in Spain the rights conferred by this law without the necessity of any treaty or diplomatic interference, by means of private action before the competent tribunal.

Art. 51. The government shall within a month determine the existing treaties in literary property with France, England, Belgium, Sardinia, Portugal, and Holland, and endeavour to conclude new treaties with as many nations as possible, in accordance with this law and on the following bases: (1) Complete reciprocity; (2) mutual obligation of the most favoured nation treatment; (3) an author properly entitled in the one country to have the same right in the other without any new formalities; (4) the unauthorised printing, sale, importation and exportation of works written in the language or dialects of the other country to be forbidden in either country.

Spain was one of the original parties to the Berne Convention,

(*d*) They will all be found in "Le Droit d'Auteur," *passim*.

(*e*) According to a Royal Decree of 19th May, 1893, authors or publishers of works written in Spanish and printed abroad in this language who propose to import them into Spain should forward to the Director-General of the Ministry of Public Education, at Madrid, along with their request, three copies of the work, with a bibliographical notice.

and accepted the Act of Paris with its Interpretative Declaration. She has also adhered, without reservation, to the Revised Convention of 1908, such adherence being authorised by a law of 1st August, 1910; and in the year 1900 she published her adhesion to the Convention of Monte Video, but this adhesion has only been recognised by the Argentine Republic and Paraguay. She is a "proclaimed" country in the United States, and consequently entitled to the benefit of the American Copyright Act, 1909, and has treaties with Austria (1912), Belgium (1880), France (1880), Italy (1880), and Portugal (1880); and with the following South American States:—Columbia, Costa Rica (1893), Ecuador (1900), Guatemala (1893), Mexico (1903), Panama (1912), and San Salvador (1884).

PORTUGAL.

Literary copyright in Portugal was formerly regulated by the law of the 8th July, 1851, the provisions of which were given in the 2nd edition of this work: this law was repealed by the Civil Code of the 1st July, 1867, which contains a number of provisions on this subject, Part II., Book I., chap. ii., Arts. 570—612 (*f*).

Literary Work in general.

Art. 570. Any one may publish in print, or by lithography, scenic, or any analogous art, a literary work, of which he is the author, without previous censorship, giving of security, or other restriction hindering the free exercise of this right, but subject to his legal liabilities. Right to publish a literary work.

This Article is applicable to the right of translation.

Art. 571. Any person may publish laws, regulations, and other official decrees, if already published by the government, on condition of adhering accurately to the authorised text. Laws.

Art. 572. The preceding Article includes speeches made in *les chambres législatives* or any others delivered officially. But the collection of the speeches or a determinate part of the speeches of an orator cannot be made, except by him or his authority. Speeches.

Art. 573. The lectures of masters and public professors and sermons cannot be reproduced in their entirety by any other than the author without his authority. This prohibition does not extend to simple extracts. Lectures and sermons.

(*f*) Translation taken from the French translation published in "Lois françaises et étrangères," par M. Lyon-Caen.

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MSS.

Art. 574. A manuscript is the property of the author, and cannot in any case be reproduced without his consent.

Art. 575. Private letters cannot be reproduced without the consent of the author or his representative, except in connection with legal proceedings.

Duration.

Art. 576. The Portuguese author of a work of literature published by printing, by lithography, or any other analogous process, on Portuguese territory, enjoys during his life the ownership of his work and the exclusive right of reproducing and disposing of it.

(1) Nevertheless authors may quote from one another and copy articles or passages which they think useful to reproduce, on condition that they indicate the author or the book or periodical from which the quotations or extracts are taken.

(2) Articles originally appearing in periodicals or forming part of a combined or collective work, can be reprinted by their authors if there is no agreement to the contrary.

Translation.

Art. 577. The right of translation is included in the rights mentioned in the preceding Article. But if the author be a foreigner, he only enjoys this right in Portugal for ten years from the publication of his work, and on condition that he commences to put this right in force within three years from such date.

(1) In case of transfer, all the author's rights pass to the translator, subject to any agreement to the contrary.

(2) The translator, Portuguese or foreigner, of a work which has become public property, enjoys for thirty years the exclusive right of reproducing his translation, without prejudice to the right of any other person to translate afresh the same work.

Heirs of author, copyright for fifty years.

Art. 579. After the death of an author his heirs, representatives, or assigns, enjoy the rights treated of in Art. 576 for fifty years.

Art. 580. If the State or a public institution publishes a work at its expense, it enjoys such right for fifty years from the publication of the volume or part which completes the work.

If such work consists of a collection of writings or memoirs on different subjects, the fifty years run from the publication of each volume.

Works in collaboration.

Art. 581. Where there is more than one author of a work, and each of them has collaborated on the same terms and in his own name, the property in the work belongs to all the co-authors,

and the first period of the duration of this property extends to the death of the last surviving collaborator, the proceeds to be shared by him with the heirs of the deceased collaborator, and the second period commences from his death.

If a collective work, in which several have joined, has been undertaken, edited, and published by a single person, the second period referred to in this Article commences from the death of such person.

Art. 582. The provisions of the preceding Articles as to authors apply to publishers to whom the property in the works has been transferred, subject to any agreements.

However, in this case the period mentioned in Art. 579 counts from the death of the author.

Anonymous works.

Art. 583. The provisions relating to works published in the author's name apply both to anonymous and pseudonymous works as soon as the identity of the author, his heirs, or assigns, is known and proved.

Art. 584. The addition given by Art. 576 to the period of copyright after the death of the author (which period was less under the previous Code) is for the benefit of the author's heirs, although the author may have alienated the copyright in whole or in part.

Art. 585. The publisher of a posthumous work of a known author enjoys copyright for fifty years from publication.

Art. 586. The publisher of an unpublished work, the proprietor of which is not yet known and has not obtained legal recognition, enjoys copyright during thirty years from the completion of publication.

Expropriation.

Art. 587. Where the edition of a work already published is exhausted, and the author or his heirs are unwilling to reprint it, the copyright may be expropriated although the work has not yet become public property.

The State alone can expropriate copyright, and on condition that it obtains a law authorising the same, that it previously compensates the author, and further, that it adheres to the general principles of expropriation for reasons of public utility.

Publishers' rights and obligations.

Art. 588. The publisher of a work, whether unpublished or already published but not become public property, cannot alter or modify the text during the life of the author or his heirs; and he must keep on the work the title chosen by the author and the latter's name, in the absence of agreement to the contrary.

Art. 589. A publisher who has contracted to publish a work must, in the absence of agreement to the contrary, commence the

publication in the year following the date of the contract and carry it on regularly, under penalty of paying damages to the person interested under the contract.

A publisher who has contracted for successive editions of a work cannot break off the publication, unless he shows that there exists some insurmountable obstacle to a ready sale of the work.

General provisions.

Art. 590. Literary property is to be considered and regulated as all other personal property, subject to the modifications imposed by the law in consideration of its special characteristics.

Art. 591. On failure of heirs the State does not succeed to copyright; any one may publish and reprint in such a case, subject to the rights of creditors on the inheritance.

Art. 592. Literary property cannot be prescribed.

Art. 593. There is no property in literary works forbidden by law and ordered to be withdrawn from circulation.

Dramatic Copyright.

Dramatic works.

Art. 594. Besides literary copyright in their works as established in the preceding Articles, dramatic authors enjoy the following rights.

Art. 595. No dramatic work can be represented in a public theatre where admission is paid for, without the written consent of the author, his heirs, assigns, or representatives, as follows:—

(1) If the work be printed this consent is only necessary after the death of the author, during the period for which his heirs, assigns, or representatives enjoy copyright.

(2) If the work be posthumous, the work cannot be represented without the consent of the heir or the owner of the manuscript.

(3) Permission for the representation of a dramatic work may be unlimited, or limited to a certain period, to certain countries, or to a certain number of theatres.

Art. 596. Where a limited permission has been granted, if the work be represented at an unauthorised theatre, the net profits belong to the person whose permission was necessary.

Art. 597. The author's share of receipts cannot be seized by a creditor of a theatre manager.

Art. 598. A dramatic author who has agreed for the representation of his work enjoys the following rights, unless he expressly renounces them:—

To make such changes and corrections in his work as he may

judge necessary, provided he does not alter any essential part without the consent of the manager of the theatre.

To require that the work, if in manuscript, shall not be communicated to any person outside the theatre.

Art. 599. An author who has agreed with a manager for the representation of his work cannot, during the existence of the agreement, grant in the same locality to another manager the right of representing either the work itself or an imitation of it.

Art. 600. If the piece has not been represented within the time agreed, or if no agreement in this respect be come to within a year, the author may withdraw his work.

Art. 601. All disputes between authors and managers are to be brought before the civil courts.

Artistic Property.

Artistic property.

Art. 602. The author of a musical work, a drawing, a painting, a sculpture or engraving, has the exclusive right of reproduction of his work by engraving, lithography, moulding, or any other process in conformity with the regulations laid down for literary property.

The provisions in favour of dramatic authors in the preceding section contained are wholly applicable to the authors of musical works, in respect to the performance of their works in theatres or other places where the public are admitted on payment.

Some Obligations common to Authors of Literary, Dramatic, and Artistic Works.

General provisions.

Art. 603. In order to enjoy the benefits given by this law, the author or proprietor of a work reproduced by typography, lithography, engraving, moulding, or any other process, must observe the following provisions.

Registration.

Art. 604. Before the publication of a literary work is effected by the circulation of copies, two copies must be deposited at the Public Library of Lisbon. The librarian is to give a receipt for this deposit, which is to be entered on the register without payment.

If the work be dramatic or musical, or if it relate to dramatic literature or musical art, the deposit and registration must be made as aforesaid in the Conservatoire Royal of Lisbon.

If the work be a lithograph, an engraving, or a casting, or if it treat of any of these arts, the deposit and registration must be

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made as aforesaid in the Academy of Fine Arts at Lisbon. But the author may deposit the original drawings instead of the two copies.

Art. 605. The Public Library and the other institutions named in the last Article, must publish monthly the registrations respectively made in the official journal.

Art. 606. Certificates from these registers are *primâ facie* evidence of title to the work with the results flowing therefrom, subject to proof to the contrary.

Remedies.

The remedies open to the proprietor of the copyright are to be found in Arts. 607 to 612 of the Civil Code, and Arts. 457 to 460 of the Penal Code of 1886. By Art. 610 of the Civil Code it is provided that any person who publishes a manuscript in which there are private letters, without the permission of their author, during his life or during the life of his heirs or representatives, shall be liable in damages.

This provision is without prejudice to the power granted by Art. 575 with reference to private letters.

Rights of Foreigners.

In the absence of treaty.

Art. 578 of the Civil Code of 1st July, 1867, provides that a foreigner shall enjoy in Portugal the same rights as a Portuguese writer if in the foreigner's country Portuguese writers enjoy the same rights as natives; but in practice this provision is rendered nugatory by reason of the necessity for registration *before* the publication of a literary, dramatic, musical, or artistic work. (Arts. 603, 604.) Further, a foreign author's rights in the matter of translations are curtailed by Art. 577 above set out.

Treaties.

Portugal did not join the Copyright Union until the 18th March, 1911, after the establishment of the Republic. On that date she adhered to the Revised Berne Convention, 1908, without reserve, and by a governmental decree of the same date declared that all works referred to in Arts. 2 and 3 of that Convention, not already protected by Art. 602 of the Civil Code, were to be deemed to be included thereunder. She is entitled to the benefit of the American Copyright Act, 1909, and has treaties with the following countries: France (1866), Belgium (1866), Italy (1906), Spain (1880) and Brazil (1889).

(*g*) These treaties can all be found, translated into French, in a collection recently published by the International Copyright Office at Berne. The treaty with Spain is more favourable to authors than that with either France or Belgium, but the treaties with these latter countries do not contain most favoured nation clauses.

ITALY.

Early legislation.

Previously to 1865, the different States of which the present kingdom of Italy is composed had each their own legislation on copyright, but in that year the Italian government passed the law of the 25th June, which still forms the basis of the law of Italy on this subject. The law was extended to Venetia on the 30th June, 1867, and to Rome on the 30th November, 1870.

On the 16th August, 1875, the law relating to dramatic works was passed, which considerably modified the preceding laws by extending the duration of copyright in such works.

However, inconveniences were felt from this double legislation, and by a law of the 18th May, 1882, the government was authorised to unite and codify the two laws of 1865 and 1875, with some modifications. This was accordingly done by a royal decree of the 19th September, 1882, and on the same day a regulation was issued for the due execution of the law.

Author's rights.

Under the present law, which came into force on the 1st August, 1885, the authors of works of the intellect (*h*) (*œuvres de l'esprit*) have the exclusive right of publishing and reproducing them, and of selling their reproductions (*i*). (Art. 1.)

Art. 2. The following are equivalent to the publication reserved to the author:—

The printing or any other similar method of publication of (1) extempore addresses, lectures, or verbal instruction, although delivered in public and reproduced by shorthand or otherwise; (2) of works or compositions suitable for public representation.

The representation or performance of a work suitable for public representation, *d'une action chorégraphique* or any musical composition whether published or unpublished.

The composition of a work of art from an author's sketches.

Speeches delivered in public meetings on objects of political or administrative interest, and especially those delivered in Parliament, can be freely published and reproduced in the reports of the sittings and in the newspapers. But they cannot be reproduced either as a special publication of one or several speeches of an individual, or as part of a collection of his works.

(*h*) Price lists and catalogues will not be protected. Milan, 10th Dec. 1895, *Prada* v. *Della Torre*. Cinematographs are regarded as "works of intellect," but the law as to deposit of copies is particularly burdensome in the case of such works.

(*i*) The translation, &c. is chiefly taken from the French translation of M. Theurault, published in "Lois françaises et étrangères," par M. Lyon-Caen.

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Art. 3. The following are equivalent to the reproduction reserved to the author:—

The repetition of the representation or performance, in whole or in part, of a work suitable for public representation, *d'une action chorégraphique*, and of any musical composition, already publicly represented or performed from the manuscript.

The adaptation for different instruments, extracts from and adaptations of musical works or parts of such works, except where a motif of an original work has been used as the theme or occasion of a musical composition which is in itself a new work (*k*).

Change of proportion in the parts or forms of a work of the draughting arts.

Change of material or process in copying a design or picture, a statue, or any other work of the same kind.

Art. 4. The exclusive right of selling a work includes the right of stopping, in the kingdom, the sale of reproductions made in a foreign country without the consent of the author.

Joint works.

Art. 5. When the exclusive right of publishing, reproducing, or selling a work belongs jointly to several persons, it is presumed till the contrary is proved that they each have an equal share, and each can exercise the entire right with power to the others to obtain compensation for their share.

In case of alienation, the assignor and the assignee are jointly and severally liable to pay this compensation, if the assignee knew that the right granted belonged jointly to several persons.

Art. 6. The author of a libretto or any composition set to music cannot deal with the right of reproduction and sale of the music, but the composer of the music can reproduce that and sell it with the words to which the music is written. In such case, the author of the words has a right to the compensation given in Art. 5 to a joint author.

Collective works.

Art. 7. The publication of a work composed of distinct parts, but arranged together in such a way as to form a single work, or a collection with a special purpose, confers on the person who has conceived it the exclusive right of sale and reproduction.

Nevertheless, each of the authors of one of the parts composing publications of this kind possesses his rights over his own work, and can reproduce it separately on condition of indicating the work or collection from which it is extracted.

(*k*) The Italian Courts hold that gramophones and similar mechanical contrivances are infringements of the copyright in musical works.

The provisions as to duration of copyright in Italy are peculiar. Arts. 8 and 9 are as follows:—

Duration.

"*Art.* 8. The exercise of the author's right over the reproduction and sale of a work begins at its first publication and lasts for the life of the author, and forty years after his death, or for eighty years in conformity with the provisions of Art. 9.

"Successive editions of a work, although increased in size or modified, do not form new works.

"And the right of reproducing the added or modified parts terminates at the same time as that of reproduction of the entire work.

"*Art.* 9. The right of reproduction and sale belongs exclusively to the author during his life. If the author die before the lapse of forty years from the first publication of the work, his heirs or representatives enjoy the copyright for the remainder of that period: this first period having come to an end in one or other of the ways above indicated, there then begins a second period of forty years, during which the same work may, subject to certain regulations, be reproduced and sold without the consent of the proprietor thereof, but on condition of paying to him 5 per cent. on the published price of each copy, which price must be plainly printed on each copy, and declared according to the form prescribed in Art. 30. The debt hereby created is privileged and a first charge upon the copies reproduced."

The effect of these two articles is to create two distinct periods of copyright. The first period lasts for the life of the author or forty years, whichever shall be the longer. During this period the author has the exclusive copyright. The second period begins when the first period comes to an end and lasts for forty years. During this second period the author has not the exclusive copyright, but anyone may reproduce his work, subject, however, to the obligation to pay the author 5 per cent. on the published price of each copy (*l*).

Translations.

By Art. 12 of the same law the author has the exclusive right of authorising translations of his works for ten years from the date of their first publication (*m*). A translator has the same rights as an author. (Art. 13.)

(*l*) Compare sect. 3 of the British Copyright Act, 1911. Anyone availing himself of this liberty must not alter the original work, and, in particular must not alter the principal exterior elements of the work, such as the cover, the frontispiece, and the date. Milan, 23rd Dec. 1896, *Carrara* v. *Sonzogno*. (See Art. 30.)

(*m*) The Italian Courts have held that public performance is not publication.

The translation of literary and scientific works consists in putting them into another language.

By Art. 11, the State, the provinces, and communes have copyright in works published at their expense and on their behalf. The right lasts for twenty years from publication. It does not apply to laws and official documents, saving such rights as may belong to the administration on grounds of public interest.

Works of academies and public bodies.

A like right in collections of their proceedings and other publications belongs to academies or other analogous scientific, literary, or artistic societies, and the author of any separate articles published in such works has the rights specified in Art. 7 (2).

Time.

Art. 15. The periods commencing from publication run from the year when the publication of the last part of the work has taken place.

In the case of works published in several volumes, the periods are reckoned for each volume, if the volumes are not all published in the same year.

No account is taken of fractions of years.

Assignment.

Art. 16. An author may alienate his rights, but a mere authorisation to publish a work does not transfer the copyright. In such case the judge is to fix a period during which any new reproduction shall be forbidden. (Art. 19.)

Execution and expropriation.

Execution cannot generally be made on copyright while it belongs to the author.

Assignment of plates, &c. for reproducing works of art.

Art. 18. The assignment of a mould, engraving plate, or any other article forming an ordinary means of publication or reproduction of a work of art is considered to include the right of publication or reproduction unless the contrary is stipulated, and provided this right belongs to the possessor of the article assigned.

The assignment of one or more copies of any work does not carry with it the right of reproducing it in the absence of express agreement.

Expropriation.

Art. 20. Copyright may, with the exception of the right of publication during the life of the author, be acquired by the State or any province or commune by expropriation on public grounds.

The declaration that public grounds exist is to be made at the instance of the Minister of Pub' Education, with the consent of the Council of State.

Compensation is to be paid.

Method of recording Publication.

Registration.

Art. 21. Any person wishing to avail himself of the rights secured by this law, must deposit not more than three copies of his work (*n*), or an equal number of copies made by photography or some other process sufficient to identify the work. The author must append a declaration in which after precisely specifying the work, and the year of publication, he shall state his desire to reserve his rights as author or publisher.

Art. 24. The separate volumes of works published in several volumes shall be deposited, if they are not all published in one year.

In the case of periodical works, the publication of which is continued without fixed limit, and in the case of magazines which are published in a course of years, a deposit shall be made every year of the part published in that year.

Art. 25. The obligation of declaring and depositing a work published in parts, or each one of the volumes composing a work, commences at the date of publication of the last part or volume to be deposited.

Newspaper articles.

Art. 26. Any person who publishes a work either all at once or in successive articles, in a newspaper or any other periodical publication, must declare, at the head of the work, or of the first article, that he intends to reserve the copyright.

In the absence of declaration, other papers or periodical publications may reproduce the work, on condition of indicating the source and name of the author, but no person may publish it separately.

When the author or other person entitled to copyright means to publish his work separately, he must make the deposit and declaration prescribed by Art. 21, giving accurately the date of the commencement and termination of the publication made first in a paper or in any other periodical. If the work so published is in several volumes, he must state the year in which was terminated the first publication of the part contained in each volume separately printed, as he makes the successive deposits.

Art. 27. The declaration and deposit must be made within three months of the publication of the work or its different parts, or from the first representation of works intended for public representation, *des actions chorégraphiques*, and musical compositions.

A declaration and deposit made after this time shall be equally

(*n*) One copy at least under the Regulation of the 19th Sept. 1882.

valid, unless, during the period elapsing between the expiration of the said three months and the actual date of deposit, a third party has reproduced the work or introduced copies from a foreign country for the purpose of sale.

In such case the author cannot prevent the sale of copies already printed or imported.

The courts are to determine any disputes arising on this provision.

Art. 28. If the declaration and deposit be not made within ten years, the copyright is considered to be abandoned.

Art. 29. Extracts of the declarations made, whether within the prescribed time or not, are to be published monthly in the Official Gazette.

In addition to this deposit, under a law of the 7th July, 1910, three copies must be delivered to the *Procureur du Roi* of the district by the printer or publisher for the use of certain libraries. Failure to make this latter deposit is visited by a fine.

Conditions of sale by third parties.

Art. 30. A person wishing to exercise the power given by Art. 9 (2) must deliver to the prefect a written declaration stating his name and address, the work he wishes to reproduce, the mode of reproduction, the number of copies and the price to be marked on each; he must add a clear offer to pay to the persons who prove themselves entitled thereto a royalty equal to $\frac{1}{20}$ of the price multiplied by the number of copies (*o*).

These declarations must be inserted at least twice, at an interval of fifteen days, in a paper appointed for judicial announcements in the place where reproduction is to be made, and in the Official Gazette.

At the end of every three months a list is to be prepared of the declarations made during that period, which are to be published after those mentioned in the preceding Article.

Art. 31. In the case of disputes between the persons interested as to the annulment, alteration, or transfer of declarations already made, the court is to decide the disputes in a summary way agreeably to recognised rights, and to the regulations established by this law.

The government, at the request and expense of the persons interested, are to publish in an appendix to the last publication of declarations, all annulments, alterations, or transfers ordered by the court, as well as those agreed to.

(*o*) There appears to be no express penalty attached to making a false declaration, nor is actual payment of the royalties in any way secured to the author.

Art 32. Any person who publishes a work without the consent of the author, is guilty of illegal publication.

Piracy.

It is accounted piracy (1) to reproduce in any manner a work over which the author's exclusive rights still extend, or to sell such reproduction without his consent; (2) to omit the declaration prescribed by Art. 30; (3) when any person produces and sells a greater number of copies than his agreement with the author allows; (4) to translate without consent any work during the period for which the right of translation is reserved to the author.

Not piracy.

Art. 40. The reproduction of a generic title is not an offence of piracy, nor the reproduction of one or more fragments of a work, when it is not made with the evident intention of reproducing part of the work of another for profit (*p*).

Articles of political argument when reproduced for the purposes of discussion, or to justify or rectify opinions already expressed on the subject, and articles of news inserted in the papers or other periodicals, may be reproduced if the source be indicated. But the reproduction of the insertions mentioned in Art. 26 constitutes the offence of piracy when it is prohibited.

Remedies.

Infringers are liable to pay penalties and damages. Pirated copies and implements for producing the same may be ordered to be destroyed or delivered to the owner of the copyright for a fixed sum in reduction of damages. In the last year of copyright destruction will not be ordered, but sequestration during the unexpired portion of copyright. (Arts. 33—39.) Fines are also imposed for omitting to make the declaration required by Art. 30, without prejudice to the right to damages. (Art. 41.) Incorrect and false information in the declarations prescribed by Arts. 21, 23, 26, and 30 is also punishable with a fine. (Art. 42.) Criminal proceedings are to be taken officially. (Art. 35.)

Art. 45. Government expenses may be defrayed by royalties not to exceed 10 francs.

Art. 46. This law is retrospective.

Art. 47. Copyright entirely extinguished at the coming into operation of this law (1st August, 1885) cannot be revived.

But if copyright still exists in any province the author, if he have not assigned, or his representative by succession, may claim the benefit of the new law and its extension to the whole kingdom, after deducting the period elapsed since publication, for the residue of the period.

(*p*) It has been held that compilers of anthologies, chrestomathies, and works of a like character must obtain the consent of the authors,

If the copyright has been assigned for a fixed time, and the period of protection accorded by this law has not then expired, the author or his representatives may resume their right for the remainder of that period.

The purchaser, on the other hand, takes the benefit, if the assignment was for an indefinite time or he was expressly given the benefit of any prolongation.

To obtain the benefits of this provision, an express declaration must be made within three months of the coming into force of this law that it is desired to take the benefit of it, the declaration to be in the form prescribed by Art. 21.

Dramatic and Musical Works.

Duration.

Art. 10. The right of public performance of a work proper to be publicly performed, of an *action chorégraphique*, and of a musical composition falls into the public domain eighty years after the first performance or publication.

Dramatic and musical works.

Art. 14. No one may represent or perform a work intended for public representation, a choreographical action, or a musical composition of which the copyright is secured under Art. 2, without the consent of the author or his representatives. Proof of the consent in writing duly witnessed must be presented and left with the prefect of the province who, in default of this proof and on demand of the party, must prohibit representation or performance (*q*).

Deposit of MSS. in case of dramatic and musical works.

Art. 23. The declarations in respect of works suitable for public representation, choreographical actions, and musical compositions, not published, the exclusive right to the publication or representation of which is desired to be retained, must be accompanied by a manuscript of the work, which will be returned after the presentation has been duly signed.

Copies of musical works must also be deposited, and in all cases it is necessary to state whether the work has been publicly represented before publication, and to give the date and place of such representation.

The composer of a musical work can prohibit the taking of any extracts from or making arrangements or variations of his work.

Artistic copyright.

In works of art the duration of the copyright is the same as in

(*q*) An official circular, dated 20th July, 1885, to the prefects enjoins them to be diligent in the performance of their duties under this Article and reminds them that no special form of demand by the owner of the copyright is necessary for prohibition. A further circular was issued on the 5th June, 1913.

works of literature, and the other provisions relating to works of literature apply.

Art. 13. The translator of a work of art has the same right as the translator of a literary work when the translation constitutes a new work of art, according to the provisions of Art. 12.

Under Art. 12, the translation of works of drawing, of painting and sculpture, engraving and analogous productions, consists in reproducing the forms or figures by some process not simply chemical or mechanical, but constituting another work of art differing in its nature from the original, as the engraving of a painting, the drawing of a statue (*r*).

Photographs.

It will be noticed that this law makes no provision as to copyright in photographs, yet there seems to be no doubt that some photographs are protected. The position seems to be similar to that in France and Belgium, viz., photographs are only protected if they be artistic (*s*).

A circular by the Minister of Public Education, dated the 6th August, 1893, declares that the reproduction by photography of monuments exposed in public places is free to all the world, but, with this exception, monuments of art, fixed or movable, belonging to the State, or antiquities preserved in the artistic, scientific, or literary State institutions, may only be photographed after permission from the authorities by whom these monuments or antiquities are guarded (*t*).

By the regulations of the 19th September, 1882, further details as to registration are prescribed and forms of application are given (*u*).

Rights of Foreigners.

Provisions of the law of 1882.

Art. 44 of the law of 18th May, 1882, which is identical with a provision in the earlier law of 25th June, 1865, is as follows:—

"This law applies to authors of works published in a foreign country with which there is no treaty, provided that that country has laws giving authors copyright to a greater or less extent, and that these laws are reciprocally applicable to works published in Italy.

"If reciprocity be promised by any foreign country to other countries on condition that they assure to authors of works published in the first country the same rights and securities as those recognised by its laws, the government is authorised to accord

(*r*) Do photographs come within this provision?
(*s*) See an article by M. Henri Rosmini in "Le Droit d'Auteur" for 1889.
(*t*) "Le Droit d'Auteur," 1894, p. 81.
(*u*) *Ibid.* 1895, p. 90.

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both by royal decree on condition of reciprocity, provided they be limited in time and do not differ essentially from the rights and securities given by this law.

"If deposit or declaration at the time of publication be prescribed by law in a foreign country, proof that either of them has been made according to such law shall be sufficient to obtain for the work there published copyright in Italy.

"If no formality be prescribed, the deposit and declaration prescribed by this law may be effected either in Italy or with Italian consuls in a foreign country" (*x*).

Treaties and Conventions.

Italy was one of the original signatories to the Berne Convention and she has ratified the Additional Act of Paris, with the Interpretative Clause, but has not yet adhered to the Revised Convention of 1908 (*y*). Italy is entitled to the benefit of the American Copyright Act, 1909, and she has also adhered to the Convention of Monte Video, but only the Argentine Republic and the Republic of Paraguay have assented to this adhesion. The following countries have special treaties with Italy: Germany, 9th November, 1907; Austria, 8th July, 1890; Colombia, 27th October, 1892; Spain, 28th June, 1880; France, 9th July, 1884; Mexico, 16th April, 1890; Montenegro, 14th November, 1900; San Marino, 28th June, 1897; Sweden and Norway, 9th October, 1884; Portugal, 16th September, 1866; Nicaragua, 25th January, 1906; Roumania, 5th December, 1906.

REPUBLIC OF SAN MARINO.

How far works are protected in.

There is no distinct law of copyright in this country, but in the treaties with Italy, dated 22nd March, 1862, and 27th March, 1872, respectively, the Republic bound itself to prevent, within its dominions, any reproduction of works of literature or art published in the kingdom of Italy. This engagement has been repeated in the more recent treaty of 28th June, 1897, but with an enlargement, for the Republic thereby undertook to prevent

(*x*) Art. 3 of the Italian Civil Code admits foreigners to the enjoyment of the civil rights of natives without any limit or conditions, but the above Article is evidently in derogation of this. Under the original Berne Convention by which Italy is bound, compliance with the formalities (if any) prescribed by the country of origin of the work is sufficient.

(*y*) Since the above was written, Italy has adhered to the Revised Convention: see *Addenda*. It may be noted here that under the original Order in Council made under the Copyright Act, 1911, Italian gramophones and similar instruments were excluded from the benefit of the Act. The British Government having received assurances that British instruments of a like character are protected in Italy, an amending Order in Council has been issued: see Appendix C.

piracies not only of works published in Italy, but also of all works which are protected in that kingdom. Under this treaty, therefore, British and other foreign works entitled to protection in Italy would appear to be also entitled to protection in San Marino.

SWITZERLAND.

Copyright in Switzerland.

Switzerland is one of the few countries belonging to the Copyright Union which has not yet brought her legislation into line with the requirements of the Berlin Convention, with the consequence that, as she has adhered to that Convention without reserve, native authors are, in some respects, worse off than foreign authors. A new law of copyright may be shortly expected.

Up to the passing of the law of the 23rd April, 1883, the law of copyright in Switzerland was laid down by a concordat entered into by fourteen separate cantons and approved 3rd December, 1856, by the Federal Council.

On the 23rd April, 1883, a uniform law for all Switzerland was promulgated, repealing all contrary provisions of the laws and cantonal orders, and in particular the concordat of the 3rd December, 1856; its provisions are as follows:—

Art. 1. Literary and artistic property consists in the exclusive right of reproduction or performance of literary or artistic works (*z*). The right belongs to the author and his representatives.

A writer or artist who works on behalf of another writer or artist is considered to have ceded to the latter his copyright, in the absence of contrary agreement.

Literary property includes the right of translation.

Art. 2. Literary and artistic copyright lasts for the life of the author and thirty years after. Duration.

In the case of a posthumous work or a work published by the confederation, by a canton, by a corporation or society, the duration is thirty years from publication. Posthumous works.

The right of translation can only be claimed by the author or his representatives, if exercised within five years.

Translations enjoy by the same title as original works the protection of this law.

(*z*) There is no definition of a "literary work" or an "artistic work." It would seem, however, that a work to be protected must be original and intellectual. An arithmetic book is entitled to protection, but not necessarily every part of it (Tribunal fédéral, 13th Nov. 1899). Likewise maps and plans may be the subject of copyright (Cour de Justice de Genève, 24th Jan. 1903), but not a railway-guide (Tribunal fédéral, 30th Nov. 1894).

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Registration.

Art. 3. Posthumous works and those mentioned in Art. 2, par. 2, must be entered in a duplicate register kept at the Federal Department of Commerce within three months

No formalities are necessary in the case of other works, but authors may register for their convenience.

The payment for registration must not exceed two francs.

The Federal Council is to issue rules for the due execution of this Article (*a*).

Art. 4. The federal law on obligations governs questions relating to agreements between authors and publishers of literary and artistic works (*b*).

Work of art, right of purchaser of.

Art. 5. In the absence of contrary stipulation, the purchaser of a work of the fine arts cannot reproduce the work till the copyright has expired.

But in the case of a portrait or half-length portrait to order, the right of reproduction passes with the work.

Portrait.

The author or his representatives cannot disturb the possession of the proprietor of the work in order to exercise their right of reproduction.

Architecture.

Art. 6. In the absence of agreement to the contrary, the purchaser of architectural plans can have them carried out.

Musical and dramatic.

Art. 7. The alienation of the right of publication of dramatic, musical, or dramatic-musical works, does not carry with it the right of performance, and *vice versâ*.

The author of a work of this kind can make the right of public representation or performance depend on special conditions, which in such case should be published at the head of the work.

But the percentage must not exceed 2 per cent. on the gross receipts. When the payment of a percentage is assured, the representation or performance of a work already published cannot be restrained (*c*).

(*a*) Regulation issued 28th Dec. 1883.

(*b*) Code Fédéral of 1882.

(*c*) It would be idle for us to attempt a construction of this clause, when the Swiss commentators are at hopeless variance as to its effect. We can only mention some of the problems to which it gives rise: Does the article include unprinted musical works, or can the owner of music in manuscript fall back on Art. 1 and restrain the performance of his music, even if the percentage is offered? What are the nature of the "special conditions" which must be published at the head of the work? Are they confined to "money" conditions, or must there be a reserve of the right of public performance? What is the effect of omitting mention of such conditions? How is the percentage to be "assured" to the proprietor? How is the person who proposes to perform to know beforehand what his "gross receipts" are going to be? Yet if the proprietor of the performing right is not satisfied with the assurance, can he prohibit performance? If numerous copyright pieces are performed at one concert, must 2 per cent. be paid in respect of each? So far as we are aware these problems all remain unsolved by the Swiss tribunals, except that we

Art. 8. The provisions of this law apply to geographical, topographical, natural history, architectural, technical, and other analogous drawings.

Photographs.

Art. 9. Photographic and other analogous works are admitted to the benefits of this law on the conditions following:--

(a) The work must be registered according to Art. 3, par. 1.

(b) The duration of copyright is five years from registration. If it be a question of the reproduction of an artistic work not become public property, the duration shall be according to the agreement between the photographer and artist; in the absence of any stipulation, five years are to be the period, after which the artist and his representative resume all their rights.

(c) When a photograph has been executed to order, the photographer may not reproduce it, in the absence of agreement.

The fact of taking a photograph directly from an original which has been previously photographed is not piracy.

Not infringements.

Art. 11. The following are not infringements of copyright in literary works:—

(1) The reproduction of extracts or entire small pieces from literary or scientific works in critical notices, in works on the history of literature, or in collections intended for scholastic instruction, on condition that the source is indicated.

(2) The reproduction of laws, legal decisions, or deliberations of the authorities and the public reports of an administrative body.

(3) The publication of reports of public meetings.

(4) The reproduction, with an indication of the source, of articles extracted from newspapers or periodical collections, unless reproduction is formally forbidden by the author in the newspaper or collection; the reproduction of articles on political discussions appearing in the public newspapers cannot be forbidden.

(5) The reproduction of news of the day, even although the source be not indicated.

The following are not infringements of artistic copyright:—

(6) The partial reproduction of a work belonging to the draughting arts, in a work of scholastic instruction.

(7) The reproduction of works of art standing in or upon the streets or public places, provided that the reproduction is not in the artistic form of the original (*d*).

believe it has been held that only 2 per cent. is payable in respect of a single concert to be divided amongst the claimants. For a further restriction on the rights of proprietors of performing rights, see Art. 11 (x.), *post*.

(*d*) In a case in which it was decided that the frescoes in the chapel of

PART V. SWITZERLAND.

(8) The reproduction or carrying out of plans or drawings of buildings or parts of buildings already built, in so far as these buildings have not an artistic character.

The following are not infringements of dramatic and musical copyright:—

(9) The insertion in a special collection intended for schools or churches, of small musical compositions already published, with or without the original words, on condition that the source be indicated.

(10) The performance or representation of dramatic, musical, or dramatic-musical works, organised without a pecuniary aim, even when admission is by payment to cover expenses or for a work of charity (*e*).

(11) The reproduction of musical works by musical boxes and other analogous instruments (*f*).

Penalties.

Arts. 12 and 13 deal with the penalties for infringements, which vary according to whether the piracy is committed knowingly or by gross negligence, or without gross negligence. In the former cases damages and fines are payable, in the latter only an injunction and payment of profits may be demanded. Imitation of the firm name or mark of the author may be visited with fine or imprisonment.

Art. 16. As soon as proceedings are commenced, the judge may order ... necessary provisional measures (provisional seizure, security, an injunction, &c.).

Art. 17. Neither civil nor criminal proceedings can be taken after the lapse of a year from the time when the author or his representatives knew of the piracy or reproduction and the name of the offender, and not in any case after five years from the day of the publication, representation, or putting on the market of the pirated work.

Art. 18. The judge may at his discretion, order confiscation

William Tell, which is closed on three sides but can be seen into from the street, could be reproduced by any one as being in a "public place," the Court of Cassation remarked that "the fundamental idea of this provision is that works of art which, from the manner in which they are erected or placed, form an integral part of the panorama of a town or landscape and which can be seen by any one upon public places or in public streets, have fallen into public domain" (*Benziger* v. *Schlumpf*, 20th July, 1899). The Swiss Courts seem to consider the preposition "in" to belong to streets and "upon" to public places, so that it is not lawful to reproduce works of art standing on private property, though the public may have general access to a place from whence they can be viewed (Court of Cassation, 15th Dec. 1898, *Union Photographique* v. *Brunner*).

(*e*) This clause seems to open a wide door to piracy. What are the "expenses" to cover which payment may be received?

(*f*) According to the commentators æolians and pianolas are not "analogous instruments."

of pirated works, both against the infringer, the importer, and the retailer, and also of implements specially intended for piratical purposes.

In the case of the performance or representation of a musical, dramatic, or dramatic-musical work, the judge may order confiscation of the receipts.

The products of these confiscations, or the confiscated receipts, may be applied in payment of the civil compensation adjudged to the proprietor.

Retrospective action.

Art. 19. This law applies to all writings, works of art, dramatic, musical, or dramatic-musical compositions published or appeared before the coming into force of this law, even when such works have not by cantonal law enjoyed any protection against piracy, reproduction, or public representation.

The time already elapsed since publication shall be taken into account in calculating the period of protection.

But no proceedings, whether criminal or civil, under the present law can be founded on reproduction made before the coming into operation of this law; on the other hand, the sale of these reproductions after such date is not permitted, except under agreement with the author, or unless in default of agreement, the proprietor of these reproductions shall pay the compensation fixed by the federal courts.

Art. 20. The prolonged period of protection given by Art. 2, over the protection formerly given, is granted in favour of the author or his heirs; but not in favour of the publisher or any other assign. But if the period of protection provided by this law is, on the other hand, shorter than that provided by legal provisions previously existing, the rights acquired under such provisions still remain in force.

Art. 21. This law comes into operation on the 1st of January, 1884.

A regulation for the execution of this law was issued on the 28th of December, 1883.

Registers.

This provides for the keeping of two registers at Berne: one for works which must be registered, *i.e.*, posthumous works, works published by a canton, a corporation or society, and also works of photography.

Secondly, a register for other works of which the registration is optional.

The formalities to be exercised on registration, &c., are carefully provided for.

Foreigners may register if domiciled in Switzerland or if their

PART V. SWITZERLAND.

works have appeared there, or if their country treats on the same footing works published in Switzerland. The Swiss Federal Code on obligations of 1882 contains special provisions relating to publishing agreements: Arts. 372 to 391.

Works of art belonging to Confederation.

A regulation of 3rd April, 1897, declares that no one may copy works of art belonging to the Confederation without authorisation, and prescribes rules for obtaining such authorisation.

Rights of Foreigners.

Art. 10 of the law of 22nd April, 1883, is as follows:—

Provisions of law of 1883.

"The provisions of this law are applicable to all works the authors of which are domiciled in Switzerland, no matter where the work has appeared or been published: also to works which have appeared or been published in Switzerland, the authors of which are foreigners.

"The author of a work made or published abroad who is not domiciled in Switzerland, enjoys the same rights as the author of a work made in Switzerland, if this latter be treated, in this foreign country, on the same footing as the author of a work made in the said country."

Switzerland was an original party to the Berne Convention of 1886, and she also ratified the Additional Act of Paris and the Interpretative Declaration of 1898. She has adhered, without reserve, to the Revised Convention of 1908, which, so far as foreign works are concerned, has full effect in the country, and she is a "proclaimed" country entitled to the benefit of the American Copyright Act, 1909. Her only treaties are with Austria (1914) and Colombia (1908) (*g*).

MONACO (PRINCIPALITY OF).

The copyright law of Monaco is governed by a Royal Ordinance of the 27th February, 1889, as modified by an Ordinance of the 3rd June, 1896, whereby all "literary and artistic works" are protected during the period of the author's life and fifty years after his death (*h*). The author has the exclusive right of translation (Art. 4), and the exclusive right of public performance

(*g*) The treaty with Japan of 1896 was denounced in the year 1911 by mutual agreement.

(*h*) But by Art. 10, in the case of anonymous and pseudonymous works, the publisher is deemed to be the author, so that, apparently, copyright is regulated by the life of the publisher. The terms of the Royal Ordinances are set out rather more fully in the fourth edition of this work.

of dramatic and dramatico-musical works (Art. 6), but musical performances are permissible if given at civil or religious meetings, or in the open air gratuitously to the public, or for charitable objects duly authorised by the government. (Art. 11.) Alienation of a work of art does not, except in the case of a portrait or bust executed on commission, *primâ facie*, carry the copyright in the work (Art. 14), but the owner of the work cannot be compelled to place the same at the disposal of the artist to enable him to reproduce it (Art. 15). No formalities need be complied with in order to gain copyright (Art. 16), and the usual penalties of fine and confiscation are imposed for infringement of copyright. (Arts. 19—31.) By Art. 2 it is declared that literary and artistic works include books, pamphlets, and writings of all kinds, dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture, and engraving; lithographs, photographs, illustrations, and geographical charts; plans, sketches, and plastic works relating to geography, topography, architecture, and sciences in general; in short, every production of the domains of literature, science, and art, which can be published by any method of printing or reproduction.

Art. 17 relates to piracy, and is as follows:—

Piracy. Every publication or reproduction, in whole or in part, of a literary or artistic work produced in bad faith in defiance of copyright, constitutes the offence of piracy.

In particular the following acts are prohibited under this head:

The publication of works known as adaptations, musical arrangements, and generally of passages taken from literary or artistic works, with variations, additions, or curtailments, which retain the characteristic features without presenting the character of a new original work.

But the fabrication and sale of instruments mechanically reproducing musical airs which are private property, do not constitute the offence of piracy (*i*).

Rights of Foreigners.

Art. 33 provides as follows:—

Foreigners. The provisions of this law shall be applicable to the foreign author of a literary or artistic work, whether published in the principality or not, and his representatives, according to the rights

(*i*) This is in accordance with Art. 3 of the Protocol to the Berne Convention, 1886, but see now Art. 13 of the Revised Convention.

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which are or are not granted to subjects of Monaco by the laws and treaties, either of the country of origin of the foreign author, or the country of first publication, when that takes place out of the country of the author.

In this last case, if the first publication is made simultaneously in several countries, the foreigner's rights shall be measured by the laws which give the shortest period of protection.

Art. 34. A foreigner shall not be allowed to claim in Monaco more extended rights than those secured to subjects of Monaco by the laws of Monaco.

Art. 35. The rights of foreigners are only conditional upon the accomplishment, in the country of first publication of the work, of the conditions and formalities imposed by the legislation of that country, but in case of dispute a certificate by the competent authority that these have been complied with may be required.

Monaco was one of the original signatories of the Berne Convention. 1886, and she also ratified the Additional Act of Paris and the Interpretative Declaration. She has adhered to the Revised Convention of 1908 without reserve, and by Royal Ordinance of the 10th December, 1910, "full and complete effect" is to be given to the same in the Principality. She does not appear to be a "proclaimed country" in the United States, and consequently is not entitled to the benefit of the American Copyright Act, 1909.

TURKEY.

Works protected.

Prior to the passing of the recent law of 8th May, 1910, the copyright law of Turkey was of a rudimentary character. It depended upon a law of 1872, and certain regulations of 28th March, 1875 (*k*). By the new law above referred to, copyright is conceded to "literary and artistic productions of any kind" (Art. 1), which include "books, works, designs, pictures, writings, engravings, statues, plans, maps, geographical, architectural, topographical and other technical designs, in the flat or in relief, also fragments and pieces of music." (Art. 2.) It will be noticed that neither architectural works themselves nor photographs are included in this category.

Nature of copyright.

The copyright confers the right to publish, make public, sell, translate or dramatise literary and artistic works, and also speeches, lectures and discourses delivered with an educational or recreative

(*k*) See Copinger, 4th ed. p. 658.

object, except those delivered at public meetings and so forth. (Art. 3.) The right of public performance of dramatic pieces and operas is conferred by Art. 10. Newspaper articles are only protected if they bear the words "rights reserved" or "all rights of publication and translation reserved." (Art. 4.) The titles of books, newspapers, &c. are protected. (Art. 5.)

Period of copyright.

The period of copyright is, in the case of literary and musical works, the life of the author and thirty years after his death, and, in the case of artistic works, the life of the author and eighteen years after his death. (Arts. 6 and 7.) In the case of posthumous works the copyright period runs from the date of publication (*l*). (Art. 9.) The copyright in anonymous or pseudonymous works belongs to the publisher until the true author is disclosed. (Art. 41.)

Letters and translations.

Letters may not be published without the consent of their composers if alive, or their families after their death. (Art. 13.) A lawful translator enjoys copyright in his translation, but only for his life and fifteen years after his death.

Licences to publish.

Exclusive licences for a period of from ten to fifteen years can be granted by the Minister of Public Education of published works of which there is no copyright proprietor, or of unpublished works in the public domain. (Arts. 17 and 18.) The same Minister may himself, after the death of the author, republish a work of repute or one possessing general interest, upon failure by the author's representatives to do so. (Art. 19.)

Deposit and registration.

Three copies of a work, other than one of which there is only a single copy, should be deposited with the Minister of Public Instruction, and particulars of name, title of work, &c. registered with the same Minister, who will give a certificate, which will be *primâ facie* evidence of title, upon payment of a fee of half a pound (Turkish). Failure to make the deposit aforesaid appears not to forfeit the copyright, but to bar proceedings. (Arts. 20—24.)

Assignment.

Copyright is assignable, but assignments must be registered. (Arts. 24, 25.)

The following will be considered piracies:—publication of a book; performance of operas or theatrical pieces; publication of pieces of music, maps, designs, pictures, &c.; making copies of writings or designs of any kind by means of photography or any other means whatsoever; in short, the production by any

(*l*) *I.e., semble,* thirty years for literary and musical works, and eighteen years for artistic works.

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industrial process whatsoever of moulds or plates of an artistic or musical work (*m*). (Art. 20.)

Piracy is punishable criminally by fine, imprisonment, and confiscation of the infringing works; and civilly by action for damages. (Arts. 32, 33.)

Rights of Foreigners.

The above law apparently has no application to foreigners in the absence of treaty, and at present Turkey has entered into no copyright treaties, nor has she adhered to any of the Copyright Conventions. It must be remembered, however, that according to the law of the Capitulations, disputes between two foreigners in Turkey are decided by the consular Court of the defendant's country. It appears, therefore, that copyright is capable of being protected in Turkey upon similar principles to those applying in Egypt (*n*).

RUSSIA.

In Russia copyright was, until the year 1911, regulated by the Penal Code of 1832, and the *ukases* of the 26th January, 184- and of the 7th May, 1857, which were re-issued in 1887. On the 20th March, 1911, a new law was passed of an elaborate character upon the subject. The following is the substance of that law (*o*):—

Subjects of copyright.

The following are subjects of copyright: (a) literary works, written or oral, such as speeches, lectures, sermons, &c. (*p*); (b) musical works, including musical improvisations; (c) artistic works, such as paintings, engravings, works of sculpture and architecture; (d) photographs and similar works protected under the provisions contained in Chapter VI. (Art. 1.) Unpublished works are protected equally with published works. (Art. 27.)

Literary and musical copyright.

The author is given the exclusive right of publishing and circulating his works by any possible means (Art. 2); but there are various acts which are not to be considered infringements of literary or musical copyright, *e.g.*:—

Not infringements.

(a) The use of another's work for the purpose of creating a new work differing essentially from the old. (Art. 3.)

(*m*) The words seem sufficiently wide to cover gramophone discs.

(*n*) See "Egypt," *post*, and "Le Droit d'Auteur," 1895, p. 165. The Law of Capitulations has, however, recently been denounced by Turkey.

(*o*) Translated from the French translation in "Le Droit d'Auteur," 1911, p. 86. Articles on this law will be found in No. XXVI. of the Journal of the Society of Comparative Legislation (1912), p. 302, and 133 L. T. Jo. p. 600.

(*p*) See also Arts. 13 and 30.

(b) Making copies of another's work for private use, and, in the case of copies of artistic works, containing neither the signature nor monogram of the author of the original. (Art. 3.)

(c) Making extracts of short passages from, or even the whole of short literary works, provided the extracts are to be inserted in works which form an independent whole, or in chrestomathies or other collections published with a scientific, technical, or educational object. (Art. 39.)

(d) The like as regards musical works. (Art. 43.)

(e) The copying in newspapers, reviews, and periodicals from other publications of a like character of news, information, &c., including telegraphic and telephonic communications, even though contributed by special correspondents. Other articles may also be copied, if not specially forbidden, but continuous reproduction from the same publication is prohibited, and telegraphic and telephonic communications cannot be reproduced by the local press during a period of eighteen hours from their publication, if specially forbidden. (Art. 40.)

(f) Publication in periodicals of speeches delivered in legislative and other public assemblies, or in the Courts, but the author retains the right of publishing the speeches separately or in a collection. (Art. 38.)

In all these cases the source from which copy has been taken must be acknowledged. (Art. 19.)

Assignment and transmission.

Copyright passes on the death of the author to his heirs (Art. 6), and, in default of heirs, ceases on the author's death; but in the case of collaborations the copyright will, in such case, pass to his co-authors, unless the deceased made any disposition in his lifetime. (Art. 7.) Assignments must be in writing (Art. 8), but assignments of future works are only valid for five years. (Art. 9.) Copyright cannot, without consent, be taken in execution as against the author or his heirs, but this does not apply as against third persons. (Art. 10.)

Period of copyright.

The period of copyright in a literary, musical, or artistic work (*q*) is during the life of the author and for fifty years after his death. (Art. 11.) In the case of posthumous works the period of protection runs from the death of the author in any case (Art. 11), and in the case of collaborations, the post mortem

(*q*) As to photographs, see Art. 61.

period commences on the death of the last surviving author. (Art. 12.)

Authors of collections of folk songs and melodies, proverbs, children's tales, popular legends, and like works, enjoy copyright for a period of fifty years from publication, without prejudice to the rights of others to make similar original collections. (Art. 13.) The publishers of newspapers, reviews, and other periodicals, of dictionaries, almanacks, and other collections composed of distinct works of different authors, enjoy copyright for twenty-five years, but, in the absence of contrary agreement, each contributor retains the copyright in his separate contribution. (Art. 14.)

Collaborations.

In the case of collaborations the work belongs to all the authors jointly (Art. 5), and *primâ facie*, in the case of collaborations composed of distinct parts, having a scientific, literary, musical, or artistic value, all the authors must concur in exercising the copyright, but each contributor has the copyright in his separate contribution. (Art. 15.)

Works published in volumes or numbers.

In any case where copyright dates from publication, the period of protection is to be reckoned, as regards works published in volumes, separately for each volume, and, with regard to periodicals, separately for each number or part, provided no more than two years elapses between the publication of the first and last number or part. (Art. 16.)

Anonymous and pseudonymous works.

Anonymous and pseudonymous works enjoy copyright for only fifty years from publication, unless the author or his representatives claim the full period. (Art. 17.)

All periods of copyright are to be reckoned from the 1st January of the year in which the author died or his work was published. (Art. 18.)

Alterations.

An assignee of copyright may not make alterations in the work, unless they be either essential or such as the author could not reasonably object to. (Art. 20.)

Letters.

Private letters not intended by their writer for printing may not be published without the consent of both writer and receiver, or, after the death of either, of his heirs; but fifty years after the death of the survivor the consent of the spouses (if still living) and the children of the persons aforesaid will be sufficient to authorise publication. (Art. 28.) Somewhat similar provisions apply to memoranda and private notes not intended for printing. (Art. 29.)

Ancient MSS.

The publisher of an ancient manuscript enjoys copyright therein for fifty years, without prejudice to the rights of others to publish the same manuscript in an original form. (Art. 30.)

To transform a novel into a play, and *vice versâ*, is forbidden. (Art. 31.)

Dramatization.

The question of translations has always been a vexed one in Russia. It is provided by Art. 34 that works published simultaneously in various languages are to be considered as original in each of these languages. Art. 33 further enacts that the author of a work published in Russia, or of a work of a Russian subject published abroad, and his heirs enjoy the exclusive right of translation into other languages, provided the right be reserved on the title page or in the preface; but this right, it is provided, shall only last for a period of ten years from the publication of the original work, and then only if a translation has been published within five years from such publication, provided, nevertheless, that a re-translation into the original language shall be unlawful throughout the entire period of copyright protection. The works of foreigners published abroad are only protected against translation if the right of translation has been expressly granted by treaty. (Art. 35.) A translator enjoys copyright in his translation, subject to the rights of others to make similar translations. (Art. 36.)

Translations.

Musical works and mechanical contrivances.

The copyright in musical works includes the exclusive right of making and publishing abridgments, extracts and medleys, also of transposing them for the voice, to other keys, or for instrumentation, or for reproducing the work mechanically by means of discs, plates, cylinders, &c. necessary for performances by means of gramophones, phonographs, pianolas, and the like instruments. If the composer has himself published the musical work, with a view to a sale, in a mechanical form adapted for use in phonographs, gramophones, or like instruments, or has granted such right to another person, who has made use of his right, any third person having a manufactory in Russia specially established for this purpose may enter into an arrangement with the composer for the acquisition of a similar right of adaptation, and in case of refusal may apply to the Court for the grant of such right upon payment of fair compensation to be fixed by such Court. (Art. 42.)

Literary works as libretti.

A composer is at liberty to use as the libretto to his composition any literary work previously published, but the libretto may not be published except in conjunction with the music, or in a concert programme, provided always that no composer may use a literary work specially intended as the libretto of a musical composition, unless he obtains the consent of the author of the literary work. (Art. 46.) The copyright in a musical work accompanied

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by a libretto written to the order of the composer of the musical work belongs entirely to him, but the writer of the libretto has, in the absence of contrary agreement, the right to publish the libretto separately from the music. (Art. 47.) Similarly, public performance of a musical work with the libretto may be authorised by the composer alone. (Art. 49.)

Public performance.

Copyright in a musical, dramatic, or dramatico-musical work includes the exclusive right of public performance (Art. 47) (*r*), but in the case of musical works the right must be specially reserved on every copy. (Art. 49.) Public performance is permissible (a) when no gain is, directly or indirectly, sought; (b) at public fêtes; (c) for charitable objects, when the performers' services are given gratis. (Art. 50.)

Artistic works.

The transfer of a work of art does not, *primâ facie*, carry the copyright. (Art. 51.) In the absence of contrary agreement the artist retains the copyright in works executed on commission, except in the case of portraits and busts, the right to reproduce, exhibit, or publish which belongs exclusively to the person represented and his heirs. (Art. 52.) The owner of the work of art cannot be compelled to place the same at the service of the artist in order to enable him to make copies. (Art. 53.) Works of art *acquired directly from the artist* for churches, public institutions, &c. may, however, be copied by anyone with the consent of the competent authority. (Art. 54.)

Infringement of artistic copyright.

The copyright in an artistic work is infringed by reproduction, multiplication, or publication of whole or part of the work (a) by any means which fall within the same class of art (*s*), (b) by making use of either the original work or a copy thereof (Art. 56): but the following are expressly stated not to be infringements of copyright:—(1) reproduction of a painting by sculpture, and *vice versâ*; (2) reproduction of works of art situate in streets or other public places by a different form of art from the original; (3) reproduction of isolated works of art in an independent scientific study, or in an educational work, to explain the text; (4) utilisation of separate parts of a work of art for industrial purposes; (5) exhibition of works of art in public exhibitions. (Art. 56.) The source must in all these cases be acknowledged. (Art. 19.)

Plans of architects, &c.

Anyone is at liberty to erect buildings or structures from the published plans, drawings, or tracings of architects, engineers, and

(*r*) Cinematographic works are not mentioned in the law. They appear only to be protected as photographs.

(*s*) This seems to have the effect of seriously curtailing an artist's copyright. Presumably a photograph of a copyright picture is permissible.

mechanicians, unless the right has been expressly reserved at the time of publication, and in the absence of contrary agreement any person acquiring technical plans, drawings, or tracings may use them for the purpose of erecting buildings or other structures, but cannot grant the like right to others. (Art. 57.)

Photographs.

A photographer has the exclusive right of reproducing, multiplying, and publishing his photographic work by any analogous process (*t*), but in the case of portraits and other photographs made to order this exclusive right belongs to the person to whose order the photographs were made. (Art. 59.) Moreover, in order to preserve the copyright in photographs every copy must bear the name, in full, and address of the photographer or the publisher, with the year of the publication of the work. (Art. 60.) Photographs are only protected for ten years from the date of publication, except that this period will be extended to twenty-five years in case the photographs are published in a collection or a series of pictures having an artistic, scientific, or historical value; and if the photographs are published as part of a literary work, the copyright is to last for the same period as the literary work itself. (Art. 61.)

Infringements of photographic copyright.

The following do not infringe the copyright in a photograph:—(1) copies made for personal use; (2) exhibition in a public exhibition; (3) reproduction in an independent scientific study or in a work of an educational character, the photograph only being used to explain the text; (4) utilisation for industrial purposes. (Art. 62.)

The rules as to photographs apply equally to works obtained by analogous processes. The source must be acknowledged. (Art. 19.)

Remedies.

The penalties for infringement of copyright are to be found in Arts. 21 to 26 of the law. The infringer is liable in damages, and infringing copies—except in the case of artistic and architectural works (Art. 58)—may be confiscated and destroyed.

Publishing agreements.

The Russian law, like the German law, contains provisions regulating contracts between authors and publishers, and their mutual obligations. Generally, the publisher must publish within three years (Art. 68); an "edition" of a literary or artistic work is limited to 1,200 copies, and of a musical work to 200 copies. (Art. 69.) The grant of the right to publish a dramatic, musical, or dramatico-musical work includes neither the right of public performance nor the right of adaptation to instruments of mechanical

(*t*) This Article apparently restricts the copyright of a photographer to the prevention of piracy by photographic methods.

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reproduction (Art. 74); and the grant of the right to publish a literary work does not include either the right of translation or the right of dramatising a literary work, or *vice versâ*. (Art. 75.)

Rights of Foreigners.

By Art. 4 of the above law it is provided:—

Copyright is recognised (a) in the case of works published (*u*) in Russia, in favour of all authors and their representatives, whatever be their nationality; (b) in the case of works of Russian subjects published abroad, in favour of their authors or their representatives, of whatsoever nationality; (c) in the case of unpublished works, in favour of all authors and their representatives, whatever be their nationality.

By Arts. 32 and 44 respectively, the piracy in Russia of literary and musical works published abroad is forbidden, unless the consent of the persons entitled to the copyright by virtue of the law of the country of first publication be obtained, and subject to the condition that the period of protection shall not exceed that accorded by the Russian law. There is, however, no similar provision with regard to photographs.

The protection thus accorded to foreign literary and musical works is, however, much curtailed by Art. 35, already alluded to (*x*), relating to translations, the effect of which is that, as regards literary works published in a foreign country, these may be freely translated unless the consent of their authors is required by reason of any treaty between Russia and a foreign State, which treaty must not grant to the subjects of foreign States any more extensive rights of translation than those accorded to Russians by Art. 33 of the law (*y*).

Foreign authors have suffered considerably in the past from piracy of their works in Russia. Russia is not a party to either the original or the revised Berne Convention, and her early admission to the Copyright Union is, perhaps, not very probable. But the law of 1911 marks a considerable step towards granting increased protection to foreign works, and although, previously to that law, Russia refrained from entering into any treaty obligations on the matter of copyright, she has now copyright treaties with France (29th November, 1911) and Germany (28th February, 1913). Negotiations have been opened up with a view to a like

(*u*) The law does not apparently require that they shall be *first* published in Russia.

(*x*) *Ante*, p. 463.

(*y*) *Ante*, p. 463.

treaty between Great Britain and Russia, but for the moment the negotiations are in abeyance.

FINLAND.

A separate and distinct law was enacted for Finland on the 15th March, 1880, on the right of the author and the artist in the produce of his work. The following is the substance of this law:—

Literary copyright.

Art. 1. The author of a writing has the exclusive right of reproducing it by printing or otherwise, and of publishing it for circulation, whether it exists only in manuscript or has been already published, and also of disposing of this right of publication by assignment or will.

After the death of the author the right of publication, if it has not been transferred to any person, belongs to the widow and heirs, according to the law respecting matrimonial rights and successions.

Definition.

Art. 2. For the application of this law, the following are equivalent to writing: technical, geographical, topographical, natural history, and other drawings and pictures which from their principal aim cannot be considered works of art; also musical compositions, plans of buildings and other architectural drawings, drawn by the author on his own account or to the order of another. It is permissible to build from a published plan.

Duration.

Art. 3. In the case of published works, if the author has placed his true name on the title-page or any other usual place, the right of publication recognised by Art. 1 lasts during the author's life and fifty years after.

If the work has not been published in the life of the author, or if a published work does not bear the name of the author as aforesaid, the exclusive right of republishing lasts for fifty years after the first publication. When the author discloses his true name, during this period, on a new edition, or by a notice inserted three times in the general papers of Finland, the period fixed in par. 1 of this article applies also to a pseudonymous or anonymous work.

Joint works.

Art. 4. When several authors have jointly contributed to a work, each as to a distinct part, the one who publishes the work has the exclusive right of republication during his life, and his assigns during fifty years afterwards, on condition that he places his name on the title-page, or some other usual place.

If a work of this kind has been published by several persons

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or by a firm, or if the person who publishes it has not been regularly named, the exclusive right of publication lasts for fifty years from the first publication.

The right of publication belonging to the Imperial University of Alexander, the Society of Sciences, and any other association, has the same duration.

Art. 5. The right given by Art. 4 to the publisher of the whole of a collaborative work is not to stand in the way of the exclusive right belonging to each author, in the absence of agreement to the contrary, of publishing separately or under another form, his portion of the work after the lapse of two years from the first publication of the work jointly as aforesaid.

Art. 6. When a work has been published simultaneously in several languages, named on the title-page, it is considered as composed in each of the languages.

Translation.

A native author's right of publication includes also the exclusive right of publishing a translation of it in a national language during the whole period of protection, and in any other language for five years from first publication. In Finland, Finnish and Swedish shall be considered national languages.

If on the title-page of the writing of a foreign author the right of translation be reserved, this right lasts for five years from the first publication.

Art. 7. A translator has the same right in his translation as the author of an original work.

Piracy, definition of.

Art. 8. Any person who without authority reproduces or causes to be reproduced a writing by printing or otherwise, for circulation, incurs the consequences of piracy fixed in chap. 4.

The unauthorised reproduction of a writing with alterations, modifications, or additions, not sufficiently essential to make it a new work, is also piracy.

Art. 9. The following are not considered piracy:—

Not piracy.

(a) Literal quotation of detached parts of writings or musical compositions already published.

(b) The insertion by way of specimen, in works of larger size and conceived on an original plan, of selections of prose, verse, or music already published, to a limited extent, or of short extracts from larger works, or of isolated drawings or pictures.

(c) The insertion of small works, extracts, morceaux of music, drawings, or pictures of that kind, already published by other authors, in school books, manuals, collections of songs or hymns, and other collections or arrangements

intended for instruction, education, pious exercises, or any other special literary object.

(d) The reproduction of a fragment of poetry already published jointly with or as words to a fragment of music, unless the verses were exclusively intended to serve as words for an opera or oratorio.

(e) The reproduction in a newspaper or a review of isolated articles or communications, extracted from another periodical, except, however, novels and scientific and literary articles the reproduction of which has been reserved.

In all the foregoing cases the original work from which the extract, &c. is taken must be clearly indicated.

Art. 10. Any person may, subject to the special regulations made on that subject, reproduce laws and general orders, reports and notices officially published, the decisions of the Courts and other authorities, and all other official documents of every kind.

Art. 11. Sermons, lectures, and other analogous addresses delivered for purposes of instruction, education, or amusement, form the subject of copyright on the same grounds as other works of literature; but speeches and debates at the sittings of the Land Tag, at synods and parish or communal assemblies, at electoral or other public meetings, are subject to Art. 10.

Dramatic works.

Art. 12. No dramatic work not yet published in print, may be represented on the stage without the consent of the author or other person entitled to copyright. When the work has been printed and published with the name of the author properly given, and the exclusive right of public representation reserved, this right belongs to the author during his life and to his representatives for fifty years after his death. The simple reading in public without scenic accessories is not a public representation.

Anyone who has lawfully translated or arranged a dramatic work for the stage, has for himself and his representatives the same copyright of the public representation of his translation or arrangement. There is a like right over the public representation of music composed for the purpose of being performed as an accompaniment of a scenic representation.

Posthumous dramatic works.

Art. 13. When the first representation on the stage of an unpublished work referred to in Art. 12 takes place after the death of an author and under his name, or during his life but without the author's name being then or afterwards given, as mentioned in Art. 3, the copyright fixed in Art. 12 shall last for fifty years from the first representation of an unprinted work, or from

publication in print. Any person may publicly represent a work put in print without the proper reservation of the right of representation.

Art. 14. Copyright sanctioned by Arts. 12 and 13 may be transferred to several persons at the same time. If the exclusive right of representation be assigned and the assignee does not exercise it during five consecutive years, the right returns to the person to whom copyright belongs under the foregoing provisions.

Artistic works.

Art. 15. An artist has the exclusive right of reproducing his drawings, paintings, or plastic works by the same artistic process for the purposes of sale and assignment of the right.

An artist has also the exclusive right of causing his work to be reproduced by copper or steel engraving or etching, by lithography or any other analogous means, or further by oleography, casting, photography, or any other process of the same kind and of multiplying reproductions.

Duration.

The right recognised to the artist as aforesaid belongs to him during his life, to his widow, and his heirs for fifty years afterwards.

The same right also belongs to any person who reproduces by copper engraving, lithography, wood engraving, or any other analogous artistic process, a work of art in which no exclusive right is subsisting, without prejudice to the right of any other person to make a reproduction of the same original by the same or an analogous process.

Art. 16. The reproduction of a work of art is not rendered lawful by the fact that it is executed on a larger scale, or in a different material, or with non-essential modifications, suppressions, or additions.

Reproduction of drawings or paintings in a plastic art and *vice versâ* is permissible.

Photographs.

Art. 17. Any person who takes, not to order, a photograph from nature or from a work of art, the reproduction of which is permitted, has for five years the exclusive right of reproducing this photograph for purposes of sale by means of photography, on condition that each copy bears his name and the date of the year when the first photograph was taken.

When a photograph is taken to order, it cannot be reproduced, except with the consent of the person giving the order.

Not piracy.

Art. 18. The following are not considered piracies:—

(1) The reproduction of a work of art belonging to the State or exposed in a public place.

(2) The representation of a work of art in scientific or educational works.
(3) The use of a work of art as a model by manufacturers or workmen in the construction and ornamentation of furniture or other goods of practical use.
(4) The reproductions of works of art by pupils for the purposes of study.

Remedies. The penalties for infringement are fine, damages and confiscation of piracies (Art. 19), and criminal proceedings must be taken within two years from the offence. (Art. 27.)

Assignments. Assignments must be in writing, and a simple licence to publish only carries the right of publishing, without alteration, a single edition of 1,000 copies. (Art. 28.)

All periods fixed by the law to run from death, publication or representation are to be reckoned from the 1st January following. (Art. 29.) As against the author, his widow and his heirs, unpublished manuscripts may not be taken in execution, but when a work has been published or the copyright assigned, creditors may take the profits in execution. (Art. 30.)

Rights of Foreigners.

Art. 32 of the above law is as follows:—

"The provisions of this law apply to (1) the works of Finnish authors and artists wherever they are published; (2) the works of foreign authors and artists residing in Finland and publishing their works there. The law may also be declared by the Emperor and Grand Duke applicable in whole or in part, on condition of reciprocity, to the works of artists and authors of a foreign country with which there may be treaties on the subject."

It does not appear that the Russian treaties with France and Germany (*z*) extend to Finland.

GREECE.

Copyright in Greece is, except as to dramatic works, regulated by Arts. 432 and 433 of the Penal Code of 1833, and by the provisions as to deposit contained in the law of 24th November, 1867, as modified by the law of 29th March, 1910. Art. 432 of the Penal Code is as follows:—

Penalties for piracy. *Art.* 432. Any person who reproduces by printing or in any

(*z*) *Ante*, p. 466.

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other way, or puts in circulation books or other printed writings, musical compositions, engravings, geographical drawings or charts, without the consent of the author, of the producer of the work, the publisher or their assigns or heirs, without the addition of some novel shape or form, during a period of fifteen years from the date of publication (with a reservation for cases where a longer privilege has been granted); or any person who within such period retails piracies or imitations so made by others against the law, of works of art or of the intellect, is punishable with a fine of 200 to 2,000 drachmas, except when the privilege in question declares a special penalty.

Duration.

In every case the circulation of the pirated articles is to be stopped by seizure on the demand of the person injured, who, on the day when the conviction has become final, has the right of disposing of the articles seized.

By Art. 1 of the law of 1910, replacing Art. 3 of a law of the 24th November, 1867, two copies of every book must be deposited by the printer for the use of the National Library, one copy for the library of Parliament, and one copy for the local public library. Failure to make these deposits does not, however, invalidate the copyright, but is visited with a fine.

Dramatic works.

A law of the 11th December, 1909, has been passed for the protection of theatrical works. Under this law the author of an original theatrical work, or the translator or adapter of a foreign or classical work, has the sole right of publishing or publicly performing the work during the life of the author and for forty years after his death (Arts. 1 and 2), or in the case of collaborations for forty years after the death of the last surviving author. (Art. 3.)

Piracy.

Copyright in a dramatic work is infringed (a) by the representation of the whole of the theatrical work, whether published or not, in a theatre or public hall, by a troupe of actors or amateurs, without the previous written consent of the author, or his heirs or assigns, or (b) by the representation of a theatrical work organised by the performers when the title or the book has been appropriated or modified, or the names of the characters altered, or the name of the author has been omitted from the programmes. (Art. 9.)

In the event of infringement by performance the owner of the copyright can claim 12 per cent. of the receipts (Art. 7), and the performers and managers are liable to fine and damages. (Arts. 10 and 12.) An injunction may also be granted. (Art. 11.)

Rights of Foreigners.

Foreigners.

Art. 433 of the Code Penal is as follows:—

"The dispositions of the previous article (*i.e.*, 432, *ante*) apply further (1) in favour of a foreigner who has not obtained a privilege in Greece, but only when the country of such foreigner grants the same protection to Greek subjects; (2) to all other inventions, works, or products of science or art, in so far as they are protected by privileges granted in Greece, against all injurious imitation."

Art. 14 of the law of 11th December, 1909, is as follows:—

"The protection granted by this law may be extended to theatrical works belonging to foreign authors and played in Greece in a foreign language upon the basis of reciprocity established by special international treaty and ratified by royal decree."

Theoretically, Art. 433 of the Penal Code ought to have the effect of protecting the works of the citizens of several European countries, but it is believed that, practically, foreigners can obtain little or no protection against piracy of their literary and artistic works in Greece. As regards the right of public performance under the law of 11th December, 1909, France concluded a treaty with Greece on the 22nd April, 1912, but Greece has no other treaty obligations on the subject of copyright.

ROUMANIA.

Some doubt existed at one time as to whether the Roumanian Constitution of 1866 had not the effect of repealing the Press law of the 13th April, 1862, which contained provisions protecting copyright. This doubt was, however, set at rest by a decision of the Court of Cassation in the year 1893, which held that the Press law of 1862 still remained in force, and it is by this law that copyright in Roumania is governed at the present day. This law is almost identical with the French law of the 19th July, 1793, and its chief provisions are as follows:—

Duration.

Art. 1. Authors of every kind of writing, composers of music, or draughtsmen who have their pictures or drawings lithographed, shall enjoy during their life, as property, the exclusive right of reproducing and selling their works throughout the principality (*a*), or of transmitting this property to others, the right being recognised by the laws in force.

(*a*) Roumania is now a kingdom.

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Art. 2. Their heirs or assigns shall enjoy this right for ten years after the death of the author or composer (*b*).

Newspapers.

Art. 3. Newspapers and other periodicals are the property of the persons or societies publishing them: their right of property is secured according to the terms of the foregoing articles.

Articles which the author or proprietor wish to protect from production by other papers must carry at the commencement a notice that reproduction is forbidden. This refers only to literary and scientific articles.

Dramatic compositions.

Art. 4. Dramatic compositions cannot in the periods mentioned be represented in any theatre, or published, without the consent of the author.

Translations.

Art. 5. Translations are not comprised in the foregoing enumeration, except the text of a translation from the original text. Also extracts made from writings introduced in lectures or commentaries with the aim of instructing the public on the value of these writings are not infringements of the rights of another.

Penalties.

The penalties for infringement are: (1) confiscation of piracies for the benefit of the author; (2) a fine to be paid by the pirate equal to the price of 1,000 copies of the original edition; and (3) a fine to be paid by every vendor of the piracy, equal to the price of 100 copies. (Arts. 6, 7, and 8.) The Penal Code of 1864 also makes piracy a criminal offence.

Formalities.

Art. 9 of the law of 1862 required a deposit of copies in order to secure copyright, but this Article has been repealed by a law of the 19th March, 1904, which, whilst requiring deposit of five copies in all for the benefit of certain libraries, visits failure to do so with a fine, and not with forfeiture of the copyright.

Rights of Foreigners.

By Art. 11 of the Press law of 1862 it is enacted:—

"All these rights are secured to authors, composers, draughtsmen, and translators of foreign countries which reciprocally secure literary property within their territory."

The probable effect of this Article is to secure protection to the works of foreigners only in the event of a treaty subsisting between their country and Roumania. Such treaties have been effected by Italy (5th December, 1906), France (6th March, 1907), Austria (2nd March, 1908), and Belgium (10th April, 1910).

(*b*) Ten years after the death of the author every work becomes public property, and anyone may reproduce the same by printing, sculpture, or lithography.

SERVIA.

Servia has no law on copyright, though as long ago as 1844 it was provided in the Servian Civil Code of that year that a regulation should be made concerning the publication of books and the relations between authors and publishers. Servia.

Servia has a treaty with France on the subject of copyright dated the 5th January, 1907.

BULGARIA.

Bulgaria has no law on copyright, nor has she entered into any copyright treaties. Bulgaria.

MONTENEGRO.

This country has no special law on copyright, but literary and artistic property is protected under the common law and the Civil Code of 1888. In the year 1893 Montenegro became a party to the Berne Convention, but she retired in the year 1900, "from motives of economy." She, however, has a copyright treaty with Italy, dated the 27th November, 1900, and another with France, dated 24th January, 1902.

CHINA.

The first and only copyright law in China is dated the 18th December, 1910 (*c*), the law being modelled somewhat on the lines of the Japanese law on the subject.

Art. 1 of this law defines copyright as the exclusive right of reproducing any object covered by the expression "work," and the same Article contains a list of objects which may be regarded as "works," namely, "writings, pictures, models, photographs, engravings, prints, and plastic works." Subjects of copyright.

The law does not expressly grant "performing rights," and, apparently, dramatic and musical works are only protected as "writings." Performing rights.

Registration, with deposit of two copies of the work with the Minister of the Interior, is necessary in order to secure the copyright. (Arts. 2, 3, 4.) Formalities.

The period of copyright protection is for the life of the author, and upon his death it passes to his heirs for a period of thirty Period of protection.

(*c*) "Le Droit d'Auteur," 1912, p. 117.

years, provided the heirs register their claim. (Arts. 5, 14, 20.) In the case of photographs, however, the period of protection is only ten years, except for photographs inserted in "writings." (Art. 10.) In the case of collaborations, the copyright belongs to each author during his life, and after his death passes to his heirs for thirty years (*d*). (Art. 6.) Posthumous works, and works published in the names of authorities, educational bodies, companies, and corporations, are protected for thirty years. (Arts. 7, 8.) The same period is allowed for anonymous publications, unless the identity of the author is revealed. (Art. 9.) Annual periods are to be reckoned from the date of registration. (Art. 11.) The law contains rules as to the procedure to be followed to register a work. (Arts. 16 to 23.)

The owner of the copyright.

In the case of commissioned works for valuable consideration, the copyright belongs to the person giving the commission. (Art. 26.) In the case of a speech or lecture, the copyright belongs to the person who delivers the same, even if he is not its author, but the person who delivers the speech or lecture may agree to the contrary. (Art. 27.) In the case of translations from foreign works into Chinese, the copyright belongs to the translator, but he cannot prevent others from making similar translations. Translations which do not essentially differ are not entitled to any protection. (Art. 28.) An adapter likewise obtains the copyright in his adaptation. (Art. 29.)

Works not entitled to copyright.

Various works are excluded from the benefit of copyright, such as laws and official publications: articles and items published in newspapers relating to politics or news of the day: and speeches made at public meetings. (Art. 31.)

Cessation of copyright.

Copyright ceases (a) upon the expiration of the period of protection, (b) upon the death of the author without heirs, (c) if the author permits free reproduction of his work. (Art. 32.)

Infringements.

Copyright in any registered work is infringed by any act of copying, reproducing, or falsifying the work (Art. 33), and the publication, without authority, of a key to any school book is forbidden. (Art. 37.) It is, however, permissible (a) to collect extracts from various authors, to be used for schools or for general use as memory aiders; (b) to make extracts from the works of another for the purpose of explaining or criticising such works; (c) to make engravings, prints, or plastic copies from pictures, and *vice versâ*. In all these cases, however, the source must be acknowledged. (Art. 39.) An infringer is liable to a fine and

(*d*) It is difficult to see how this provision can work.

payment of damages, and all proceedings for infringement of copyright must be commenced within two years. (Arts. 40 to 50.)

Rights of Foreigners.

The above law seems to make no distinction between Chinese and foreigners, and any person publishing a work in China and complying with the formalities prescribed by the law can, apparently, obtain copyright protection in China. Works published in foreign countries do not appear to receive any protection under the Chinese law. In the open ports the mixed tribunals can be invoked, but it is doubtful how far they would protect authors. If, however, the offenders are foreigners established in China, they can be sued before the consular Court of their country. A British Order in Council of 1904 (replacing an earlier Order of 1899), as modified by a further Order in Council of the 11th February, 1907, provides that any act which if done in the United Kingdom or in a British possession would be an infringement of copyright shall, if done by a British subject, or by a native in China or Corea, be an offence against that Order, and be punishable with fine or imprisonment, provided the offence be committed against the property of a British subject or of a native or the subject of a foreign State with which reciprocal relations exist (*e*). The United States, in the year 1903, concluded a copyright treaty with China, but the same is believed to be of little value (*f*). In 1908 the United States, and in 1909, France, concluded treaties with Japan whereby Japan's copyright law is extended to places where that country has extra-territorial jurisdiction.

JAPAN.

Copyright in Japan is regulated by a law of 3rd March, 1899, as amended by a law of 14th June, 1910, replacing an earlier law of 28th December, 1877. The principal provisions of the law are as follows (*g*):—

Art. 1. The exclusive right of reproducing writings, speeches, paintings and designs, sculptures, works of architecture (*h*), plastic works, photographs, and other works in the literary, scientific, or artistic domain belongs to the author. Law of 3rd March, 1899.

(*e*) Such reciprocal relations exist between France and Great Britain.
(*f*) See United States of America, *post*.
(*g*) From "Le Droit d'Auteur," 1899.
(*h*) Works of architecture were added by the law of 1910.

Copyright in a literary or scientific work includes the right of translation, and in a dramatic or musical work the right of publication, representation, and performance.

Art. 2. Copyright is transferable.

Duration.

Art. 3. Copyright in a published work lasts for the life of the author and thirty years after his death. In the case of collaborations it lasts for thirty years from the death of the survivor.

Art. 4. Copyright in posthumous works lasts for thirty years from the first publication, representation, or performance. The period is the same in the case of anonymous or pseudonymous works, except that they are entitled to full protection if the authors register their true names.

Art. 6. Works belonging to public bodies, educational or religious establishments, companies or corporations, are protected for thirty years from first publication, representation, or performance.

Translations.

Art. 7. The right of translation lapses if the author or his assigns fail to publish a translation within ten years. If during this period an author publishes a translation in a language for which protection is claimed, his right of translation does not lapse so far as concerns that language.

Calculation of period of protection.

Art. 8. The term of copyright in the case of works published in a series of volumes, is reckoned from the date of each volume; but in the case of works published in parts the term is reckoned from the last part, unless three years or more elapse between the parts.

Art. 9. In calculating the periods above referred to no account is to be taken of the residue of the year in which the author dies, or of the year in which the work is published, represented, or performed.

Art. 10. Copyright is lost in default of heirs.

Not subject of copyright.

Art. 11 (as amended by the law of 1910). The following are not the subject of copyright: (1) laws, ordinances, and official publications; (2) information and news of the day inserted in newspapers; (3) speeches and arguments before the courts or in deliberative assemblies and political meetings.

Art. 12. The publisher or performer of an anonymous or pseudonymous work safeguards the rights of the author and his assigns, unless the author's true name be registered.

Rights of collaborators.

Art. 13. Copyright in collaborations belongs to all the authors. In case the parts of the work are not distinct, the right of any one opposed to the publication, representation, or performance can, on payment of its value, be acquired by the others, in the absence of

contrary agreement, but the name of the opposing author may not then be put on the work against his will. If the several parts of the work be distinct, the several authors may each publish, represent, or perform their distinct parts in case any of the others are opposed to the publication, representation, or performance of the common work, and in the absence of contrary agreement.

Compilations.

Art. 14. Any one making a lawful compilation from the works of various authors is to be considered the author of the compilation and to have copyright in the whole work, without prejudice to the copyright of the various authors in their respective portions.

Registration.

Art. 15 (as amended by the law of 1910). In default of legal registration the rights of successors, assignees, and mortgagees cannot be exercised as against third persons. The author of an anonymous or pseudonymous work may register his true name. Rules as to registration are to be made by ordinance (*i*). (Art. 16.)

Art. 17. Unpublished works are not subject to execution by creditors without the consent of the author or his assignee.

Art. 18. An assignee may not, without the author's consent, alter the name or appellation adopted by the latter or modify the title of the work or correct the work itself.

Notes, corrections, &c.

Art. 19. Neither the addition of the marks called "Kun-ten" (*k*), interlineary translations, punctuations, critical notes, appendices, plans, designs, and other corrections, additions, suppressions, and alterations of the original work, nor the adaptation of the work, create copyright specially in these modifications, unless works of this character can be considered new works.

Newspaper articles.

Art. 20 (as amended by the law of 1910). Articles in newspapers, with the exception of stories and novels, and works belonging to the domain of literature, science, or art, can be reproduced, with acknowledgment of source, unless the right of reproduction is expressly reserved.

Translations, reproductions, &c.

Art. 21 (as amended by the law of 1910). Any one lawfully translating a work enjoys copyright in his translation, without prejudice to the rights of the author of the original.

Art. 22. Whoever lawfully reproduces an artistic work by a different art to that employed in the original has copyright in his reproduction.

(*i*) See *post*.
(*k*) "Kun-ten" are marks facilitating the reading of Chinese texts. Likewise the interlineary translations and punctuations only apply to Chinese characters.

PART V. JAPAN.

Photographs.

Art. 23. Copyright in a photograph lasts for ten years, calculated from the date of publication, or from the taking of the negative if it be not published.

Any one lawfully reproducing a work of art by photography enjoys copyright as long as the copyright subsists in the original work, without prejudice to any agreement between the parties concerned.

Art. 24. If photographs be made specially for the purpose of being inserted in a literary or scientific work, the copyright belongs to the author of the work and subsists as long as the work itself is protected.

Art. 25. The right to reproduce photographic portraits belongs to the person who has ordered them.

Art. 26. The provisions as to photographs are applicable to works obtained by an analogous process.

Art. 27. Regulations may be made with regard to the publication, representation, and performance of unpublished works the proprietors of which are unknown (*l*).

Piracy and the remedies therefor.

Art. 29. Any one infringing copyright must make reparation in accordance with the provisions of this law and those of the Civil Code, Book II., chap. 5.

Art. 30. The following are not piracies of published works: (1) reproduction otherwise than by a mechanical or chemical process and without any intention of publishing the reproduction; (2) making extracts and citing passages, provided the quotations are kept within legitimate limits; (3) selecting and collecting small portions within legitimate limits, intended for the use of schools, for a reading book or a course of ethics; (4) introducing phrases extracted from a literary or scientific work into a dramatic work, or to serve as the libretto of a musical work; (5) inserting in a literary or scientific work artistic productions to explain the text, and *vice versâ*; (6) reproducing by plastic art a painting or work of draughtsmanship, and *vice versâ*.

In the above cases the source must be clearly indicated.

Art. 31. Any one importing piracies with the object of selling and circulating the copies within the Empire is to be treated as a pirate.

Art. 32a. Any one publishing a collection of solutions of problems intended for classical exercises is to be treated as a pirate.

(*l*) By ordinance of 28th June, 1899, any person desiring to take advantage of this provision must advertise his intention in the "Official Gazette" and in at least four principal Tokio newspapers and in a newspaper of the author's domicile, if known. Publication can then be made if the author be not discovered within six months.

Art. 32b (new Article under law of 1910). Any one reproducing or publicly performing the work of another by means of cinematography shall be guilty of piracy.

Art. 33. Any one who, in good faith and without fault on his part, commits a piracy and makes profits to the detriment of third persons, must make restitution of these profits.

Art. 34. One of several co-proprietors of copyright may sue for infringement without the consent of the others, and recover his proportion of damages or profits.

Presumptions of authorship.

Art. 35. In a civil action there is a *primâ facie* presumption that the person whose name appears on the work as such is its author, and in the case of an anonymous or pseudonymous work, that the publisher named on the title-page of the work is the true publisher. In the case of an unpublished dramatic or musical work, the person who is named as its author in the announcement of the performance, or, if no one is no named, the organiser of the performance is, *primâ facie*, the author of the piece.

Precautionary measures.

Art. 36. When a civil or criminal action has been commenced for piracy, the Court may, at the request of the plaintiff, with or without taking security, forbid the sale and circulation, or seize or suspend the execution or performance of a work suspected of being a piracy. If at the trial the work is pronounced to be no piracy, the plaintiff will be civilly liable in damages.

Penalties.

Arts. 37 to 43 provide penalties of varying amount for the several offences under the statute. Piracies and all plant used exclusively in the production of infringements are to be confiscated, but only if they belong to the infringer, the printer, or the person who sells or circulates the piracies.

Limitation of actions.

Civil or criminal proceedings must be commenced within two years (*m*). (Art. 45.)

Transitory provisions.

Arts. 47 to 50 contain the transitory provisions.

Registration.

An ordinance of 15th June, 1910, prescribes the formalities necessary for registration under Art. 15. A request for registration must be addressed to the Minister of the Interior, and be in the prescribed form.

The registers are to be kept by the Minister of the Interior, and may be consulted and extracts obtained on payment of a fee.

Rights of Foreigners.

In absence of treaty.

The Japanese law of the 3rd March, 1899, provides for international protection only in the case where there is a treaty or

(*m*) The law does not state when this period is to begin to run.

PART V. JAPAN.

convention. Any foreign author, however, can obtain copyright by publishing first in Japan. Art. 28 of the above-mentioned law is as follows:—

"The provisions of this law shall apply to foreigners, so far as concerns the protection of their copyright, subject to the special stipulations, if any, contained in treaties and conventions: in the absence of such stipulations, the protection of this law shall be accorded to those persons who shall make the first publication of their works in the Empire."

Corea.

By Imperial Ordinances of 18th June and 29th August, 1910, the Japanese law was extended to Corea.

Japan and the Copyright Union.

Japan joined the Copyright Union in the year 1899 (*n*). At the meeting of the Powers held in Berlin in the year 1908, to consider what modifications in the original Convention of Berne were advisable, the representatives of Japan were instructed to oppose any increase in the stringency of the rules against translations; in fact their proposition was to be that under the Convention the translation into Japanese of a European work, and *vice versâ*, should be free. The contention of Japan was that she stood in a unique position; her manners, customs, religion, and traditions all differed from those of European nations, and the best means of enabling her to understand Western culture was through Western literature; and the Japanese language differed so essentially from other languages as to render satisfactory translations difficult to obtain. The representations of Japan were, however, overruled, and the majority of the Powers agreed to an increase of the protection of authors against the translation of their works (*o*). Consequently, although Japan has adhered to the Revised Convention, she has done so subject to a reserve as to rights of translation, in respect of which she remains bound by Art. 5 of the Convention of 1886, as revised by the Additional Act of Paris, 1896. She also makes a reserve as to the right of public performance of musical works, as to which she remains bound by para. 3 of Art. 9 of the Convention of 1886.

Japan is a "proclaimed" country in the United States, and entitled to the benefit of the American Copyright Act, 1909, but she has no treaty relations, other than the treaties already referred to (*p*), with France and the United States with regard to her extra-territorial jurisdiction in China.

(*n*) Thereupon all British consular jurisdiction in Japan as regards copyright ceased.

(*o*) *Ante*, p. 317.

(*p*) *Ante*, p. 477.

SIAM.

Law of 12th Aug., 1901.

On the 12th August, 1901, the first law on the subject of copyright was promulgated in Siam. This law relates only to literary copyright. It commences with a preamble which recites that when an author, with the resources of his imagination, intelligence, and knowledge has devoted his efforts to composing a work, and has caused it to be printed and published with a view to making a profit, it happens, particularly when the work has a considerable sale, that other persons do not fear to print and expose it for sale, and by these means cause the author to lose the profit to which he was justly entitled: that this practice is prohibited in the majority of foreign countries where all persons other than the author, or any person authorised by him, is forbidden to make extracts from his work or to copy it or publish it: consequently, Her Majesty has deemed it necessary to make a law which shall have force and vigour throughout her dominions, to protect the interests of authors in a manner conformable to justice. The main provisions of this law, which came into force on the 12th August, 1901, are as follows:—

Books only protected.

Art. 3. Any one publishing a work in the form of a book or pamphlet, and complying with the conditions of this law, possesses, with respect to his work, identical rights with those he has in any other property belonging to him.

Art. 4. Copyright includes the exclusive right of abridging, translating, circulating, or selling the work.

Duration.

Art. 5. The term of copyright is the life of the author and seven years from his decease, with a minimum of forty-two years.

Art. 6. The author's heirs can acquire copyright in his posthumous works for a period of forty-two years from the author's death.

Art. 8. The copyright in works intended for instruction and composed at Government expense vests in the Government.

Formalities.

Art. 10. In order that a book may acquire copyright it must be printed and submitted to the proper official for registration within twelve months from publication. If the author die before having acquired his right, the heirs must seek the right within twelve months from his death. A copy of the work must also be presented to the official having charge of the register (Art. 12), and three copies must be deposited for certain libraries. (Art. 15.) Transferees may be registered. (Art. 15.) There is a fee payable on registration. (Art. 17.)

PART V. SIAM.

Infringement and remedies.

Art. 16. It is forbidden to make extracts from copyright works, or to translate, copy, or sell them, whether for profit or not. It is likewise forbidden to sell piracies without the authorisation of the proprietor of the copyright.

The proprietor of the copyright can recover damages for infringement, and all copies printed in violation of his rights belong to him.

Rights of Foreigners.

Foreigners.

The above law does not contain any provisions of an international character. According to Art. 7 it applies only to works printed and published for the first time in Siam, but apparently a foreigner so printing and publishing would be entitled to receive protection.

British consent or jurisdiction.

By the Siam Order in Council, 1906 (*q*), it is provided that any act which if committed in the United Kingdom or any British possession would constitute a violation of (*inter alia*) any statute, law, or Order in Council for the time being in force relating to copyright, shall, if committed by a British subject in Siam, be punishable in the consular Courts of that country, provided, nevertheless, that no proceedings instituted by any complainant, other than a British subject, shall be admitted, unless the Court is satisfied that effective measures have been taken for the punishment, in the consular or other Courts in Siam, of the like acts committed by the subjects of the State or Power of which the complainant is a citizen, with regard to the interests of British subjects.

EGYPT.

Native Courts.

The situation in Egypt with regard to copyright is somewhat peculiar. Art. 323 of the Egyptian Penal Code, first promulgated in 1884 and extended in 1889 to the whole of Egypt, forbids piracy of books. This applies to the native Courts (*r*).

Jurisdiction of the Mixed Courts.

Protection is also afforded to literary and artistic property by the Mixed Courts, which have jurisdiction in the case of civil disputes between natives and foreigners and between foreigners of different nationalities; the criminal jurisdiction of these Courts is very limited. These Mixed Courts, three in number, with a Court of

(*q*) Made under the powers conferred by the Foreign Jurisdiction Act, 1890.
(*r*) No general law applicable to all persons is possible in Egypt without the consent of the Powers, and, so long as the Capitulations subsist, it would seem impossible for Egypt to adhere to the Berne Convention with any advantage.

Appeal, were established under the Convention of 1875. Regulations have been established for these Courts, and under Art. 34 the new Courts in the exercise of their jurisdiction in civil and commercial matters, and within the limits given to them in criminal matters, are to apply the codes presented to the Powers by Egypt, and in case of the silence, insufficiency, or obscurity of the law, the judge shall observe principles of natural justice and the rules of equity.

The codes are silent as to copyright, but the Courts have decided that under the principles of natural justice and the laws of equity, copyright ought to be recognised.

At the date of the third edition of this work five decisions had been given by these Courts and a considerable number have since then been added, the plaintiffs in the decided cases having been generally either Frenchmen or Italians. These decisions relate to the reproduction of novels in Egyptian newspapers, the unauthorised performance and execution of European musical, musical dramatic, and dramatic works, and infringement of photographs.

The principle laid down by the Court of Appeal in what may be termed the leading case of the *Société des Gens de Lettres* v. *The Egyptian Gazette* (*s*) is that "copyright is a veritable right of property, founded on labour," and that the absence of any special law on the subject in Egypt ought not to have the effect of destroying this right, but that it ought to receive protection by virtue of Art. 34 of the Regulations above referred to. All property ought to be respected, including literary and artistic property, and therefore an author ought to be entitled to bring an action for damages for infringement of his rights. In conformity with the principle here laid down, it has been held that no formalities are needed to obtain copyright in Egypt, and that authors of musical and dramatic pieces cannot be compelled to allow their performance on payment of a reasonable sum. The Mixed Tribunal at Cairo has also held that the copyright in a picture remains in the artist after sale of his work, unless there has been an agreement to the contrary (*t*).

Consular jurisdiction.

By the side of the civil jurisdiction thus exercised by the Mixed Courts is the criminal jurisdiction of the consular Courts of the various Christian countries. These Courts primarily deal with litigation between subjects of one and the same nation, but a

(*s*) Reported in "Le Droit d'Auteur," 1889, p. 101.

(*t*) *Schiffi* v. *Lekizian*, 16th May, 1896. In *Enoch* v. *Granato-Mezzacopo* (5th Dec., 1903), an injunction was granted against a vendor in Egypt of piratical copies of a musical composition printed in Bucharest.

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subject of one country is also at liberty to proceed against the subject of another country in the consular Court of the country of the latter, the law to be applied being the law of the defendant's country. An important judgment was delivered on the 12th March, 1896, by the consular Court of France, at Cairo, and affirmed by the Court of Aix, on the 11th February, 1897, which declared that "by virtue of the principle of exterritoriality recognised by international conventions, Frenchmen in Egypt are subject to the French penal law for all crimes and offences covered by that law. . . . This privilege of exterritoriality has the effect of subjecting Frenchmen to the local jurisdiction in Egypt in penal matters, and, as a necessary corollary, imposes the duty upon the French consular tribunals of trying matters deemed to be offences by French law"; and the defendant was fined under Arts. 425, 428, and 429 of the French Penal Code for infringement of the plaintiff's dramatic copyright (*u*).

M. Darras, in an able article contributed to "Le Droit d'Auteur" (*x*), contends that not only Frenchmen domiciled in Egypt are called upon to respect the rights of authors and artists exactly as though the parties were actually in France, but that Englishmen, Germans, Belgians, Dutch, &c., are under equal obligation to respect in Egypt not only the rights of their fellow countrymen, but also the rights of all others whose rights they would be obliged to respect in their own country; so that, for example, Englishmen in Egypt may be sued in the consular Courts for infringing the copyright of authors belonging to any country of the Copyright Union. However this may be with regard to the other European countries, it is not clear that the British consular Courts have jurisdiction in the matter of copyright. The English consular jurisdiction rests entirely upon Orders in Council made under the Foreign Jurisdiction Act, 1890, which codified the earlier laws on the same subject (*y*), and when the Mixed Courts were established in Egypt the jurisdiction of the consular Courts was, by Order in Council of 5th February, 1876, suspended as to such matters "as come within the jurisdiction of the Mixed Courts." It might be contended, therefore, that as the

(*u*) *Société des Auteurs et Compositeurs Dramatiques* v. *Jules Morvand*. "Le Droit d'Auteur," 1897, p. 129. (*x*) 1895, p. 165.

(*y*) See Piggott on Exterritoriality. Foreign jurisdictions exercised in consular Courts exist at the present time: (1) in civilized independent States, by virtue of express treaty, as in Turkey, Persia, and China; (2) in protected States, with a settled form of government, as in the protected African communities, where the relation of suzerain and dependent State involves such a jurisdiction; (3) in countries with no settled form of government, as in the African spheres of influence, or in the Pacific islands.

Mixed Courts have undoubtedly some jurisdiction in the matter of copyright, the British consular jurisdiction is ousted.

LIBERIA.

Law of 22nd Dec., 1911. Works protected.

Liberia has a copyright law dated the 22nd December, 1911. By this law authors of literary, scientific, and artistic works are granted in the Republic of Liberia the exclusive right of reproducing, selling, or authorising the reproduction of their works. (Art. 1.)

Meaning of "literary works."

Literary works include books, pamphlets, and other writings: dramatic or dramatico-musical works, choreographic works and pantomimes, musical compositions, works of design and painting, architectural drawings, works of sculpture, engraving, and lithography, illustrations, geographical charts, plans, sketches and plastic works relative to geography, topography, architecture or science, translations, adaptations, arrangements of music, and other reproductions in an altered form of literary or artistic works (*z*). (Art. 2.)

Period of copyright.

The period of copyright is for the life of the author and twenty years.

Formalities.

In order to secure copyright one copy of the work must be deposited with the State Department, and the Secretary of State must be satisfied that the work is an original one, and thereupon issue a certificate to the person demanding the same (*a*). (Arts. 5 and 6.)

No mention is made of performing rights, mechanical music, or cinematographs in the law, which must, at best, be regarded as incomplete.

Rights of Foreigners.

Art. 4 of the above law provides that "the exclusive right of selling a work includes the right to forbid the sale in Liberia of reproductions manufactured in a foreign country without the consent of the author."

Liberia has adhered to the Revised Berne Convention of 1908 without reserve.

(*z*) Cf. Art. 2 of the Berlin Convention. Photographs are not mentioned.
(*a*) Presumably these formalities are not required in respect of works published in any country of the Copyright Union.

PART V. TUNIS.

TUNIS.

French Protectorate.

By a treaty of 12th May, 1881, a French protectorate was established over Tunis.

The following law on artistic and literary property was passed on the 15th June, 1889, and published in the official Tunisian journal on the 20th June, 1889 (*a*).

Duration.

Art. 1. Authors of literary and artistic works enjoy during their entire life the exclusive right of sale, of reproduction, of representation or performance and circulation of their works throughout the territory of the regency of Tunis, and also the right of assigning such property in whole or in part. Nevertheless this protection is limited to (1) works published for the first time in Tunis, whatever may be the nationality of the author; (2) to works published in a foreign country, for the protection of which a diplomatic treaty can be cited.

Art. 2. The right is prolonged for fifty years after the death of the author, for the benefit of his heirs or assigns.

Definition clause.

Art. 3. The expression "literary and artistic works" includes books, pamphlets, and all other writings, dramatic or dramatic-musical works, musical compositions with or without words, works of drawing, painting, sculpture and engraving, lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture, and sciences in general: in short, every production of the literary or scientific and artistic domain which can be published by any method of printing or reproduction (*b*).

Copyright does not exclude the right of making quotations for purposes of criticism, argument, or education.

Newspapers.

Every paper may reproduce an article published in another paper, on condition of indicating the source, unless this article carries a special warning that reproduction is forbidden.

Translations.

Art. 4. Copyright in a literary work includes the exclusive right of making or authorising a translation of it. Copyright in musical compositions includes the exclusive right of making arrangements on the motifs of the original work.

Penalty for infringement.

Art. 5. No literary or artistic work not become public property may be publicly performed in the regency, without the formal consent in writing of the author or his assigns, under penalty of a fine of fifty piastres at least, and confiscation of receipts for the benefit of the authors or their assigns.

(*a*) The law is translated from "Le Droit d'Auteur," 1889.
(*b*) This follows the definition in the Berne Convention, 1886, but not that in the Revised Convention, 1908.

Art. 6. Piracy in the territory of the regency constitutes a misdemeanor; and so also the sale, exportation, and consignment of pirated works, as well as their importation into Tunisian territory.

Piracy.

Art. 7. Any persons who knowingly sell, expose for sale, keep in their shops for purposes of sale, or import into the territory of the regency, with a commercial object, pirated articles, are guilty of the same offence.

Arts. 8 and 9 refer to the penalties in the event of any infringement. The French Courts are alone competent to take cognizance of all claims or disputes under this law. (Art. 11.) Art. 463 of the French Penal Code (*c*) applies. (Art. 10.)

Rights of Foreigners.

Foreigners

Rights of foreigners under the law of 15th June, 1889, are limited by Art. 1 above set out: (1) to works published for the first time in Tunis, whatever may be the nationality of the author; and (2) to works published abroad, and for the protection of which a diplomatic convention can be invoked.

By the treaty of 12th May, 1881, before referred to, Tunis undertook not to conclude any international act without the assent of France, but, with that assent, she has ratified the Revised Berne Convention, subject to a reservation as to works of applied art.

M. Darras' opinion

It is the opinion of M. Darras (*d*) that the law of 15th June, 1889, is applicable only to Tunisians who are not under the protection of some European Power. He contends that as regards France, the effect of the treaty of 12th May, 1881, is that the French tribunals are competent to punish offences against Frenchmen, and that inasmuch as a French law of 28th May, 1836, has enacted that "offences, delicts, and crimes committed in the Levant shall be visited with the penalties provided by the French laws," Frenchmen in the Levant are subjected to the penal provisions of the French laws; and that, though by a French law of 27th March, 1883, consular jurisdiction in Tunis has been suppressed, this has not had the effect of abrogating the provisions of the law of 28th May, 1836. According to M. Darras there is this special peculiarity about Tunis, that this latter law does not apply to Frenchmen only, but ought to be extended to all Europeans, because, since the establishment of the French protectorate over Tunis, all the European Powers have renounced the benefit of

(*c*) *Ante*, p. 366, n. (*c*).
(*d*) "Le Droit d'Auteur," 1901, p. 91.

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the Capitulations (*e*), and this, he contends, has had the effect not only of attributing competence to the French tribunals at Tunis over all Europeans, but of rendering applicable the provisions of the French penal laws. This opinion is, to some extent, confirmed by a judgment of the Tunis Court delivered the 29th December, 1900 (*f*), by which certain Italians were fined under Art. 463 of the French Penal Code, though the decision of the Court was based not upon the grounds suggested by M. Darras, but erroneously, no doubt (*g*), on the provisions of the Berne Convention.

Tunis was, in the year 1912, "proclaimed" by the United States as a country entitled to the benefit of the American Copyright Act, 1909.

SOUTH AND CENTRAL AMERICA.

None of the States of South or Central America is a party to the Berne Convention, but these States have endeavoured to establish a separate Convention according mutual protection to their literary and artistic works. These Conventions, known as the Pan-American Conventions, have already been referred to earlier in this work (*h*), but by no means all the States have adhered to these Conventions, and although most of the States have domestic legislation on the subject, authors generally receive only scanty protection for their works in South and Central America.

ARGENTINE REPUBLIC.

Old law.

Prior to the passing of the law of the 23rd September, 1910, hereinafter referred to, the law of copyright in the Argentine Republic was uncertain and unsatisfactory. Art. 17 of the Constitution of 1869 had provided that every author or inventor should be the exclusive proprietor of his work "for the period allowed by law." No law was, in fact, passed until the law of 1910, and, in the meantime, it was a matter of controversy as to whether the effect of the absence of any special law on the subject was to give an author unlimited copyright or no copyright at all. The better opinion, however, appears to have been that native authors had unlimited copyright in their works, and, probably, foreigners

(*e*) See British Order in Council, 31st Dec., 1883. Piggott on Exterritoriality.
(*f*) "Le Droit d'Auteur," 1901, p. 57.
(*g*) According to the provisions of the Berne Convention it is the law of the country where the piracy is committed that is applicable.
(*h*) *Ante*, p. 328.

resident in Argentina also; but it is believed that no works of foreigners published abroad were ever held by the Courts to be entitled to protection.

Law of 23rd Sept., 1910.

The situation has now been to some extent cleared by the passing of the law of the 23rd September, 1910, although that law can only be described as meagre and unsatisfactory. This law seems to admit the previous existence of copyright, inasmuch as, in recognising "scientific, literary, and artistic property" in all works made public or published in the Argentine Republic, it declares that the same shall be regulated by "the common law under the conditions and restrictions stated in this law." (Art. 1.)

Works protected.

A wide definition of "scientific, literary, and artistic property" is given by Art. 2, which provides that this shall include "writings of any nature or extent, theatrical and musical compositions of any kind, works of painting, sculpture, architecture, and engraving, geographical maps, plans, designs, and photographs, in short, any production of a scientific, literary, or artistic character, whatever be the mode or form of reproduction."

The protection accorded.

Copyright consists of the right "to arrange, publish, perform, exhibit in public, assign and translate the work, to authorise translation, and to reproduce the same in any form." (Art. 3.)

Owner of the copyright.

In the absence of contrary agreement, the copyright belongs to the author, and if there is more than one author the copyright belongs to them all in equal shares (*i*). After the author's death the copyright passes to his heirs; but this copyright may be assigned *inter vivos*. (Arts. 4 and 5.) In the case of anonymous contributions to a collective work, supplied at request, the authors do not, in the absence of contrary agreement, retain their copyright (Art. 4), and, presumably, in such a case the copyright belongs to the proprietor of the collective work. By Art. 6, however, it is provided that, in the absence of contrary agreement, the author is understood to reserve the right to reproduce his work in any form whatsoever without any express reservation.

Period of copyright.

The period of copyright protection is during the life of the author and for ten years after his death: in the case of collaborations the ten year period runs from the death of the last surviving author: and in the case of posthumous works the period of protection is twenty years from publication. (Art. 5.) No express provision is made for the case of anonymous or pseudony-

(*i*) In a case of *Fernandez-Gomez* v. *Gheraldo* (Buenos Aires, 27th Feb., 1912), the Court refused to restrain the performance of a play at the request of one of two co-authors unless the plaintiff produced a consent of his co-author. But the correctness of this decision has been questioned. "Le Droit d'Auteur," 1912, p. 49.

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mous works, and, although Art. 4 declares that anonymous or pseudonymous authors are "represented" by the lawful publisher, it does not seem to follow that the period of copyright is to be regulated by the life of the latter.

Formalities. Although no express mention of reserve of copyright is necessary, copyright is dependent upon the deposit of two copies with the National Library within fifteen days if the work appears in the capital, or within thirty days if it appears elsewhere in Argentine territory. The period of fifteen days applies also to works printed abroad and published by a publisher in the Republic, but the time runs from the first day when the work is placed on sale in Argentine territory. In the case of works of painting, architecture, and sculpture, the deposit is to consist of a sketch of the original work, with such additional particulars as may be necessary to identify the work. The deposit is to be made by the printer or publisher, but the penalty falls upon the author, for, although copyright is only suspended in the first instance, if deposit is not made within two years the work falls into the public domain. (Art. 7.)

Newspaper articles. Provided the source be acknowledged, newspaper articles—except those which treat of sciences or arts, or those the reproduction of which is expressly forbidden—may be reproduced. (Art. 8.)

Remedies. The remedies for piracy are a civil action for damages, seizure of infringing articles, or injunction against illegal performance of a theatrical work—the last two remedies at the peril of the plaintiff. (Art. 9.) There are no criminal remedies (*k*).

Retroactivity. The law contains no express provisions with regard to works published prior to the passing of this law, but it is presumed that, as the Act is only a modification of the common law, such works receive the same protection as those published after the passing of the law.

Rights of Foreigners.

Provisions of the law as to foreign works. The rights of foreigners are regulated by Arts. 10, 11, and 12 of the law of 1910. Art. 10 provides that all the provisions of the law, with the exception of those contained in Art. 7 (relating to deposit), apply to works published in a foreign country, whatever be the nationality of the authors, provided they belong to nations which have either adhered to international Conven-

(*k*) The Federal Court of Buenos Aires, by a decision of the 23rd June, 1912, have held that questions of infringement of copyright fall within the jurisdiction of the local tribunals. "Le Droit d'Auteur," 1913, p. 66.

tions on the subject, or have concluded special treaties with the Argentine Republic. To obtain copyright for a foreign work no formalities are required to be observed, beyond those prescribed by the laws of the country of first publication (Art. 11), but the period of protection accorded by the Argentine law is not to exceed that conferred by the laws of the country of first publication. (Art. 12.) No express provision is made to the effect that the period of protection is not to exceed that conferred by the Argentine law, but this seems to follow from the opening words of Art. 10, stating that "the provisions of this law" are applicable to foreign works.

Effect of these provisions.

It will be noticed that copyright is only accorded to the works of foreigners published abroad, provided their authors belong to a country which has adhered to international Conventions or has concluded a special treaty with the Republic. If the authors are subjects of such a country it seems to be a matter of indifference what is the country of first publication, provided the formalities prescribed by that country have been observed. It is thought that the "international Conventions" referred to in Art. 10 include only those Conventions to which the Argentine Republic has adhered. The Republic has adhered to the Monte Video Convention, to which Belgium, France, and Spain are also parties. Belgian, French, and Spanish authors are therefore entitled to protection of their works in Argentina (*l*), but Great Britain is not a party to that Convention, nor has she any special treaty with Argentina on the subject of copyright. At the present time, therefore, it does not appear to be possible for a British subject to obtain copyright for his works in Argentina, except by publishing his works in that country. As previously pointed out, copyright is accorded to all works "made public, or published, in the Argentine Republic." It will be noticed that this does not expressly require the works to be "first" published in the country, though it is possible that this may be the construction placed upon the law by the Argentine Courts.

BOLIVIA.

Law of 1909.

On the 29th October, 1909, the Bolivian Congress passed a new law on the subject of copyright. This law supersedes a ministerial decree of the 13th August, 1879, based largely upon

(*l*) It is believed that authors belonging to these countries have met with some success in the Argentine Courts. "Le Droit d'Auteur," 1914, p. 71.

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the Portuguese Code of 1867, by which copyright in Bolivia was previously regulated, and the new law, both in respect of period of protection and in other respects, is less liberal to authors than the old law (*m*).

Works protected.

By this law of 1909 intellectual property includes "scientific, artistic, and literary works" (Art. 1), and this property is exerciseable by (1) authors, (2) translators, (3) publishers who publish works previously unpublished, (4) persons who abridge or summarise the works of another with his consent, (5) heirs succeeding to an author's property, (6) authors of maps, plans, and scientific designs, and (7) composers of music, painters, sculptors, &c. (Art. 2) but the law contains no other definition of the works to be protected.

Period of protection.

The general period of copyright protection is the life of the author and thirty years after his death (*n*). (Art. 4.) The benefit of the law is granted to the State and to artistic, scientific, and literary societies, to institutions and to educational bodies legally established (Art. 3), but no statement is made as to the period during which such bodies are to enjoy protection. In the case of a posthumous work, the publisher enjoys protection for thirty years from the date of publication, without prejudice to the rights of the heirs of the author, if the author is known: if he is not known, then for a period of twenty years only from the date of publication (*o*). (Arts. 6 and 7.)

In order to acquire copyright it is necessary to register the work with the Ministry of Education, and to deposit "in the public libraries" (*p*) a signed copy of the work, but works of painting, sculpture, &c. are not subject to the obligation as to deposit. Registration must be effected within one year from the date of publication, failing which the work falls into the public domain. (Arts. 9, 10, 11, 12.)

Infringement of copyright.

"Amongst other things," (1) any change in the title or substance of a work made with a view to publication, and (2) illegal reproduction abroad of the work of a native, are to be considered infringements of copyright (Art. 15), but the law is no more precise than this upon the question of infringement of copy-

(*m*) A fact which, as "Le Droit d'Auteur" (1910, p. 102) justly observes, is "unique in the modern history of copyright."

(*n*) Under the decree of 1879 copyright continued for fifty years after the author's death.

(*o*) The periods under the old law were respectively fifty years and thirty years.

(*p*) The number of copies to be deposited, therefore, depends upon the number of the "public libraries" for the time being.

right. The State is given the right to expropriate any work which has once been published, if the same is out of print and the author or his heirs will not reprint the same, notwithstanding that the work has not fallen into the public domain. (Art. 18.)

Remedies.

A pirate is liable to pay as a penalty the value of copies illegally sold or, if the number sold is unknown, the price of 500 copies. (Art. 14.) If the piracy has been committed abroad the pirate may be proceeded against in accordance with the provisions of the Penal Code or international arrangements. (Art. 15.)

Rights of Foreigners.

Under the decree of 1879, foreign authors were granted the same advantages as were accorded to Bolivian authors, resident in the foreign country, subject to some modification in the case of translations. The new law contains no provisions whatsoever as to the rights of foreign authors, and such authors can only claim protection for their works under some treaty. Bolivia has a treaty with France, dated the 8th September, 1887, by which the subjects of either country enjoy in the territory of the other the same rights of copyright as natives. Bolivia is also a party to the Monte Video Convention.

BRAZIL.

History of copyright legislation.

Legislation in Brazil on the subject of copyright is of modern growth, for, with the exception of some crude provisions in the Criminal Code of 1830, the monarchy was entirely opposed to any such legislation.

When the form of government was altered to a republic in 1889, a new Penal Code was promulgated (11th October, 1890), which contained a special chapter on literary and artistic property, which is still in force; and the Constitution of 24th February, 1891, by Art. 72, s. 26, provided that "authors of literary and artistic works are guaranteed the exclusive right of reproducing their works by printing or any other mechanical process. The author's heirs shall enjoy this right for the period that the law shall determine." No law was, however, passed until the 1st August, 1898, when the law which now mainly regulates copyright in this country came into force. This law repeals "all contrary provisions" in other laws, and this, it is conceived, practically amounts to a repeal of the provisions of the Penal Code of 1890, so far as they relate to copyright, except as to penalties.

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The law of 1st August, 1898, is as follows (*q*):—

Law of 1st August, 1898.

Art. 1. The rights belonging to the author of a literary, scientific, or artistic work consist of the exclusive liberty of reproducing or authorising the reproduction of his work by publication, representation, performance, or any other means whatsoever.

Art. 2. Defines literary, scientific, and artistic works nearly in the words of Art. 4 of the Berne Convention as comprehending "books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of painting, sculpture, architecture, engraving, lithography, photography; illustrations of all sorts; charts, plans, and sketches; in fact, every production whatsoever in the literary, scientific, or artistic domain."

Duration of copyright.

Art. 3. The following are the periods of protection: (1) For the right of reproduction in any form whatsoever, fifty years from the 1st January of the year of publication; and (2) for the right of translation, public representation, and performance, ten years, dating in the case of translations from the 1st January of year of publication, and in the case of public representations and performances from the first authorised representation or performance (*r*).

Assignability.

Art. 4. Copyright is personal property, assignable and transmissible in whole or in part, in conformity with the following rules: (1) Assignments *inter vivos* shall only be valid for thirty years, after which the copyright, if still subsisting, shall revert to the author; (2) at every new edition the author has the right to either correct and revise his work or regain his copyright on making compensation to the assignee as prescribed by this law.

Art. 5. An assignee of copyright may not modify the work for sale or exploitation.

Art. 6. In the absence of a legal publishing agreement the copyright is presumed to remain vested in the author, and the pub-

(*q*) Translated from the French translation in "Le Droit d'Auteur," 1898, p. 101.

(*r*) Art. 345 of the Penal Code of 11th October, 1890, forbids the reproduction of any literary or artistic work by means of printing, engraving, lithography, or any other mechanical process during the life of the author or of the person to whom he has assigned his property (!) and ten years after his death, if he leave heirs; and as to translations, Art. 347 simply forbids to translate and sell any writing or work without the author's leave; and Art. 348 likewise forbids public performance of musical and dramatic works. It will be noticed that the provisions of the law of 1898 are conceivably less favourable to the author than those of the Penal Code of 1890, for, under the former, copyright might possibly cease whilst the author was still living. As Art. 72 of the Constitution has enacted "that the *heirs* of authors shall enjoy this right during the period that the law shall determine," could the provisions of the Code of 1890 (as we have seen, not necessarily repealed) be invoked if they were more favourable to the author than those of the law of 1898?

lisher must pay the author at least one half of the sale price of the whole edition.

Art. 7. Copyright is protected from the author's creditors.

Posthumous works.

Art. 8. Posthumous works are protected for the same periods as prescribed in Art. 3, but the right of translation and public performance runs from the 1st January of the year in which the author dies.

Collaborations.

Art. 9. Collaborators, in the absence of agreement to the contrary, enjoy equal rights, and the authority of all of them is necessary for reproduction. Disputes are to be determined by the Courts.

Art. 10. The consent of one collaborator is sufficient to authorise the stage production of a theatrical work, but the others are to be indemnified.

Anonymous and pseudonymous works.

Art. 11. In the case of anonymous and pseudonymous works the copyright is vested in the publisher until the author makes himself known.

Art. 12. Translations are protected as original works, but the translator can only prevent other translations during the period mentioned in Art. 3 (2).

Formalities.

Art. 13. In order to obtain copyright, it is indispensable to register and deposit at the National Library within a period of two years expiring on the 31st December of the year following that in which the term fixed by Art. 3 commences to run: (1) one perfect copy of a work of art, literature, or science, printed, photographed, lithographed, or engraved; (2) a perfectly clear photograph of minimum dimensions of 18 by 24 centimetres of works of painting, sculpture, architecture and design, sketches, &c. (*s*).

Performing rights.

Art. 14. The right of performance of a literary work is regulated by the provisions as to musical works.

Musical compositions.

Art. 15. No public performance or execution, in whole or part, of a musical work may take place without the author's consent; but after a work has been published and put in sale it is understood that the author gives his consent to its performance where no payment is exacted.

Art. 16. Copyright in a musical work includes the exclusive right to make arrangements and variations in the *motifs*.

Artistic works.

Art. 17. The transfer of an artistic work does not carry the

(*s*) Regulations as to registration and deposit were issued on 11th June, 1901. A demand for registration must be addressed to the director of the National Library, and the demand must indicate nationality, profession, domicile of the author, title of work, place and date of first publication, reprinting, representation or performance, and all essential elements of the work. A fee of two milreis is charged for registration.

right of reproduction for the profit of the proprietor of the work; but the artist may only reproduce it if he acknowledges that the work is not original.

Art. 18. The reproduction of a work of art by industrial processes, or the application of a like work to industry, does not deprive a like work of its artistic character; but it remains subject to the provisions of this law.

Piracy.

Art. 19. Any deceitful or fraudulent infringement of copyright constitutes the offence of piracy. Any one knowingly selling piracies, exposing them for sale, having them on his premises for sale, or importing them into the country for commercial purposes, is guilty of the same offence.

Art. 20. Accomplices are subject to the same penalties as the authors of these offences.

Art. 21. The following are to be considered piracies: (1) translations of foreign works; (2) reproductions, translations, representations, and performances, without the consent of the author, if necessary, when modifications, additions, or suppressions have been made to the works without the author's consent.

Not piracy.

Art. 22. The following will not be considered piracies: (1) reproduction of passages or fragments of published works, or the insertion, entire, of short writings in the body of a large work, provided the latter be a scientific work or a compilation of writings of various authors, composed for the purpose of public instruction, the source to be acknowledged; (2) reproduction in journals or periodicals of news, political articles, extracts from other journals and periodicals, or the reproduction of speeches at public meetings of whatever nature. The journal from which the extracts are taken should be named, and the author alone has the right to publish an article or a speech separately; (3) reproduction of official and state documents; (4) reproduction, in books and journals, of passages for criticism or polemics; (5) reproduction, in the body of a writing, of works of figurative art to illustrate the text, on condition of expressly naming the author; (6) reproduction of works of art found in streets or public places; (7) reproduction of portraits or busts executed on commission, when made to the order of the proprietor of the object.

Penalties.

Arts. 23 to 47 relate to the penalties for infringement and procedure for recovery thereof. Under the Code Penal fines were inflicted and confiscation of piracies decreed, but the fines were ridiculously small [illegible] operated rather as an encouragement than a deterrent to pi[illegible]he provisions of the Code Penal as to penalties are expres[illegible]tained by Art. 23 of the law of 1898, but, in addition to the fines, the pirate is now made liable in

damages, and the piracies and all instruments of piracy are liable to confiscation. Unauthorised performances of musical and dramatic works are punished by forfeiture of the receipts and imprisonment. One collaborator may sue for infringement without joining the others.

Rights of Foreigners.

The strong hopes that have been entertained that Brazil would be the first of the Latin States of America to join the Copyright Union have, for the moment, been dashed.

Provisions of law of 1898.

The law of 1898 is conceived in a strictly national spirit, Art. 1 providing that the rights thereby accorded are conferred "upon natives and foreigners residing in Brazil (*t*), according to the terms of Art. 72 of the Constitution, provided they fulfil the conditions prescribed by Art. 13."

There is, indeed, one clause in the law of 1898 that seems to afford some protection to foreign works. Clause 21 (1) is in the following terms: "Translations of foreign works in the Portuguese language, not expressly authorised by the authors and made by foreigners not domiciled in the Republic, and not printed there, are to be considered piracies. Authorised translations must bear the inscription 'translation authorised by the author,' and such alone may be imported, sold, or performed in the territory of the Republic." Though the object of this Article is, admittedly, simply to exclude the wretched translations that had been previously freely imported from Portugal in large quantities, it may operate indirectly to give some protection to the foreigner (*u*).

Law of 17th January, 1912.

In the year 1912 a law was passed (*x*) providing that all the provisions of the law of 1898, with the exception of Art. 13 (*y*), should apply equally to scientific, literary, and artistic works published in foreign countries, whatever might be the nationality of their authors, provided that they belonged to nations which have concluded with Brazil treaties guaranteeing reciprocal protection to Brazilian works (Art. 1), but the period of protection must not exceed the period allowed to the works by the laws of the country where the same are first published, and the provisions of the law are not to apply to works published, or in course of publication, at the date of the promulgation of the law. (Art. 3.) In order to enjoy the benefit of this law, it is only necessary that

(*t*) The necessary period of residence is not stated.
(*u*) See "Le Droit d'Auteur," 1898, p. 114.
(*x*) Law No. 2577, 17th January, 1912; "Le Droit d'Auteur," 1912, p. 34.
(*y*) Relating to registration of works.

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Present state of international protection in Brazil.

the author of the foreign work should comply with the formalities required by the laws of the country of first publication. (Art. 2.)

This law follows the Argentine law of the 23rd September, 1910, and only grants protection to foreign works on the basis of same treaty, but the passing of the law raised hopes that Brazil would adhere to the Berne Convention. These hopes were confirmed when the negotiations which France had opened up with Brazil, with a view to entering into a treaty for the mutual protection of works published in either country, were momentarily broken off, upon the ground that Brazil desired to consider whether the better course would not be for her to join the Copyright Union. A clause was actually introduced into the Budget law of the 4th January, 1913, expressly authorising the Government to ratify the Revised Convention of 1908, but the Government failed to take advantage of the permission thus accorded, and, as the clause had not re-appeared in the Budget of 1914, it is not clear whether the permission given by the Budget of 1913 has not lapsed. At any rate, there does not seem any immediate prospect of the hopes that have been raised coming to fruition, and, in the meantime, the negotiations for a treaty between France and Brazil were reopened, and resulted in the signing of a treaty between the two countries, dated the 16th December, 1913, guaranteeing protection to the authors of either country in the other upon the "most favoured nation" footing (*z*). The only other country which has a copyright treaty with Brazil is Portugal (1st November, 1889) —this treaty being of a rudimentary character. Brazil was one of the parties to the Monte Video Convention of 1889, but she appears never to have ratified the same. She is, however, bound by the Pan-American Convention of Rio de Janeiro, 1906 (*a*).

CHILI.

Copyright in literary and artistic works is regulated in Chili by the law of the 24th July, 1834, and is further sanctioned by the Civil Code of 1855, Art. 584. Authors can take civil proceedings for damages under Art. 2314 of the Civil Code, or proceed criminally against the offender under Art. 471 of the Penal Code, which provides that the punishment of minor transportation or banishment (*b*), or a fine of 100 to 1,000 pesos may be inflicted on any person who commits any fraudulent act relating to literary or artistic property, and that copies, implements, or

(*z*) "Le Droit d'Auteur," 1914, p. 4.
(*a*) *Ante*, p. 328.
(*b*) Enforced residence in a fixed locality.

articles pirated, fraudulently imported or circulated, may be confiscated for the benefit of the injured person, and that engraving plates and implements used for the committal of the offence may be confiscated where only useful for that purpose.

The law of 24th July, 1834, provides as follows:—

Art. 1. Authors of any kind of writing, or compositions of music, painting, drawing, or sculpture, and, in short, all persons to whom the first conception of a work of literature or *des belles lettres* belongs, shall have the exclusive right during their lives of selling, causing to be sold, or circulating in Chili reproductions of their works, whether by printing, lithography, moulding, or any other process intended to reproduce or multiply copies. Duration.

Art. 2. Their legatees or heirs shall enjoy the same right for five years, which may be extended to ten, if the government thinks fit; but if the inheritance devolves on the treasury, the work shall become public property.

Art. 3. Authors and their heirs may transfer their rights to any person.

Art. 4. The proprietor of the MS. of a posthumous work shall enjoy copyright for ten years, with no extension: the period shall run from first publication, and on condition that the work is published separately and not in an edition comprising the works of the author published in his lifetime: in this case the posthumous work shall share the fate of those works. Posthumous works.

Art. 5. The possessor of posthumous MSS. containing corrections of a work published in the lifetime of the author shall enjoy copyright for ten years, with no extension, on condition that he brings the MSS. before the ordinary Court in the year following the death of the author, and clearly proves that they are his.

Art. 7. Theatrical pieces shall, in addition, be protected against representation in any theatre in Chili without the written consent of the author or his heirs during the life of the author and five years from his death, during which latter period the copyright belongs to the heirs. Dramatic works.

Art. 8. When a work has been composed by a body of several persons, they shall enjoy copyright for forty years from first publication:

Art. 9. Translators of works and their heirs shall enjoy the same rights as authors and their heirs.

Art. 10. To enjoy the rights given by these articles, it is not necessary to obtain any title from government, but it will suffice to deposit three copies of the work at the public library of Santiago and to mention the proprietor at the head of the work. Deposit.

Art. 11. The government may grant an exclusive privilege for five years to persons reprinting interesting works, provided the reprint be correct and handsome.

Art. 12. If the author or publisher do not desire to enjoy copyright, and do not fulfil the formalities prescribed by Art. 10, the printer must deposit three copies as aforesaid.

Art. 13. Printers must also deposit at the library two copies of every periodical, paper, or separate publication printed by them, and send one copy to the Ministry of the Interior and one to each Procureur fiscal.

Art. 14. After the expiration of the periods previously mentioned, every work shall become public property, and any person may take advantage thereof as seems good to him.

Piracy.

Art. 15. If any person reprint, engrave, or imitate the work of another, or contravene in any way the provisions of this law, the person interested may bring him before the judge, who shall decide the matter summarily according to the laws in force relating to encroachments on the property of another.

Art. 584 of the Civil Code of 1855 provides that the productions of talent or intellect are the property of their author. This property is regulated by special laws.

Rights of Foreigners.

Foreigners.

Art. 6 of the law of 24th July, 1834, provides "that foreigners who publish their works in Chili shall enjoy the same rights as Chilians, and if they publish in Chili a new edition of works published in another country, they shall enjoy like rights for ten years." This clause seems a model of bad draftsmanship. Literally construed, foreigners publishing at any time in Chili would obtain copyright, and the foreigner publishing a new edition would apparently not need to be the proprietor of the copyright in the author's native country. Whether such a literal construction would prevail is not, however, certain. At any rate, the foreigner must make the deposit required by Art. 10. Chili has signed the Convention of Monte Video and the Pan-American Convention, but, hitherto, she has ratified neither. She is a "proclaimed" country entitled to the benefit of the United States Copyright Act, 1909, and by a treaty with the same country, dated the 6th December, 1898, it was agreed that publications made in violation of the copyright laws of the country of destination should not be allowed to be carried as postal packages between the two countries. Negotiations between France and Chili for a copy-

right treaty have recently been opened up, but at present Chili has no express treaties on the subject.

COLUMBIA.

Copyright in Columbia is governed by a long law of the 20th October, 1886, based largely upon the Spanish law of 10th January, 1879. Its main provisions are as follows (*c*):—

Art. 1. Literary and artistic property, or copyright, consists in the privilege accorded to authors by law of profiting by their works, during a fixed period and in consideration of certain previous formalities.

Art. 2. For the purposes of the law, an author means a person who has produced an original work; also a person who recasts or compiles, or who makes an abridgment or summary of another work, on condition that in these various works he keeps within the limits allowed by law and international treaties.

Art. 3. The benefits of this law can be claimed by any Columbian who publishes a work in a foreign country, even in a country with which there is no literary convention. **Who entitled to copyright.**

Art. 4. Any person who first publishes an unpublished work, of which nobody is the owner, from a manuscript of which he is the proprietor, is regarded as an author.

Art. 5. The State, corporations, and persons constituted by law also enjoy literary copyright, so long as they have a legal existence.

Art. 6. For the purposes of this law, a literary or artistic work means any original production resulting from individual effort or labour of intellect, imagination, or art.

Not only works completely original are considered to belong to the person producing them, but also those of which the elements, though drawn from other authors, have been selected with discernment, clothed with a new form, and intelligently adapted to a purpose more or less general.

Art. 7. Ideas, philosophical or scientific, conceptions or systems, and other parts of human knowledge, apart from the particular form with which the author or artist has clothed them, do not constitute private property and may be freely presented under new forms.

Art. 9. Every work of the intellect, after having been published by printing, engraving, or any other analogous process, and after the fulfilment of the legal formalities, constitutes a property

(*c*) "Le Droit d'Auteur," 1914, p. 129.

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regulated by the ordinary law without other limits than those resulting from the law.

Duration.

Art. 10. Literary and artistic property belongs to authors for life, and after their death to persons lawfully acquiring it for eighty years.

Assignability.

Copyright may be assigned (Art. 14), but if the copyright be assigned *inter vivos* twenty-five years after the author's death, it reverts to the author's heirs of necessity, if he has such. (Art. 15.)

Formalities.

Registration must be effected at the Ministry of Public Education, and three copies deposited for the use of the Ministry of Public Education and the National Library, but there is no necessity for deposit of works of art of which only single copies exist, and, in the case of dramatic works which have been publicly performed, but not printed, a single MS. copy must be deposited. (Art. 29.) Such registration must be effected within one year from the date of publication. (Art. 30.) If the author fails to register, the work becomes public property for a period of ten years, and within a year from the expiration of that time the author may recover the copyright by registration, but publishers may sell their stock lawfully printed during the period of forfeiture. If the author does not take advantage of his second opportunity, the copyright is lost altogether. (Arts. 21, 22.)

Special subjects of literary copyright.

The law provides that the copyright in letters shall remain in the sender. (Art. 33.) Translations and abridgments, unless they be of foreign works, are prohibited (Art. 39), but translators and abridgers have the copyright in their translations and abridgments. Except, however, in a case where they have obtained the authority of the author of the original work, they cannot oppose similar translations or abridgments being made by others. (Art. 41.) Similarly, compilations are protected if their method or arrangement is original. (Art. 42.) Documents preserved in archives and public libraries may only be copied with the permission of the proper authority (Art. 45), but laws, regulations, and official documents may be freely copied. (Arts. 54, 55, 56.)

Anonymous, pseudonymous and posthumous works.

The copyright in anonymous and pseudonymous works is protected by the publisher, until their authors disclose their identity. (Art. 46.) It is provided that works published orally during an author's life, as well as works published after his death, are to be included amongst posthumous works (Art. 47), but the law, apparently, gives no special period of protection for such works.

Collective and joint works.

The copyright in a collective work belongs to the author or editor, and a contributor must expressly reserve his copyright, if

he desires to do so. (Art. 50.) In the case of collaborations copyright endures for eighty years from the death of the last surviving author. (Art. 50.)

Periodicals.

As regards articles contributed to periodicals, the proprietors have only the right of once publishing articles supplied by paid contributors. The writers have the right to publish their works in any manner they think fit. (Art. 51.) Productions published in periodicals may be reprinted in other periodicals, unless the copyright is specially reserved, and in any case the source must be acknowledged. (Art. 52.)

Not piracies.

It is permissible to make quotations from another author, provided the passages taken are not so numerous or consecutive as to be considered as a literal imitation (Art. 37): it is also permissible to make selections from the works of others for school books, except against the express wishes of the authors of the originals. (Art. 38.)

Dramatic and musical works.

Dramatic and musical works may not be publicly performed without the consent of their authors (Art. 58), but if the authors do not fix the amount of royalty, they can only claim the amount of royalties fixed by regulations. (Art. 58.) Musical compositions, as well as arrangements, variations, &c., on a theme or air which is public property may be the subject of copyright. (Art. 60.)

Works of painting and sculpture.

Any person has the right to prevent his portrait or bust being exhibited or sold without his consent, but he cannot deprive a *bonâ fide* dealer of his possession without making him fair compensation. The permission of the family is necessary for the reproduction or sale of a bust or portrait of a deceased person. The absolute right of publishing a portrait can only be obtained by formal contract. (Art. 61.) The question whether a painter or sculptor preserves the exclusive right of reproduction by engraving or analogous process of his work after alienation must generally be answered in the negative, and depends upon the terms of the contract. (Art. 62.) (*d*)

Piracy.

Piracy committed in a foreign country is an offence if the products be sold in Columbia (Art. 64), but, as doctrines, opinions, and systems do not constitute literary property within Art. 7, a person who reproduces ideas, while changing their form, arrangement, or performance, is not guilty of piracy. (Art. 71.)

Penalties

The penalties for piracy are fine and confiscation of pirated copies (Art. 68), and, if the author of the piracy is not known,

(*d*) The law contains no express provisions as to photographs.

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the publisher, printer, and vendor are to be successively liable, subject to their proving good faith. (Art. 69.) Importers of piracies are liable to hand over to the proprietor of the copyright all copies in their possession and the value of copies sold.

French and Spanish law to be followed.

By Art. 73 it is provided that, if any contest shall arise on the question whether there has been a lawful reproduction of ideas in a work, or an unlawful reproduction of materials belonging to another, the judge or Court which has cognizance of the case, may order an examination or reference to experts, and in the absence of previous decisions settling the law, is to specially adhere to the principles sanctioned by French and Spanish law in relation to literary and artistic property.

Rights of Foreigners.

Foreigners belonging to Spanish-speaking colonies.

In treating the rights of foreigners the law of 1886 draws a distinction between Spanish-speaking countries and others, as appears from the following clauses:—

Art. 25. Authors, natives of countries where the Spanish language is spoken, and the legislation of which accords literary copyright, shall, within the limits of this law, enjoy in Columbia the rights hereby given by means of a civil action before a judge having jurisdiction, without the necessity for any treaty or diplomatic intervention.

Art. 65. It is also piracy to reproduce in Columbia copyright works, printed in Spanish in countries with which reciprocity exists in respect of literary property (*d*).

Other foreigners.

Authors of countries not falling within the above category, can only obtain protection in Columbia by virtue of treaties: but treaties are difficult to arrange, by reason especially of Art. 26 of the same law, which declares: "No reservation of the right of translation can be made in International Conventions entered into by the Government, except in the case of works written in a foreign language, and printed in a country where Spanish prevails, as, for example, works in Latin, Basque, or Catalan, printed in Spain." Again, Art. 39, which forbids unauthorised translations, adds: "But works of a foreign author, printed in a country with a foreign language, may be freely translated wholly or partially on the single condition that the author's name is not concealed"; and yet again, Art. 57, forbidding unauthorised performances of dramatic and musical works, adds: "If the work be

(*d*) The works of Columbian authors are protected even though they be published in a foreign country: see Art. 3, *supra*.

a foreign one, originating from another country where the Spanish language is spoken, and with which reciprocity exists in respect of literary property, the above prohibition shall refer only to works the authors of which expressly reserve the right of representation." There is, it will be noticed, a marked distinction between the language of Art. 39 and Art. 57, the former expressly stating that foreign works may be freely translated, but the latter making no such express statement as to the right of performing foreign musical and dramatic works. From this difference in language it might perhaps be contended that foreigners are to be protected in their performing rights, but such a construction is rather strained. Columbia has signed, but not ratified, the Pan-American Convention. She has also a treaty with Spain, dated the 28th November, 1885, containing the most-favoured-nation clause, one with Italy, dated 27th October, 1892, and one with Switzerland, dated the 14th March, 1908. A treaty with San Salvador, signed on the 24th December, 1900, does not appear to have been ratified by Columbia.

COSTA RICA.

Costa Rica possesses a complete law on the subject of copyright, the date of the law being the 26th June, 1896. Its main provisions are as follows (*e*):—

Art. 1. Intellectual property is of the same character and subject to the same rules as movable property.

Art. 2. It includes all kinds of scientific, literary, and artistic works, by whatever means produced.

Art. 3. Copyright lasts for the life of the author and fifty years after his death (*f*). Duration.

Art. 4. In case of alienation, the alienee becomes the proprietor of the copyright during his life and then his successors are entitled for twenty years after, but after that period the copyright re-vests in the author or his heirs or legatees for a period of thirty years. Title of alienee.

Art. 5. In case of failure of heirs, the property falls into the public domain.

Art. 6. The State, communes, official and private corporations, are entitled to the benefits of this law, but, except in the case of private corporations, copyright will last for twenty-five years only.

Art. 7. Literary and scientific works belong to their authors, and may not, under any pretext, be published or translated without their consent. Literary copyright.

(*e*) "Le Droit d'Auteur," 1896.
(*f*) But see Arts. 63 *et seq*.

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Art. 8. Private letters cannot be published without the authorisation of the writers.

Art. 9. No one may reproduce the works of another without the permission of the proprietor.

Art. 10. It is permissible to publish commentaries, supplements, notes, and critical observations on the subject of the work, provided no more of the text be taken than is necessary for this purpose.

Performing rights.

Art. 11. Unauthorised publication is forbidden of scientific or literary productions recited, played, or performed in public or private, and noted, stenographied, or obtained by phonograph or any other means; and (Art. 12) the same applies to professional lectures in universities, colleges, and schools: but (Art. 13) these provisions are not to prevent the publication of extracts.

Official records, newspapers, &c.

Art. 14. It is permissible to publish in journals, pamphlets, books or sheets, public documents emanating from the government, provided they have been officially published, and the reproduction conforms to the official text; but (Art. 15) complete or partial collections of speeches delivered in Congress or in an official capacity may not be published without consent.

Art. 16. Periodicals may reproduce publications inserted in other periodicals, unless forbidden (*g*).

Art. 17. Authors and translators of productions inserted in journals or reviews may, in the absence of contrary agreement, publish them in collections.

Translations.

Art. 18. A translator enjoys copyright in his translation, but without the right to prevent other translations.

Art. 19. The possessor or publisher of a work may not alter it without the author's consent.

Art. 20. Unlawful works are not protected.

Anonymous and pseudonymous works.

Art. 21. The publisher of an anonymous, pseudonymous, or posthumous work has the rights of the author, but (Art. 22) the author, translator, or proprietor of an anonymous or pseudonymous work may obtain the copyright on proving his title.

Art. 23. The property in posthumous works belongs to the author's heirs or legatees for a term of fifty years (*h*).

Art. 24. Amongst posthumous works are included: (1) works

(*g*) The Supreme Court of Justice in Costa Rica held, on the 14th July, 1903, that telegrams published in the Official "Gazette" could, by virtue of Art. 14, be reproduced by newspapers, though the "Gazette" purported to forbid such reproduction. Art. 14 is not confined to "official" documents. "Le Droit d'Auteur," 1904, p. 32.

(*h*) The law does not state whether this term runs from the author's death or from publication.

which have never been published in the author's lifetime; (2) abridgments, transformations, annotations, or corrections amounting to a new work and left by the author at his decease.

Art. 25. When a work has been alienated, the Courts are to decide whether the modifications are sufficient to make the work a new work within Art. 24 (2).

Dramatic and musical works.

Art. 27. The provisions as to literary copyright all apply equally to musical and dramatic works, save that (Art. 28) the exemption mentioned in Art. 10 does not apply to musical works.

Art. 28. The author's consent is necessary for altering a musical composition in any way by introducing accompaniments, making transpositions, arrangements, changing the text, &c.

Art. 29. No dramatic or musical work may be performed in whole or in part in a theatre or public place without the authorisation of the author or proprietor, and (Art. 30) this prohibition extends to performances given by societies s[illegible]nstituted as to receive a money contribution.

Art. 31. Authors or proprietors of musical and dramatic works must determine the rights of performance, otherwise they can only claim those fixed by the executive power.

Art. 32. In the absence of contrary agreement, half of the rights belong to the author of the music and half to the author of the libretto.

Art. 33. Copies of unpublished dramatic or musical works may not be made, sold, or lent on hire, without the author's permission.

Art. 34. Authors of a lyrico-dramatic work may publish and sell their work separately.

Art. 35. If the author of the libretto of a lyrico-dramatic work forbids performance the author of the music may substitute another libretto, and *vice versâ*.

Art. 36. When a dramatic or musical work is performed in public the title may not be altered or the text curtailed, changed, or added to without the author's consent.

Art. 37. The rights belonging to the author or proprietor of a dramatic or musical work are not subject to the creditors of the manager of the performance.

Artistic copyright.

Art. 38. The author of a work of art has the exclusive right of reproduction by any means, without exception.

Art. 39. Authors of plans, sketches, designs, maps, and other like works enjoy the benefits of this law.

Art. 40. The provisions relative to literary works apply equally to artistic works.

Arts. 41 to 48 relate to patents.

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Registration and deposit.

Arts. 49 to 62 relate to the formalities necessary to obtain copyright. Authors must register at the Office of Public Libraries, and deposit three signed copies of their works within a year from the day when the printing of the work is finished (*i*), without which no copyright can be obtained (*k*). (Art. 53.) In the case of musical and dramatic works which have been performed but not printed, it will be sufficient to deposit a signed manuscript copy (Art. 55), and in the case of artistic works, such as pictures, statues, architectural models, and such like works, it will be sufficient to deposit an engraving, design, or photograph of the work. Registrations will be published in the official journal within eight days.

Retrospective operation.

The benefits of this law are extended to scientific, literary, and artistic productions produced before this law came into force, provided they are registered within six months from the date of its doing so.

Forfeiture of copyright.

Art. 63. Scientific, literary and artistic works which have not been registered within the period appointed by law fall into the public domain, but after ten years from the day when that period expires, authors or proprietors, or their heirs or legatees, have the right to recover the copyright on duly registering within a year, in default of which the work falls definitely into the public domain.

Art. 64. Likewise scientific, literary, and artistic works which have not been reprinted (*réimprimées*) by the author or proprietor within a period of twenty-five years fall into the public domain.

Art. 65. Dramatic and musical works which have been registered and deposited in accordance with the provisions of Art. 55 fall into the public domain if they have not been published within thirty years from the date of registration.

Art. 68. It belongs to the Minister of Instruction to declare the forfeiture of the copyright in a work. Such a declaration is to be inserted within eight days in the official journal (Art. 69), and, if not, any interested person may require it to be inserted.

Art. 71. Infringers are punishable, civilly and criminally, as provided by Art. 496 of the Penal Code.

Penalties.

Art. 72. The persons responsible for fraudulent piracy committed by publication are successively, (1) the author of the piracy; (2) the publisher; and (3) the printer, unless they respec-

(*i*) What if the work be not printed? The law seems to make no special provision for this, and yet it is clear that pictures, &c. must be registered. The word used in the French translation is "impression."

(*k*) But see Art. 63.

tively prove absence of guilt. In the case of fraudulent piracies committed by performance or public exhibition (Art. 73) the persons responsible are, (1) the person on whose account the performance or exhibition is organised; or, in default, (2) the persons who perform or exhibit the work.

Rights of Foreigners.

The last Article of the law of 1896 provides that, "Foreigners resident abroad shall enjoy in Costa Rica the rights hereby conferred on natives and foreigners resident in the Republic, provided the laws of their nation accord equal advantages to citizens of Costa Rica." Foreigners.

Costa Rica has copyright treaties with the following countries: Spain (14th November, 1893), Guatemala (15th May, 1895), Salvador (12th June, 1895), Honduras (28th September, 1895), and France (28th August, 1896), and the President of the United States has issued a proclamation according Costa Rica the benefit of the United States Copyright Act, 1909. Costa Rica was one of the signatories of the Pan-American Convention, and this Convention was ratified by her on the 13th July, 1903.

DOMINICA.

Dominica possesses no copyright law, although by the Constitution of the 20th June, 1896, it is provided that "the nation guarantees *to Dominicans* the property in their scientific, artistic, and literary productions." Dominica has, however, adhered to the Pan-American Convention of Mexico, 1902 (*l*), being expressly authorised to do so by a law of the 5th August, 1911; but it is difficult to see what law a foreigner can invoke.

ECUADOR.

Art. 27 of the Constitution of Ecuador of 1884, provides that every person shall enjoy liberty of industry, and within the conditions fixed by law, the exclusive property in his discoveries, inventions, and literary works.

A law was passed concerning literary and artistic property on the 3rd August, 1887.

By this law copyright is conferred in literary and artistic works upon the authors thereof. Included amongst authors of literary works are: (1) a producer of a written or oral work; (2) a translator; (3) a proprietor of an unpublished work, not legally belong- Works protected.

(*l*) *Ante*, p. 528.

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ing to any other person, which he publishes for the first time; (4) a compiler of historical or legislative documents, having permission to make their compilations; (5) a compiler of popular productions, such as songs, traditions, &c., if the compilation is made with a literary object; (6) a publisher or compiler of a work which is no longer private property. (Art. 2.) Included amongst authors of artistic works are: (1) the creator of the work; (2) the composer of variations on a musical theme, on condition that these variations constitute, in the opinion of experts, a new creation; (3) the compiler of popular musical works having no known proprietors; (4) the author of transpositions or instrumentations made with the permission of the author of the original; (5) an artist, a geographer, an engineer, a draughtsman, a calligraphist, or a sculptor, each in respect of his original work and in copies which can be made from it by any process whatsoever; unless, however, he has alienated the original; (6) the reproducer of a work with the author's permission; (7) the publisher of works in respect of which copyright has ceased. (Art. 3.)

Duration of copyright.

The period of protection varies in different cases. In the case of the producer or creator of a literary or artistic work, and in the case of works falling within Art. 3 (5), the period is the life of the author and fifty years after his death: in the case of translations, compilations, &c., the period is fifty years from publication: in all other cases the period is twenty-five years from publication (*m*). (Art. 9.)

Abridgments and translations.

Abridgments are not generally permissible without the consent of the author of the original (Art. 14): and in the case of an abridgment of a work which has become public property, the abridger has copyright in his abridgment, but has no right to prevent others from making similar abridgments. (Art. 15.) Similarly, the existence of a privileged translation does not prevent the publication of another translation of the translated work (Art. 17), and every translation must, unless it be of an anonymous work, indicate the name of the author of the original work. (Art. 18.)

Periodicals.

Articles contributed to periodicals may be reproduced in other periodicals, unless authors expressly reserve their rights. (Art. 28.) If, on the other hand, the editor or publisher of the periodical expressly reserves the copyright, he may not publish the articles separately. (Art. 29.) An author who undertakes the editorship of a periodical does not retain the copyright in any

(*m*) As to dramatic rights, see Art. 35.

article he may contribute, but may publish his article separately. (Art. 30.)

Reproductions of portraits and busts may not be sold without the permission of the interested person. (Art. 32.) Portraits and busts.

Dramatic works are protected against reproduction in the same manner as other works of literature (Art. 33), and they may not be represented in public theatres without the author's permission. (Art. 34.) The exclusive right of public performance lasts for the life of the author and twenty-five years after his death. (Art. 35.) Dramatic works.

In order to obtain copyright in a work, the copyright must be registered, and three copies of the work, if printed, must be deposited (Arts. 43, 45): in the case of pictures or sculptures, registration alone will be sufficient, but this does not apply to engravings and other works capable of being multiplied by mechanical means (Art. 46): in the case of dramatic and musical works not yet printed, one MS. copy must be deposited. (Art. 47.) The period allowed for registration is six months from publication, or three months from representation, as the case may be. (Art. 49.) Formalities.

The author's remedies for infringement of copyright are seizure of the piracies and payment of the value of copies sold. (Art. 54.) If there are any aggravating circumstances, a fine may be imposed. (Arts. 58, 59.)

Rights of Foreigners.

By Art. 64, every citizen of Ecuador who publishes a work outside the territory is granted the benefit of the law, subject to his complying with the formalities, but the period allowed him for registration is double that allowed in ordinary cases. Works of citizens published abroad.

Art. 42 provides that when an author has granted to a citizen of Ecuador the exclusive right of translating or making an abridgment or epitome of his works, such person may prevent any work analogous to his own being made in Ecuador: and the same applies in like cases in regard to artistic property and the representation of dramatic works permitted by a foreign author to an Ecuadorian theatrical enterprise. Thus, a foreigner would appear to be able to confer upon an Ecuadorian citizen the exclusive right, in Ecuador, of translating, abridging, epitomizing, or performing his works. Otherwise the law does not contain any express reference to foreigners, and possibly "authors" will be restricted to native authors. Ecuador has copyright treaties with Mexico Rights of foreigners in Ecuador.

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(10th July, 1888), France (9th May, 1898, and 1st July, 1905), and Spain (24th June, 1900).

GUATEMALA.

Works protected. Copyright in Guatemala is governed by a law of the 29th October, 1879. By this law the inhabitants of the Republic are granted the exclusive right of publishing and reproducing their original works by manuscript, printing, lithography, or any analogous process (Art. 1), and this right is extended to lectures and speeches. (Art. 2.)

Duration and assignment. Literary copyright is perpetual (Art. 5), but if the author or owner of the copyright leaves no successors, copyright ceases on the death of the author or owner, as the case may be. (Art. 24.) An assignee of the copyright, moreover, cannot oppose the publication by the author of his work with essential modifications. (Art. 7.) In the case of collaborations, upon the death of any author without leaving heirs or assigns, his rights survive to his co-authors. (Art. 13.)

Periodicals. With regard to political periodicals the only property recognised is that in scientific, literary, or artistic articles contained in them, whether these articles are original works or translations; but any person publishing any passage from the unprotected part must cite the title and number of the periodical from which the quotation is taken. (Art. 17.)

Translations. The right of translation must be expressly reserved. (Art. 18.)

Formalities. In order to secure copyright the author or his representative must apply to the Ministry of Public Education, and must deposit four copies of every printed work. (Arts. 28, 29.) In the case of anonymous works a sealed envelope containing the name of the author must be deposited. (Art. 31.)

Remedies. Piracies are visited by confiscation of pirated copies, and the payment of damages and costs, with a fine in case of a second offence. (Art. 33.) An injunction may also be granted. (Art. 34.)

Rights of Foreigners.

The above law only confers copyright on "inhabitants of the Republic." (Art. 1.) Guatemala has copyright treaties with Costa Rica (15th May, 1895), France (21st August, 1895), Honduras (2nd March, 1895), Salvador (27th March, 1895), and Spain (25th May, 1893). She has also signed and ratified the

Pan-American Mexican Convention of 1902 and the Rio Convention of 1906 (*n*), and is a "proclaimed" country entitled to the benefit of the United States Copyright Act, 1909.

HAYTI.

By the law of literary and artistic property passed on the 8th October, 1885, after a preamble stating that the law on this subject, already sanctioned in the Penal Code and the law of the 25th October, 1864, required modification and extension, it was enacted as follows:— Law of 8th October, 1885.

Art. 1. The expression "literary and artistic works" includes books, pamphlets, writings of every kind, dramatic works of every kind, musical compositions with or without words and arrangements of music, works of drawing, painting, sculpture, and engraving, lithographs, geographical charts, plans, scientific sketches, and generally every kind of literary, scientific, or artistic work capable of being published by any method of printing or reproduction. Definition.

Art. 2. Authors of these works shall enjoy the right of property hereinafter mentioned, and the privilege of proceeding against pirates or vendors of their works, on the sole condition of depositing at the secretary's office of the Department of the Interior five copies, to be sent on to the different public libraries by the chief of the said department. Deposit.

Art. 3. This deposit shall be made:

(1) In the case of a work published by a Haytian in Hayti or a foreign country, in the year of publication.

(2) In the case of a work so published before the promulgation of this law, within a period of two years.

Art. 4. The proprietors of posthumous works, by inheritance or other titles, are in the position of authors, and shall enjoy the same rights and the same privileges, subject to the condition of printing their works separately and observing the provisions of this law. Posthumous works.

Art. 5. Authors shall have the exclusive right during their life of selling, causing to be sold, circulating, representing, translating or causing to be translated into another language, all their works whatsoever, of assigning the property in whole or part, and making use of the appropriate processes of reproduction of every class of work. Duration.

(*n*) *Ante*, p. 328.

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Widows and children, and other heirs.

Art. 6. The same privilege, which extends to widows for their life, shall pass to children for twenty years, and if there be no children, for ten years to the other heirs or proprietors, after which the work shall become public property.

Piracy.

Any person publishing, reproducing, exhibiting, or representing, without the written consent of the author or his representatives, a literary or artistic work, commits the offence of piracy, and is liable to confiscation of the piracies and to payment of a sum equivalent to the price of 1,000 copies of the original publication. He is also liable to be criminally proceeded against under the Penal Code of 1835.

Rights of Foreigners.

The above law has no special provisions as to foreigners, but Hayti was one of the original signatories of the Berne Convention, and she has adhered to the Revised Convention of 1908, without any reserve, but otherwise she is under no treaty obligations.

HONDURAS.

No special copyright law.

Honduras has no special law relating to copyright beyond some rudimentary provisions in the Penal Code of 29th July, 1898, and the Civil Code of 31st December, 1898. By Art. 523 of the former it is provided that any fraud in the matter of literary or industrial property shall be punishable with "minor banishment" for a period of from thirty-one days to a year. Art. 444 of the Civil Code declares that "the author of a literary, scientific, or artistic work has the right to exploit it or dispose of it as he pleases," and Art. 445 enacts that "the laws relating to intellectual and industrial property shall designate the persons to whom this right shall belong, the modes of exercising it, and its duration. Where no such provisions are made, the general rules established by this Code with regard to property shall apply."

Honduras has copyright treaties with Costa Rica (28th September, 1895), Guatemala (2nd March, 1895), Nicaragua (20th October, 1894), and Salvador (19th January, 1895), and is a party to the Pan-American Convention of 1902 (*o*). The United States has "proclaimed" her as a country entitled to the benefit of the Copyright Act, 1909.

(*o*) *Ante*, p. 328.

MEXICO.

Civil Codes.

The Civil Code of 1871, as modified by that of 1884, contains elaborate provisions for the protection of literary and artistic property (*p*).

Works protected.

Inhabitants of the Mexican Republic are given the exclusive right of publishing and reproducing, in whole or in part, their original works, either by manuscript, printing, lithography, or other analogous process (Art. 1247): and this right is extended to oral and written lectures, and public speeches. (Art. 1249.)

Duration of literary copyright.

Literary copyright is perpetual (Art. 1253), but the publisher of a posthumous work by a known author, unless he be the heir or assign of the author, has copyright for thirty years only. (Art. 1258.) Institutions enjoy copyright in works published by them for twenty-five years. (Art. 1262.)

Assignee's rights.

An assignee of copyright cannot prevent the author from publishing his work with substantial modifications. (Art. 1260.)

Newspapers.

In political newspapers only scientific literature or artistic articles, whether original or translated, are the subjects of copyright, but any person copying from newspapers must indicate the title and number of the paper copied from. (Art. 1268.)

Translations.

Translating rights must be specially reserved, and it must be stated whether the translating rights are reserved for a special language or for all languages. (Art. 1269.)

Dramatic works.

A dramatic author has, besides the exclusive right of publication and reproduction, the exclusive right of public performance. (Art. 1284.) The performing rights last for the life of the author and thirty years after his death. (Art. 1285.) The law also contains provisions regulating arrangements between the authors of dramatic pieces and theatrical managers. (Arts. 1288 to 1295.) The assignment of the right of publication of a dramatic work does not, in the absence of express agreement, carry the performing rights. (Art. 1302.)

Artistic copyright.

The following persons have the exclusive right of reproducing their original works: (1) authors of geographical and topographical charts, of scientific and architectural, &c. drawings; (2) architects; (3) artists, engravers, lithographers, and photographers; (4) sculptors, for such of their works as are completely finished, as well as for their designs and casts;

(*p*) The law of Guatemala is very similar to this law. The references are to the Articles of the law of 1871, the editor not having been able to obtain a copy of the law of 1884, but the text is believed to accurately state the law under the later Code.

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(5) musicians; (6) calligraphists. (Art. 1306.) The copyright in these cases is perpetual. (Art. 1307.)

Musical works.

The performing rights, in the case of musical compositions, are the same as in the case of dramatic works (Art. 1308), and as between authors of words and music, the author of the music is to be considered the author of the words, in the absence of contrary agreement. (Art. 1309.)

Purchasers of artistic works.

The purchaser of a work of art does not, in the absence of contrary agreement, obtain the copyright (Art. 1313), but, if the work has been made to order, the artist may not reproduce it in the same branch of art. (Art. 1314.)

Piracy.

The following are acts of piracy: (1) publication of works, speeches, lectures, and original literary articles; (2) publication of translations of such works; (3) representation of dramatic works and performance of musical compositions; (4) publication and reproduction of artistic works, whether effected by the same process as that employed by the artist or by a different process; (5) the omission of the name of the author or translator; (6) reproduction of an architectural work, when it is necessary to penetrate a private house in order to make the same; (7) publication and performance of a musical piece composed of extracts from other pieces; (8) the arrangement of a musical composition for separate instruments. (Art. 1316.)

Not piracies.

Art. 1322 contains a list of acts which are not to constitute piracy. Amongst these it may be noticed that it is not piracy (1) to perform a drama or musical work when it takes place without stage accessories in a private house or at a public free concert, or if the receipts are intended for charity; (2) to publish the libretto of an opera, or the words of any musical composition where the author has not expressly reserved his literary copyright; (3) to reproduce a sculpture with essential differences, or sculptures standing in squares, promenades, cemeteries, and other public places; (4) to reproduce works of painting, engraving, or lithography, by processes of the plastic arts, and *vice versâ*; (5) to reproduce works of architecture, in the case of public monuments or the exterior parts of private houses; (6) to use artistic works as designs for manufactures.

Formalities.

In order to secure copyright the author or his attorney must present himself at the Ministry of Public Education to procure legal recognition of his rights. (Art. 1349.) Further, in the case of books, two copies must be deposited, one for the National Library, and the other for the Public Archives (*q*) (Arts. 1350,

(*q*) A third copy is generally requested for the Library of the Ministry.

1353); in the case of musical works, engravings, lithographs, or analogous works, one copy must be deposited (Art. 1351); and in the case of works of architecture, painting, sculpture, or other work of the like kind, a drawing, sketch, or plan with information as to the dimensions and essential points of the original must be deposited. (Art. 1352.) In addition to these formalities, every author, translator, and publisher must put on the cover of the book or musical composition, at the foot of an engraving, and at the foot of, or some other visible place upon, an artistic work, his name, the date of publication, the conditions of reproduction, or the legal information which he shall think proper, failing which he cannot exercise the rights conferred by the law. (Arts. 1364, 1365.)

The law provides for confiscation of piracies, and the payment of penalties and damages in the event of infringement of copyright. (Arts. 1328 to 1348.)

Rights of Foreigners.

Foreigners residing or publishing in Mexico.

Arts. 1383 and 1384 enable a foreigner residing or publishing in Mexico to obtain copyright in his work. These clauses are as follows:—

Art. 1383. For legal purposes there shall be no distinction between Mexicans and strangers; it is sufficient if the work be published on Mexican territory.

Art. 1384. If a Mexican or a foreigner residing in Mexico publish a work outside the territories of the Republic, he may enjoy copyright, on condition of conforming to the provisions of Arts. 1349 to 1352.

Foreigners residing and publishing abroad.

As regards works of foreigners published abroad by authors who are not resident in Mexico, these are only protected on condition of reciprocity. Art. 1386 provides:

For legal purposes authors residing in foreign countries are to be treated precisely as Mexican authors, provided that Mexicans enjoy equal rights in the country of origin of the work.

As to this provision, the Mexican Minister in Paris in the year 1881 made an authorised communication to the Society of Comparative Legislation in Paris to the effect that "the reciprocity required by the law of Mexico is not subordinated to Mexican authors enjoying abroad the rights accorded in Mexico to foreign authors, but only to the law of the country according to Mexican authors the same rights as to natives. The Mexican law being more liberal than the laws of other countries, it follows that the

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foreign author enjoys in Mexico more extensive rights than in his own country" (*r*). This last assertion must not, however, be taken too literally, for, in the first place, foreigners must comply with the complicated and often expensive (*s*) formalities prescribed by Arts. 1349 *et seq.*; and, secondly, in the matter of translations, foreigners are placed in an inferior position to natives by Art. 1156, which enacts: "Authors not residing on national territory and publishing their works abroad, enjoy the rights accorded by Art. 1154 (*t*) for a period of *ten* years."

Treaties and conventions.

The Pan-American Convention was signed at Mexico, and it is to the Mexican Government that the ratifications have to be communicated, yet Mexico has not herself yet ratified the Convention, though she has signed it. There are copyright treaties in force between Mexico and the following countries: Belgium (7th June, 1895), Ecuador (10th July, 1888), France (27th November, 1886), Italy (16th April, 1890), Dominica (29th March, 1890), and Spain (26th March, 1903). The President of the United States has proclaimed Mexico as being entitled to the benefit of the Copyright Act, 1909.

NICARAGUA.

The Civil Code of 1904 governs the law of copyright in Nicaragua. This Code is practically identical with the Mexican Code (*u*), but six copies of a printed work must be deposited in order to secure copyright. (Art. 832.) The rights of foreigners are also the same as in Mexico. Nicaragua has a copyright treaty with Honduras, dated the 20th October, 1894, and one with Italy dated the 25th May, 1905. She has ratified the Pan-American Convention of Mexico, 1902, and the Rio Convention of 1906.

PANAMA.

Panama, by her Constitution of 1904, adopted the Colombian copyright law of 1886 (*x*). She has a copyright treaty with Spain dated the 25th July, 1912. The Canal Zone is governed by the United States law, under a War Department Order of 1907.

(*r*) Darras, "Du Droit des Auteurs et des Artistes," p. 315. "Le Droit d'Auteur," 1895, p. 149.
(*s*) See "Le Droit d'Auteur," 1898, p. 135.
(*t*) According to Art. 1154, the author must reserve his rights of translation.
(*u*) *Ante*, p. 517.
(*x*) *Ante*, p. 503.

PARAGUAY.

The Constitution of the 24th November, 1870, provides that every author or inventor is to have the exclusive property in his work, invention, or discovery, during the time fixed by law. The only law on the subject that has yet been promulgated is the Penal Code of 1910. By Art. 425 of that Code it is provided that if any one unlawfully appropriates or reproduces any literary or artistic work he shall be liable to one year's imprisonment, and to pay double any profit he may have obtained. The expression "literary or artistic works" includes (*y*) books, pamphlets, and other writings, dramatic or dramatico-musical works, choreographic works, musical compositions, drawings, paintings, sculptures, engravings, photographs, lithographs, geographical maps, plans, sketches, and plastic works relating to geography, topography, architecture, or to sciences in general; in short, to any production in the field of literature or art which may be published by any mode of printing or reproduction whatsoever. The penalty is to be reduced by one half in the case of indirect appropriations or reproductions, such as adaptations, arrangements, &c. Art. 428 provides that the provisions of the Code shall only apply if the interested persons expressly reserve their rights and register the same in the public registry; but the law does not state the period of protection.

At the instigation of the Argentine Republic, Paraguay was a signatory of the Convention of Monte Video (*z*), which she ratified on the 2nd September, 1889: and she has accepted the adhesion to that Convention of Spain, France, Italy, and Belgium. She also signed the Pan-American Convention, but only *ad referendum*.

PERU.

Copyright in Peru is regulated by the law of the 3rd November, 1849, passed in execution of Art. 174 of the Constitution of the 1st November, 1839, which proclaimed the inviolability of intellectual property. The Constitution of 1860 now in force has in Art. 26 reaffirmed the principle of the earlier Constitution by declaring that property is inviolable whether it be material, intellectual, literary, or artistic: no one can be deprived of his property except for some reason of public utility, recognised by law, and on payment of a previously fixed compensation.

Law of 3rd November, 1849.

(*y*) The definition is taken from the Monte Video Convention, 1889, Art. 5.
(*z*) *Infra*, p. 328.

PART V. PERU.

The law of 1849 on literary property provides as follows:—

Duration.

Art. 1. Authors of writings, geographical charts, engravings, and musical compositions, of whatsoever kind, shall enjoy during their lives the exclusive right of being able to sell or circulate their works in the territories of the Republic, and the power of assigning their right in whole or in part.

Art. 2. The following are excepted from the right recognised in Art. 1: books and writings contrary to religion or good morals, and paintings or engravings which offend public morals; these works will be prosecuted in conformity with the laws.

Art. 3. The author's heirs and assigns shall enjoy the same rights for twenty years from his death.

Posthumous works.

Art. 4. The legitimate proprietors of a posthumous work shall enjoy the exclusive right during thirty years.

Deposit.

Art. 5. In order to prove at any time the copyright of a book, engraving, &c., it shall suffice to deposit a copy in the public library, if there be one, and another copy in the archives of the prefecture of the department where the work is published, except where there is a question or opposition raised by another person: in this case, the question must be decided by the tribunals. If the author does not desire to disclose his name, he shall deposit at the prefecture a sealed and closed envelope, in which his name shall be inscribed.

Penalties.

Art. 6. Any person publishing or selling within the Republic pirated publications shall incur a fine of 200 to 500 pesos for the benefit of the author, to whom there shall, in addition, be handed over all the copies.

Art. 7. Any person importing into or selling in the Republic publications made in a foreign country of works, the copyright of which belongs to another, shall be liable to suffer confiscation of all copies in his possession: these shall be allotted to the proprietor of the work.

Translations.

Art. 8. The author of a translation or version shall enjoy the same rights, provided he has fulfilled the formalities prescribed by Art. 5.

Art. 9. After the expiration of the periods mentioned in this law, the works, whatever they may be, shall become public property, and any citizen may freely print and sell them.

Rights of Foreigners.

Foreigners.

The law of 1849 not having defined who are to fall within the category of "authors," and being conceived in generous terms,

M. Darras has observed that possibly it might be held applicable to foreigners, whether resident in Peru or not, and whether publishing in Peru or abroad (*a*), but this view is probably too optimistic. At any rate, whilst Peru has ratified the Convention of Monte Video on the 25th October, 1889, she has expressly declared that she will not accept the accession of countries not invited to take part in the Congress of Monte Video in the same form as the accession of Spanish American countries invited to, but not represented at, that Congress (*b*). She has consequently refused to accept the adhesion of France, Italy, Spain, and Belgium to the Convention. Peru has no other copyright treaty.

SALVADOR.

Law of 2nd June, 1900.

Until the year 1900 copyright in Salvador was regulated by Art. 610 of the Civil Code of 1880, but on the [illegible] June, 1900, a law was passed, of which the provisions are as follows:—

Copyright and its duration.

Art. 1. Authors of writings of every kind, musical compositions, works of painting, design, sculpture, and, in short, all original works, are to have during their lives the exclusive right of selling, manufacturing, or putting in circulation their works reproduced by printing, lithography, moulding, or any other process of reproduction or multiplication whatsoever.

Art. 2. Their heirs are to enjoy the same right for twenty-five years, but the work falls into the public domain, if the treasury be the heir. Likewise the work falls into the public domain if the heirs do not within a year make use of their rights or renounce them before the Minister of "Fomento."

Art. 3. Authors and their heirs may transfer their rights to third persons.

Art. 4. The proprietor of a posthumous manuscript containing corrections made by the author of a work published during his life, is to enjoy the property therein for a fixed period of twenty-five years.

Art. 6. Theatrical pieces may not be performed on any stage in Salvador without the permission of the author during his life or of his heirs during the period of twenty-five years granted them.

Art. 7. Corporations are entitled to copyright for fifty years from publication.

(*a*) "Le Droit d'Auteur," 1897, p. 139.
(*b*) See note under the heading "Peru" in the Collection of Copyright Treaties published by the International Bureau at Berne in 1904.

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Art. 8. Translators of Latin or Greek works are protected for the like period as authors.

Formalities.

Art. 9. No Government document is necessary to confer copyright; it is sufficient to previously deposit a copy of the work with the Minister of "Fomento," and to indicate on the frontispiece to whom it belongs. Works manifestly immoral or contrary to public order will be forbidden.

Art. 10. The Government may accord privileges for a maximum period of five years to any one reprinting interesting works, provided the edition be correct and the permission of the proprietor be obtained.

Art. 11. At the expiration of the periods fixed by the preceding articles, a work may be considered common property, and any one may exploit it at his pleasure.

Penalties.

The penalties for piracy are, under the Penal Code of 1904, a fine and confiscation of piracies.

Art. 13. Authors or printers must send copies of their works to countries with which there may be treaties to this effect.

Periodicals.

Art. 14. Publications which have appeared in periodicals may be freely reproduced.

Art. 15. These provisions are without prejudice to treaties still in force.

Rights of Foreigners.

Foreigners.

Art. 5 of the above law provides that "foreigners who publish their works in Salvador shall enjoy the same rights as natives: likewise when, after they have been published abroad, a new edition shall be made in Salvador." Salvador has ratified the Pan-American Convention (decree of 16th May, 1902), and has treaties with the following countries: Costa Rica (12th June, 1895), France (2nd June, 1880), Guatemala (27th March, 1895), Honduras (19th January, 1895), and Spain (23rd June, 1884). A treaty, concluded on the 24th December, 1900, with Columbia does not appear to have been ratified by the latter country.

URUGUAY.

Law of 15th March, 1912.

The only copyright law of Uruguay is dated the 15th March, 1912 (*c*).

Works protected.

All literary and artistic works published or performed in the country, as well as the works of citizens of the Republic imported

(*c*) "Le Droit d'Auteur," 1913, p. 2.

from abroad, are declared to be private property. (Art. 1.) The expression "literary and artistic works" includes (*d*) books, pamphlets and other writings, dramatic and dramatico-musical works, choreographic works, musical compositions with or without words, drawings, paintings, sculptures, engravings, photographs, lithographs, geographical maps, plans, sketches and plastic works relating to geography, topography, architecture, or to the sciences in general; in short, any production in the literary or artistic domain capable of being published by any mode of printing or reproduction whatsoever. (Art. 2.)

Definition of copyright.

Copyright includes the liberty of disposing of, publishing, alienating, translating, or authorising the translation, and reproducing the work in any form whatsoever. (Art. 3.)

Translations.

Translators, provided their translations are made with the consent of the owners of the copyright in the original, have copyright in their translations, as also have translators of works which have fallen into the public domain; but in the latter case the translator cannot prevent similar translations by others. (Art. 4.)

Musical works.

In the case of musical compositions with words, the copyright belongs to the author of the music. (Art. 5.)

Portraits, &c.

Photographs, busts, pictures, and other artistic reproductions which represent any person become the exclusive property of such person, including the right of reproduction. (Art. 6.)

Special circumstances.

The copyright in anonymous and pseudonymous works is deemed to belong to the publisher. (Art. 7.) Any collaborator may exercise the entire right of publishing, reproducing, or translating the work, subject to accounting for profits to his co-authors. (Art. 9.) In the case of collective works the copyright is deemed to belong to the publisher, but each contributor may, unless he has formally assigned the copyright to the publisher, freely reproduce or translate his contribution. (Art. 10.)

Period of copyright.

The general period of copyright protection is the life of the author and twenty-five years after his death. (Art. 11.) For posthumous works the period is twenty-five years from first publication. (Art. 12.) In the case of collaborations the *post-mortem* period runs from the death of the last surviving author. (Art. 13.)

Piracy.

Art. 17 contains a list of acts which shall be deemed to be infringements of copyright. Amongst these we may notice (1) any printing or reproduction by mechanical process of a

(*d*) The definition Article is taken from Art. 5 of the Monte Video Convention, 1889, *ante*, p. 328.

PART V. URUGUAY.

literary work without the consent of the proprietor of the copyright; (2) adaptations, arrangements, or imitations of a literary, dramatic, or musical work; (3) public representation or performance of a dramatical or musical work; (4) appropriation of words for a musical composition, or of music for a literary composition, without consent; (5) copying or reproducing an artistic work by any process whatsoever; (6) reproducing portraits without consent. But by Art. 18 the following, amongst other things, are not to be regarded as piracies:—(1) publication of extracts, &c. intended for teaching, if the author's name be indicated; (2) reprinting articles from newspapers and reviews and reproducing engravings inserted in periodicals, unless prohibited at the foot of each article or engraving; (3) reproduction of fragments for comment or criticism: (4) representation by an author or his representative of theatrical works alienated by him, if two years have elapsed since the last representation; (5) reprinting by the author or his representative of literary works alienated by him, if five years have elapsed since stock was exhausted; (6) free reproduction of pictures, monuments, or allegorical figures exhibited in museums, promenades and public parks.

Formalities. In order to enjoy the rights given by this law, either two copies of the work, or two photographs of the work sufficient to identify the same, must be deposited at the National Library, together with a stamped declaration containing a description of the work and date of its being printed, exhibited, or published, and claiming copyright therein. (Art. 20.) Assignments must also be registered. (Art. 21.) Registration should be effected within three months after first publication or representation, as the case may be. Registration will be accepted after that date, but no action will lie for any infringement committed prior to registration. (Art. 25.) If registration is not effected within ten years, the work falls into the public domain. (Art. 26.)

Penalties. A person who infringes copyright is liable to a fine and payment of damages, and the infringing articles may be confiscated. (Arts. 29—31.)

Transitory provisions. Works published prior to the promulgation of the law may be registered within six months after such promulgation. (Art. 34.)

Rights of Foreigners.

All works published or performed (*e*) in Uruguay are, by Art. 1 of the above law, entitled to the benefit of copyright, as also are

(*e*) The law does not, apparently, require that the works shall be *first* published or performed in Uruguay.

the works of citizens of the Republic imported from a foreign country.

Uruguay has ratified the Convention of Monte Video, 1889 (*f*), but she has not accepted the adhesion of any European country. She has also signed, but not ratified, the Pan-American Convention.

VENEZUELA.

Early copyright laws.

The first copyright legislation in Venezuela was a law of the 19th April, 1837, which was replaced by a law of 12th May, 1887, closely modelled on the Spanish law of the 10th January, 1879, with the important exception that copyright was made *perpetual* in Venezuela. The law of 12th May, 1887, was a sufficiently satisfactory law, but in the year 1894 it was repealed and replaced by a new law of the 17th May, 1894, which required authors to comply with rigorous formalities in order to obtain copyright. The main provisions of the law of 17th May, 1894, are as follows (*g*):

Law of 17th May, 1894.

Art. 1. "Author" means any person who composes a scientific, literary, or artistic work, and "translator" means anyone who expresses a work in another language, distinct from that in which the original work or composition is expressed or written.

Art. 2. The right an author possesses over his composition, and the right acquired by translators over translated works or compositions, constitute intellectual property, which is sacred and inviolable like any other property, and is to be governed by the rules of the common law, subject to any restrictions established by law.

Art. 3. Copyright in an original work belongs legally to its author, or in the case of a translation to the translator, provided no pre-existing (*h*) international treaty prevents.

Duration.

Art. 4. Copyright is, by its nature, perpetual, and the following persons are to enjoy it: (a) Authors in respect of their works; (b) translators with respect to their translations; (c) persons who alter, abridge, make extracts from, or reproduce original or translated works with the consent of their proprietors; (d) publishers of unpublished works the proprietors of which are unknown, provided they make legitimate use of their rights; (e) assignees; (f) the heirs and representatives of proprietors; and (g) the nation, when the proprietor dies without heirs.

(*f*) *Ante*, p. 328.
(*g*) "Le Droit d'Auteur," 1895, p. 114.
(*h*) *Sic.* The word is ambiguous, and may mean either existing previously to this law or existing previously to the date when the work is published.

Transfer.

Art. 5. Copyright may be assigned by acts *inter vivos*, and the assignee obtains copyright in perpetuity, provided the rules and formalities established by the common law are observed.

Right of reproduction.

Art. 6. The author of a scientific, literary, or artistic work has the sole right of reproduction in any form or by any means, and (Art. 7) the author of a literary or scientific work has the right of translation.

Collaborations.

Art. 8. Copyright in collaborations, in the absence of contrary agreement, belongs to the joint authors in equal shares, but each of them may sue for infringements.

Commentaries, &c.

Art. 9. The consent of the proprietor of the copyright is necessary to the publication of the works of another, even though accompanied by notes, comments, and additions, but commentaries, criticisms, and notes upon any work may be published, provided only the portions or texts necessary for the object in view be inserted.

Art. 10. As regards works of art, and, in particular, musical works, any reproduction or copy falsifying the original is a piracy, and the consent of the author or his representatives is necessary before reproducing the work of another in the same or any other dimensions.

Anonymous works.

Art. 11. The publisher of an anonymous or pseudonymous work is to be deemed its author until the author proves his title.

Translations.

Art. 12. A translator has copyright in his translation, but without the right to prevent other translations.

Art. 13. A work may not be modified or altered without the consent of its author or his representatives.

Piracy.

Art. 14. Copyright in literary and scientific works extends to all written or spoken exposures of their ideas, comprising not only works that have been published, but writings of all kinds. Consequently, no one may publish, without the author's permission, either in pamphlet or any other form, (a) oral lessons and lectures; (b) pleadings or written judgments; (c) parliamentary, academic, or other speeches, except in political journals.

This provision is not to affect the right of Courts and tribunals to draw up authentic copies or documents.

Art. 15. Authors of speeches or writings the subject of the last preceding clause may publish or reproduce them in pamphlet or in any form they please.

Performing rights.

Art. 16. An injunction may be obtained against the unlawful public performance or execution of a literary or musical piece.

Art. 17. If the performance takes place in spite of the injunc-

tion the proprietor of the work is to be entitled to the total receipts, which may be recovered in a summary manner.

Art. 18. The author or proprietor of a dramatic or musical composition has the right to claim from the proper person that which the performance or execution of his work has produced (*i*) in a theatre or place of public entertainment, on conforming to the rules of the common law.

Art. 19. In case of performance of a lyrico-dramatic work, created in collaboration by the author of the libretto and of the music, the receipts or products are, in the absence of agreement to the contrary, to belong to the proprietors in equal shares, and (Art. 20) the author of the libretto and the musical part have each the right to print and sell separately the part of the work which he has created, but, in publishing the musical part, the words of a song may be added.

Formalities.

A register is established in the office of the governor of the federal district and in each of the offices of the State Presidents in which scientific, literary, and artistic works will be entered in chronological order. (Arts. 22 and 23.) The entry in the register is to give (a) the name and domicile of the person making the entry; (b) the title of the work; (c) the name of the author, translator, &c.; (d) the place and date of printing; (e) the edition, volumes, form, number of pages, and all other details which, in the opinion of the interested party, ought to be registered the better to assure his rights. (Art. 24.)

Request for protection.

Art. 25. In order to enjoy the benefits hereby conferred the author or translator or his representative should, before printing, engraving, or lithographing, address to the governor of the district or the State President a request containing the title of the work or composition, and, where registration is sought, the delivery of a "patent" to assure the copyright to the person entitled thereto.

Art. 26. Upon receipt of the request, the President or governor must, in his presence, take the oath of the applicant that the work in question, if original, or the translation has not been printed, engraved, or lithographed previously either in Venezuela or abroad (*k*), after which the title is to be registered, and (Art. 27) a sealed patent delivered to the applicant in the prescribed form.

Art. 28. Besides the titles of written works, those of engrav-

(*i*) *i.e.*, *semble*, net receipts. Under the preceding clause he is entitled to gross receipts.

(*k*) This is no real protection to a foreign work, it only prevents a pirate from obtaining copyright in the work he has pirated.

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ings, lithographs, architectural plans, geographical plans, and other artistic works, for which protection may be sought, are to be inscribed in the register or list kept at Caracas or in each State capital. At the bottom of these works are to be placed the words "Registered according to law," and underneath the signature of the proper authority (*l*).

Art. 29. The "patent" must be printed on the back of the title-page, and published at least four times in the official "Gazette."

Art. 30. There are no fees for registration, but the patent is to be on properly stamped paper.

Art. 31. Six copies of the work must be deposited at the registry.

Penalties.

Art. 32. The offence of falsification in prejudice of intellectual property is to be punished according to the Penal Code (*m*). Any fraudulent action or breach directed against the said property constitutes this offence; consequently, all are equally culpable who knowingly sell, expose for sale, or import pirated or falsified works. The responsibility falls, in the first place, on the author of the piracy, and, in his default, on the publisher and the printer, unless they respectively prove their innocence.

The infringing articles may also be forfeited. (Art. 33.)

Art. 38. The property in posthumous works belongs to the heirs or representatives of the author. Alterations, additions, annotations, and corrections left by an author relating to a previous work are considered posthumous works.

Rights of Foreigners.

Foreigners.

The only clause in the above law expressly referring to international rights is Art. 37, which authorises the government "to conclude treaties and arrangements with friendly nations with a view to better realising the doctrine upon which this law is based, provided that the government shall not accord to foreigners rights in excess of, or modifying, those conferred by the legislature upon intellectual property." No treaty has yet been concluded under the provisions of this Article, and it is impossible to say whether, in the absence of a treaty, a foreigner is entitled to any protection in respect of his works in Venezuela. The law of 1894 does not define "author."

(*l*) Presumably a copy of the signature.
(*m*) By fine and imprisonment.

UNITED STATES OF AMERICA.

Previous Copyright Acts.

In the United States, copyright in a published work depends entirely upon the legislation of Congress, but unpublished works are protected by the common law, as in England prior to the recent Act.

The Constitution of the 4th March, 1789, authorised Congress "to promote the progress of science and useful arts by securing for limited terms to authors and inventors the exclusive right to their respective writings and discoveries," and this provision is the source of the federal legislative power in matters of copyright. Several earlier laws were passed by Congress relating to copyright, but all these were repealed in 1870, and the entire law on the subject was embodied in an Act of 1873, which remained in force until 1909, with certain amendments made in the law, notably by the Act of 1891, commonly known as the Chace Act.

Copyright Act, 1909.

In the year 1909 was passed "an Act to amend and consolidate the Acts respecting copyright," which repealed all laws or parts of laws in conflict with its provisions (*n*), and is the Act which, as amended by Acts of 24th August, 1912 (*o*), and 28th March, 1914, now governs the copyright law in the United States.

Subjects of copyright.

The subjects of copyright under the Act of 1909 are: (a) books (*p*), (b) periodicals, (c) lectures, sermons and addresses, (d) dramatic and dramatico-musical compositions, (e) musical compositions, (f) maps, (g) works of art, (h) reproductions of works of art, (i) drawings or plastic works of a scientific or technical character, (j) photographs, (k) prints and pictorial illustrations, (l) motion picture photo plays, (m) motion pictures other than photo plays (*q*).

Unpublished works.

Common law copyright is expressly preserved (*r*), but statutory copyright may also be obtained in unpublished works, that is to say, works "of which copies are not reproduced for sale" (*s*).

Persons entitled to copyright.

The persons entitled by the Act to copyright protection for their works are: (1) the "author" of the work, if he is (a) a citizen of the United States, or (b) a resident alien domiciled in

(*n*) Sect. 63.
(*o*) Commonly known as the Townshend Act.
(*p*) As to the meaning of this and the following expressions, see "Rules and Regulations for the Registration of Claims to Copyright," Rule 2, Appendix D., *post*.
(*q*) Sect. 5 as amended by the Act of 1912.
(*r*) Sect. 2.
(*s*) Sect. 11.

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the United States at the time of the first publication of his work, or (c) a citizen or subject of any country which grants either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, the existence of reciprocal copyright conditions being determined by presidential proclamation (*t*); (2) the "proprietor" of the work, that is to say, a person deriving title under the author; and (3) the executors, administrators, or assigns of the author or proprietor (*u*).

Term of copyright.

The term of copyright in the United States is an original term of twenty-eight years from the date of first publication, with a right of renewal for a second period of twenty-eight years. This right of renewal belongs, in the case of a posthumous or a composite work, such as a periodical or encyclopædia, to the proprietor of the work, and in other cases to (a) the author, if still living; (b) the widow, widower, or children of the author, if the author is not living; (c) the author's executor, if such widow, widower, or children be not living; (d) if the author, widow, widower, and children are all dead, and the author left no will, his next of kin. Application for renewal must be made and registered within one year prior to the expiration of the first term (*x*). The assign of the author is not able to claim this renewal (*y*), but, presumably, the assign may have equitable rights to the renewed term after it has been claimed.

Assignment of copyright.

Copyright is distinct from the property in the material object copyrighted, and, *primâ facie*, a transfer of the material object does not transfer the copyright (*z*). Copyright may be assigned by any instrument in writing (*a*), but if executed in a foreign country, must be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorised by law to administer oaths or perform notarial acts (*b*). All assignments must be registered (*c*).

Publication.

The Act contains no precise definition of "publication," but, by sect. 62, "the date of publication" is, in the case of a work of which copies are reproduced for sale or distribution, to be "the earliest date when copies of the first authorised edition were placed on sale, sold, or publicly distributed by the proprietor of

(*t*) See *post*, p. 537.
(*u*) Sect. 8.
(*x*) Sect. 24.
(*y*) See Attorney-General's opinion (Report of Register of Copyrights, 1910, p. 46).
(*z*) Sect. 41.
(*a*) Sect. 42.
(*b*) Sect. 43.
(*c*) Sects. 44, 45.

the copyright or under his authority." Publication, therefore, only takes place with the concurrence of the proprietor of the copyright, and it would seem that, for books at least, there must be an issue of copies. Representation on the stage of a play is not a publication of it, nor is the public performance of a musical composition publication (*d*). It is not very clear whether the public exhibition of a work of art is a publication—it would seem to depend upon the circumstances. In the case of *American Tobacco Co.* v. *Werchmeister* (*e*), it was held that public exhibition in a place where copying was forbidden did not amount to publication, but the Court added "we do not mean to say that the public exhibition of a painting or statue where all might see and freely copy it, might not amount to publication within the statute, regardless of the artist's purpose or notice of reservation of rights which he takes no measure to protect."

Copyright notice.

Copyright is obtained by publication "with the notice of copyright affixed to each copy published or offered for sale in the United States by authority of the copyright proprietor" (*f*). By sect. 18 it is provided that this copyright notice "shall consist of the word 'Copyright' or the abbreviation 'Copr.,' accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication." In the case of copies of works (f) to (k) mentioned in sect. 5 (*g*), the notice may consist of the letter C inclosed within a circle thus: ⓒ accompanied by the initials, monogram, mark, or symbol of the copyright proprietor, provided that on some accessible portion of such copies, or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear (*h*). In the case of books or other printed publications, the notice must be upon the title-page or the page immediately following; in the case of a periodical, either upon the title-page or upon the first page of text of each separate number, or under the title heading; or, in the case of a musical work, either upon its title-page or the first page of music; provided that one notice of copyright in each

(*d*) See Regulation 23 of the Copyright Rules and Regulations, Appendix D., *post*.

(*e*) (1907), 207 U. S. Rep. 284.

(*f*) Sect. 9; Regulations 24, 25, 26. The notice may be omitted in the case of foreign made copies not offered for sale in the United States.

(*g*) *Ante*, p. 531.

(*h*) The old form of copyright notice will be sufficient in the case of works in which copyright subsisted at the time of the Act coming into force. Sect. 18.

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volume, or in each number of a newspaper or periodical published, is to be sufficient (*i*).

Effect of omission of copyright notice.

Accidental omission of the copyright notice from some copies does not invalidate the copyright, but damages are not in that case recoverable against an innocent infringer, and an injunction may be refused, except on the terms of reimbursing the expenses of an innocent infringer (*k*). On the other hand, no relief seems possible if the copyright notice is in the wrong place or a wrong form (*l*).

Registration and deposit.

The next step will be to register the copyright, which is effected by deposit at the Copyright Office of two complete copies of the best edition of the work (*m*), with a proper application for registration and a money order for the amount of registration fee (*n*). The statute requires this deposit to be made "promptly," which has been defined as "without unnecessary delay," but this does not mean the very day of publication (*o*).

Failure to make deposit.

The effect of a failure to deposit the necessary copies and to register the copyright is not to invalidate the copyright in the first instance, but only to prevent any action for infringement being brought until such deposit and registration have been effected (*p*), but notice may be given by the Register of Copyrights requiring the deposit to be made, and upon failure to comply with this notice within three months—or six months in the case of a foreign country—the proprietor of the copyright will be liable to a fine, and the copyright will become void (*q*).

Deposit in case of unpublished work.

In the case of unpublished works, statutory copyright may be obtained by deposit of one typewritten or manuscript copy in the case of a lecture, sermon, address, dramatic or musical work; a positive print in the case of a photograph; a photographic reproduction in the case of works of art, &c. (*r*). If, however, the work be afterwards published, deposit must be made in the ordinary way (*s*).

The "manufacturing provisions."

In addition to the above formalities, printed "books," except the original text (*t*) of books of a foreign origin in a language

(*i*) Sect. 19.
(*k*) Sect. 20.
(*l*) *Freeman* v. *Trade Register* (1909), 173 F. R. 419; Bowker on Copyright (Amer.), p. 131. As to false copyright notices, see sect. 29.
(*m*) Sect. 12.
(*n*) *I.e.*, one dollar, Regulations 22 and 40.
(*o*) Regulation 22. As to foreign works, see *post*, "Rights of Foreigners."
(*p*) Sect. 12.
(*q*) Sect. 13.
(*r*) Sects. 18 to 20.
(*s*) Sect. 11.
(*t*) It is to be noted that the exemption only applies to the "original text." Apparently the French translation of a German book, for instance, must comply with the manufacturing provisions: Bowker, p. 155.

other than English, must comply with the notorious "manufacturing provisions" of the Act. That is to say, they must be "printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or if the text be reproduced by lithographic process or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the texts and the binding of the said book shall be performed within the limits of the United States" (*u*). These requirements also extend to the illustrations of a book, and to separate lithographs or photo-engravings, except when, in either case, the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art (*x*).

These provisions are even more stringent than those contained in the repealed Act, inasmuch as they require that, not only shall the printing be done in the United States, but the type must be set and the binding done within the country. An affidavit to this effect must be made at the time of depositing the necessary copies (*y*), and, apparently, failure to comply with the manufacturing provisions involves loss of the copyright.

Rights of owner of copyright.

The proprietor of the copyright has the exclusive right (a) to print, reprint, publish, copy, and vend the work; (b) to translate, dramatise, arrange, or adapt the work; (c) to deliver in public for profit a lecture, sermon, or address; (d) to publicly perform the work (*z*).

Records, &c.

Authors of works published after July 1st, 1909, are also given the sole right to authorise the reproduction of their works by means of mechanical instruments (*a*), but subject to the condition, as regards musical works, that once the owner of the copyright has permitted such reproduction, any other person may make similar use of the copyrighted work upon payment of a fixed royalty of two cents on every record (*b*). The records themselves do not seem to be entitled to copyright.

Prohibition against importation.

The provisions of the American Act as regards importation of copyright works are somewhat unusual, inasmuch as they expressly permit the importation of copyright books under certain circumstances. Sect. 31 provides, generally, against the impor-

(*u*) Sect. 15.
(*x*) *Ib.*
(*y*) Sect. 16.
(*z*) Sect. 1.
(*a*) Sect. 1. As to foreign works, see *post*.
(*b*) Sect. 1.

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tation of "piratical copies," and even of copies authorised to be imported by the owner of the copyright which have not been produced in accordance with the manufacturing provisions of the Act; but the prohibition is not to apply to (a) works in raised characters for the use of the blind; (b) foreign-made periodicals containing authorised copyright matter; (c) authorised editions of works in foreign languages of which only an English translation has been copyrighted in the United States; (d) authorised copies published abroad when imported under special circumstances. The "special circumstances" permit the importation of authorised copies for individual use and not for sale, provided not more than one copy be imported at one time; by or for the United States; or by or for certain educational authorities, including free libraries, not more than one copy at a time; or when parts of libraries or collections are purchased and imported *en bloc* for the use of such authorities as before mentioned, or form parts of personal baggage belonging to persons or families arriving from foreign countries, and are not intended for sale.

Customs duties.

Books generally are also liable to payment of customs duties on importation into the States, but certain books are on the "free list," including books and pamphlets, chiefly in languages other than English (*c*); books, maps, music, photographs, etchings, lithographic prints and charts, specially imported, not more than two copies in any one invoice for the use of learned societies and free libraries, not for sale (*d*). The fact, however, that a work happens to be included in the "free list" does not authorise free importation in contravention of the copyright laws.

Rights of Foreigners.

The Chace Act, 1891, first gave foreigners copyright.

Until recent times, a foreign author or publisher had no rights as against an American publisher who reprinted or issued his work in America. The first Copyright Act of 1790 was expressly applicable only to citizens of the United States or persons resident there, and this provision was maintained in all subsequent amendments of the law until the Chace Act of 1891. Under that Act, foreigners could obtain American copyright, provided they were citizens or subjects of a foreign State or nation which permitted to Americans "the benefit of copyright on substantially the same basis as its own citizens," or of a State or nation which

(*c*) Regulation 518. (*d*) Regulation 519.

is "a party to an international agreement (*e*) which provides for reciprocity in the granting of copyright by the terms of which agreement the United States of America may, at its pleasure, become a party to such an agreement."

The Act of 1909.

The Act of 1909 provides (*f*) "that the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign nation, only:

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

(b) When the foreign State or nation of which such author or proprietor is a citizen grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty: or when such foreign State or nation is a party to an international agreement (*e*) which provides for reciprocity in the granting of copyright by the terms of which agreement the United States may, at its pleasure, become a party thereto."

The existence of such "reciprocal conditions" is to be determined by Presidential proclamation, which would appear to be conclusive.

Gramophone records.

With regard to the right to authorise reproduction by mechanical contrivances it is provided (*g*) that as regards musical works this right shall not apply to "the works of a foreign author or composer unless the foreign State or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights."

Countries receiving copyright protection in America.

Presidential proclamations have been issued according the right to acquire general copyright in the United States to citizens of Great Britain and her possessions (*h*), and the following other countries—Austria, Belgium, Chili, China, Costa Rica, Cuba, Denmark, France, Germany, Guatemala, Honduras, Hungary,

(*e*) The Berne Convention is not, it appears, such an international agreement.
(*f*) Sect. 8.
(*g*) Sect. 1.
(*h*) Notwithstanding that the unpublished works of American citizens are not protected in Great Britain or her possessions (*ante*, p. 27). There is, however, probably small prospect of the Presidential proclamation being revoked on this ground.

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Italy, Japan, Luxemburg, Mexico, Netherlands and her possessions, Nicaragua, Norway, Portugal, Salvador, Spain, Sweden, Switzerland, and Tunis. British subjects cannot, however, obtain gramophone and similar rights, these only being, at present, accorded to Belgium, Cuba, Germany, Luxemburg, and Norway.

America really grants no international protection.

In reality, the American law does not provide for international protection at all: it only enables the citizens of foreign countries under certain circumstances to obtain American copyright. Under the Revised Berne Convention the nationality of the author in the case of a published work is of no importance. In America the nationality of the author is of the first importance. A citizen, for instance, of a country which is not a "proclaimed" country—Russia, for example—cannot obtain copyright in America for his works by first publishing them in England, or even by publishing simultaneously in England and America; in order to gain American copyright he must become domiciled in America prior to publishing his work (*i*). Again, the principle of the Revised Berne Convention is that a work entitled to copyright in any one country of the Union *ipso facto* becomes entitled to copyright in all the other countries of the Union; the American law requires that the work shall be published first in America, or simultaneously in America and a foreign country, and must comply with all the formalities imposed by the Act in respect of native works, except in so far as these may have been expressly modified in favour of foreigners.

Formalities to be observed.

Foreign works must, therefore, be registered at the Copyright Office in Washington, and every copy must bear the necessary copyright notice (*k*). There are, however, two modifications of the law in favour of foreigners, first, in respect of deposit of copies (*l*), and, second, as regards the manufacturing provisions (*m*).

Deposit of one copy sufficient.

We have seen that the native author must deposit two complete copies of the best edition of his work. Sect. 12 of the Act of 1909 has recently been amended (*n*), and now provides that if the work is by an author who is a citizen or subject of a foreign State or nation, and has been published in a foreign country, only *one* complete copy of the best edition then published in such foreign country need be deposited.

Manufacturing provisions.

As regards the "manufacturing provisions," it has been pointed out that books of which the author is not a citizen or domiciled

(*i*) He cannot indirectly qualify for copyright by assigning to an American or other proprietor: *Bong* v. *Campbell* (1909), 214 U. S. R. 236.
(*k*) *Ante*, p. 533.
(*l*) *Ante*, p. 534.
(*m*) *Ante*, p. 534.
(*n*) Act of 28th March, 1914.

resident of the United States, if they are written in a language *other than English*, are not required to comply with the "manufacturing provisions" of the Act (*o*). On the other hand, a book published by a British or other foreign author in the English language must be printed from type set within the United States, and the printing and binding must also be performed within the limits of the country. This is a particularly onerous condition of copyright, and accounts for the fact that the great majority of English books are, at the present day, entirely unprotected in America.

Ad interim protection.

Some slight concession is, however, accorded to British authors by sect. 21, which enables them to obtain an *ad interim* protection for their works published abroad in the English language prior to the date of their publication in the United States. In order to obtain this *ad interim* protection, which is to have all the force and effect of copyright under the Act, deposit must be made at the Copyright Office not later than thirty days after the publication of the work abroad, of a complete copy of the foreign edition (*p*), with a request for the reservation of copyright, and the protection is to last for another thirty days after such deposit (*q*). This provisional copyright becomes permanent when, within the period of provisional protection, an authorised edition of the book is published within the United States complying with the manufacturing provisions of the Act (*r*). Thus, books in the English language can obtain *ad interim* protection for a period ranging from thirty days to sixty days before permanent copyright is obtained, the exact period depending upon how soon after publication the "foreign" copy is deposited at the Copyright Office (*s*). Of course, if an American edition with notice of copyright can be published simultaneously with the English edition, there will be no necessity to apply for *interim* protection, and this is the course which is adopted by many of the larger publishing firms having offices in both countries.

Manufacturing provisions do not apply to

It must further be remembered that the manufacturing provisions only apply to "books," and, moreover, to "the printed book or periodical specified in sect. 5, sub-sects. (a) and (b)" (*t*), so

(*o*) *Ante*, p. 534.
(*p*) It is not necessary that this copy should have the copyright notice required by sect. 9 (Copyright Rules, r. 26).
(*q*) Sect. 21.
(*r*) Sect. 22.
(*s*) There is a movement in the States in favour of legislation extending the time for the manufacture of the American edition.
(*t*) *Ante*, p. 531.

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artistic, dramatic, or musical works.

that not only are artistic works exempted from those provisions, but also dramatic and musical compositions, which are specified in sub-sects. (d) and (e) of sect. 5, notwithstanding that such works have been printed in book form (*u*). The proprietors of the copyright in such works can, therefore, obtain copyright for their foreign editions upon complying with the general formalities of the Copyright Act, without having them manufactured in the United States. First publication upon American soil is not expressly stated to be essential, provided the work has the requisite copyright notice and deposit of one copy with the requisite copyright notice has been made "promptly" at the Copyright Office in America (*x*); but the doubt has been expressed whether a book published in another country prior to publication in the United States has not fallen into the public domain, and thus forfeited copyright protection in the United States (*y*).

Treaties and conventions.

America is not a party to the Berne Convention, but she is a party to the Pan-American Convention of 1902, including the modifications made to that Convention at Buenos Aires in 1910 (*z*). She also has special Copyright Treaties with China (8th October, 1903), securing protection for ten years in that country for American books, maps, prints, or engravings, specially prepared for the use and education of the Chinese, and translations into Chinese of any book, but permitting Chinese subjects to make original translations into Chinese; and with Japan (10th November, 1905, 11th August, 1908), granting mutual protection to works, other than translations, and additionally protecting American works in China and Corea (*a*). She has also recently concluded a Copyright Treaty with Hungary (30th January, 1912), whereby authors who are citizens or subjects of either country are entitled to protection for their works in the other country, subject, however, "to the performance of the conditions and formalities prescribed by the laws and regulations of the country where protection is claimed under the present Convention," but works are to be protected independently of the existence of protection in the country of origin of the work.

(*u*) *Ditson* v. *Littleton* (1895), 67 F. R. 905; *Hervieu* v. *Ogilvie* (1909), 169 F. R. 978.
(*x*) *Ante*, pp. 534, 538.
(*y*) Bowker, p. 127.
(*z*) *Ante*, p. 328.
(*a*) *Ante*, p. 477.

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Hawaii, &c.

Alaska, Hawaii, Porto Rico, and the Philippine Islands are all specifically referred to in the American Act of 1909 (*b*), which is, therefore, in force in those countries. By a War Department Order of 1907, American copyright was extended to the Canal Zone of Panama.

Cuba.

Cuba stands on a different footing. As a Spanish colony, Cuba came under the Spanish law of 1879, and this law continues to be applicable under four military ordinances promulgated between the years 1900 and 1902, during the period of the United States protectorate, and continued under its present insular government. The first ordinance (*c*) referred to deals with the rights of foreigners, and prescribes as follows:—

Military governor of Cuba.

1. Authors of foreign scientific, literary, and artistic works, their agents or representatives, shall enjoy in the island of Cuba the protection conferred by the Spanish Copyright Law of 10th January, 1879 (*d*), for the period during which these works are protected in the country of origin, provided it does not exceed that prescribed by the said law, and that the conditions required by it and by the Rules for its execution (*e*) be fulfilled.

2. The general register provided by Art. 33 of the above-mentione' law shall be kept by the State and Government Department.

3. Foreign works must be entered in the general register. For this purpose a certificate issued by the competent authority of the country of origin of the work, duly legalised and establishing ownership in favour of the person seeking registration, should be presented.

4. The civil governors and municipal mayors shall not suspend the performance or recitation of foreign literary or musical works by virtue of Art. 63 of the Rules for Execution unless the person claiming such suspension establishes that he is the proprietor of the work, or the agent of the proprietor, by presenting the certificate of registration issued by the officer charged to keep the general register, or, in default, the agent's authority.

5. Registration of foreign works shall be gratuitous, and proprietors or their representatives can obtain, free of cost, certificates of registration.

By the second ordinance, dated 13th February, 1901, it is

(*b*) See sect. 34.
(*c*) 19th March, 1900. Translated from "Le Droit d'Auteur," 1903, p. 32.
(*d*) *Ante*, p. 429.
(*e*) These are the rules referred to, *ante*, p. 434.

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declared that for the purpose of registration of foreign copyrights it shall be sufficient to produce a document executed in the presence of a notary public or other public officer authorised to take oaths or declarations, provided the document contains, in full, the titles or certificates relating to the property delivered in the country of origin of the work, and that the officer in whose presence the document is executed certifies that the original certificates have been produced to him.

The third ordinance, dated 13th June, 1901, deals with the rights of natives, and is as follows (*f*):—

1. Rights of property in the matter of patents, copyrights, and trade marks duly acquired in Cuba, the Island of Pirios, and the Island of Guam, in accordance with the provisions of the Spanish law, and which existed on the 11th April, 1899, in these islands, or any of them, shall subsist in their integrity for the entire periods for which they have been granted: the proprietors shall be protected and maintained in their said rights, provided always that the original or duly certified copy of the certificate of registration of the trade mark or copyright be deposited at the office of the governor of the island where protection is sought . . . and the original certificate or duly certified copy thereof shall be received and deposited at the office of the governor of the island, for all the purposes of this ordinance, without the necessity for any other certification.

2. The rights of property accorded by the United States in the matter of patents (including designs), those concerning trade marks, prints, and labels registered at the office of patents for the United States, and those concerning copyrights duly registered at the office of the Library of Congress, shall be maintained and protected by the civil government of the said islands, provided that a duly certified copy . . . of the certificate of registration of copyright . . . be deposited at the office of the governor of the island where protection is desired.

3. The person, firm, partnership, or corporation guilty of violating the rights protected by virtue of the observance of the provisions of this ordinance shall be liable to the civil and penal punishments created and established by the Spanish laws relative to the aforesaid matters which remain in force in the said islands.

4. The provisions of existing ordinances in conflict with this ordinance are revoked.

The fourth ordinance (dated 26th February, 1902) contains pro-

(*f*) Translated from "Le Droit d'Auteur," 1903, p. 38.

visions as to the form of register prescribed by Art. 33 of the Spanish law and paragraph 3 of the military ordinance of 19th March, 1900, and this has now been replaced by a local ordinance of the 3rd April, 1909.

Entitled to benefit of U. S. Act of 1909.

Cuba has been "proclaimed" as a country entitled to the benefit of the United States Act of 1909, including the provisions relating to mechanical instruments for recording musical works.

TABLE SHOWING THE DURATION OF THE PRINCIPAL PERIOD OF COPYRIGHT PROTECTION IN VARIOUS FOREIGN COUNTRIES OF THE WORLD.

Argentina	20 years from death of author.
Austria	30 years from death of author.
Belgium	50 years from death of author.
Bolivia	30 years from death of author.
Brazil	50 years from 1st January in year of publication.
Chili	5 years from death of author.
China	30 years from death of author.
Columbia	80 years from death of author.
Denmark	50 years from death of author.
Ecuador	50 years from death of author.
Egypt	(?) Perpetual.
Finland	50 years from death of author.
France	*Id.*
Germany	30 years from death of author.
Greece	15 years from day of publication.
Guatemala	Perpetual.
Haiti	Life of author and his widow and 20 years more if there be children, 10 years if none.
Holland	50 years from death of author.
Hungary	50 years from death of author.
Italy	1st period: life of author or 40 years from publication, whichever shall be the longer; 2nd period: 40 years (*g*).
Japan	30 years from death of author.
Luxembourg	50 years from death of author.
Mexico	Perpetual. (Performing rights 30 years from death of author.)
Monaco	50 years from death of author.
Norway	*Id.*
Paraguay	(?) Perpetual.
Peru	20 years from death of author.
Portugal	50 years from death of author.
Roumania	10 years from death of author.
Russia	50 years from death of author.
Salvador	25 years from death of author.
Siam	7 years from death of author or 42 years from publication, whichever shall be the longer.
Spain	80 years from death of author.
Sweden	50 years from death of author (10 years from death of author for works of art).
Switzerland	30 years from death of author.
Tunis	50 years from death of author.
Turkey	30 years from death of author.
United States	28 years from registration, with a further period of 28 years on re-registration.
Uruguay	20 years from death of author.
Venezuela	Perpetual.

(*g*) During the second period the copyright is not exclusive. The work may be reproduced by any one paying a percentage to the proprietor.

PART VI.

ARRANGEMENTS BETWEEN AUTHORS AND PUBLISHERS.

Contracts between authors and publishers should be in writing

CONTRACTS between authors and publishers are not, as in some countries, notably Germany, regulated by any special law, but their validity, construction, and enforcement depend upon the ordinary rules of law governing contracts relating to dealings with personal property. It is always advisable that they should be in writing, and if they are not to be performed within a year, writing is necessary under the Statute of Frauds (*a*).

In *Sweet* v. *Lee* (*b*), it appeared that the agreement for the publication of a dictionary of legal practice was contained in a memorandum, which was signed with the initials of the publisher and of the author, and was to the effect that the latter should receive 80*l*. a year for five years, and 60*l*. a year for the rest of his life if he should live longer than five years. This was held to be void under the Statute of Frauds; because, being a memorandum of an agreement not to be performed within a year, no consideration was expressed on the face of it, and it was without any signature other than the initials of the parties. The plaintiff, therefore, was not entitled to damages claimed to have been sustained by the failure of the defendant to perform his agreement to prepare a new edition. Nor, although the contract was unenforceable,

(*a*) But a contract by a printer to print, and find the paper for printing a number of copies of a work, is not a contract for the sale of goods within the 4th section of the Sale of Goods Act, 1893; and the printer consequently may recover the price in an action for work, labour and materials, where the contract is a verbal one: *Clay* v. *Yates* (1856), 1 H. & N. 73. And a printer who is employed to print certain numbers, but not all consecutive numbers, of an entire work has a lien upon the copies not delivered for his general balance due for printing the whole of those numbers: *Blake* v. *Nicholson* (1814), 3 M. & S. 167. But it seems that by the custom of trade a printer cannot recover for the printing of a work before the whole is completed and delivered: *Gillett* v. *Mawman* (1808), 1 Taunt. 137; see also *Adlard* v. *Booth* (1837), 7 C. & P. 108. A contract to satisfy the Statute of Frauds need not appear from one document, but may be collected from any number of documents, provided they be sufficiently connected: see *Boydell* v. *Drummond* (1811), 11 East, 142; *Mavor* v. *Pyne* (1825), 3 Bing. 285; *Pearce* v. *Gardner* (1897), 1 Q. B. 688.

(*b*) (1843), 3 Man. & Gr. 452.

could the plaintiff, having paid for several years the sums mentioned in the memorandum, recover the money so paid on the ground of failure of consideration.

MSS. sent on approval.

Offer and acceptance are essential to every valid contract. If an author sends his manuscript to a publisher on approval, this is an offer by the author that the publisher shall have the right to publish on terms to be agreed upon, and if the latter publish without any agreement as to the author's remuneration, the law will imply a promise to pay a reasonable price for the work. What, short of actual publication, amounts to an acceptance of an author's manuscript will depend upon the circumstances of the case, but if the publisher retain the article and has it put into type and a proof sent for revision to the writer, the latter may generally treat this as an acceptance of his manuscript and sue the publisher for the price, even though the article is never, in fact, published (*c*).

An action maintainable for not supplying a work agreed to be furnished.

If an author agree in writing to supply a bookseller or publisher with a manuscript of a work to be printed by the latter, an action for damages can be maintained for refusing to furnish the same (*d*), provided the work be one which, if published, would not be libellous (*e*), or would not subject the author to punishment (*f*).

Should the work be stopped the author must be paid for work already done.

Where, however, the author was engaged for a certain sum to write an article to appear, among others, in a work called "The Juvenile Library," and before he had completed his article, and before any portion of it had been published, the work in which it was to have appeared was discontinued, Lord Chief Justice Tindal held that the publishers were not entitled to claim the completion of the article in order that it might be published in a separate

(*c*) *Macdonald* v. *National Review*, Westminster County Court, 16th May, 1893; *Pall Mall Gazette*, 17th May, 1893.

(*d*) *Gale* v. *Leckie* (1817), 2 Stark. N. P. C. 107. The Court of Chancery, however, could not compel him to write: *Clarke* v. *Price* (1819), 2 Wils. C. C. 157.

(*e*) *Lyne* v. *Sampson Low & Marston*, *Times*, 17th Feb., 1873.

(*f*) *Gale* v. *Leckie*, *supra*; and see *Brook* v. *Wentworth* (1795), 3 Anstr. 881; *Cowan* v. *Milburn* (1867), L. R. 2 Ex. 230. A contract for the publication of a book which it is unlawful to publish is not valid. But where this defence is set up, and the work is not produced, and no evidence of its character is offered, the jury are not to pronounce that the book is obnoxious: *Gale* v. *Leckie*, *supra*. A printer cannot maintain an action against a publisher for money due for printing an obscene book: *Poplett* v. *Stockdale* (1825), 1 Ryan & M. 337. But where a printer, after printing part of a book, received the manuscript of the other part and found it to be libellous, it was held that he was not bound to print the libellous part, and was entitled to recover for what he had printed: *Clay* v. *Yates* (1856), 1 Hurl. & N. 73; *Lyne* v. *Sampson Low & Marston*, *supra*.

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form for general readers, but were bound to pay the author a reasonable sum for the part which he had prepared (*g*).

Payment to author's representative for part of work finished.

Where a work called the "Elements of Mechanical Philosophy" was published in parts, the agreement between the author and publisher being that each part should be paid for when issued, and after the publication of a complete part the progress of the work was interrupted by the death of the author, it was held that the representatives of the deceased author were entitled to payment of the stipulated price of the published part (*h*).

Care necessary in drafting publishing agreements.

All agreements between authors and publishers should be drawn with care, so as to make the respective rights of the parties clear. "Agreements between authors and publishers," remarked Page-Wood, V.-C., in *Reade* v. *Bentley* (*i*), "assume a variety of forms. Some are so clear and explicit that no doubt can arise upon them. Thus, where an author assigns his copyright, the transaction is one which every person understands, and which leaves no room for uncertainty as to the rights of the parties."

Agreements for sale of copyright outright.

It will be remembered that in the case of literary copyright, the Copyright Act, 1911 (*k*), provides that the copyright shall vest, in the first instance, in the author, and not in the publisher, unless the relationship of master and servant subsists between the author and publisher (*l*). This, however, is not necessarily so in the case of engravings, photographs or portraits, for sect. 5 (1) (a) provides that, where such works have been made for valuable consideration in pursuance of an order, the person who has given the order shall be the first owner of the copyright (*m*). If, therefore, the terms of the arrangement between the author and publisher be that the copyright in a literary work is to belong to the publisher upon payment to the author of a fixed sum, an assignment in writing of the copyright by the author to the publisher should be made, even though the work has been written to the order of the publisher (*n*), but, in the case of an engraving, photograph or

(*g*) *Planché* v. *Colburn* (1832), 5 C. & P. 58; on app. 8 Bing. 14.

(*h*) *Constable* v. *Robinson's Trustees*, 14 Jac. Dec. 166, 1st June, 1868. One judge, however, dissented, thinking the contract was one for the entire work, and that the object of partial payment was the accommodation of the author, and not any qualification of the original obligation. If a bookseller undertakes to publish a work in parts, and before the completion he dies, the subscriber has a claim upon the estate to complete the work, for otherwise these parts which he has purchased upon the faith of the work being completed are useless.

(*i*) (1857), 1 K. & J. 656.

(*k*) Sect. 5 (1), *ante*, p. 108.

(*l*) Sect. 5 (1) (b), *ante*, p. 117.

(*m*) *Ante*, p. 113.

(*n*) As to what would amount to an assignment, see *ante*, p. 124. If no assignment has been executed, however, the publisher may have equitable rights: see *ante*, p. 124.

portrait made to the order of the publisher, no such assignment will be necessary.

As to the alteration of an author's work where copyright belongs to publisher.

If a publisher be the absolute owner of the copyright, he is entitled, without the consent of the author, to publish successive editions of the work with additions and corrections; and, in bringing out new editions, may make such omissions and other changes in the original as will not injure the reputation of the author. But such revision when done by another, cannot lawfully be represented as having been made by the author of the original: and if the publisher issues a new edition under the author's name so incorrect as to be injurious to the author's reputation, he renders himself liable to an action for damages (*o*).

When, however, a portion of the work is written to be published under the name of another, the author would have no remedy in case of its alteration or variation (*p*). This was decided in *Cox* v. *Cox* (*q*). The defendant, a house agent, having prepared a book on the sale of estates, applied to the plaintiff, a barrister, to correct the work, and to supply the legal matter necessary to complete it, for which the plaintiff was to be paid a certain remuneration, according to the number of pages the work might contain. "No agreement," said the Vice-Chancellor in passing judgment, "was come to as to the name under which the work was to appear. The case, therefore, stood thus: The defendant said, 'I am going to write a work, which you shall correct and put into shape, and a part of which you shall supply for a certain remuneration.' If that be so, the plaintiff was evidently in the subordinate position of assisting in the production of a work which was to come out in the name and as the work of the defendant. The work would be partly the defendant's own composition, and it would be partly the work of the plaintiff; but it was to come out as one entire publication, and to be paid for at one uniform rate. The bulk of the matter was apparently to be supplied by the defendant. The plaintiff employed himself in the preparation of a treatise on the law of vendor and purchaser and landlord and tenant, the whole of which the defendant desired to have compressed into one printed sheet. The plaintiff, on the other hand,

(*o*) See *Archbold* v. *Sweet* (1832), 1 Moo. & Rob. 162.

(*p*) The name of the editor appearing upon the title-page forms no part of the title; and the Master of the Rolls refused to restrain by injunction the proprietors of a journal from omitting the publication of the editor's name on the title-page, although the agreement between the proprietors and editor provided that the title of the journal should not be altered without mutual consent: *Crookes* v. *Petter* (1860), 6 Jur. 1131. Similarly the author's name may be omitted: *Brook* v. *Lloyd* (1910), 26 T. L. R. 519.

(*q*) (1856), 11 Ha. 118.

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thought that no information of value on the legal incidents of the property treated of could be condensed within that compass, and he extended this portion of the work to three sheets and a half. The defendant then said: 'If you will reduce this matter to one-half of its present magnitude, I am willing to print it; if not, I decline to print it at all.' This was an absolute rejection of the plaintiff's contribution, except upon the terms of reducing it in quantity to the extent which the defendant required. The plaintiff, on the other hand, was resolved that the whole should be printed or none. There was at this point of the transaction great difficulty in the way of any arrangement. The defendant said, 'I will have only one sheet and three-quarters of legal matter.' The plaintiff insisted that he should have three sheets and a half, or none. Then what followed? The plaintiff looked over the manuscript again, but did not reduce it to the required dimensions; and the defendant, although it had not been so reduced, took the manuscript in the state in which it had been left (which he could only have been entitled to do under the contract), and he began to print the work. The plaintiff proceeded to correct the proof sheets; but (as he states), when he began to find that the legal portion of the work was introduced in a mutilated form, he intimated his refusal to consent to any alteration; and in this state of things the application is made for the injunction. I have st[illegible]' what appears to me to be the substance of the contract between the parties, up to the time of the discussion as to the space which the legal matter should occupy; and that contract the plaintiff has, by the fourteenth paragraph of the bill, treated as subsisting, for he thereby claims £60 as the unpaid part of the remuneration on the whole contract. On the other hand, the defendant, having taken the manuscript and used it, cannot, I think, dispute his liability to pay for it, according to the terms of the contract. But that would be a question for a court of law. Something was said with regard to the possible effect of the alteration of the plaintiff's portion of his work, as affecting his reputation; but, as it was held in Sir James Clarke's case (*r*), the possible effect on reputation, unless connected with property, is not a ground for coming to this court, though it may be an ingredient for the Court to consider when the question of a right of property also arises. . . . A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it,

(*r*) *Clarke* v. *Freeman* (1850), 11 Beav. 112.

and produce it in a mutilated form? How far, in a case in which the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and thenceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire; and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which had been accepted in that shape, the question might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required, in such a form as to enable the defendant to publish it as his own. I can find no circumstances from which any such special contract as I have mentioned can be inferred. The plaintiff has, indeed, sought to make it a stipulation that his contribution of the legal materials shall not be published otherwise than entire; but this stipulation has no foundation in the original contract, upon which his case rests. It may well be that this part of the work may suffer in value from the alterations made by the defendant, but no one will probably expect to find the law set forth with any great amount of precision in a work issued by a house agent for the guidance of his customers in dealings of a simple character. If any such mistakes should occur in the legal portion of the work, as the plaintiff apprehends, he will have the remedy in his own hands, by correcting the errors in a subsequent work, in which he may publish his treatise in a distinct form" (*s*).

Agreements for royalties or share of profits.

But instead of an "outright" transfer of his copyright, the author may agree with the publisher that the latter shall pay him a specified royalty upon all copies of the work which may be sold, or that the profits upon sale of the work shall be divided in certain proportions. In these cases it is still more important that the agreement between author and publisher shall be clear and precise.

Distinction between a publishing agreement and an assignment of copyright.

The first point that should be made clear is as to whether the copyright shall belong to the publisher, or whether he is merely to have the exclusive right of publishing the work.

(*s*) This right the plaintiff would have had by virtue of sect. 18 of the Copyright Act, 1842, now repealed (see *ante*, p. 17). No such right is given by the Copyright Act, 1911: cf. *Lee* v. *Gibbings*, *post*, p. 567. And as to the right of an editor of an encyclopædia or magazine who is interested in the success of the publication to prevent the owner of the copyright in the publication from altering articles proposed to be inserted by the editor, see *Crookes* v. *Petter* (1860), 6 Jur. 1131.

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The distinction between a mere publishing agreement and an assignment of copyright is well recognised. Thus, in the case of *Sweet* v. *Cater* (*t*) the agreement, after reciting that the author had prepared a tenth edition of his work, which the publisher was desirous of *purchasing*, and that it had been agreed that a certain printer should print a given number of copies, and the publisher should pay to the author *for the said tenth edition* a certain sum, went on to direct that the work should be in a given number of volumes, and should *be sold* to the public for a given price. It was objected that the plaintiff, the publisher, was not, under this agreement, the *proprietor of the copyright* within the meaning of the statute (54 Geo. III. c. 156, s. 4), but a mere licensee to sell a given number of copies. The Court overruled the objection, holding that the copyright was equitably vested in the publisher, on the ground that the contract was obligatory on both parties, that the plaintiff was bound to sell, and therefore the author was bound to abstain from doing anything which would interfere with the sale. The Court, moreover, were of opinion that the equitable right to the copyright endured until the number of copies fixed by the terms of the agreement had been exhausted.

Presumption that copyright is not intended to be assigned.

But wherever there are continuous obligations on the part of the publishers—for instance, the payment of royalties to the author—the tendency of the Courts is to construe the agreement as conferring upon the publisher a conditional licence to publish, rather than as giving him an equitable title to the copyright. Thus, in *Re Jude* (*u*), the plaintiff was the proprietor of the copyright in a series of musical compositions called "Music and the Higher Life." In the year 1900 the defendant company, through their managing director, agreed in consideration of the plaintiff giving to the company "the sole and exclusive right of printing and publishing" this series in volume form: first, to bear the whole cost of printing and issuing the volume; secondly, to pay the plaintiff 6*d*. on every copy sold; thirdly, to supply the plaintiff with such copies as he should require at 1*s*. 6*d*. per copy, such copies not to be liable to the royalty of 6*d*. It was held by the Court of Appeal, affirming Kekewich, J. (*x*), that this was a mere publishing agreement, and not an assignment of copyright. The Court of Appeal based their decision largely upon the fact that the defendants were only to be at liberty to publish the musical compositions in "volume form," but Mr. Justice Kekewich appears to have thought that the fact that the defendants

(*t*) (1841), 11 Sim. 573. (*u*) (1907) 1 Ch. 651.
(*x*) (1906) 2 Ch. 595.

were to be under continuing obligations to the plaintiff was evidence of an intention not to assign the copyright, and this view is supported by the case of *Stevens* v. *Benning* (*y*), where Page-Wood, V.-C., remarked as follows:—"Then it is argued, that the sole power of printing, reprinting and publishing is, in fact, the copyright. And no doubt if an author, in consideration of a sum of money paid to him, agrees that certain persons shall have the sole power of printing, reprinting, and publishing a certain work for all time, that would be a parting with the copyright; but, if the agreement is that the publishers, performing certain conditions on their part, should, so long as they do perform such conditions, have the right of printing and publishing the book, that is a very different agreement."

Whether payment of royalties can be enforced against assignees of copyright.

It may be said to be, generally, inadvisable that in any royalty agreement the author should part with his copyright, inasmuch as his right to claim the royalties against an assignee of the copyright might be jeopardised. It has been held in several patent cases that the vendor of patent rights has a lien upon the patent for payment of royalties (*z*), and such cases would seem to apply to copyright cases, provided the agreement to pay royalties is general, and not an agreement simply to pay royalties upon all copies manufactured by the original assignees. Such a lien, however, could not be enforced against a purchaser of the copyright without notice of the original agreement, and, of course, there would be no privity of contract between the author and the second assignee enabling the author to sue such assignee directly for the royalties (*a*).

Bankruptcy of publisher.

In the case of *Re Grant Richards* (*b*), it was held that, where an author had assigned his copyright in consideration of the payment of royalties, and, upon the bankruptcy of the publisher, his trustee continued the publisher's business for some time, the author had no right to claim payment of the royalties in full, but could only prove in the bankruptcy for damages. On the other hand, in a case where there was an agreement by the publisher to pay a share of profits to the author, and the copyright still remained vested in him, it was held that the agreement was terminated by the bankruptcy of the publisher, whose trustee in bankruptcy was restrained from reprinting or republishing the

(*y*) (1855), 1 K. & J. 168.
(*z*) *Werderman* v. *Société Générale d'Electricité* (1881), 19 Ch. D. 246; *Dansk* v. *Snell*, (1908) 2 Ch. 127; dist. *Bagot Pneumatic Tyre Co.* v. *Clipper Tyre Co.*, (1902) 1 Ch. 146.
(*a*) *Bagot Pneumatic Tyre Co.* v. *Clipper Tyre Co.*, *supra*.
(*b*) (1907) 2 K. B. 38.

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book, even on the terms of continuing to pay the author his share of profits, but without prejudice to the right of the trustee to dispose of stock (*c*).

Provisions of new Bankruptcy Act as to copyright.

The undoubted hardship caused to authors by the decision in the case of *Re Grant Richards* (*d*) has now been removed by sect. 25 of the Bankruptcy and Deeds of Arrangement Act, 1913 (*e*), whereby it is provided as follows:—

"Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee in the bankruptcy shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except upon the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the Court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of profits at a rate not less than that which the bankrupt was liable to pay."

Construction of this section.

This section only, in terms, applies to a case where the bankrupt is liable to pay royalties or a share of profits "to the author," but it seems probable that the Courts will not give a stringent construction to the section, but will hold that it applies equally to a case where the royalties or share of profits is payable to the personal representatives, or to an assign, of the author. It is further to be noticed that the section deprives the trustee in bankruptcy, not only of the right to continue to manufacture copies of an author's work without payment of royalties or share of profits, but also of the right to dispose of stock on hand without making like payment. On the other hand, the section might be construed as enlarging the rights of the trustee in bankruptcy by conferring upon the Court the power to authorise a transfer of the bankrupt's right or interest in the copyright, notwithstanding, perhaps, that the agreement between the author and the publisher

(*c*) *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683. Royalties, it may be noticed, are income, and therefore, as between tenant for life and remainderman, belong to the former: *Davidson* v. *Ogilvie* (1910), Sc. Sess. Cas. 294.

(*d*) *Supra*.

(*e*) 3 & 4 Geo. V. c. 34, now sect. 60 of the Bankruptcy Act, 1914 (4 & 5 Geo. V. c. 59). Sect. 102 of the Bankruptcy (Scotland) Act, 1913 (3 & 4 Geo. V. c. 20), is to the same effect.

was of a personal character, and, therefore, not generally assignable (*f*).

Basis of the royalty.

If the royalty payable to the author is a certain proportion of the price of the work, the agreement should fix a minimum price at which the work is to be sold (*g*), which may be a "long" price, enabling a discount to be allowed to the general public, or a "net" price, allowing no such discount. The royalty payable to the author will, generally, be calculated upon the retail price at which copies of the work are supplied to the "trade" (*h*).

Ordinary profit-sharing agreement between authors and publishers not a partnership.

The ordinary agreement between authors and publishers to the effect that the former shall contribute the manuscript, and the latter shall in the first place defray the cost of the bringing out of the work, and repay himself out of the proceeds of the sale, and that the net profits shall be divided, is not properly a partnership, and the author is not liable for paper and printing supplied and executed for the publisher (*i*). On the other hand, where the printing is arranged for by the author, the publisher is not liable if the work should prove to infringe the copyright of another (*k*).

But is a joint adventure terminable by notice.

The true relationship between author and publisher under a profit-sharing agreement was the subject of discussion in the case of *Reade* v. *Bentley* (*l*). There, by a memorandum of agreement, made in November, 1852, between the plaintiff and the defendant, it was agreed that the latter should publish, at his own expense and risk, a work entitled "Peg Woffington," of which the former was the author; and, after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of 10 per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that should be printed of the work were to be divided into two equal parts, one moiety to be paid to the plaintiff, and the other to the defendant. Subsequently the same parties entered into a similar agreement relative to the publication of another work entitled "Christie Johnstone," of which the plaintiff was also the author; and they signed for that purpose a memorandum

(*f*) See *post*, p. 561.

(*g*) As to agreements for maintenance of prices, see *post*, p. 566.

(*h*) If the book is published in different bindings this must be taken into consideration in the agreement. Royalties are not usually paid on press or other free copies.

(*i*) See *Gardiner* v. *Childs*, 8 C. & P. 345; *Reade* v. *Bentley* (1857), 3 K. & J. 271, and 4 *Ibid.* 656; *Wilson* v. *Whitehead* (1845), 10 M. & W. 503; *Gale* v. *Leckie* (1817), 2 Stark. 107.

(*k*) *Kelly's Directories* v. *Gavin*, (1901) 1 Ch. 374; (1902) 1 Ch. 631.

(*l*) (1857), 1 K. & J. 656.

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of agreement, which, except as to the date and the title of the work, was in the same words as the former. Two editions of the former work and four of the latter having been published by the defendant, and no fresh expenditure having been incurred by him since the publication of those editions, the plaintiff claimed a right to terminate the joint adventure between them, and to prevent the defendant from publishing any further edition of either work.

The main question to determine was, what was the effect of the agreement which had been entered into between the plaintiff and the defendant?

It was contended by the plaintiff that the case was one of simple agency; that by the effect of the agreement the defendant became a mere agent of the plaintiff. "But," observed the Vice-Chancellor, "it is clear that he became more than that. A mere agent may be paid, as the defendant was to be paid, by a share of the profits; but a mere agent never embarks in the risk of the undertaking; and here the defendant took upon himself the whole expense and risk of bringing out the work. Clearly, therefore, the case is something more than one of simple agency." He held, accordingly, that the enterprise was in the nature of a "joint adventure" which the author was at liberty to terminate by reasonable notice.

After considering and distinguishing the cases of *Sweet* v. *Cater* (*m*) and *Stevens* v. *Benning* (*n*), the Vice-Chancellor remarked as follows:—

"It was contended for the defendant that if the effect of the agreement was not an assignment of the copyright (which it is now clearly decided that it could not be), it resulted in a joint adventure, in which the defendant was to have a licence to publish the work; and that, from the nature of the case, and by the terms of the agreement, that licence was irrevocable. In *Stevens* v. *Benning* I considered the agreement must be regarded as creating, to a certain extent, a joint adventure, and Lord Justice Knight Bruce adopted the same view. He says, it must be observed, that such interest, if any, in the copyright of the author's work as the other parties to the agreement acquired under it, they acquired, not exclusively of the author, 'but by way of joint adventure with him, or of partnership with him, in respect and for the objects of which he undertook the fulfilment by himself personally of certain duties to them, and they undertook the fulfilment by themselves personally of certain duties to him' (*o*). Community

(*m*) (1841), 11 Sim. 572. (*n*) (1854), 6 D. M. & G. 223.
(*o*) 6 D. M. & G. at p. 229.

of risk does not appear to me to be by our law, any more than it was by the civil law, essential to constitute a partnership; one partner being at liberty to contract with another that he will take all the losses of the concern upon himself. Lord Justice Turner looked upon the agreement in *Stevens* v. *Benning* in the double light of a licence and a partnership, speaking, however, less decidedly as to its being a partnership. He says: 'Next, if there was a partnership, then, if the agreement does not affect the copyright, the partnership was not in the copyright, but in the copies printed under the licence contained in the agreement' (*p*)—viewing it, therefore, as a licence for the publication of the work, and then a joint adventure between the author and publisher in the copies so to be published. If that were the effect of the agreement in the present case, the question would still remain, whether the licence be irrevocable.

"The plaintiff does not attempt to interfere with the publication of an edition which the defendant had commenced, and incurred expense in preparing for publication, before he exercised the option of determining the agreement. His claim is limited to editions about which no such expense had been incurred by the defendant; and his argument is, that, unless he has a right to determine the agreement as to all such editions, the consequence will be, that, during the whole of the defendant's life, he may be under an obligation to the defendant, while the defendant will be under no reciprocal obligation to him. It is true that, according to *Stevens* v. *Benning*, a licence like the present would, I apprehend, be restricted to the defendant personally, and would not extend to his executors, or to any future partner or assignee; but if the defendant's construction be correct, it follows that, so long as he lives and is willing to continue publishing fresh editions of the work, so long, according to the doctrine in *Sweet* v. *Cater*, the plaintiff will be precluded from asserting a right to publish any competing edition. The defendant could compel the plaintiff to abstain from publishing a single copy of the work, so long as he expressed his readiness to continue publishing. But the plaintiff has no reciprocal power. He could never compel the defendant to publish more than a single edition of the work. His powers are limited to what the contract gives him; and, according to the contract, when the defendant has published a single edition the contract on his part is fulfilled. That is a position of considerable hardship for an author, and one which ought to be clearly shown,

(*p*) 6 D. M. & G. at p. 231.

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upon the face of a contract, to have been contemplated by the parties who entered into it . . . In the present case, no new expense has been incurred by the defendant, either in printing, advertising, or otherwise, as regards 'Peg Woffington,' since the publication of the second edition, and, as regards 'Christie Johnstone,' since the publication of the fourth edition; and that being, as I have already intimated, the true test in construing the agreement, it appears to me, that, when those editions were published, the period had arrived at which the parties intended a division of profits to take place, and at which the plaintiff became entitled to terminate his agreement with the defendant. This is the only conclusion at which I can arrive, after a very careful consideration of the contracts. But it is much to be regretted that contracts should be framed with such uncertainty, when it would have been so easy to make them certain" (*q*).

Fiduciary relationship between author and publisher.

A profit-sharing agreement between an author and a publisher does, however, establish a fiduciary relationship between the parties, and the author is entitled to an account from the publishers (*r*). For this purpose the publisher must produce all books and documents necessary for the proper vouching of the accounts; he is not entitled to charge the author at a higher rate for the expenses of printing, paper, &c. than he himself actually pays, and must give the author the benefit of all trade commissions and discounts (*s*).

Works published at author's risk.

Where an author is prepared to run the entire risk of the publication of a work, he usually employs a publisher to publish and sell the work on his behalf at a fixed commission. In this case the publisher is simply agent for the author, and the entire liability for the expenses of printing and publishing the work falls upon the latter; but he receives the gross proceeds of sales, less the publisher's commission. It is, however, a well-known practice of publishers in accounting for sales to reckon "13 copies as 12" or "25 copies as 24," and it should be made clear in the agreement whether this practice is intended to apply as between the parties. It should further be made clear whether the particular publisher is to have the exclusive right of publication, or whether the author is to be at liberty to make similar contracts with other publishers (*t*).

(*q*) 1 K. & J. at p. 669.
(*r*) *Barry* v. *Stevens* (1862), 31 Beav. 258.
(*s*) See an opinion of counsel obtained in the year 1893, by the Society of Authors.
(*t*) See *ante*, p. 132.

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Some points in drafting publishing agreements.

Every well-drafted agreement between an author and a publisher should clearly state what are the precise rights which the publisher is to acquire. As we have seen (*u*), copyright is divisible as to time (*x*), place and method of reproduction. Is the agreement to include all translations, abridgments, selections, dramatizations, &c., or are these to be reserved to the author? Is the publisher to have foreign rights, as well as local rights? In the case of musical and dramatic works, is the publisher to have the performing rights and the right to authorise reproduction by records or other mechanical instruments? In the case of novels intended to be published as "serials" in magazines, is the right of publication in book form included, or is the author to be left free to arrange for book publication independently? In the case of pictures, is the publisher to have the right of reproduction by all processes or only by photography, engraving, lithography, or what other process, and is the original to become the property of the publisher or to be returnable within any, and what, time to the artist? All these are points which should be made clear upon the face of the agreement. If, again, the publisher is to have the right to publish only a single edition of a work, the number of copies of which the edition is to consist should be declared, for otherwise a publisher might, if so disposed, print 20,000 as one edition (*y*).

Construction of the word "edition."

The meaning of the word "edition," and the construction to be placed upon it, were fully discussed in *Reade* v. *Bentley*. It was argued that where a work has once been stereotyped, the term "edition" was no longer applicable; and that when a work is published in what are called "thousands," 20,000 or 30,000 being circulated, each thousand could not properly be called an "edition." Wood, V.-C., however, thought that not merely in point of etymology, but having regard to what actually takes place in the publication of any work, an "edition of a work was the putting of it forth before the public, and if this were done in batches at successive periods, each successive batch was a new edition; and the question whether the individual copies had been printed by means of movable type or by stereotype, did not seem to him to be material. If movable type were used, the type

(*u*) *Ante*, p. 126.

(*x*) It should be remembered that under sect. 5 (2) (b) of the Act of 1911, no assignment by an author is operative beyond a period of twenty-five years from the author's death (see *ante*, p. 128).

(*y*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 669; *Sweet* v. *Cater* (1841), 11 Sim. 572; *Stevens* v. *Benning* (1854), 1 K. & J. 168; *Benning* v. *Dove* (1831), 5 C. & P. 427.

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having been broken up, the new edition was prepared by setting up the type afresh, printing afresh, advertising afresh, and repeating all the other necessary steps to obtain a new circulation of the work. In that case the contemplated break between the two editions was more complete, because, until the type was again set up, nothing further could be done. It made no substantial difference as regards the meaning of the term 'edition,' whether the new 'thousand' had been printed by a resetting of movable type, or by stereotype, or whether they have been printed at the same time with the former thousand or subsequently. A new 'edition' is published whenever, having in his storehouse a certain number of copies, the publisher issues a fresh batch of them to the public. This, according to the practice of the trade, is done, as is well known, periodically. And if, after printing 20,000 copies, a publisher should think it expedient for the purpose of keeping up the price of the work, to issue them in batches of a thousand at a time, keeping the rest under lock and key, each successive issue would be a new 'edition' in every sense of the word" (*z*).

Where agreement is for a specified number of copies.

Where the agreement is for the exclusive publication of a specified number of copies, that number only can be printed and sold, and until their sale the author cannot revoke the authority given to the publishers, or himself publish the work.

An agreement that the publisher shall publish a second edition, if demanded by the public, and print as many copies as they can sell, gives them the right, when such demand arises, to publish and sell as many copies as can properly be considered to belong to that edition, and to prevent the author or any other person from publishing until such copies shall be sold (*a*).

Agreements as to style of publication.

The publisher is bound to observe the terms of the contract between himself and the author as to the manner and style of the publication, and the price at which it shall be issued to the public, but if the price at which the work is to be sold be not *fixed* by the agreement, or otherwise arranged by the author and publisher, the latter is the proper person to determine the same. At the same time, he would not be permitted to fix upon a style, or sell at a

(*z*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 667. See *Blackwood* v. *Brewster*, 7 Dec. 1860; 23 Sess. Cas. 2nd Series, 142. In this case it was held that an editor, under an agreement that he should prepare every new edition of a work, and should receive a certain sum for his services, is not entitled to superintend, or to claim payment for, the reprinting of a part of the work to replace copies destroyed by fire. The copies reprinted under such circumstances do not form a new edition, but go to replace the part of the edition destroyed.

(*a*) *Pulte* v. *Derby*, 5 McLean (Amer.), 328.

price, which would be clearly injurious either to the literary reputation or the pecuniary interests of the author, without his consent.

When neither the time during which the publication is to last, nor the number of editions or copies to be published, is specified, the publisher is not bound to publish more than the first edition; and the author, by giving proper notice, may end the contract and prevent the publication of any further editions (*b*). But the publisher is at liberty to continue publishing successive editions on the terms of the contract until the receipt of such notice; and the author is not entitled to restrain the publication or sale of any edition on which the publisher has incurred expense before receiving notice to end the agreement (*c*).

Specific performance not decreed.

A Court of Equity will not decree specific performance of an agreement to write a book. It has no power to go so far, and were it capable of making such an order, there would be no means of enforcing it (*d*).

Likewise an author cannot, it is thought, have specific performance of an agreement by a publisher to publish the author's manuscript (*e*).

An author may bind himself not to write upon a particular subject.

But an author may bind himself not to write upon a particular subject, or only for a particular person; for a bond or covenant to that effect would not resemble one in restraint of trade.

Thus, in *Morris* v. *Colman* (*f*), where Colman had contracted with the proprietors of the Haymarket Theatre not to write dramatic pieces for any other theatre, the Lord Chancellor maintained that such a contract was not unreasonable upon either construction, whether it was that Mr. Colman should not write for any other theatre without the licence of the proprietors of the Haymarket Theatre, or whether it gave to those proprietors merely a right of pre-emption. If, said he, Mr. Garrick were now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other? I cannot see anything

(*b*) *Reade* v. *Bentley* (1857), 3 K. & J. 271; 4 *Ibid.* 656; *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497. In this last case it was held that no agreement could be implied on the part of the author not to bring out a second edition until all the first edition was sold.

(*c*) *Reade* v. *Bentley*, *supra*.

(*d*) *Clarke* v. *Price* (1819), 2 Wils. C. C. 157. But a specific performance of an agreement to assign a copyright may be decreed: *Thombleson* v. *Black* (1836), 1 Jur. 198.

(*e*) *Stevens* v. *Benning* (1854), 6 D. M. & G. 223, 229; *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497, 499.

(*f*) (1812), 18 Ves. 437.

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unreasonable in this; on the contrary, it is a contract which all parties may consider as affording the most eligible, if not the only, means of making this theatre profitable to them at all as proprietors, authors, or in any other character which they are by the contract to hold.

But Court will not interfere until there be an actual publication.

But in *Brooke* v. *Chitty* (*g*), where the defendant had undertaken not to write or edit any work upon the criminal law, except a work of which the plaintiff had purchased the copyright, and an advertisement of an edition of Burn's "Justice of the Peace," by the defendant, had appeared, Lord Brougham refused to grant an injunction, observing that the defendant was at liberty to write in his closet what he pleased, and that the Court would not interfere until there was a violation of the alleged undertaking by actual printing and publication.

So, when an author sells the copyright of a work published under his own name, and covenants with the purchaser not to publish any other work to prejudice the sale of it, it seems that another publisher, who has no notice of this covenant, may be restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject, but under a different title, and though there be no piracy of the first book (*h*).

If an author undertakes to compose a work and dies before completing it, his executors or administrators are discharged from the contract, for the undertaking was merely personal in its nature, and by the intervention of the contractor's death has become impossible to be performed (*i*). And if an author becomes bankrupt his trustee has no power to compel him to complete the work (*k*).

Independent of agreement to the contrary, author at liberty to publish a continuation of his work.

But where no such covenant had been entered into and the publisher had agreed with an author for an edition of a history to be written by the latter, in four volumes, and had obtained subscriptions for all that could fall within his edition, the Court held that the author was at liberty to publish a continuation of the history which embraced part of the period and also much of the matter contained in the last of the four volumes (*l*).

(*g*) (1831), 2 Cooper's Cases, *temp.* Cottenham, 216; cf. *Brook* v. *Wentworth* (1795), 3 Anst. 881.

(*h*) *Barfield* v. *Nicholson* (1824), 2 Sim. & St. 1; but see *Sweet* v. *Archbold* (1834), 10 Bing. 133.

(*i*) *Marshall* v. *Broadhurst* (1831), 1 Tyrrh. 349; *Cooke* v. *Coleraft* (1773), 2 W. Bl. 856.

(*k*) *Gibson* v. *Carruthers* (1841), 8 M. & W. 343.

(*l*) *Blackie & Co.* v. *Aikman* (1827), 5 Sess. Cas. 719. As to the respective rights of a writer and publisher of a periodical to continue to publish the

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After an author has parted with the copyright in a book, he is not at liberty to reproduce substantially the same matter in another work. Even in the absence of any special agreement, the second publication would be an infringement of the copyright in the first (*m*).

But after parting with copyright, author cannot reproduce matter in any other book.

A writer agreed with a publisher to edit a translation of Montaigne, adding notes and a biographical sketch of the author, for a particular sum, which was to be increased by other sums as further editions should be published. It was intended that the publisher should have the sole right of multiplying copies of the work, but there was no assignment to him of the copyright. After the publisher's death, his widow and executrix, with the author's knowledge and assent, registered the copyright in her own name. On the publication of a fresh edition, the widow paid the author money, and gave him copies of the work on the same terms as were contained in the agreement made with her husband in his lifetime, and on three occasions, when the author claimed remuneration on those terms, she did not repudiate all liability, but disputed merely the amount. This was held to be evidence from which a jury might infer an agreement on the part of the widow to remunerate the author on the same scale as in the agreement with her husband, in consideration of the author assenting to her registering the copyright in her own name (*n*).

Warranty on sale of copyright.

Where the executor and son of a deceased author, in reply to an offer from a publishing house relating to one of his father's works, replied that he would be happy to treat with them "respecting the copyright" in it; and, in another letter, said he had accepted their offer "for the exclusive right of publishing it," and gave a receipt for the money paid "for permission to publish the work so long as the copyright may endure; that right to be exclusively their own for ten years from this date," it was held that this amounted to an express warranty of title, and an equitable assignment of the copyright having, unknown to the executor, been previously made to another publisher, the executor was held liable to an action for breach of the warranty (*o*).

Assignability of publishing agreements.

The question whether the benefit of a publishing agreement is assignable by the publisher turns upon whether the agreement

periodical in the old name after termination of their agreement, see *Ingram* v. *Stiff* (1859), 5 Jur. 947; *Clowes* v. *Hogg* (1870), W. N. 268; *Constable* v. *Brewster*, 3 Sess. Cas. 215.

(*m*) *Rooney* v. *Kelly*, 14 Ir. L. R. (N. S.), 153; *Colburn* v. *Simms* (1843), 2 Ha. 543.

(*n*) *Hazlett* v. *Templemore* (1866), 13 L. T. 593; cf. *Re Jude*, (1907) 1 Ch. 651.

(*o*) *Sims* v. *Marryatt* (1851), 17 Q. B. 281.

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ought to be regarded as of a personal nature or not. Contracts of a personal character are not assignable, and wherever the author is to be remunerated either by a share of profits or by royalties *primâ facie* the contract is of a personal nature. Thus, where there was an agreement in writing between an author and certain publishers, that they should print, reprint, and publish his book, upon the condition that the author should prepare it all before a certain day, and should correct it for the press, and that the publishers should direct the mode of printing, and pay all the expenses and take all risk of publishing, and out of the produce should first repay such expenses, and then divide the profits between themselves and the author equally; and that if all copies should be sold and a new edition should be required, the author should prepare the same, and the publishers should print and publish it on the same conditions; and that, if all the copies of any edition should not be sold in five years from the date of publication, the publishers might sell the remaining copies by auction or otherwise, in order to close the account; it was held to be a personal contract with the author, and not a contract for an assignment of the copyright; and, consequently, the benefit thereof could not be assigned by the publishers (*p*).

"The principal question then is," said Vice-Chancellor Wood, in giving judgment in this case, "whether this agreement is a personal engagement or not. It would be difficult for me to say that, in a contract of this kind, the author is utterly indifferent into whose hands his interests under such an engagement are to be entrusted.

"It is not merely a question of his literary interests, but certain publishers undertaking to incur the expenses of bringing out the work, and fixing the price, the author is to have a share of the profits; and they are to decide in what shape the book is to come out, and at what price it is to be sold, and are to account with him. I must say, that, in my opinion, these are peculiarly personal considerations; and that this contract bears the impress of being a personal contract in all these respects. It could not be a matter of indifference to Mr. Forsyth that the assignees in bankruptcy of Mr. Benning should be at liberty to transfer the future right of fixing the price of this and subsequent editions, and the right to call upon him to fulfil his duty of preparing a new edition, and the risk which might be incurred in conducting it, and the other

(*p*) *Stevens* v. *Benning* (1854), 1 K. & J. 168, affirmed, 6 D. M. & G. 223; 1 Jur. (N. S.) 74; *Reade* v. *Bentley* (1857), 3 K. & J. 271; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886.

benefits and obligations of the agreement, to any one they might think proper; possibly to some one not even carrying on the trade of a bookseller, as might happen in case of an absolute sale to the best bidder. Regarding the agreement as a contract for the purchase of a limited right, according to the view of the Vice-Chancellor of England in *Sweet* v. *Cater* (*q*), it is still impossible that it should be indifferent to Mr. Forsyth that it should pass from a respectable firm in London to booksellers residing in a remote part of the country, or to other persons unable to fulfil the engagements entered into with him. The contract, therefore, is one which involves personal considerations; and framed as it is, I must regard it as a special kind of agency, under which the agents were bound to sell, and to take the risk of there being no profits upon themselves."

If the publishers are a limited company.

The same principles have been held to apply in a case where the publishers were a limited company, and the proposed assignment was to be made by a receiver and manager of the company appointed in a debenture-holder's action. The Court declined to accede to the view that a distinction ought to be drawn between a limited company and an individual publisher, and considered that an author might repose confidence in a company, notwithstanding that the constitution of the company might alter and its officers might be changed at any time (*r*).

If the publishers are to pay a fixed sum.

If, on the other hand, the publisher is under an obligation to pay to the author a definite sum of money for the privilege of publishing his works, it seems probable that the publisher would have the right to assign the benefit of the agreement, for, though the literary interests of the author might possibly be affected to some extent, yet the change of publishers could not, at least directly, cause him any pecuniary injury.

If the copyright has been assigned.

Again, in the cases above cited, the authors had retained the copyright in themselves. If the copyright has been transferred to a publisher, then he has a statutory right to assign the copyright (*s*), and the mere fact that the author is to be remunerated by royalties or a share of profits will not be sufficient to deprive the publisher of that right: there would have to be an express agreement not to assign (*t*).

(*q*) (1841), 11 Sim. 579; *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683.
(*r*) *Griffith* v. *Tower Publishing Company, Ltd.*, (1897) 1 Ch. 21.
(*s*) See sect. 5 (2) of the Act of 1911.
(*t*) *Re Grant Richards*, (1907) 2 K. B. 33; but see as to the bankruptcy of the publisher under such circumstances, *ante*, p. 552.

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Breach by publisher of publishing agreement.

An author has a right to sue a publisher for breach by the latter of a publishing agreement. An author and publisher entered into an agreement under which the author was to edit the whole of the plays of Shakespeare (to be called the "Temple Shakespeare"), and was to write an introduction, notes, and glossary for each play. The publisher was to pay the author a royalty, and the copyright was vested in the publisher. One of the clauses of the agreement was that in the event of a cheaper or other form of edition of any or either of the plays being thought advisable by the publisher it should form the subject of an agreement with the author on similar *pro rata* terms to those embodied in that agreement. Subsequently, the publisher produced a "Temple Shakespeare" for schools, with notes, introduction, and glossary written by a person other than the author. The Court held this to be a breach of the publishing agreement, and on the author bringing his action, whilst refusing an injunction restraining the publication of the school edition, ordered a reference to Chambers to assess the damages the plaintiff had suffered (*u*).

In absence of agreement, purchaser of copyright not bound to publish.

It may be well to mention here that it is apprehended that, where the copyright in a work is sold outright, and there is no express agreement to publish the same, the proprietor may decline to publish, notwithstanding that the author may fail by reason of this to acquire additional reputation. The author should have made the publication by the purchaser part of the agreement, had he considered this material to his interests.

Rights of owners of copyright works.

A few observations may, perhaps, not be out of place here as to the rights of the owner of a material object which is the subject of copyright, to deal with that object in any way he pleases. We have already pointed out that the transfer of the material object does not, even in the case of a picture, *primâ facie* operate to transfer the copyright (*x*). The right of selling the material object is, however, no part of the copyright conferred upon an author by the Copyright Act. Copyright is infringed by reproduction of a work, not by sale of it. It is true that a person who sells a work which to his knowledge infringes copyright is, by sect. 2 (2) of the Act, exposed to an action for infringement of copyright, but no person can, it is thought, be sued on that ground for selling a work which has been lawfully made, save only in the case of a work lawfully made in another country, but improperly imported into this country (*y*). *Primâ facie*, therefore,

(*u*) *Gollancz* v. *Dent* (1903), 88 L. T. 358. (*x*) *Ante*, p. 120.

(*y*) Sects. 2 (2), 35 (1). But see *Monckton* v. *Pathé Frères*, (1914) 1 K. B. 395, more fully considered *ante*, p. 273.

any owner of a work which is the subject of copyright may sell it to any person, and at any price that he pleases, but may not multiply copies of it.

Stock in hand after termination of publishing agreement may be sold;

It consequently follows that if a publisher is given a right to publish a copyright work for a limited period, which has expired, he is entitled to sell stock which he has on hand, provided he has not manufactured in excess of the numbers permitted by his contract. Thus, in the case of *Howitt* v. *Hall* (*z*), the defendants paid to the plaintiff, the author of a work entitled "A Boy's Adventures in Australia," the sum of £250, "being the purchase-money, as agreed, for the copyright and sole right of sale for four years" of that work. At the expiration of the term of four years the defendants still had a number of unsold copies of the work in stock, and these the Court held he was entitled to dispose of as he pleased. Vice-Chancellor Wood, in giving judgment, remarked: —"The Copyright Acts were directed against unlawful printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed. The words 'sole right of sale' might or might not have been superfluous; but after four years the right to print the work reverted to the author, who had taken care to secure himself in this respect. It had been suggested that the effect might be to destroy the copyright in the author altogether, as the publisher who had purchased the copyright for a limited period only might during that period print off copies enough to last for all time. A nice question might indeed arise as to the number of copies of which an edition might consist, but a publisher was not likely to incur the useless expense of printing copies enough to exhaust the demand for all time, and have them lying upon his hands unprofitably. Besides this, even if the effect of a sale for four years might operate in this way to deprive the author of all copyright in his work, the answer was that he had not guarded himself against such a contingency. If a manifest case of fraud upon the author were established, the Court would know how to deal with it. But nothing of the sort was shown. The defendants had acted quite *bonâ fide*, and were making a perfectly legitimate use of their contract, and the motion must be refused" (*a*).

or stock made prior to an assignment of copyright.

On the same principles, it has been held that the assignor of the copyright in a work is equally at liberty to sell any copies of

(*z*) (1862), 6 L. T. 348.

(*a*) In consequence, it is usual in publishing agreements which are liable to determination to provide that upon such determination the author is to be at liberty to purchase unexhausted stock at cost price.

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the work manufactured prior to the date of the assignment (*b*); and prior to the recent Bankruptcy Act the trustee in bankruptcy of a publisher whose publishing agreement was terminated by the bankruptcy could also have disposed of stock (*c*).

Price maintenance agreements.

The question of what are known as "price maintenance" agreements has received some attention in recent times, though, as regards books, the question is a more burning one in America than in this country (*d*). The object of the publishers is to prevent—in the interests, as they contend, of the genuine book-selling businesses—the retail trade from selling at "cut prices," by placing upon every copy of the work issued a notice to the effect that the same shall not be sold at less than a certain price. As already pointed out, the Copyright Act does not include amongst the monopolies conferred upon the copyright owner the exclusive right of selling the work, and, therefore, the patent cases in which it has been held that the purchaser of a patented article is bound by any restrictions imposed by the owner of the patent with regard to user of the patented article, provided knowledge of those restrictions is brought home to the purchaser at the time of the purchase (*e*), have no application to copyright works. The owner of a copyright work is not bound by any restrictions in regard to the use or sale of the work, unless he has contracted to observe such restrictions. If a copyright owner sells to a purchaser upon the footing that the work shall not be sold at less than a certain price, and the purchaser does so, he is liable, not for infringement of copyright, but for breach of contract (*f*). Such contract, however, does not run in any sense with the work, so that a sub-purchaser is not liable to the copyright owner for selling under the stipulated price, even though he had full knowledge of the contract between his immediate vendor and the copyright owner, unless such sub-purchaser has himself contracted to observe the stipulations as to price (*g*). Sometimes, as affording some additional protection to the copyright owner, an agreement is

(*b*) *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418.

(*c*) *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683; *Re Curry* (1848), 12 Ir. Eq. 382; but see now sect. 60 of the Bankruptcy Act, 1914, *ante*, p. 552.

(*d*) Where the question is further complicated by the "anti-trust" legislation.

(*e*) See *National Phonograph Co.* v. *Menck*, (1911) A. C. 336, and the cases there cited. In America it has been held that, notwithstanding that, under the American Act, the copyright owner is given the exclusive right of vending the work, a sale in breach of a notice not to sell at less than a stated price, is not an infringement of copyright: *Bobbs-Merrill Co.* v. *Straus* (1908), 210 U. S. R. 339.

(*f*) *Benning* v. *Dove* (1831), 5 C. & P. 427.

(*g*) *Taddy* v. *Sterious*, (1904) 1 Ch. 354; *McGruther* v. *Pitcher*, (1904) 2 Ch. 306.

entered into by the purchaser not only that he will not himself sell under a certain stipulated price, but that he will, on the occasion of any sub-sale, procure that the sub-purchaser shall enter into a similar agreement. Such an agreement is not in restraint of trade, so that an action will lie if the purchaser fails to obtain any such agreement from the sub-purchaser (*h*); but if the sub-purchaser does enter into such a contract, there will generally be no privity of contract between the copyright owner and the sub-purchaser, so that the former will have no direct right of action against the sub-purchaser for breach of his contract (*i*).

Rights of purchasers to alter copyright works.

Fraudulent alterations of works of art are punishable summarily under sect. 7 of the Fine Arts Copyright Act, 1862 (*k*). The question of the right of a purchaser of a stock of books to make alterations was considered in a case of *Lee* v. *Gibbings* (*l*), decided in the year 1892. There Mr. Sidney Lee sought to restrain Mr. Gibbings from publishing as a new and complete work of the author, with the date 1892 on the title-page, mutilated copies of "The Life of Lord Herbert of Cherburg," prepared by the author for Mr. Nimmo in 1886, and issued by him in that year. The Court declined to interfere on an interlocutory application, and intimated that Mr. Lee's only remedy was for a libel against Mr. Gibbings. It seems that Mr. Nimmo having sold 395 copies to the public, sold the rest of the issue to Mr. Gibbings as a remainder, which Mr. Gibbings issued as a new book, with the date 1892, omitting the introduction and the index.

There can be no doubt that such an issue was calculated to damage the reputation of the author, for apart from the question of mutilation, no opportunity was afforded him of introducing matters having reference to the life in question which might have come to his knowledge since the appearance of the first issue. Mr. Justice Kekewich, in his judgment, said: "The legal side of the case is one of considerable interest, and not at all free from difficulty. I regard the defendant for this purpose as the owner of the copyright of this work. He is not, I am aware, the owner of the copyright, but he has purchased the unpublished sheets of the plaintiff's work, and as regards these unpublished sheets he stands in Mr. Nimmo's place, and is the owner of the copy-

(*h*) *Elliman & Co.* v. *Carrington & Son*, (1901) 2 Ch. 275. As to agreements between manufacturers to keep up prices, see *Urmston* v. *Whitelegg Bros.* (1890), 63 L. T. 455.

(*i*) *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.* (1914), 83 L. J. K. B. 923.

(*k*) 25 & 26 Vict. c. 68, *ante*, p. 217.

(*l*) (1892), 67 L. T. 263.

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right (*m*). He has Mr. Nimmo's assent to their publication. He has even Mr. Nimmo's assent to the publication in the present form, and he, therefore, though having no right to multiply copies in the sense of printing further copies and publishing anything else but these sheets, can deal with these sheets as he pleases, provided he gives the plaintiff no cause to complain. He thinks fit, that is to say, he finds it convenient to his trade, to publish the plaintiff's work in a mutilated form. The word 'mutilated' may or may not imply something in derogation of the work, or of the defendant's manipulation of it; but strictly speaking the form is mutilated. The index is left out. I do not myself attribute very great importance to that in such a work as this, but I only speak for myself in saying that. There are other parts left out, including the introduction, and I should certainly say that the omission of the introduction to such a work as this was very nearly leaving out the principal part of the work. Then the date is altered, so as to give the impression that it is a new work. I am told that is not so; that nobody would suppose that was a work published in 1892 because the figures '1892' are on the title-page. I suppose that there are some people who would regard 1892 as meaning nothing. I confess to be amongst them who have regarded it as meaning that the work was published in 1892 and not in 1886; but that is a question of injury to the plaintiff to which I will come presently, and not otherwise a mutilation of the plaintiff's work. The omission of the introduction does seem to me to be a very cogent instance of mutilation. Is the defendant entitled to do that? There is no law compelling a man to publish the whole of the work because he has the copyright in the whole. Nor can he be prevented from publishing extracts from the work. Whether it is right for him to publish extracts without saying they are extracts, or whether he can publish a work in a mutilated form without indicating in the least that there has been that mutilation, is a question, to my mind, of some difficulty.

"The question resolves itself into this: Does he thereby injure the author's reputation? For that, what is the author's remedy at law? His remedy in law is, I think, undoubtedly libel or nothing. Injury to reputation is the foundation of the remedy in an action of libel. It is what you have to prove in order to get your damages, and if one endeavoured, which I am not intending to do, to frame the innuendo in an action of libel by the plaintiff against the defendant, it would necessarily point to the injury of

(*m*) This, we submit with deference, is too broad a definition of Mr. Gibbings' rights. Copyright must be assigned in writing, *ante*, p. 122.

the reputation of the author hereby informing the public that this mutilated work was really the work of the plaintiff, whereas, in fact, his work was something far superior, and that this would be discreditable to him. That would be necessarily the general line of complaint.

"It comes, therefore, to a question on this part of the case whether I ought to grant an injunction now to restrain a libel before that question has been before a jury, which is the avowedly proper tribunal for the purpose of determining whether a libel exists or not. The jurisdiction of the Court to restrain a libel is undoubted. It has been affirmed over and over again, even in those cases in which the Court has refused to grant an injunction, in particular the last case of *Bonnard* v. *Perryman* (*n*). Of late years there has been no such thing as an injunction to restrain a libel except in the recent case, where Mr. Justice Chitty distinguished trade libels from other libels, and granted an injunction (*o*), a decision with which, within the last week or two, I have had occasion to express my entire concurrence (*p*). But with that exception, as far as I know, the Court has not of late granted an injunction to restrain a libel before the point has been submitted to a jury, in other words, on interlocutory application.

"Now ought this to be an exceptional case? I see no reason for making an exception in favour of a case such as this. The balance of convenience does not seem to me to point in favour of granting an injunction, because, though the sale of the work will no doubt go on, and though if it goes on it is injurious to the plaintiff's reputation—the injury will be continued—yet the injury must to a great extent be done by the mere publication, and after all success in the ultimate result would be quite satisfactory to the plaintiff. I mean, if it were eventually determined that the plaintiff was right and could sustain an action of libel against the defendant by reason of this publication, then, not by the damages awarded, but by the mere verdict of the jury, he would have, I will not say rehabilitated, but maintained his reputation at the level at which it before existed. It cannot be suggested that the mere sale of a few copies more or less would place him in any worse position if eventually he succeeded, and of course, if he did not, then he has no reason to complain.

"Now, on the balance of convenience, I think I ought not to grant an injunction, especially it being of course understood that

(*n*) (1891) 2 Ch. 269.
(*o*) *Collard* v. *Marshall*, (1892) 1 Ch. 571.
(*p*) *Pink* v. *Federation of Trades* (1892), 67 L. T. 258.

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I express no opinion whether it is a libel or not. That is really the reason why the Court in these cases does not grant an injunction, because if it granted an injunction, or even if it refused it on any other ground than the one I have mentioned, the Court would be obliged to express an opinion, that the Court ought not to express an opinion on a matter that is to be left to a jury.

"But the plaintiff's case has been put by Mr. Renshaw on another ground, which strikes me as extremely deserving of attention, though I do not think I ought to grant an injunction on that ground at the present moment. He says this is like the case of *Clarke* v. *Freeman* (*q*), and *Clarke* v. *Freeman* may be considered for this purpose as decided quite differently from the way in which it was decided. In that I follow him. I do not think that after the observations of Vice-Chancellor Malins, Lord Cairns, and Lord Selborne on that case, I ought to hesitate to regard it as really erroneously decided, and I do not think that, having regard to Lord Cairns's observations on p. 310 of the second Chancery Appeals in the case of *Maxwell* v. *Hogg* (*r*), I ought to doubt what the proper decision should have been in *Clarke* v. *Freeman*, or on what ground that proper decision would have been rested, because he says—distinctly speaking, be it remembered—in the Court of Appeal: 'It always appeared to me that *Clarke* v. *Freeman* might have been decided in favour of the plaintiff on the ground that he had a property in his own name.' The question of whether a libel was a fit subject for an injunction either on motion or at the trial was not discussed in *Clarke* v. *Freeman*. It is not discussed by Lord Cairns, it is not discussed by Lord Selborne, and it is not discussed by Vice-Chancellor Malins, but they disapprove of the decision, and Lord Cairns says because the plaintiff had a property in his own name, the name was invaded by the actions of the defendant, and the plaintiff could therefore restrain the defendant from doing what he did on that ground. That is entirely independent of libel.

"Now, can I decide this case on that ground in favour of the plaintiff? I think not, and I think not because when you come to test that argument, according to my present opinion, you really come back again to the question of libel in this case, though you would not have done so in *Clarke* v. *Freeman*. The plaintiff's case on this part of it is, 'The defendant is publishing as my own what is not my own; that is to say, I am the author of an entire book, the defendant is publishing only part of it, and such part

(*q*) (1850), 11 Beav. 112.
(*r*) (1867), L. R. 2 Ch. 307.

that really he is not publishing my work at all; he is bringing out what I never sanctioned as my work, and which cannot be fairly represented as my work, and therefore I complain of him using my name in connection with a book that is not mine.' It comes back to this: Is the book the plaintiff's or not? It is avowedly only part of it; but is it such a substantial part of it that it may be fairly called the plaintiff's? It is so unless the mutilations are such as to give the plaintiff a right of action for libel. So that, try it as you will, it comes back to the same point, and I think, therefore, I should be doing wrong in seizing hold of the doctrine, not of *Clarke* v. *Freeman*, but which ought to have been supported in *Clarke* v. *Freeman*, to give the plaintiff relief which ought, on the other hand, to be denied him, because he is really bringing an action of libel. I therefore, on those grounds, must refuse the motion, without expressing any opinion whether what has been done is injurious to the plaintiff's reputation or not.

"This is really the whole question in the case. If the case is tried out, there is nothing else to be tried, and therefore the proper way to deal with the costs is to make the costs of both parties costs in the action" (*s*).

(*s*) Verbatim report in *The Athenæum*, 13th Aug., 1892. Cf. *Cox* v. *Cox* (1856), 11 Ha. 118, *ante*, p. 547.

APPENDIX A.

IMPERIAL STATUTES.

COPYRIGHT ACT, 1911.

1 & 2 Geo. 5, c. 46.

An Act to amend and consolidate the Law relating to Copyright.

[16th December, 1911.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I.—Imperial Copyright.

Rights.

Copyright.

1.—(1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if—

(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in

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public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right—

(a) to produce, reproduce, perform, or publish any translation of the work;

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;

(d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,

and to authorise any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

Infringement of copyright.

2.—(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright:—

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary:

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work:

(iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art:

(iv) The publication in a collection, mainly composed of non-copyright matter, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of

schools in which copyright subsists; Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged:

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries:

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(c) by way of trade exhibits in public; or

(d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of copyright.

Term of copyright.

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has

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paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Compulsory licences.

4. If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit.

Ownership of copyright, &c.

5.—(1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and

(b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations to the United Kingdom or any self-governing dominion or

other part of His Majesty's dominions to which this Act extends, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies.

Civil remedies for infringement of copyright.

6.—(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall,

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unless the contrary is proved, be presumed to be the author of the work;

(b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Rights of owner against persons possessing or dealing with infringing copies, &c.

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Exemption of innocent infringer from liability to pay damages, &c.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work.

Restriction on remedies in the case of architecture.

9.—(1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

Limitation of actions.

10. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Summary Remedies.

Penalties for dealing with infringing copies, &c.

11.—(1) If any person knowingly—

(a) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or

(c) distributes infringing copies of any such work either for

the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) by way of trade exhibits in public any infringing copy of any such work; or

(e) imports for sale or hire into the United Kingdom any infringing copy of any such work:

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(3) The Court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the Court may think fit.

(4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906. 2 Edw. 7, c. 15. 6 Edw. 7, c. 36.

12. Any person aggrieved by a summary conviction of an offence under the foregoing provisions of this Act may in England and Ireland appeal to a Court of quarter sessions and in Scotland under and in terms of the Summary Jurisdiction (Scotland) Acts. Appeals to quarter sessions.

13. The provisions of this Act with respect to summary remedies shall extend only to the United Kingdom. Extent of provisions as to summary remedies.

Importation of Copies.

14.—(1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of this section, be deemed to Importation of copies.

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39 & 40 Vict. c. 36.

be included in the table of prohibitions and restrictions contained in section forty-two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876: Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

Delivery of Books to Libraries.

Delivery of copies to British Museum and other libraries.

15.—(1) The publisher of every book published in the United Kingdom shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depôt in London named in the demand a copy of the book for, or in accord-

ance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin, and subject to the provisions of this section the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade.

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

Special Provisions as to certain Works.

Works of joint authors.

16.—(1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall

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be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous works.

17.—(1) In the case of a literary dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section three of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *primâ facie* proof of the copyright being with the owner of the manuscript.

Provisions as to Government publications.

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

Provisions as to mechanical instruments.

19.—(1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making

of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within the parts of His Majesty's dominions to which this Act extends records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that—

(i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent.; and

(b) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent.

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a halfpenny for each separate musical work in which copyright subsists reproduced thereon,

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and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions:—

(a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply:

(b) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale.

within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten:

(c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives:

(d) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section:

(e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that—

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

Provision as to political speeches.

20. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

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Provisions as to photographs.

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Provisions as to designs registrable under 7 Edw. 7, c. 29.

22.—(1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

(2) General rules under section eighty-six of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

Works of foreign authors first published in parts of His Majesty's dominions to which Act extends.

23. If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection to the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works.

Existing works.

24.—(1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that—

(a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the

right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine: but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either—

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration. or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the *London Gazette* and in two London newspapers:

(b) where any person has, before the twenty-sixth day of July nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section nineteen sub-sections (7)

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and (8) and of section thirty-three of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Application to British Possessions.

Application of Act to British dominions.

25.—(1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the *London Gazette* that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

Legislative powers of self-governing dominions.

26.—(1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion, that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that

dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first-mentioned dominion, and to works first published in that dominion; but, save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends, may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this sub-section, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this sub-section, the expression "a dominion to which this Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

Power of Legislatures of British possessions to pass supplemental legislation.

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession.

Application to protectorates.

28. His Majesty may, by Order in Council, extend this Act to any territories under his protection and to Cyprus, and, on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which this Act extends.

PART II.—INTERNATIONAL COPYRIGHT.

Power to extend Act to foreign works.

29.—(1) His Majesty may, by Order in Council, direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

(a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends;

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(b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects;

(c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly:

Provided that—

(i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I. of this Act;

(ii) the Order in Council may provide that the term of copyright within such part of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

(iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order;

(iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

(v) in applying the provision of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country;

(vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section five of the International Copyright Act, 1886.

49 & 50 Vict. c. 33.

(2) An Order in Council under this section may extend to all the several countries named or described therein.

Application of Part II. to British possessions.

30.—(1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possessions specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III.—SUPPLEMENTAL PROVISIONS.

Abrogation of common law rights.

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

Provisions as to Orders in Council.

32.—(1) His Majesty in Council may make Orders for altering, revoking, or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every Order in Council made under this Act shall be published in the *London Gazette* and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

Saving of university copyright. 15 Geo. 3, c. 53.

33. Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1775, of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act.

Saving of compensation to certain libraries.

34. There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation

APPENDIX A.

as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books:

Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

Interpretation.

35.—(1) In this Act, unless the context otherwise requires,—

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

"Work of sculpture" includes casts and models;

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography;

"Cinematograph" includes any work produced by any process analogous to cinematography;

"Collective work" means—

(a) an encyclopædia, dictionary, year book, or similar work;

(b) a newspaper, review, magazine, or similar periodical; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

"Infringing," when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of the provisions of this Act;

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument;

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made;

"Lecture" includes address, speech, and sermon;

"Self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council.

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part.

36. Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule: **Repeal.**

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part.

APPENDIX A.

Short title and commencement.

37.—(1) This Act may be cited as the Copyright Act, 1911.

(2) This Act shall come into operation—

(a) in the United Kingdom, on the first day of July nineteen hundred and twelve or such earlier date as may be fixed by Order in Council;

(b) in a self-governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion;

(c) in the Channel Islands, at such date as may be fixed by the States of those islands respectively;

(d) in any other British possession to which this Act extends, on the proclamation thereof within the possession by the Governor.

SCHEDULES.

Section 24.

FIRST SCHEDULE.

EXISTING RIGHTS.

Existing Right.	Substituted Right.
(a) *In the case of Works other than Dramatic and Musical Works.*	
Copyright	Copyright as defined by this Act (*a*).
(b) *In the case of Musical and Dramatic Works.*	
Both copyright and performing right..	Copyright as defined by this Act (*a*).
Copyright, but not performing right ..	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright ..	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings:—

"Copyright," in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work;

"Performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

(*a*) In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under sect. 18 of the Copyright Act, 1842.

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SECOND SCHEDULE.

Section 36.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Geo. 2, c. 13	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. 3, c. 38	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. 3, c. 53 ..	The Copyright Act, 1775	The whole Act.
17 Geo. 3, c. 57 ..	The Prints Copyright Act, 1777	The whole Act.
54 Geo. 3, c. 56 ..	The Sculpture Copyright Act, 1814.	The whole Act.
3 & 4 Will. 4, c. 15.	The Dramatic Copyright Act, 1833.	The whole Act.
5 & 6 Will. 4, c. 65.	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. 4, c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. 4, c. 110.	The Copyright Act, 1836	The whole Act.
5 & 6 Vict. c. 45 ..	The Copyright Act, 1842	The whole Act.
7 & 8 Vict. c. 12 ..	The International Copyright Act, 1844.	The whole Act.
10 & 11 Vict. c. 95.	The Colonial Copyright Act, 1847.	The whole Act.
15 & 16 Vict. c. 12.	The International Copyright Act, 1852.	The whole Act.
25 & 26 Vict. c. 68.	The Fine Arts Copyright Act, 1862.	Sections one to six. In section eight the words "and "pursuant to any Act for "the protection of copy- "right engravings," and "and in any such Act as "aforesaid." Sections nine to twelve.
38 & 39 Vict. c. 12.	The International Copyright Act, 1875.	The whole Act.
39 & 40 Vict. c. 36.	The Customs Consolidation Act, 1876.	Section forty-two, from "Books wherein" to "such copyright will expire." Sections forty-four, forty-five, and one hundred and fifty-two.
45 & 46 Vict. c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 & 50 Vict. c. 33.	The International Copyright Act, 1886.	The whole Act.
51 & 52 Vict. c. 17.	The Copyright (Musical Compositions) Act, 1888.	The whole Act.
52 & 53 Vict. c. 42.	The Revenue Act, 1889	Section one, from "Books first published" to "as provided in that section."

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Session and Chapter.	Short Title.	Extent of Repeal.
6 Edw. 7, c. 36....	The Musical Copyright Act, 1906.	In section three the words "and which has been registered in accordance "with the provisions of "the Copyright Act, 1842, "or of the International "Copyright Act, 1844, "which registration may "be effected notwithstanding anything in the "International Copyright "Act, 1886."

THE FINE ARTS COPYRIGHT ACT, 1862.

25 & 26 Vict. c. 68.

25 & 26 Vict c. 68.

An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works. [29th July, 1862.

Whereas by law, as now established, the authors of paintings, drawings and photographs have no copyright in such their works, and it is expedient that the law should in that respect be amended; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[*Sects.* 1—6 *are repealed by the Copyright Act*, 1911.]

Penalties on fraudulent productions and sales.

7. No person shall do or cause to be done any or either of the following acts; that is to say,

First, no person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram:

Secondly, no person shall fraudulently sell, publish, exhibit, or dispose of. or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work:

Thirdly, no person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having

been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken:

Fourthly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work or any copies of such work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Penalties.

Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding Ten Pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

Recovery of pecuniary penalties.

Words in brackets and italics repealed by Copyright Act, 1911.

8. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act [*and pursuant to any Act for the protection of copyright engravings*], may be recovered by the person hereinbefore [*and in any such Act as aforesaid*] empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows:—

In England and Ireland, either by action against the party offending, or by summary proceeding before any two justices having jurisdiction where the party offending resides:

In Scotland by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, * * * and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by [*advocation*,] suspension, reduction, or otherwise.

[*Sects.* 9—12 *repealed by the Copyright Act*, 1911.]

THE CUSTOMS CONSOLIDATION ACT, 1876.

39 & 40 VICT. c. 36.

39 & 40 Vict. c. 36. *An Act to consolidate the Customs Laws.* [24th July, 1876.

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Prohibitions and restrictions.

AS TO THE IMPORTATION, PROHIBITION, ENTRY, EXAMINATION, LANDING, AND WAREHOUSING OF GOODS.

* * * * * * *

42. The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

Goods Prohibited to be Imported.

[*Books wherein the copyright shall be first subsisting, first composed, or written or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire*] (*a*).

* * * * * * *

Indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles.

[*Sects.* 44 *and* 45 *are repealed by the Copyright Act,* 1911.]

* * * * * * *

Customs Acts to extend to British possessions abroad, except where otherwise provided for.

151. The Customs Acts shall extend to and be of full force and effect in the several British possessions abroad, except where otherwise expressly provided for by the said Acts, or limited by express reference to the United Kingdom or the Channel Islands, and except also as to any such possession as shall by local Act or ordinance have provided, or may hereafter, with the sanction and approbation of Her Majesty and her successors, make entire provision for the management and regulation of the Customs of any such possession, or make in like manner express provisions in lieu or variation of any of the clauses of the said Act for the purposes of such possession.

[*Sect.* 152 *repealed by the Copyright Act,* 1911.]

(*a*) Repealed by Copyright Act, 1911; but see sect. 14 of Act of 1911.

THE MUSICAL (SUMMARY PROCEEDINGS) COPYRIGHT ACT, 1902.

2 EDW. 7, c. 15.

An Act to amend the Law relating to Musical Copyright. [22nd July, 1902.

2 Edw. 7, c. 15.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Seizure, &c. of pirated copies.

1. A Court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold or offered for sale, may, by order, authorise a constable to seize such copies without warrant and to bring them before the Court, and the Court, on proof that the copies are pirated, may order them to be destroyed, or to be delivered up to the owner of the copyright if he makes application for that delivery.

Power to seize copies on hawkers.

2. If any person shall hawk, carry about, sell or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner.

Definitions.

3. "Musical copyright" means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorise another person to do all or any of the following things in respect of a musical work:—

(1) To make copies by writing or otherwise of such musical work.
(2) To abridge such musical work.
(3) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

Short title and commencement.

4. This Act may be cited as the Musical (Summary Proceedings) Copyright Act, 1902, and shall come into operation on the first day of October, One thousand nine hundred and two, and shall apply only to the United Kingdom.

MUSICAL COPYRIGHT ACT, 1906.

6 EDW. 7, c. 36.

An Act to amend the law relating to Musical Copyright.

[4th August, 1906.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Penalty for being in possession of pirated music.

1.—(1) Every person who prints, reproduces, or sells, or exposes, offers, or has in his possession for sale, any pirated copies of any musical work, or has in his possession any plates for the purpose of printing or reproducing pirated copies of any musical work, shall (unless he shows that he acted innocently) be guilty of an offence punishable on summary conviction, and shall be liable to a fine not exceeding five pounds, and on a second or subsequent conviction to imprisonment with or without hard labour for a term not exceeding two months, or to a fine not exceeding ten pounds: Provided that a person convicted of an offence under this Act who has not previously been convicted of such an offence, and who proves that the copies of the musical work in respect of which the offence was committed had printed on the title page thereof a name and address purporting to be that of the printer or publisher, shall not be liable to any penalty under this Act unless it is proved that the copies were to his knowledge pirated copies.

Constable may take into custody without warrant.

(2) Any constable may take into custody without warrant any person who in any street or public place sells or exposes, offers, or has in his possession for sale any pirated copies of any such musical work as may be specified in any general written authority addressed to the chief officer of police, and signed by the apparent owner of the copyright in such work or his agent thereto authorised in writing, requesting the arrest, at the risk of such owner, of all persons found committing offences under this section in respect to such work, or who offers for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars.

(3) A copy of every written authority addressed to a chief officer of police under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority.

(4) Any person aggrieved by a summary conviction under this section may in England or Ireland appeal to a Court of quarter

sessions, and in Scotland under and in terms of the Summary Prosecutions Appeals (Scotland) Act, 1875.

38 & 39 Vict. c. 62.

Right of entry by police for execution of Act.

2.—(1) If a Court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act is being committed on any premises, the Court may grant a search warrant authorising the constable named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Act is being committed.

(2) All copies of any musical work and plates seized under this section shall be brought before a Court of summary jurisdiction, and if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies shall be forfeited and destroyed or otherwise dealt with as the Court think fit.

Definitions:

3. In this Act—

"Pirated copies."

The expression "pirated copies" means any copies of any musical work written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copyright in such musical work:

"Musical work."

The expression "musical work" means a musical work in which there is a subsisting copyright, [*and which has been registered in accordance with the provisions of the Copyright Act*, 1842, *or of the International Copyright Act*, 1844, *which registration may be effected notwithstanding anything in the International Copyright Act*, 1886:]

"Plates."

The expression "plates" includes any stereotype or other plates, stones, matrices, transfers, or negatives used or intended to be used for printing or reproducing copies of any musical work: Provided that the expressions "pirated copies" and "plates" shall not, for the purposes of this Act, be deemed to include perforated music rolls used for playing mechanical instruments, or records used for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records respectively are made:

"Chief officer of police."

The expression "chief officer of police"—

(a) with respect to the City of London, means the Commissioner of City Police;

(b) elsewhere in England has the same meaning as in the Police Act, 1890; 53 & 54 Vict. c. 45.

(c) in Scotland has the same meaning as in the Police (Scotland) Act, 1890; 53 & 54 Vict. c. 67.

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(d) in the police district of Dublin metropolis means either of the Commissioners of Police for the said district;

(e) elsewhere in Ireland means the District Inspector of the Royal Irish Constabulary:

"Court of summary jurisdiction."

The expression "Court of summary jurisdiction" in Scotland means the sheriff or any magistrate of any royal, parliamentary, or police burgh officiating under the provisions of any local or general police Act.

Short title.

4. This Act may be cited as the Musical Copyright Act, 1906.

APPENDIX B.

INTERNATIONAL TREATIES AND CONVENTIONS.

REVISED BERNE CONVENTION, 1908 (*a*).

Convention for the purpose of revising the Convention of Berne of the 9th September, 1886, the Additional Article and the Final Protocol attached to the same Convention, and the Additional Act and the Interpretative Declaration of Paris of the 4th May, 1896; made on the 13th day of November, 1908, between His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of Italy; His Majesty the Emperor of Japan; the President of the Republic of Liberia; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Serene Highness the Prince of Monaco; His Majesty the King of Norway; His Majesty the King of Sweden; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

[The following is an English translation of the Convention, with the omission of the formal beginning and end.]

Art. 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.

Art. 2. The expression "literary and artistic works" shall include any production in the literary, scientific or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture or science.

Translations, adaptations, arrangements of music and other reproductions in an altered form of a literary or artistic work as well

(*a*) Sometimes called the "Berlin Convention."

as collections of different works, shall be protected as original works without prejudice to the rights of the author of the original work.

The contracting countries shall be bound to make provision for the protection of the above-mentioned works.

Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows.

Art. 3. The present Convention shall apply to photographic works and to works produced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection.

Art. 4. Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives as well as the rights specially granted by the present Convention.

The enjoyment and the exercise of these rights shall not be subject to the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights, shall be governed exclusively by the laws of the country where protection is claimed.

The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country the laws of which grant the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

By published works must be understood, for the purposes of the present Convention, works copies of which have been issued to the public. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication.

Art. 5. Authors being subjects or citizens of one of the countries of the Union who first publish their works in another country of the Union shall have in the latter country the same rights as native authors.

Art. 6. Authors not being subjects or citizens of one of the countries of the Union, who first publish their works in one of those countries,

shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by the present Convention.

Art. 7. The term of protection granted by the present Convention shall include the life of the author and fifty years after his death.

Nevertheless, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be regulated by the law of the country whore protection is claimed, and must not exceed the term fixed in the country of origin of the work. Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their domestic laws.

For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed. provided that the said term shall not exceed the term fixed in the country of origin of the work.

Art. 8. The authors of unpublished works, being subjects or citizens of one of the countries of the Union, and the authors of works first published in one of those countries shall enjoy, in the other countries of the Union, during the whole term of the right in the original work, the exclusive right of making or authorising a translation of their works.

Art. 9. Serial stories, tales, and all other works, whether literary, scientific, or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the consent of the authors.

With the exception of serial stories and tales, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.

Art. 10. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational purposes, or having a scientific character, or for chrestomathics, the effect of the legislation of the countries of the Union and of special arrangements existing or to be concluded between them is not affected by the present Convention.

Art. 11. The stipulations of the present Convention shall apply

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to the public representation of dramatic or dramatico-musical works, and to the public performance of musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works shall be protected during the existence of their right over the original work against the unauthorised public representation of translations of their works.

In order to enjoy the protection of the present Article, authors shall not be bound in publishing their works to forbid the public representation or performance thereof.

Art. 12. The following shall be especially included among the unlawful reproductions to which the present Convention applies: Unauthorised indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, tale, or piece of poetry into a dramatic piece and *vice versâ*, &c., when they are only the reproduction of that work, in the same form or in another form without essential alterations, additions, or abridgments, and do not present the character of a new original work.

Art. 13. The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can reproduce them mechanically; (2) the public performance of the said works by means of these instruments.

Reservations and conditions relating to the application of this Article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.

The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the present Convention.

Adaptations made in virtue of paragraphs 2 and 3 of the present Article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country.

Art. 14. Authors of literary, scientific or artistic works shall have the exclusive right of authorising the reproduction and public representation of their works by cinematography.

Cinematograph productions shall be protected as literary or artistic works, if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character.

Without prejudice to the rights of the author of the original work the reproduction by cinematography of a literary, scientific or artistic work shall be protected as an original work.

The above provisions apply to reproduction or production effected by any other process analogous to cinematography.

Art. 15. In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous work the publisher, whose name is indicated on the work, shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author.

Art. 16. Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

In such a country the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.

The seizure shall take place in accordance with the domestic legislation of each country.

Art. 17. The provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

Art. 18. The present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin through the expiration of the term of protection.

If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country.

The application of this principle shall take effect according to the stipulations contained in special Conventions existing, or to be concluded, to that effect between countries of the Union. In the absence of such stipulations, the respective countries shall regulate, each in so far as it is concerned, the manner in which the said principle is to be applied.

The above provisions shall apply equally in case of new accessions to the Union, and also in the event of the term of protection being extended by the application of Article 7.

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Art. 19. The provisions of the present Convention shall not prevent a claim be.. ~ made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general.

Art. 20. The Governments of the countries of the Union reserve to themselves the right to enter into special arrangements between each other, provided always that such arrangements confer upon authors more extended rights than those granted by the Union or embody other stipulations not contrary to the present Convention. The provisions of existing arrangements which answer to the above-mentioned conditions shall remain applicable.

Art. 21. The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its working.

The official language of the Office shall be French.

Art. 22. The International Office collects every kind of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and publishes such information. It undertakes the study of questions of general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations, edits a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.

The Director of the International Office shall make an annual Report on his administration, which shall be communicated to all the members of the Union.

Art. 23. The expenses of the Office of the International Union shall be shared by the contracting States. Until a fresh arrangement be made they cannot exceed the sum of 60,000 francs a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 24.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding

countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:— APPENDIX B.

1st class	.....	25 units.
2nd „	.....	20 „
3rd „	.....	15 „
4th „	.....	10 „
5th „	.....	5 „
6th „	.....	3 „

These coefficients are multiplied by the number of countries of each class, and the total product thus obtained gives the number of units by which the total expense is to be divided. The quotient gives the amount of the unit of expense.

Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration prepares the Budget of the Office, superintends its expenditure, makes the necessary advances, and draws up the annual account which shall be communicated to all the other Administrations.

Art. 24. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries. The Administration of the country where a Conference is to meet prepares, with the assistance of the International Office, the programme of the Conference. The Director of the Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote.

No alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

Art. 25. States outside the Union which make provision for the legal protection of the rights forming the object of the present Convention may accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. It may, nevertheless, contain an indication of the provisions of the Convention of the 9th September, 1886, or of the Additional Act of the 4th May, 1896, which they may judge necessary to substitute, provisionally at least, for the corresponding provisions of the present Convention.

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Art. 26. Contracting countries shall have the right to accede to the present Convention at any time for their Colonies or foreign possessions.

They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Such Declaration shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Art. 27. The present Convention shall replace, in regard to the relations between the Contracting States, the Convention of Berne of the 9th September, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of the 4th May, 1896. These instruments shall remain in force in regard to relations with States which do not ratify the present Convention.

The Signatory States of the present Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the Conventions which they have previously signed.

Art. 28. The present Convention shall be ratified, and the ratifications exchanged at Berlin not later than the 1st July, 1910.

Each Contracting Party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.

Art. 29. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Art. 30. The States which shall introduce in their legislation the duration of protection for fifty years contemplated by Article 7, first paragraph, of the present Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, who will communicate it at once to all the other States of the Union.

The same procedure shall be followed in the case of the States renouncing the reservations made by them in virtue of Articles 25, 26, and 27.

APPENDIX B.

ADDITIONAL PROTOCOL TO THE REVISED CONVENTION OF BERNE OF THE 13TH NOVEMBER, 1908 (*b*).

[Dated 20th March, 1914.]

The States which are members of the International Union for the protection of literary and artistic works, being desirous of authorising an optional limitation as to the application of the Convention of the 13th November, 1908, have drawn up the following Protocol.

1. Whenever any country outside the Union fails to give adequate protection to the works of authors who are the subjects or citizens of one of the countries of the Union, nothing in the provisions of the Convention of the 13th November, 1908, shall be deemed to prejudice in any manner whatsoever the right of the Contracting States to impose restrictions upon the protection accorded to works the authors of which are, at the time when such works are first published, subjects or citizens of any such country outside the Union and are not actually domiciled in one of the countries of the Union.

2. The right conferred by this Protocol upon the Contracting States belongs equally to each of their possessions beyond the seas.

3. Any restrictions imposed by virtue of Article 1 hereof shall be without prejudice to any rights acquired by any author over a work published (*publiée*) in any country of the Union prior to the date when such restrictions come into force.

4. Every State which, acting under the provisions of this Protocol, shall impose restrictions upon the protection of the rights of authors, shall notify the fact to the Government of the Swiss Confederation by written declaration indicating the countries to which such restrictions apply and the nature of the restrictions to which the rights of authors who are subjects or citizens of that country are subjected. The Government of the Swiss Confederation shall forthwith communicate the fact to all other States of the Union.

5. This Protocol shall be ratified and the ratifications shall be deposited at Berne within twelve months after the date hereof (*c*). It shall come into operation one month after the expiration of this period and shall have the same force and duration as the Convention of which it forms part.

In witness whereof the Plenipotentiaries of the countries which

(*b*) The editor has not been able to obtain any official translation of this Additional Protocol, and the following is a translation from the French text ("Le Droit d'Auteur," 1914, p. 45).

(*c*) Great Britain ratified this Additional Protocol on the 7th July, 1914. Apparently, she is the first country to have done so.

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are members of the Union have signed this Protocol, a copy of which is to be sent to each of the Unionist Governments.

Done at Berne, the 20th day of March, 1914 (*d*).

(Signatures.)

Procès-verbal *of Signature.*

The undersigned duly authorised Plenipotentiaries, this day assembled to proceed with the signature of the Additional Protocol to the Revised Convention of Berne for the protection of literary and artistic works, dated the 13th November, 1908, take note of the following declaration read by the Plenipotentiary of Sweden:

"The King's Government, not yet having ratified the Revised Berne Convention of the 13th November, 1908, sign this Additional Protocol subject to the reserve that ratification of the Protocol shall only be made along with the Convention" (*e*).

In witness, &c.

Done at Berne, the 20th day of March, 1914.

BERNE CONVENTION, 1886.

Convention for protecting effectively and in as uniform a manner as possible, the rights of authors over their literary and artistic works. Made on the fifth day of September, 1887, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Hayti; His Majesty the King of Italy; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

[The following is an English translation of the Convention, with the omission of the formal beginning and end.]

Art. 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.

Art. 2. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries

(*d*) The Plenipotentiaries signing this Protocol represent Belgium, Denmark, France, Germany, Great Britain, Hayti, Holland, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Portugal, Spain, Sweden, Switzerland, and Tunis.

(*e*) Sweden has not yet ratified the Revised Convention (*ante*, p. 423).

or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

The enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and must not exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work shall be considered to be that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them the laws of which grant the shortest term of protection.

For unpublished works the country to which the author belongs shall be considered to be the country of origin of the work.

Art. 3. The stipulations of the present Convention shall apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

Art. 4. The expression "literary and artistic works" shall include books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

Art. 5. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.

For works published in incomplete parts (*livraisons*) the period of ten years shall commence from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections (*cahiers*) published by literary or scientific societies, or by private persons, each volume, bulletin, or collection shall be with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present Article, and for the calculation of the terms of protection, the 31st December of the year in which the work was published shall be regarded as the date of publication.

Art. 6. Lawful translations shall be protected as original works. They shall consequently enjoy the protection stipulated in Articles 2

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and 3 as regards their unauthorised reproduction in the countries of the Union.

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Art. 7. Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it shall be sufficient if the prohibition is indicated in general terms at the beginning of each number of the periodical.

This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or miscellaneous information.

Art. 8. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the effect of the legislation of the countries of the Union, and of special arrangements existing or to be concluded between them is not affected by the present Convention.

Art. 9. The stipulations of Article 2 shall apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, shall be, during the existence of their exclusive right of translation, equally protected against the unauthorised public representation of translations of their works.

The stipulations of Article 2 shall apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title page or commencement of the work that he forbids the public performance thereof.

Art. 10. The following shall be specially included amongst the illicit reproductions to which the present Convention applies: unauthorised indirect appropriations of a literary or artistic work, of various kinds, such as adaptations, musical arrangements, &c., when they are only the reproduction of a particular work, in the same form, or in another form, without essential alterations, additions, or abridgments, so as not to present the character of a new original work.

It is agreed that, in the application of the present Article, the tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

Art. 11. In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary,

be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article 2.

Art. 12. Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place in accordance with the domestic legislation of each country.

Art. 13. It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

Art. 14. Under the reserves and conditions to be determined by common agreement, the present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

Art. 15. It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

Art. 16. An International Office shall be established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This Office, of which the expenses will be borne by the Administrations of all the countries of the Union, shall be placed under the high authority of the Superior Administration of the Swiss Confederation, and shall work under its direction. The functions of this Office shall be determined by common accord between the countries of the Union.

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Art. 17. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries.

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

Art. 18. Countries which have not become parties to the present Convention, and which make provision by their domestic law for the protection of the rights forming the object of the present Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

Art. 19. Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Art. 20. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorised to receive accessions. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Art. 21. The present Convention shall be ratified, and the ratifications exchanged at Berne within the space of one year at the latest.

Additional Article.

The Convention concluded this day shall in no wise affect the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to this Convention.

Final Protocol.

1. As regards Art. 4 it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day, from the date of its coming into force. They shall, however, not be bound to protect the authors of such works further than is permitted by their own legislation except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between those who have legal rights.

2. As regards Art. 9 it is agreed that those countries of the Union whose legislation implicitly includes choreographic works amongst dramatico-musical works expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs in which copyright subsists, shall not be considered as constituting an infringement of musical copyright.

4. The common agreement contemplated in Art. 14 of the Convention is established as follows:—

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force, shall take effect according to the stipulations on this head contained in special Conventions existing, or to be concluded, to that effect.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each in so far as it is concerned, by its domestic legislation, the manner in which the principle contained in Art. 14 is to be applied.

5. The organisation of the International Office established in virtue of Art. 16 of the Convention, shall be fixed by a regulation which shall be drawn up by the Government of the Swiss Confederation.

The official language of the International Office shall be French.

The International Office will collect every kind of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will undertake the study of questions of general interest concerning the

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The International Office will always hold itself at the disposal of members of the Union with a view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Administration of the country where a Conference is to meet will prepare the programme of the Conference with the assistance of the International Office.

The Director of the International Office shall attend the sittings of the Conferences, and shall take part in the discussions without the right to vote. He shall make an annual report on his administration, which shall be communicated to all the members of the Union.

The expenses of the Office of the International Union shall be shared by the Contracting States. Until a fresh arrangement be made, they cannot exceed the sum of sixty thousand francs a year. This sum may be increased if necessary, by the simple decision of one of the Conferences provided for in Art. 17.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

1st class	25	units.
2nd „	20	„
3rd „	15	„
4th „	10	„
5th „	5	„
6th „	3	„

These co-efficients will be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.

Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the Budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

6. The next Conference shall be held at Paris between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office. APPENDIX B.

7. It is agreed that, as regards the exchange of ratifications contemplated in Art. 21, each Contracting Party shall deliver a single instrument, which shall be deposited with those of the other countries, in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries who took part.

The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

ADDITIONAL ACT OF PARIS. 1896.

[The following is an English translation of the Additional Act with the omission of the formal beginning and end.]

Art. 1. The International Convention of the 9th September, 1886, is modified as follows:—

1. *Art.* 2.—The first paragraph of Art. 2 shall run as follows:—

"Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished, or first published in one of those countries, the rights which the respective laws do now or may hereafter grant to natives."

A fifth paragraph is added in these terms:—

"Posthumous works shall be included among those to be protected."

2. *Art.* 3.—Art. 3 shall run as follows:—

"Authors not being subjects or citizens of one of the countries of the Union, who first publish or cause to be first published, their literary or artistic works in one of those countries, shall enjoy, in respect of such works, the protection granted by the Berne Convention, and by the present Additional Act."

3. *Art.* 5.—The first paragraph of Art. 5 shall run as follows:—

"Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing

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to be published in one of the countries of the Union, a translation in the language for which protection is to be claimed."

4. *Art.* 7.—Art. 7 shall run as follows:—

"Serial stories, including tales, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced, in original or translation, in the other countries, without the sanction of the authors or of their lawful representatives.

"This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or editors shall have expressly declared in the newspaper or periodical itself in which they shall have been published that reproduction is forbidden. In the case of periodicals it shall be sufficient if such prohibition is indicated in general terms at the beginning of each number.

"In the absence of prohibition, such articles may be reproduced on condition that the source is indicated.

"The prohibition cannot in any case apply to articles of political discussion, to news of the day, or to miscellaneous information."

5. *Art.* 12.—Art. 12 shall run as follows:—

"Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

"The seizure shall take place in accordance with the domestic legislation of each country."

6. *Art.* 20.—The second paragraph of Art. 20 shall run as follows:—

"Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union."

Art. 2. The Final Protocol annexed to the Convention of the 9th September, 1886, is modified as follows:—

1. No. 1.—This clause shall run as follows:—

"As regards Art. 4 it is agreed as follows:—

"(A.) In countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of the present Additional Act.

"(B.) Photographic works and works produced by an analogous process shall be admitted to the benefits of these engagements in so far as the domestic laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works.

"It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries

of the Union, as contemplated by the Berne Convention and by the present Additional Act, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between those who have legal rights."

2. No. 4.—This clause shall run as follows:—

"The common agreement contemplated in Art. 14 of the Convention is established as follows:—

"The application of the Berne Convention and of the present Additional Act to works which have not fallen into the public domain within the country of origin at the time when these engagements come into force, shall take effect according to the stipulations on this head contained in special Conventions existing, or to be concluded, to this effect.

"In the absence of such stipulations between any of the countries of the Union, the respective countries shall regulate, each in so far as it is concerned, by its domestic legislation, the manner in which the principle contained in Art. 14 is to be applied.

"The stipulations of Art. 14 of the Berne Convention and of the present clause of the Final Protocol shall apply equally to the exclusive right of translation in so far as such right is established by the present Additional Act.

"The above-mentioned temporary stipulations shall apply in case of new accessions to the Union."

Art. 3. The countries of the Union which are not parties to the present Additional Act, shall at any time be allowed to accede thereto on their request to that effect. This stipulation shall apply equally to countries which may hereafter accede to the Convention of the 9th September, 1886. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, who shall in turn communicate it to the other Governments.

Art. 4. The present Additional Act shall have the same force and duration as the Convention of the 9th September, 1886.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of that Convention, as soon as possible, and within the space of one year at the latest.

It shall come into force as regards those countries which shall have ratified it three months after such exchange of ratifications.

APPENDIX B.

TREATY BETWEEN GREAT BRITAIN AND AUSTRIA-HUNGARY.

Convention for the Establishment of International Copyright.

[Vienna, April 24, 1893.]

Art. 1. Authors of literary or artistic works and their legal representatives, including publishers, shall enjoy reciprocally, in the dominions of the High Contracting Parties, the advantages which are, or may be, granted by law there for the protection of works of literature or art.

Consequently, authors of literary or artistic works which have been first published in the dominions of one of the High Contracting Parties, as well as their legal representatives, shall have in the dominions of the other High Contracting Party the same protection and the same legal remedy against all infringement of their rights, as if the work had been first published in the country where the infringement may have taken place.

In the same manner, the authors of literary or artistic works, and their legal representatives, who are subjects of one of the High Contracting Parties, or who reside within its dominions, shall in the dominions of the other Contracting Party enjoy the same protection and the same legal remedies against all infringements of their rights as though they were subjects of, or residents in, the State in which the infringement may have taken place.

These advantages shall only be reciprocally guaranteed to authors and their legal representatives when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country shall not exceed that which is granted to authors and their legal representatives in the country where the work was first published.

Art. 2. The right of translation forming part of the copyright, the protection of the right of translation, is assumed under the conditions laid down by this Convention. If ten years after the expiry of the year in which a work to be protected in Her Majesty's dominions on the basis of this Convention has appeared, no translation in English has been published, the right of translating the work into English shall no longer within those dominions exclusively belong to the author.

In the case of a book published in numbers, the aforesaid period of ten years shall commence at the end of the year in which each number is published.

Art. 3. Authorised translations are protected as original works. They consequently enjoy the full protection granted by this Convention against the unauthorised reproduction of original works.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Art. 4. The expression "literary or artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions, with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

Art. 5. In the British Empire, and in the Kingdoms and States represented in the Austrian Reichsrath, the enjoyment of the rights secured by the present Convention is subject only to the accomplishment of the conditions and formalities prescribed by the law of that State in which the work is first published; and no further formalities or conditions shall be required in the other country.

Consequently, it shall not be necessary that a work which has obtained legal protection in one country should be registered, or copies thereof deposited in the other country in order that the remedies against infringement may be obtained which are granted in the other country to works first published there.

In the dominions of the Hungarian Crown the enjoyment of these rights is subject, however, to the accomplishment of the conditions and formalities prescribed by the laws and regulations both of Great Britain and of Hungary.

Art. 6. In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be, consequently, admitted to institute proceedings in respect of the infringement of copyright before the Courts of the other State, it will suffice that their name be indicated on the work in the accustomed manner.

The Tribunals may, however, in case of doubt, require the production of such further evidence as may be required by the laws of the respective countries.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the legal representative of the anonymous or pseudonymous author, until the latter or his legal representative has declared and proved his rights.

Art. 7. The provisions of the present Convention cannot in any way derogate from the right of each of the High Contracting Parties to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, exhibition, or sale of any book or production.

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Each of the High Contracting Parties reserves also its right to prohibit the importation into its own territory of works which, according to its internal laws, or to the stipulations of treaties with other States, are or may be declared to be illicit reproductions.

Art. 8. The provisions of the present Convention shall be applied to literary or artistic works produced prior to the date of its coming into effect, subject, however, to the limitations prescribed by the following regulations:

(a) In the Austro-Hungarian Monarchy—

Copies completed before the coming into force of the present Convention, the production of which has been hitherto allowed, can also be circulated in future.

In the same manner, appliances for the reproduction of works, such as stereotypes, wood blocks, and engraved plates of every description, such as lithographers' stones, if their production has not hitherto been prohibited, may continue to be used during a period of four years from the coming into force of the present Convention.

The distribution of such copies, and the use of the said appliance is, however, only permitted if an inventory of the said copies and appliances is taken by the Government in question, in consequence of an application of the interested party, within three months from the coming into force of the present Convention, and if these copies and appliances are marked with a special stamp.

Dramatic and dramatico-musical works, or musical compositions legally performed before the coming into force of the present Convention, can also be performed in the future.

(b) In the United Kingdom of Great Britain and Ireland—

The author and publisher of any literary or artistic work first produced before the date at which this Convention comes into effect shall be entitled to all legal remedies against infringement; provided that where any person has, before the date of the publication of the Order in Council putting this Convention into effect, lawfully produced any work in the United Kingdom, any rights or interest arising from or in connection with such production, which are subsisting and valuable at the said date, shall not be diminished or prejudiced.

Art. 9. The provisions of the present Convention shall apply to all the colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, New Zealand.

Provided always that the provisions of the present Convention shall apply to any of the above-named colonies or foreign possessions on

whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative at the Court of His Imperial and Royal Apostolic Majesty, within two years from the date of the exchange of ratifications of the present Convention.

Art. 10. The present Convention shall remain in force for ten years from the day on which the ratifications are exchanged; and in case neither of the two High Contracting Parties shall have given notice twelve months before the expiration of the said period of ten years of their intention of terminating the present Convention, it shall remain in force until the expiration of one year from the day on which either of the High Contracting Parties shall have given such notice.

Her Britannic Majesty's Government shall also have the right to denounce the Convention in the same manner, on behalf of any of the colonies or foreign possessions mentioned in Art. 9, separately.

Art. 11. The present Convention shall be ratified, and the ratifications shall be exchanged at Vienna as soon as possible. It shall come into effect ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties respectively.

In witness whereof, &c.

Appendix B.

THE REVISED BERNE CONVENTION OF 1908, COLLATED WITH THE BERNE CONVENTION OF 1886 AND THE ACTS OF PARIS OF 1896 (*f*).

NOTE.—The alterations (other than drafting amendments) embodied in the Revised Convention, as compared with the Berne Convention and the additional Act of Paris, are shown in thick type (column (1)).

The provisions of the texts of 1886 and 1896 which are entirely omitted from the Revised Convention are shown in *italics* (column (2)).

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Berne Convention.
Art. 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.	*Art.* 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.
Art. 2. The expression "literary and artistic works" shall include any production in the literary, scientific, or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, **choreographic works and pantomimes, the acting form of which is fixed in writing or otherwise;** musical compositions with or without words, works of design, painting, **architecture**, sculpture, engraving and lithography; illustrations, geographical charts, plans, sketches, and plastic works relative to geography, topography, architecture, or science.	*Art.* 4. The expression "literary and artistic works" shall include books, pamphlets, and all other writings; dramatic or dramatico-musical works and musical compositions, with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relating to geography, topography, architecture, or to the sciences in general; finally, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction whatever.

(*f*) Taken from the Annex to the Report of the Committee on the Law of Copyright, 1900 (Cd. 4976).

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Closing Protocol.—2. With reference to Article 9, it is agreed that those countries of the Union the law of which implicitly includes choreographic works amongst dramatico-musical works, expressly admit the said works to the benefit of the provisions of the Convention concluded this day. *It is, however, understood that disputes which may arise upon the application of this clause shall be reserved for the decision of the respective Courts.*
	Additional Act. *Revised Closing Protocol.*—1. With reference to Article 4, it is agreed as follows:— A. In the countries of the Union in which protection is accorded not only to architectural plans, but also to works of architecture themselves, those works are admitted to the benefit of the provisions of the Berne Convention and of the present additional Act.
	Berne Convention.
Translations, **adaptations, arrangements of music, and other reproductions in an altered form of a literary or artistic work, as well as collections of different works,** shall be protected as original	*Art.* 6. Lawful translations shall be protected as original works. Hence they shall enjoy the protection stipulated for in Articles 2 and 3 as regards their unauthorised reproduction in the countries of the Union.

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(1)

Revised Convention as signed at Berlin on November 13th, 1908.

(2)

Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896.

[NOTE.—The Interpretative Declaration was not signed by Great Britain.]

works, **without prejudice to the rights of the author of the original work.**

The contracting countries shall be bound to make provision for the protection of the above-mentioned works.

Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Art. 3. **The present Convention shall apply** to photographic works and to works produced by a process analogous to photography. **The contracting countries shall be bound to make provision for their protection.**

Closing Protocol.—1. As regards Article 4, it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day from the date of its coming into effect. They shall, however, not be bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, within the meaning of the said Convention, so long as the principal right of reproduction of the work itself subsists, and within the limits of private

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	agreements between the parties entitled.
	Additional Act.
	Revised Closing Protocol.—1. With reference to Article 4, it is agreed as follows:—
	* * *
	B. Photographic works, and works obtained by analogous processes, shall be admitted to the benefit of the provisions of those Acts, in so far as the domestic law of each country allows this to be done, and in the measure of the protection that it accords to similar national works.
	It is understood that an authorised photograph of a protected work of art shall enjoy legal protection, in all the countries of the Union, within the meaning of the Berne Convention, and of the present additional Act, so long as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between the parties entitled.
	Berne Convention.
Art. 4. Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries **other than the country of origin of the work**, for their works, whether unpublished or first published in a country of the Union, the rights	*Art.* 2. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective

APPENDIX B.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
which the respective laws do now or may hereafter grant to natives **as well as the rights specially granted by the present Convention.**	laws do now or may hereafter grant to natives. *Additional Act.* *Art.* 2. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished or published for the first time in one of those countries, the rights which the respective laws do now or may hereafter grant to natives.
The enjoyment **and the exercise** of these rights shall not be subject to **the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights shall be governed exclusively by the laws of the country where protection is claimed.**	*Berne Convention.* *Art.* 2, § 2. The enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by the law of the country of origin of the work. . . . *Interpretative Declaration.* § 1. With reference to the terms of Article 2, § 2, of the Convention, the protection assured by the aforesaid Acts shall depend solely upon the accomplishment, in the country of origin of the work, of the conditions and formalities which are prescribed by the law of that country. The same shall hold good for the protection of the photographic works mentioned in § 1 B. of the revised closing Protocol.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1866, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
The country of origin of the work shall be considered to be, in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country the laws of which grant the shortest period of protection. **In the case of works published simultaneously in a country outside the Union and in a country of the Union: the latter country shall be considered exclusively as the country of origin.**	*Berne Convention.* *Art.* 2, § 3. The country of first publication, or, if that publication takes place simultaneously in several countries of the Union, that one of them in which the shortest period of protection is granted by law, shall be considered to be the country of origin of the work. § 4. For unpublished works, the country to which the author belongs shall be considered to be the country of origin of the work.
By "published works" must be understood, for the purposes of the present Convention, works copies of which are issued by a publisher. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication.	*Interpretative Declaration.* § 2. By "works published" must be understood works copies of which are issued by a publisher in one of the countries of the Union. Consequently the representation of a dramatic or dramatico-musical work, the performance of a musical work, and the exhibition of a work of art shall not constitute a publication in the sense of the aforesaid Acts.
Art. 5. **Authors being subjects or citizens of one of the countries of the Union, who first publish their works in another country of the Union,**	

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
shall have in this latter country the same rights as native authors.	*Berne Convention.*
Art. 6. Authors not being subjects or citizens of one of the countries of the Union, who first publish their works in one of those countries, shall enjoy **in that country the same rights as native authors, and in the other countries of the Union** the rights granted **by the present Convention.**	*Art.* 3. The stipulations of the present Convention shall apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.
	Additional Act.
	Art. 3. Authors not belonging to any country of the Union, if they have first published their literary or artistic works, or caused them to be first published, in one of those countries, shall enjoy for such works the protection granted by the Berne Convention and by the present Additional Act.
	Berne Convention.
Art. 7. **The term of protection granted by the present Convention shall include the life of the author and fifty years after his death.** **Nevertheless, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be regulated by the law of the country where protection is claimed,** and must not exceed the term	*Art.* 2, § 2. . . . it (the enjoyment of these rights) must not exceed, in the other countries, the duration of the protection granted in the said country of origin.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
fixed in the country of origin of the work. **Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their domestic laws.**	
For photographic works and works produced by a process analogous to photography, for posthumous works, **for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work.**	*Additional Act.* *Art.* 2. Posthumous works shall be included among the works protected.
Art. 8. The authors **of unpublished works, being subjects or citizens of one of the countries of the Union, and the authors of works first published in one of those countries,** shall enjoy, in the other countries of the Union, during the whole term of the right in the original work, the exclusive right of making or authorising a translation of their works.	*Berne Convention.* *Art.* 5. Authors being subjects or citizens of one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union. *For works published by instalments, the period of ten years shall not begin to run until the publication of the last instalment of the original work.* *For works composed of several volumes published at intervals as*

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	well as for reports or papers published by literary or learned societies or by individuals, each volume, report, or paper shall be, with regard to the period of ten years, considered as a separate work.
	In the cases provided for by the present Article, the 31st December of the year in which the work was published shall be considered as the date of publication for the purpose of calculating the period of protection.
	Additional Act.
	Art. 5. Authors being subjects or citizens of one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising translations of their works during the whole term of the right in the original work. *Nevertheless, the exclusive right of translation shall cease to exist when the author shall not have made use of it within a period of ten years from the time of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is claimed.*
	Berne Convention.
Art. 9. Serial stories, tales, **and all other works, whether**	*Art.* 7. Articles in newspapers or magazines published in any

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
literary, scientific, or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the consent of the authors.	country of the Union may be reproduced, in original or in translation, in the other countries of the Union, unless the authors or publishers have expressly forbidden it. *For magazines it is sufficient if the prohibition is made in a general manner at the beginning of each number of the magazine.*
With the exception of serial stories and tales, any newspaper article may be reproduced **by another newspaper** unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; **the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.**	No prohibition can in any case apply to articles of political discussion or to the reproduction of news of the day or miscellaneous items.
The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.	*Additional Act.* *Art.* 7. Serial novels, including short stories, published in the newspapers or magazines of any country of the Union may not be reproduced, in original or in translation, in the other countries, without the authorisation of the authors or their lawful representatives. This applies equally to other articles in newspapers or magazines, whenever the authors or publishers shall have expressly declared in the newspaper or magazine in which they have published such articles that they forbid the reproduction of these. *For magazines it is sufficient if the prohibition is made in a general manner at the beginning of each number.* In the absence of prohibition,

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	reproduction shall be permitted on condition of indicating the source. No prohibition can in any case apply to articles of political discussion, news of the day, or miscellaneous items.
	Berne Convention.
Art. 10. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of each country of the Union and of special arrangements existing, or to be concluded between them, is not affected by the present Convention.	*Art.* 8. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for education, or having a scientific character, or for chrestomathies, the effect of the legislation of each country of the Union and of special arrangements existing or to be concluded between them is not affected by the present Convention.
Art. 11. The stipulations **of the present Convention** shall apply to the public representation of dramatic or dramatico-musical works **and to the public performance of musical works,** whether such works be published or not.	*Art.* 9. The stipulations of Article 2 shall apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.
Authors of dramatic or dramatico-musical works shall be protected during the existence of their right **over the original work** against the unauthorised public representation of translations of their works.	Authors of dramatic or dramatico-musical works, or their lawful representatives, shall be protected in like manner during the existence of their exclusive right of translation against the unauthorised public representation of translations of their works.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
In order to enjoy the protection of the present Article, authors shall not be bound in publishing their works to forbid the public representation or performance thereof.	The stipulations of Article 2 shall apply equally to the public performance of unpublished musical works, and of published works as to which the author has expressly declared upon the title-page or at the commencement of the work that he forbids their public performance.
Art. 12. The following shall be specially included among the unlawful reproductions to which the present Convention applies:— Unauthorised indirect appropriations of a literary or artistic work. such as adaptations, musical arrangements, **transformations of a novel, tale, or piece of poetry into a dramatic piece, or vice versâ, &c.**, when they are only the reproduction of that work, in the same form or in another form, without essential alterations, additions, or abridgments, and do not present the character of a new original work.	*Art.* 10. The following shall be specially included among the unlawful reproductions to which the present Convention applies:— Unauthorised indirect appropriations of a literary or artistic work, known by various names, such as adaptations, arrangements of music, &c., when they are only the reproduction of such a work in the same form or in another form, without essential alterations, additions, or abridgments, and do not in other respects present the character of a new original work. It is understood that, in the application of the present Article, the Courts of the various countries of the Union shall, if occasion arises, take into account the reservations of their respective laws. *Interpretative Declaration.* § 3. The transformation of a novel into a play, or of a play into a novel, shall come within the stipulations of Article 10.

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
Art. 13. **The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can produce them mechanically; (2) the public performance of the said works by means of these instruments.**	*Berne Convention.* *Closing Protocol.*—§ 3. It is understood that the manufacture and sale of instruments serving to reproduce mechanically musical airs in which copyright subsists shall not be considered as constituting infringement of musical copyright
Reservations and conditions relating to the application of this Article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.	
The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the present Convention.	
Adaptations made in virtue of paragraphs 2 and 3 of the present Article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country.	

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1866, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
Art. 14. Authors of literary, scientific, or artistic works shall have the exclusive right of authorising the reproduction and public representation of their works by cinematography. Cinematograph productions shall be protected as literary or artistic works if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character. Without prejudice to the rights of the author of the original work, the reproduction by cinematography of a literary, scientific, or artistic work, shall be protected as an original work. The above provisions apply to reproduction or production effected by any other process analogous to cinematography.	
Art. 15. In order that the authors of works protected by the present Convention may, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.	*Art.* 11. In order that the authors of works protected by the present Convention may, in the absence of proof to the contrary, be considered as such, and consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author.	For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author. *It is understood, nevertheless, that the Courts may, if necessary, require the production of a certificate from the competent authority, stating that the formalities prescribed, according to Article 2, by the law of the country of origin, have been fulfilled.*
Art. 16. Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection. **In such a country the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.** The seizure shall take place in accordance with the domestic legislation of each country.	*Art.* 12. Pirated works may be seized upon importation into those countries of the Union in which the original work has a right to legal protection. The seizure shall take place in accordance with the domestic legislation of each country. *Additional Act.* *Art.* 12. Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection. The seizure shall take place in accordance with the domestic legislation of each country.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Berne Convention.
Art. 17. The provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.	*Art.* 13. It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit by measures of domestic legislation or police the circulation, representation, and exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.
Art. 18. The present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin **through the expiration of the term of protection.** **If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country.**	*Art.* 14. The present Convention, under the reservations and conditions to be determined by a common agreement, shall apply to all works which, at the time of its coming into force, have not yet fallen into the public domain in their country of origin.
The application of this principle shall take effect according to the stipulations contained in special Conventions existing, or to be concluded, to that effect	*Closing Protocol.*—§ 4. The common agreement provided for in Article 14 of the Convention is concluded as follows:— The application of the Con-

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
between countries of the Union. In the absence of such stipulations, the respective countries shall regulate, each in so far as it is concerned, the manner in which the said principle is to be applied.	vention to works not fallen into the public domain at the time of its coming into force, shall take effect according to the stipulations relative thereto, contained in special treaties existing, or to be concluded for the purpose. In the absence of such stipulations between countries of the Union, the respective countries shall regulate, each for itself, by domestic law, the manner in which the principle contained in Article 14 is to be applied. *Additional Act.* *Closing Protocol.*—§ 4. The common agreement provided for in Article 14 of the Convention is concluded as follows:— The application of the Berne Convention and of the present additional Act to works not fallen into the public domain in their country of origin at the time of the coming into force of those Acts, shall take effect according to the stipulations relative thereto contained in special Conventions existing or to be concluded for the purpose. In the absence of such stipulations between countries of the Union, the respective countries shall regulate, each for itself, by domestic law, the manner in which the principle contained in Article 14 is to be applied. *The stipulations of Article* 14

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	of the Berne Convention and of this paragraph of the Closing Protocol shall apply equally to the exclusive right of translation as granted by the present Additional Act.
The above provisions shall apply equally in case of new accessions to the Union, **and also in the event of the term of protection being extended by the application of Article 7.**	The above-mentioned temporary provisions shall be applicable in case of new accessions to the Union.
Art. 19. **The provisions of the present Convention shall not prevent a claim being made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general.**	
	Berne Convention.
Art. 20. The Governments of the countries of the Union reserve to themselves the right to enter into special arrangements between each other, provided always that such arrangements confer upon authors more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention. The provisions of existing arrangements which answer to the above-mentioned conditions shall remain applicable.	*Art.* 15. It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to make separately particular arrangements between themselves, provided always that such arrangements confer upon authors or their representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Additional Article. The Convention concluded this day shall not in any way affect the maintenance of the treaties already existing between the contracting countries, so far as those treaties confer upon authors or their representatives rights more extended than those accorded by the Union, or embody other stipulations which are not contrary to this Convention.
Art. 21. The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" **shall be maintained.** That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its working.	*Art.* 16. An International Office shall be established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works." That Office, the expenses of which shall be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confederation, and works under its supervision. Its functions shall be determined by common agreement between the countries of the Union.
	Closing Protocol.—§ 5. The organization of the International Office provided for by Article 16 of the Convention shall be settled by a regulation which shall be drawn up by the Government of the Swiss Confederation.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
The official language of the Office shall be French.	The official language of the International Office shall be French.
Art. 22. The International Office collects every kind of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and publishes such information. It undertakes the study of questions of general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations, edits a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.	*Closing Protocol.*—§ 5 (*continued*). The International Office shall collect every kind of information relative to the protection of the rights of authors over their literary and artistic works. It shall arrange and publish such information. It shall undertake the study of questions of general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations shall edit a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.
The International Office will always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.	The International Office shall always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.
The Director of the International Office shall make an annual Report on his Administration, which shall be communi-	The Director of the International Office shall make an annual Report on his Adminis-

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
cated to all the members of the Union.	tration, which shall be communicated to all the members of the Union.
Art. 23. The expenses of the Office of the International Union shall be shared by the contracting countries. Until a fresh decision is arrived at, they cannot exceed the sum of 60,000 fr. a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 24. The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:— 1st class.....25 units. 2nd „ .....20 „ 3rd „ .....15 „ 4th „ .....10 „ 5th „ ..... 5 „ 6th „ ..... 3 „ These coefficients are multiplied by the number of countries of each class, and the total product thus obtained gives the number of units by which the total expense is to be divided. The quotient gives the amount of the unit of expense. Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.	*Closing Protocol.*—§ 5 (*continued*). The expenses of the Office of the International Union shall be shared by the contracting countries. Until a fresh decision is arrived at, they cannot exceed the sum of 60,000 fr. a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 17. The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:— 1st class.....25 units. 2nd „ .....20 „ 3rd „ .....15 „ 4th „ .....10 „ 5th „ ..... 5 „ 6th „ ..... 3 „ These coefficients shall be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense. Each country shall declare, at

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
The Swiss Administration prepares the Budget of the Office, superintends its expenditure, makes the necessary advances, and draws up the annual account, which will be communicated to all the other Administrations.	the time of its accession, in which of the said classes it desires to be placed. The Swiss Administration shall prepare the Budget of the Office, and superintend its expenditure, make the necessary advances, and draw up the annual account, which will be communicated to all the other Administrations.
Art. 24. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union. Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries. The Administration of the country where a Conference is to meet prepares, with the assistance of the International Office, the work of the Conference. The Director of the Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote. No alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.	*Art.* 17. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union. Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries. *Closing Protocol.*—§ 5. The Administration of the country where a Conference is to meet shall prepare, with the assistance of the International Office, the work of the said Conference. The Director of the International Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote. It is understood that no alteration in the present Convention shall be binding on the Union, except by the unanimous consent of the countries composing it.

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Closing Protocol.—§ 6. *The next Conference shall take place at Paris within a period of from four to six years from the date of the coming into force of the Convention.* *The French Government shall fix the date of this Conference within these limits, after having consulted the International Office.*
Art. 25. States outside the Union which make provision for the legal protection of rights forming the object of the present Convention may accede thereto on request to that effect. Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union. Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. **It may, nevertheless, contain an indication of the provisions of the Convention of the 9th September, 1886, or of the Additional Act of the 4th May, 1896, which they may judge necessary to substitute, provisionally at least, for the corresponding provisions of the present Convention.**	*Art.* 18. Countries which have not been parties to the present Convention and make provision in their own territory for the legal protection of the rights forming the objects of this Convention, shall be admitted to accede thereto on request to that effect. Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union. Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.
Art. 26. Contracting countries	*Art.* 19. Countries acceding to

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
shall have the right to accede to the present Convention at any time for their Colonies or foreign possessions. They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded. **Such Declaration shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.**	the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions. They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.
Art. 27. **The present Convention shall replace, in regard to the relations between the Contracting States, the Convention of Berne of the 9th September, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of the 4th May, 1896. These instruments shall remain in force in regard to relations with States which do not ratify the present Convention.** **The signatory States of the present Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any**	

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
specific point, by the provisions of the Conventions which they have previously signed.	
Art. 28. The present Convention shall be ratified and the ratifications exchanged **at Berlin not later than the 1st July, 1910.**	*Art.* 21. The present Convention shall be ratified and the ratifications exchanged at Berne, within a period of one year at the latest.
Each Contracting Party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.	*Closing Protocol.*—§ 7. It is agreed that, as regards the exchange of ratifications provided for by Article 21, each Contracting Party shall deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.
Art. 29. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.	*Art.* 20. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.
Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country which made it, the Convention remaining in full force	Such denunciation shall be made to the Government appointed to receive accessions. It shall only take effect in regard to the country which made it, the Convention remaining in full

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
and effect for the other countries of the Union.	force and effect for the other countries of the Union.
	Additional Act. Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country which made it, the Convention remaining in full force and effect for the other countries of the Union.
Art. 30. **The States which shall introduce in their legislation the duration of protection for fifty years contemplated by Article 7, first paragraph, of the present Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, who will communicate it at once to all the other States of the Union.** **The same procedure shall be followed in the case of the States renouncing the reservations made by them in virtue of Articles 25, 26, and 27.** In faith whereof, &c.	

APPENDIX C.

ORDERS IN COUNCIL MADE UNDER SECTS. 28 AND 29 OF THE COPYRIGHT ACT, 1911, EXTENDING THAT ACT TO FOREIGN COUNTRIES AND BRITISH PROTECTORATES.

ORDER IN COUNCIL UNDER THE COPYRIGHT ACT, 1911, REGULATING COPYRIGHT RELATIONS WITH THE FOREIGN COUNTRIES OF THE BERNE CONVENTION UNION (*g*).

At the Court at Buckingham Palace, the 24th day of June, 1912.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas on the 9th day of September, 1886, a Convention with respect to the protection to be given by way of copyright to the authors of literary and artistic works (hereinafter called the Berne Convention) set out in the Second Schedule to this Order was concluded between Her late Majesty Queen Victoria and the foreign countries following, that is to say:—Belgium, France, Germany, Hayti, Italy, Spain, Switzerland and Tunis, and on the 5th day of September, 1887, the ratifications of the said Berne Convention were duly exchanged between Her late Majesty Queen Victoria and the aforesaid countries:

And whereas subsequently the foreign countries following, namely, Luxemburg, Monaco, Montenegro, Norway and Sweden, acceded to the said Berne Convention:

And whereas an additional Act to the said Berne Convention (hereinafter called the Additional Act) set out in the Third Schedule to this Order was agreed upon between Her late Majesty Queen Victoria and the foreign countries following, namely, Belgium, France, Germany, Italy, Luxemburg, Monaco, Montenegro, Spain, Switzerland and Tunis, for the purpose of varying the provisions of the said Berne Convention, and the ratifications of the said Addi-

(*g*) Statutory Rules and Orders, 1912, No. 913.

tional Act were, on the 9th day of September, 1897, exchanged between Her late Majesty Queen Victoria and the aforesaid countries:

And whereas subsequently the Republic of Hayti acceded to the said Additional Act, and the foreign countries following, namely, Denmark and the Farõe Islands, the German Protectorates, Japan and Liberia, acceded to the said Berne Convention and the said Additional Act, and the Principality of Montenegro duly denounced the said Berne Convention and the said Additional Act:

And whereas by the Orders in Council mentioned in the Fifth Schedule to this Order and made under the authority of the International Copyright Acts, 1844 to 1886, effect is now given throughout His Majesty's dominions to the said Berne Convention and the said Additional Act:

And whereas a Convention (hereinafter called the Berlin Convention) set out in the First Schedule to this Order was on the 13th day of November, 1908, agreed upon between His late Majesty King Edward VII. and the foreign countries following, namely: Belgium, Denmark, France, Germany, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Spain, Sweden, Switzerland and Tunis, for the purpose of replacing the said Berne Convention and the said Additional Act:

And whereas it is provided by the said Berlin Convention that the Contracting States may make reservations by declaring at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the said Berne Convention and the said Additional Act, and it is further provided by the said Berlin Convention that the said Berne Convention and the said Additional Act shall remain in force in regard to relations with Contracting States which do not ratify the said Berlin Convention:

And whereas the said Berlin Convention was ratified by His Majesty on the 14th day of June, 1912, subject to the reservation mentioned in Part I. of the Fourth Schedule to this Order:

And whereas the said Berlin Convention has also been ratified by the foreign countries following, namely, Belgium, France, Germany, Hayti, Japan, Liberia, Luxemburg, Monaco, Norway, Spain, Switzerland and Tunis, subject to the reservations mentioned in Part II. of the Fourth Schedule to this Order:

And whereas the Republic of Portugal has acceded to the said Berlin Convention:

And whereas by the Copyright Act, 1911, the aforesaid International Copyright Acts, 1844 to 1886, are repealed, as from the commencement of the said Copyright Act, 1911, in the parts of His Majesty's dominions to which the said Act extends:

And whereas by the said Copyright Act, 1911, authority is conferred upon His Majesty to extend by Order in Council the protection of the said Act to certain classes of foreign works within

APPENDIX C.

any part of His Majesty's dominions, other than self-governing dominions, to which the said Act extends:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered as follows:—

(1) This Order shall extend to the foreign countries following, namely, Belgium, Denmark and the Faröe Islands, France, Germany, and the German Protectorates, Hayti, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Portugal, Spain, Sweden, Switzerland and Tunis. And the above countries are in this Order referred to as the foreign countries of the Copyright Union.

(2) The Copyright Act, 1911, including the provisions as to existing works, shall subject to the provisions of the said Act and of this Order apply—

(a) to works first published in a foreign country of the Copyright Union, in like manner as if they had been first published within the parts of His Majesty's dominions to which the said Act extends:

(b) to literary, dramatic, musical and artistic works, the authors whereof were at the time of the making of the works subjects or citizens of a foreign country of the Copyright Union, in like manner as if the authors had been British subjects:

(c) in respect of residence in a foreign country of the Copyright Union, in like manner as if such residence had been residence in the parts of His Majesty's dominions to which the said Act extends.

Provided that—

(i) Sections 1 (2) (d) and 19 of the Copyright Act, 1911, and such other part or parts thereof as confer upon the owner of the copyright in a literary, dramatic or musical work the exclusive right of making any record perforated roll cinematograph film or other contrivance by means of which the work may be mechanically performed and such other part or parts thereof as confer copyright in any record or perforated roll shall not apply in the case of any work of which the country of origin is Denmark, Italy, or Sweden.

(ii) The term of copyright within the parts of His Majesty's dominions to which this Order applies shall not exceed that conferred by the law of the country of origin of the work.

(iii) The enjoyment of the rights conferred by the Copyright Act, 1911, shall be subject to the accomplishment of the following conditions and formalities, that is to say:—

(a) In the case of any newspaper article (not being a

serial story or tale) of which the country of origin is one of the foreign countries following, namely, Belgium, France, Germany, and the German Protectorates, Hayti, Liberia, Luxemburg, Monaco, Portugal, Spain, Switzerland and Tunis, the right to prevent the reproduction of such article (either in the original language or in a translation) in another newspaper with an indication of the source shall be conditional upon reproduction being forbidden by express declaration in some conspicuous part of the newspaper in which the article is published.

(b) In the case of any newspaper or magazine article (not being a serial story or tale) of which the country of origin is Denmark, Italy, Norway or Sweden, the right to prevent the reproduction of such article (either in the original language or in a translation) with an indication of the source shall be conditional upon reproduction being forbidden by express declaration in some conspicuous part of newspaper or magazine in which the article is published.

(c) In the case of any literary or dramatic work of which the country of origin is Denmark, Italy, Japan, or Sweden the right after the expiration of ten years from the end of the year in which the work or in the case of a book published in numbers each number of the work was first published, to prevent the production, reproduction, performance in public or publication of any translation of the work shall be conditional upon the publication before the expiration of the above-mentioned period and within the parts of His Majesty's dominions to which this Order applies or within any foreign country of the Copyright Union of an authorised translation in the language for which protection is claimed of the work or of each number of the work.

(d) In the case of any published musical work of which the country of origin is Denmark, Italy, Japan or Sweden the right to prevent performance in public shall be conditional upon performance in public being forbidden by an express declaration on the title-page or commencement of the work.

(e) In the case of any work of which the country of origin is Denmark, Italy or Sweden the entire rights conferred by the Copyright Act, 1911, shall be conditional upon the accomplishment of the conditions and formalities prescribed by law in the country of origin.

(iv) Nothing in the provisions of the Copyright Act, 1911, as applied to existing works, shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by

virtue of Section 5 of the International Copyright Act, 1886.

(3) Subject to the provisions of Article (2) proviso (i) of this Order where any musical work to which this Order applies has been published before the commencement of the Copyright Act, 1911, but no contrivances by means of which the work may be mechanically performed have before the commencement of this Order been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Order applies, copyright in the work shall include all rights conferred by the said Act with respect to the making of records, perforated rolls and other contrivances by means of which the work may be mechanically performed.

(4) In this Order the expression "the country of origin" as applied to a work has the same meaning as in the third paragraph of Article 4 of the Berlin Convention.

(5)—(a) This Order shall apply to all His Majesty's dominions, colonies, and possessions, excepting to those hereinafter named, that is to say, except to the—

Dominion of Canada,
The Commonwealth of Australia,
The Dominion of New Zealand,
The Union of South Africa,
Newfoundland.

(b) This Order shall also apply to Cyprus, and to the following territories under His Majesty's protection, that is to say:—the Bechuanaland Protectorate, East Africa Protectorate, Gambia Protectorate, Gilbert and Ellice Islands Protectorate, Northern Nigeria Protectorate, Northern Territories of the Gold Coast, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia, Sierra Leone Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Weihaiwei.

(6) The Orders mentioned in the Fifth Schedule to this Order are hereby revoked, as from the date of the commencement of this Order, so far as regards the parts of His Majesty's dominions to which this Order applies:

Provided that neither such revocation nor anything else in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

(7) This Order shall be construed as if it formed part of the Copyright Act, 1911.

(8) This Order shall come into operation in the United Kingdom on the 1st day of July, 1912, and in any part of His Majesty's dominions to which this Order applies, and on the day on which the

Copyright Act, 1911, comes into operation in such part: which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly.

Almeric Fitzroy.

[Then follow Schedules setting out in full the Revised Convention, 1908; the original Convention, 1886; the Additional Act of Paris, 1897; the Reservations made to the Revised Convention (*h*); and references to the Orders in Council under the International Copyright Acts, 1844 to 1886.]

ORDER IN COUNCIL AMENDING THE ORDER IN COUNCIL OF JUNE 24, 1912, REGULATING COPYRIGHT RELATIONS WITH THE FOREIGN COUNTRIES OF THE BERNE COPYRIGHT UNION AS REGARDS DENMARK AND JAPAN (*i*).

At the Court at Buckingham Palace, the 17th day of March, 1913.

PRESENT,

The King's Most Excellent Majesty,

Lord President	Lord Stamfordham
Viscount Knollys	Mr. Herbert Samuel.

Whereas His Majesty, by virtue of the authority conferred on Him by the Copyright Act, 1911, and having regard to the provisions of the Berlin Copyright Convention, was pleased to make an Order in Council, dated the 24th day of June, 1912 (hereinafter called the Principal Order), extending the protection of the said Act to certain classes of works to which protection is guaranteed by the said Convention:

And whereas the Kingdom of Denmark has ratified the said Convention subject to the reservation mentioned in the Schedule attached to this Order:

And whereas it is expedient that Article 2, proviso (iii) (a), of the Principal Order should be extended so as to apply to newspaper articles (not being serial stories or tales) of which the country of origin is Japan:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered, as follows:—

(1) The provisions of Article (2), proviso (i), Article (2), proviso (iii) (c), Article (2), proviso (iii) (d), and Article (2),

(*h*) *Ante*, pp. 325, 326.
(*i*) Statutory Rules and Orders, 1913, No. 330.

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proviso (iii) (c), of the Principal Order are hereby revoked so far as they relate to works of which the country of origin is Denmark, and the authors of all such works shall enjoy the same rights as if the said provisions had never related thereto.

(2) In the application of the provisions of Article (3) of the Principal Order to works of which the country of origin is Denmark, the date of this Order shall be substituted for the commencement of the Act and for the commencement of the Principal Order.

(3) Where any person has, before the date of this Order, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work at a time when such reproduction or performance would, but for the making of this Order, have been lawful, nothing in this Order shall diminish or prejudice any rights or interest arising from, or in connection with, such action which are subsisting or valuable at the said date unless the person who, by virtue of this Order, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined in accordance with the provisions of the Copyright Act, 1911.

(4) The provisions of Article (2), proviso (iii) (a), of the Principal Order shall apply as if Japan were included amongst the foreign countries named in those provisions.

And the Lords Commissioners of the Treasury are to give the necessary orders accordingly.

Almeric FitzRoy.

SCHEDULE.

RESERVATION MADE TO THE BERLIN CONVENTION.

Country.	Subject.	Substituted Provisions of Berne Convention and Additional Act of Paris.
Denmark	Newspaper and magazine articles.	Article (7) of the Berne Convention as amended by the Additional Act.

ORDER IN COUNCIL EXTENDING THE ORDER IN COUNCIL OF JUNE 24, 1912, REGULATING COPYRIGHT RELATIONS WITH THE FOREIGN COUNTRIES OF THE BERNE COPYRIGHT UNION TO THE NETHERLANDS (*k*).

At the Court at Buckingham Palace, the 17th day of March, 1913.

PRESENT,

The King's Most Excellent Majesty

Lord President — Lord Stamfordham
Viscount Knollys — Mr. Herbert Samuel.

Whereas His Majesty, by virtue of the authority conferred on Him by the Copyright Act, 1911, and having regard to the provisions of the Berlin Copyright Convention, was pleased to make an Order in Council, dated the 24th day of June, 1912 (hereinafter called the Principal Order), extending the protection of the said Act to certain classes of works to which protection is guaranteed by the said Convention.

And whereas the Kingdom of the Netherlands has acceded to the said Convention subject to the reservations mentioned in the Schedule to this Order:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered, as follows:—

The Principal Order shall extend to the Netherlands as if that country were amongst the foreign countries of the Copyright Union therein named, subject to the following modifications:—

(a) The provisions of Article (2), proviso (iii) (b), and of Article (2), proviso (iii) (c) of the Principal Order shall apply as if the Netherlands were included amongst the foreign countries named in those provisions.

(b) In the application to works of which the country of origin is the Netherlands of Sections 1 (2) (d) and 19 of the Copyright Act, 1911, the date of this Order shall be substituted for the commencement of the Act in Sections 19 (7) and 19 (8) wherever that expression occurs, and the 1st November, 1912, for the passing of the Act.

(c) In the application to such works of the provisions of Section 24 of the Copyright Act, 1911, the date of this Order shall be substituted for the commencement of the Act wherever that expression occurs in sub-section (1) (a), and for the 26th July, 1910, in sub-section (1) (b).

(*k*) Statutory Rules and Orders, 1913, No. 331.

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(d) In the application to such works of the provisions of Article (3) of the Principal Order the date of this Order shall be substituted for the commencement of the Principal Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly.

Almeric FitzRoy.

SCHEDULE.

RESERVATIONS MADE TO THE BERLIN CONVENTION.

Country.	Subject.	Substituted Provisions of Berne Convention and Additional Act of Paris.
Netherlands	Translating right	Article 5 of the Berne Convention as amended by the Additional Act.
	Newspaper and magazine articles.	Article 7 of the Berne Convention as amended by the Additional Act.
	Performing right as regards translations.	Article 9, paragraph (2) of the Berne Convention.

ORDER IN COUNCIL AMENDING THE ORDER IN COUNCIL OF JUNE 24, 1912, REGULATING COPYRIGHT RELATIONS WITH THE FOREIGN COUNTRIES OF THE BERNE COPYRIGHT UNION AS REGARDS ITALY (*l*).

At the Court at Buckingham Palace, the 9th day of February, 1914.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas His Majesty, by virtue of the authority conferred on Him by the Copyright Act, 1911, and having regard to the provisions of the Berlin Copyright Convention, was pleased to make an Order in Council, dated the 24th day of June, 1912 (hereinafter called the Principal Order), extending the protection of the said Act to certain classes of works to which protection is guaranteed by the said Convention:

And whereas it is provided in Article (2), proviso (i), of the Principal Order that Sections 1 (2) (d) and 19 of the Copyright Act, 1911, and such other part or parts thereof as confer upon the owner

(*l*) Statutory Rules and Orders, 1914, No. 223.

of the copyright in a literary, dramatic or musical work the exclusive right of making any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed and such other part or parts thereof as confer copyright in any record or perforated roll shall not apply in the case of any work of which the country of origin is Italy:

And whereas His Majesty has received an assurance from the Italian Government to the effect that the widest protection is granted in Italy to works of British origin, to the authors of which is reserved the exclusive right of every form of reproduction, execution, or representation by any means whatever (including the cinematograph as well as mechanical musical instruments):

And whereas in view of this assurance it is expedient to revoke the provision above referred to in Article (2), proviso (i), of the Principal Order:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered, as follows:—

(1) The provisions of Article (2), proviso (i), of the Principal Order are hereby revoked so far as they relate to works of which the country of origin is Italy.

(2) In the application of the provisions of Article (3) of the Principal Order to works of which the country of origin is Italy, the commencement of this Order shall be substituted for the commencement of the Act and for the commencement of the Principal Order.

(3) In the application to works of which the country of origin is Italy of Sections 1 (2) (d) and 19 of the Copyright Act, 1911, the commencement of this Order shall be substituted for the commencement of the Act, and for the passing of the Act, in Sections 19 (7) and 19 (8), wherever those expressions occur, and the 1st day of July, 1914, for the 1st day of July, 1913.

(4) Where any person has, before the date of this Order, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work at a time when such reproduction or performance would, but for the making of this Order, have been lawful, nothing in this Order shall diminish or prejudice any rights or interest arising from, or in connection with, such action which are subsisting or valuable at the said date unless the person who, by virtue of this Order, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agree-

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ment, may be determined in accordance with the provisions of the Copyright Act, 1911.

(5) This Order shall come into operation on the First day of April, 1914, which date is in this Order referred to as the commencement of the Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly.

Almeric FitzRoy.

ORDER IN COUNCIL VARYING ORDER IN COUNCIL OF FEBRUARY 9, 1914, REGULATING COPYRIGHT RELATIONS AS REGARDS ITALY (*m*).

At the Court at Buckingham Palace, the 30th day of March, 1914.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas His Majesty, by virtue of the authority conferred upon Him by the Copyright Act, 1911, was pleased to make an Order in Council, dated the 9th day of February, 1914, revoking, so far as they relate to works of which the country of origin is Italy, the provisions of Article (2), proviso (i), of the Order in Council therein referred to as the Principal Order:

And whereas it is expedient that Article (3) of the said first-mentioned Order should be varied:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered, as follows:—

1. Article (3) of the said Order shall be varied by omitting therefrom the words "and the first day of July, 1914, for the first day of July, 1913," and the Article shall take effect as if those words had not been inserted therein.

2. This Order shall come into operation on the 1st day of April, 1914.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly.

Almeric FitzRoy.

(*m*) Statutory Rules and Orders, 1914, No. 521.

ORDER IN COUNCIL UNDER THE COPYRIGHT ACT, 1911, REGULATING COPYRIGHT RELATIONS WITH AUSTRIA-HUNGARY (*n*).

At the Court at Buckingham Palace, the 24th day of June, 1912.

PRESENT:

The King's Most Excellent Majesty in Council.

Whereas on the 24th day of April, 1893, a Convention, set out in the First Schedule to this Order, with respect to the protection to be given by way of copyright to the authors of literary and artistic works was concluded between Her late Majesty Queen Victoria and His Majesty the Emperor of Austria, King of Bohemia and Apostolic King of Hungary, and the ratifications of the said Convention were exchanged on the 14th day of April, 1894, between Her late Majesty Queen Victoria and His Majesty the Emperor:

And whereas by the Orders in Council mentioned in the Second Schedule to this Order and made under the authority of the International Copyright Acts, 1844 to 1886, effect was given to the said Convention throughout His Majesty's dominions except in the Dominion of Canada, the Cape, New South Wales and Tasmania:

And whereas by the Copyright Act, 1911, the said International Copyright Acts, 1844 to 1886, are repealed, as from the date of the commencement of the said Copyright Act, 1911, in the parts of His Majesty's dominions to which the said Act extends:

And whereas by the said Copyright Act, 1911, authority is conferred upon His Majesty to extend by Order in Council the protection of the said Act to certain classes of foreign works within any part of His Majesty's dominions, other than self-governing dominions, to which the said Act extends:

And whereas it is expedient to continue the protection granted by the Orders in Council mentioned in the Second Schedule to this Order:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered, as follows:—

(1) The Copyright Act, 1911, including the provisions as to existing works, shall subject to the provisions of the said Act and of this Order apply—

(a) To works first published in the Austro-Hungarian Monarchy in like manner as if they had been first published within the parts of His Majesty's dominions to which the said Act extends;

(*n*) Statutory Rules and Orders, 1912, No. 914.

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(b) To literary, dramatic, musical and artistic works, the authors whereof were at the time of the making of the work subjects of the Austro-Hungarian Monarchy in like manner as if the authors had been British subjects;

(c) In respect of residence in the Austro-Hungarian Monarchy in like manner as if such residence had been residence in the parts of His Majesty's dominions to which the said Act extends.

Provided that—

(i) The term of copyright within the parts of His Majesty's dominions to which this Order applies shall not exceed that conferred by the law of the Austro-Hungarian Monarchy;

(ii) The enjoyment of the rights conferred by the Copyright Act, 1911, shall be subject to the accomplishment of the following conditions and formalities, that is to say:—

(a) In the case of any literary or dramatic work the right after the expiration of 10 years from the end of the year in which the work or in the case of a book published in numbers each number of the work was first published to prevent the production reproduction performance in public or publication of any English translation of the work shall be conditional upon the publication before the expiration of the above-mentioned period of an authorised English translation of the work or of each number of the work;

(b) In the case of any work first published in the Austro-Hungarian Monarchy the entire rights conferred by the Copyright Act, 1911, shall be conditional upon the accomplishment of the conditions and formalities prescribed by law in that part of the Monarchy in which the work was first published.

(2) In the case of any musical work to which this Order applies and which has been published before the commencement of the Copyright Act, 1911, copyright in the work shall include all rights conferred by the said Act with respect to the making of records, perforated rolls, and other contrivances by means of which the work may be mechanically performed.

(3) This Order shall apply to all His Majesty's dominions, colonies, and possessions, excepting to those hereinafter mentioned; that is to say, except to:—

The Dominion of Canada,
The Commonwealth of Australia,
The Dominion of New Zealand,
The Union of South Africa,
Newfoundland.

(4) The Orders mentioned in the Second Schedule to this Order are hereby revoked as from the date of the commencement of the Copyright Act, 1911, so far as regards the parts of His Majesty's dominions to which this Order applies.

Provided that neither such revocation nor anything else in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

(5) This Order shall be construed as if it formed part of the Copyright Act, 1911.

(6) This Order shall come into operation in the United Kingdom on the first day of July, 1912, and in any other part of His Majesty's dominions to which this Order applies, on the day on which the Copyright Act, 1911, comes into operation in such part; which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly (*o*).

Almeric Fitzroy.

ORDER IN COUNCIL EXTENDING THE COPYRIGHT ACT, 1911, TO CERTAIN BRITISH PROTECTORATES (*p*).

At the Court at Buckingham Palace, the 24th day of June, 1912.

PRESENT,

The King's Most Excellent Majesty

Lord President	Sir Henry W. Primrose
Earl Beauchamp	Mr. C. F. G. Masterman
Lord Richard Cavendish	Sir David Brynmor Jones
Viscount Allendale	Sir James Henry Dalziel
Lord Chamberlain	Sir Albert Spicer, Bart.

Whereas it is, among other things, provided by the Copyright Act, 1911, that His Majesty may, by Order in Council, extend the said Act to any territories under His protection and to Cyprus, and that on the making of any such Order the said Act shall, subject to the provisions of the Order, have effect as if the territories to

(*o*) The text of the Treaty with Austria-Hungary (*ante*, p. 622) then follows as a Schedule.

(*p*) Statutory Rules and Orders, 1912, No. 912.

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which it applies or Cyprus were part of His Majesty's dominions to which the said Act extends:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:—

1. The Copyright Act, 1911, shall apply to Cyprus and to the following territories under His Majesty's protection, namely, the Bechuanaland Protectorate, East Africa Protectorate, Gambia Protectorate, Gilbert and Ellice Islands Protectorate, Northern Nigeria Protectorate, Northern Territories of the Gold Coast, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia, Sierra Leone Protectorate, Somaliland Protectorate, Southern Nigeria Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Weihaiwei.

2. In Article 12 of "The Somaliland Order in Council, 1899," the word "Copyright" is hereby revoked and shall be deleted.

Almeric Fitzroy.

APPENDIX D.

COLONIAL AND FOREIGN STATUTES, ORDERS AND REGULATIONS.

COMMONWEALTH OF AUSTRALIA.

COPYRIGHT ACT, 1912.

No. 20 OF 1912.

An Act relating to Copyright. [20th November, 1912.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the Copyright Act, 1912. Short title.

2. This Act is divided into Parts as follows:— Parts.

Part I.—Preliminary.
Part II.—Copyright.
Part III.—Summary Remedies.
Part IV.—The Copyright Office.
Part V.—Miscellaneous.

3. *In this Act, unless the context otherwise requires*— Definitions.

(a) "the British Copyright Act" means the Copyright Act, 1911, of the United Kingdom (1 & 2 Geo. 5, c. 46);

(b) words and expressions defined in the British Copyright Act have the same meanings as in that Act;

(c) "Territory" means a Territory of the Commonwealth which is part thereof.

4. The Copyright Act, 1905, is repealed. Repeal.

5. The Copyright Office established under the Copyright Act, 1905, and any officers appointed under that Act, shall continue as if established or appointed under this Act. Continuance of Copyright Office.

Continuance of administration of State Copyright Acts.

6. Where, in pursuance of any proclamation (*a*) issued under the Copyright Act, 1905, the administration of any State Copyright Act has become transferred to the Commonwealth, such administration shall continue to be so transferred to the same extent and subject to the same terms and conditions as if the Copyright Act, 1905, still remained in force.

Continuance of registers of copyrights.

7. All Registers of Copyrights established under the Copyright Act, 1905, shall continue as if established under this Act.

PART II.—COPYRIGHT.

Adoption of British Copyright Act.

8. The British Copyright Act, a copy of which is set out in the Schedule to this Act, shall, subject to any modifications provided by this Act, be in force in the Commonwealth, and shall be deemed to have been in force therein as from the first day of July, One thousand nine hundred and twelve.

Modifications to adapt the British Copyright Act to the Commonwealth.

9. In the application of the British Copyright Act to the Commonwealth—

(a) any powers of the Board of Trade under section three may be exercised by the Governor-General;

(b) the reference in sub-section (4.) of section nineteen to arbitration shall be read as a reference to arbitration under the law of the State or Territory in which the dispute occurs, and the reference in sub-section (6.) of that section to the Board of Trade shall be read as a reference to the Governor-General;

(c) the reference in section twenty-two to the Patents and Designs Act, 1907, shall be read as a reference to the Designs Act, 1906, and the reference in that section to section eighty-six of the Patents and Designs Act, 1907, shall be read as a reference to section forty-one of the Designs Act, 1906; and

(d) the reference in section twenty-four to the *London Gazette* and two London newspapers shall be read as a reference to the *Commonwealth Gazette* and one newspaper published in each of the capital cities of the Australian States.

Importation of copies.
1 & 2 Geo. 5, c. 46, s. 14.

10.—(1.) Copies made out of the Commonwealth of any work in which copyright subsists which if made in the Commonwealth would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Comptroller-General of Customs, that he is desirous that such copies should not be imported into the Commonwealth, shall not be so imported and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of the Customs Acts, 1901-1910.

(*a*) See proclamation in Gazette of 26th January, 1907, p. 435.

(2.) Before detaining any such copies, or taking any further proceedings with a view to the forfeiture thereof, the Comptroller-General of Customs or the Collector of Customs for the State may require the regulations under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3.) The Governor-General may make regulations, either general or special, respecting the detention and forfeiture of copies, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4.) The regulations may apply to copies of all works, the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5.) The regulations may provide for the informant reimbursing the Comptroller-General of Customs or the Collector of Customs for the State all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under the Copyright Act, 1905, being treated as notices given under this section, and also that notices given to the Commissioners of Customs and Excise of the United Kingdom and communicated by them to the Comptroller-General of Customs shall be deemed to have been given by the owner to the Comptroller-General.

(6.) This section shall have effect as the necessary modification of section fourteen of the British Copyright Act.

Provision for reciprocal protection of copyright.

11.—(1.) Subject to this section, the Governor-General in Council may, by Order, direct that the British Copyright Act and this Act shall extend to literary, musical, dramatic, and artistic works first produced or published in any part of the King's dominions to which the British Copyright Act does not extend, in like manner as if the works had been first published or produced in the Commonwealth.

(2.) Any Order made in pursuance of this section may provide—

(a) that the term of copyright shall not exceed that conferred by the law of the part of the King's dominions to which the Order relates;

(b) that the enjoyment of the rights conferred by virtue of the Order shall extend to the Commonwealth only, and shall be subject to the accomplishment of such conditions and formalities as are prescribed by the Order;

(c) for the modification of any provision of the British Copyright Act or this Act as to ownership of copyright or

otherwise, having regard to the law of the part of the King's dominions to which the Order relates; and

(d) that the British Copyright Act and this Act may extend to existing works in which copyright subsists in the part of the King's dominions to which the Order relates, but subject to such modifications restrictions and provisions as are set out in the Order.

(3.) An Order in pursuance of this section shall only be made in case the Governor-General in Council is satisfied that the part of the King's dominions in relation to which the Order is proposed to be made has made, or has undertaken to make, such provisions, if any, as he thinks sufficient for the protection of works first produced or published in the Commonwealth and entitled to copyright therein.

Provisions as to Order in Council.

Cf. 1 & 2 Geo. 5, c. 46, s. 32.

12.—(1.) The Governor-General in Council may make Orders for altering, revoking, or varying any Order in Council made by him in pursuance of any power conferred upon him by the British Copyright Act or this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2.) Every Order in Council made by the Governor-General in pursuance of any power conferred upon him by the British Copyright Act or this Act shall be published in the *Gazette*, and shall be laid before both Houses of the Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

Saving of copyrights in certain works made out of the Commonwealth.

13.—(1.) Where copyright subsisted in the United Kingdom in respect of any musical, dramatic, or artistic work at or after the commencement of the Copyright Act, 1905, and before the first day of July, One thousand nine hundred and twelve, the copyright shall, subject to this section, be deemed to have subsisted in the Commonwealth as from the commencement of the Copyright Act, 1905, or from the date of the commencement of the copyright in the work, as the case requires, to the same extent as if copyright therein had subsisted in the Commonwealth under the law of the United Kingdom.

(2.) Where a person has before the commencement of this Act taken any action whereby he has incurred any expenditure or liability in connection with the reproduction of any musical, dramatic, or artistic work in a manner which at the time was lawful, or for the purpose of or with a view to the production of any such work at a time when such reproduction would, but for this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which were subsisting and valuable at the first day of July, One thousand nine hundred and twelve, unless the person who, by virtue of this

section, becomes entitled to restrain such reproduction, agrees to pay such compensation as, failing agreement, may be determined by arbitration.

PART III.—SUMMARY REMEDIES.

14.—(1.) If any person knowingly— **Summary offences. 1 & 2 Geo. 5, c. 46, s. 11.**

(a) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(b) sells or lets for hire or by way of trade exposes or offers for sale or hire, any infringing copy of any such work; or

(c) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) by way of trade exhibits in public any infringing copy of any such work; or

(e) imports for sale or hire into the Commonwealth any infringing copy of any such work,

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction; or in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(2.) If any person knowingly makes or has in his possession any plate for the purposes of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(3.) The Court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in possession of the alleged offender which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the Court may think fit.

15. Any person who, for his private profit, permits any theatre or other place of entertainment to be used for the performance in public of any musical or dramatic work, without the consent of the registered owner of the sole right to perform or authorise the performance of the work in the State or part of the Commonwealth where the theatre or place is situated, shall be guilty of an offence, unless he was not aware, and had no reasonable ground for sus- **Penalty for permitting unauthorised performance in theatres, &c.**

pecting, that the performance would be an infringement of the right to perform or authorise the performance of the work.

Penalty: Ten pounds.

Search warrant and seizure of pirated copies.

16.—(1.) A justice of the peace may, upon the application of the registered owner of the copyright in any literary, dramatic, musical, or artistic work or of the agent of such owner appointed in writing—

(a) if satisfied by evidence that there is reasonable ground for believing that infringing copies of the work are being sold, or offered for sale—issue a warrant, in accordance with the form prescribed, authorising any constable to seize the infringing copies and to bring them before a Court of summary jurisdiction;

(b) if satisfied by evidence that there is reasonable ground for believing that infringing copies of the work are to be found in any house, shop, or other place—issue a warrant, in accordance with the form prescribed, authorising any constable to search, between sunrise and sunset, the place where the infringing copies are supposed to be, and to seize and bring them or any copies reasonably suspected to be infringing copies of the work before a Court of summary jurisdiction.

(2.) A Court of summary jurisdiction may, on proof that any copies brought before it in pursuance of this section are infringing copies of the work, order them to be destroyed or to be delivered up, subject to such conditions, if any, as the Court thinks fit, to the owner of the copyright in the work.

Power of owner of performing right to forbid performance in infringement of his right.

17.—(1.) The registered owner of the sole right to perform, or authorise the performance, of a musical or dramatic work in the Commonwealth or any part thereof, or the agent of such owner appointed in writing, may, by notice in writing in accordance with the prescribed form, forbid the performance in public of the work in infringement of his right, and require any person to refrain from performing or taking part in the performance in public of the work, in infringement of his right, and every person to whom a notice has been given in accordance with this section shall refrain from performing or taking part in the performance in public of the work in infringement of the right of such owner.

Penalty: Ten pounds.

(2.) A person shall not give any notice in pursuance of this section without just cause.

Penalty: Twenty pounds.

(3.) In any prosecution under sub-section (2.) of this section, the defendant shall be deemed to have given the notice without just cause unless he proves to the satisfaction of the Court that, at the time of giving the notice, he was the registered owner of the sole

right to perform, or authorise the performance, of the work in the Commonwealth or any part thereof, or the agent of such owner appointed in writing, and had reasonable ground for believing that the person to whom the notice was given was about to perform or take part in the performance of the work in infringement of the right of such owner.

Application of penalties.

18. Where proceedings are instituted in any Court of summary jurisdiction, by or on behalf of the owner of the copyright in any work or the owner of the sole right to perform, or authorise the performance, of any work, in respect of any offence in infringement of his right, any penalty imposed shall be paid to him by way of compensation for the injury sustained by him, but in any other case any penalty imposed in respect of any offence against this Act shall be paid to the Commonwealth.

Limitation of summary proceedings.

19. No proceedings shall be instituted in a Court of summary jurisdiction in respect of any offence against this Act after the expiration of six months from the date of the offence.

Appeals.

20. An appeal shall lie from any conviction or order (including any dismissal of any information, complaint, or application) of a Court of summary jurisdiction in respect of any offence or matter under this Act, and such appeal shall be to the Court, and shall be made within the time and in the manner, provided by the law of the State or Territory in which the conviction or order was made in case of appeals from Courts of summary jurisdiction in that State or Territory.

Part not to apply to works of architecture.

21. This Part of this Act shall not apply to any case to which section nine of the British Copyright Act, relating to infringement of copyright in the case of a work of architecture, applies.

Cf. 1 & 2 Geo. 5, s. 9 (2).

PART IV.—THE COPYRIGHT OFFICE.

Division 1.—General.

Copyright office.

22. There shall be, for the purposes of this Act, an office called the Copyright Office.

Registrar of Copyrights.

23. The Copyright Office shall be in charge of an officer called the Registrar of Copyrights.

Powers and functions of registrar.

24. The Registrar of Copyrights shall have such powers and functions as are conferred upon him by this Act and the regulations.

Seal.

25.—(1.) There shall be a seal of the Copyright Office, and impressions thereof shall be judicially noticed.

(2.) The seal of the Copyright Office in use at the commencement of this Act shall, until altered, be the seal of the Copyright Office.

Division 2.—Registration.

Registration optional.

26.—Registration of copyright shall be optional, but the special remedies provided for by sections fifteen, sixteen, and seventeen of this Act can only be taken advantage of by registered owners.

Copyright registers.

27. The following Registers of Copyrights shall be kept by the Registrar at the Copyright Office:—

The Register of Literary (including Dramatic and Musical) Copyrights.
The Register of Fine Arts Copyrights.
The Register of International and State Copyrights.

Method of registration.

28. The owner of any copyright under this Act, or of the sole right to perform, or authorise the performance, of any musical or dramatic work in the Commonwealth or any part thereof, may obtain registration of his right in the manner prescribed.

Registration of assignments and transmissions.

29. When any person becomes entitled to any registered copyright or other right under this Act by virtue of any assignment or transmission, or to any interest therein by licence, he may obtain registration of the assignment, transmission, or licence in the manner prescribed.

How registration effected.

30. The registration of any copyright or other right under this Act, or of any assignment or transmission thereof or of any interest therein by licence, shall be effected by entering in the proper register the prescribed particulars relating to the right, assignment, transmission, or licence.

Registration of works published in a series.

31. In the case of an encyclopædia, newspaper, review, magazine, or other periodical work, or a work published in a series of books or parts, a single registration for the whole work may be made.

Trusts not registered.

32.—(1.) No notice of any trust expressed, implied, or constructive shall be entered in any Register of Copyrights under this Act or be receivable by the Registrar.

(2.) Subject to this section, equities in respect of any copyright under this Act may be enforced in the same manner as equities in respect of other personal property.

Register to be evidence.

33. Every Register of Copyrights under this Act shall be *primâ facie* evidence of the particulars entered therein, and documents purporting to be copies of any entry therein or extracts therefrom certified by the Registrar and sealed with the seal of the Copyright Office, shall be admissible in evidence in all Federal or State Courts, or the Courts of any Territory, without further proof or production of the originals.

Certified copies.

34. Certified copies of entries in any register under this Act or of extracts therefrom shall on payment of the prescribed fee be given to any person applying for them.

35. Each register under this Act shall be open to public inspection at all convenient times on payment of the prescribed fee.

Inspection of register.

36. The Registrar may, in prescribed cases and subject to the prescribed conditions, amend or alter any register under this Act by—

Correction of register.

(a) correcting any error in any name, address, or particular; and

(b) entering any prescribed memorandum or particular relating to copyright or other right under this Act.

Rectification of register by the Court.

37.—(1.) Subject to this Act the Supreme Court of any State or a judge thereof may, on the application of the Registrar or of any person aggrieved, order the rectification of any register under this Act by—

(a) the making of any entry wrongly omitted to be made in the register; or

(b) the expunging of any entry wrongly made in or remaining on the register; or

(c) the correction of any error or defect in the register.

(2.) An appeal shall lie to the High Court from any order for the rectification of any register made by a Supreme Court or a judge under this section.

Delivery of copies to registrar.

38.—(1.) Every person who makes application for the registration of the copyright in a book shall deliver to the Registrar one copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and bound, sewed, or stitched together and on the best paper on which the book is printed.

(2.) Every person who makes application for the registration of the copyright in a work of art shall deliver to the Registrar one copy of the work of art or a representation of it.

(3.) The Registrar shall refuse to register the copyright in any book until sub-section (1.) of this section has been complied with, or the copyright in a work of art until sub-section (2.) of this section has been complied with.

(4.) Each copy or representation delivered to the Registrar in pursuance of this section shall be retained at the Copyright Office.

False representation to registrar.

39. A person who wilfully makes any false statement or representation to deceive the Registrar or any officer in the execution of this Part of this Act, or to procure or influence the doing or omission of any thing in relation to this Part of this Act or any matter thereunder shall be guilty of an indictable offence.

Penalty: Imprisonment for three years.

APPENDIX D.
AUSTRALIA.

PART V.—MISCELLANEOUS.

Delivery of books to the librarian of the Parliament.

Cf. 1 & 2 Geo. 5, c. 46, s. 15.

40.—(1.) The publisher of every book which is first published in the Commonwealth after the commencement of this section, and in which copyright subsists under this Act, shall within one month after the publication deliver, at his own expense, a copy of the book to the Librarian of the Parliament, who shall give a written receipt for it.

(2.) The copy delivered to the Librarian of the Parliament shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and bound, sewed, or stitched together, and on the best paper on which the book is printed.

(3.) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book.

(4.) For the purposes of this section the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, map, plan, chart, or table, but shall not include any second or subsequent edition of a book unless that edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto or any book published by any State or any authority of a State.

Preservation of rights of State libraries.

41. Nothing in this Act shall be deemed to affect the existing provisions of any Act of the Parliament of a State which require or relate to the delivery to any specified Public or other Library of the State of copies of books published in the State or to affect the power of the Parliament of a State to make laws requiring or relating to such delivery.

Regulations.

42. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Copyright Office.

[SCHEDULE (*b*).]

(*b*) The Schedule contains a reprint of the Imperial Copyright Act, 1911.

NEW ZEALAND.

1913, No. 4.

An Act relating to Copyright. [22nd November, 1913.

BE it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

1. This Act may be cited as the Copyright Act, 1913, and shall commence on the first day of April, nineteen hundred and fourteen.

Interpretation.

2.—(1.) In this Act, unless the context otherwise requires,—

"Literary work" includes maps, charts, plans, tables, and compilations:

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting-form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting-form or the combination of incidents represented gives the work an original character:

"Artistic work" includes works of painting, drawing, sculpture, and artistic craftsmanship, and architectural works of art, and engravings, and photographs:

"Work of sculpture" includes casts and models:

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure; provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction:

"Engravings" include etchings, lithographs, woodcuts, prints, and other similar works not being photographs:

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography:

"Cinematograph" includes any work produced by any process analogous to cinematography:

"Collective work" means—

(a) An encyclopædia, dictionary, year-book, or similar work;

(b) A newspaper, review, magazine, or similar periodical; and

(c) Any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated:

"Infringing," when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made or imported in contravention of the provisions of this Act:

"Performance" means any acoustic representation of a work, and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument:

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument:

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls, or other contrivances for the acoustic representation of the work are or are intended to be made:

"Lecture" includes address, speech, and sermon:

"Court of summary jurisdiction" means a magistrate or two or more justices exercising jurisdiction under the Justices of the Peace Act, 1908.

(2.) Except for the purposes of infringement of copyright, a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public without the consent or acquiescence of the author, his executors, administrators, or assigns.

(3.) For the purposes of this Act a work shall be deemed to be first published in New Zealand notwithstanding that it has been published simultaneously in some other place, unless the publication in New Zealand is colourable only and is not intended to satisfy the reasonable requirements of the public; and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may for the time being be fixed by the Governor in Council.

(4.) Where, in the case of an unpublished work, the making of a work has extended over a considerable period the conditions of this Act conferring copyright shall be deemed to have been complied with if the author was during any substantial part of that period a British subject or resident in New Zealand.

(5.) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in New Zealand if he is domiciled therein.

PART I.—COPYRIGHT.

Rights.

Copyright.

3.—(1.) Subject to the provisions of this Act, copyright shall subsist in New Zealand for the term hereinafter mentioned in every original literary, dramatic, musical, and artistic work if—

(a) In the case of a published work, the work was first published in New Zealand; and

(b) In the case of an unpublished work, the author was at the date of the making of the work a British subject or resident in New Zealand;

but in no other works, except so far as the protection conferred by this Act is extended by the Governor in Council pursuant to this Act.

(2.) For the purposes of this Act "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever; to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; and if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right—

(a) To produce, reproduce, perform, or publish any translation of the work;

(b) In the case of a dramatic work, to convert it into a novel or other non-dramatic work;

(c) In the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work by way of performance in public or otherwise;

(d) In the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered;

and to authorise any such acts as aforesaid.

(3.) For the purposes of this Act "publication" in relation to any work means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but for the purposes of this provision the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

No copyright except as provided by this Act.

4. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other statutory enactment for the time being in force; but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

APPENDIX D. NEW ZEALAND.

Infringement of copyright.

5.—(1.) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of copyright:—

(a) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary:

(b) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work:

(c) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art:

(d) The publication in a collection, mainly composed of non-copyright matter, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists:

Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged:

(e) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (a) as to newspaper summaries:

(f) The reading or recitation in public by one person of any reasonable extract from any published work.

(2.) Copyright in a work shall also be deemed to be infringed by any person who—

(a) Sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(b) Distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(c) By way of trade exhibits in public; or

(d) Imports for sale or hire into New Zealand,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made in New Zealand.

(3.) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

Term of copyright.

6. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the commencement of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner, to or for the benefit of the owner of the copyright, royalties in respect of all copies of the work sold by him, calculated at the rate of ten per centum on the price at which he publishes the work; and for the purposes of this proviso the Governor may, by Order in Council gazetted, make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if he thinks fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Compulsory licenses.

7. If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work, or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a license to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the said Court may think fit.

Ownership of copyright, &c.

8.—(1.) Subject to the provisions of this Act the author of a work shall be the first owner of the copyright therein:

Provided that—

(a) Where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person, and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and

(b) Where the author was in the employment of some other person under a contract of service or apprenticeship, and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright; but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2.) The owner of the copyright in any work may assign the right, either wholly or partially, and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by license; but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:

Provided that where the author of a work is the first owner of the copyright therein no assignment of the copyright, and no grant of any interest therein made by him (otherwise than by will) after the commencement of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void; but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work, or a license to publish a work or part of a work as part of a collective work.

(3.) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies.

Civil remedies for infringement of copyright.

9.—(1.) Where copyright in any work has been infringed the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2.) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3.) In any action for infringement of copyright in any work the work shall be presumed to be a work in which copyright subsists, and the plaintiff shall be presumed to be the owner of the copyright unless the defendant puts in issue the existence of the copyright or, as the case may be, the title of the plaintiff; and where any such question is in issue, then—

(a) If a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work:

(b) If no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Rights of owner against persons possessing or dealing with infringing copies, &c.

10. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Exemption of innocent infringer from liability to pay damages, &c.

11. Where proceedings are taken in respect of the infringement of the copyright in any work, and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work.

Restriction on remedies in the case of architecture.

12.—(1.) Where the construction of a building or other structure which infringes, or which if completed would infringe, the copyright

APPENDIX D. NEW ZEALAND.

in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.

(2.) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

Limitation of actions.

13. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

Summary Remedies.

Summary offences.

14.—(1.) Every person who knowingly—

(a) Makes for sale or hire any infringing copy of a work in which copyright subsists; or

(b) Sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work; or

(c) Distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) By way of trade exhibits in public any infringing copy of any such work; or

(e) Imports for sale or hire into New Zealand any infringing copy of any such work,

is liable on summary conviction to a fine not exceeding two pounds for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction, or, in the case of a second or subsequent offence, either to such fine or to two months' imprisonment.

(2.) Every person who knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or who knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, is liable on summary conviction to a fine of fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to two months' imprisonment.

(3.) The Court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work, or all plates in possession of the alleged offender which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed, or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

Permitting unauthorised performances.

15. Every person who for his private profit permits any theatre or other place of entertainment to be used for the performance in public of any musical or dramatic work without the consent of the registered owner of the sole right to perform or authorise the per-

formance of the work in New Zealand, or any part of New Zealand where the theatre or place is situated, is liable on summary conviction to a fine of ten pounds, unless he was not aware and had no reasonable ground for suspecting that the performance would be an infringement of the right to perform or authorise the performance of the work.

Search warrant.

16.—(1.) Any justice may, on the application of the registered owner of the copyright in any literary, dramatic, musical, or artistic work, or of the agent of such owner appointed in writing,—

(a) If satisfied by evidence that there is reasonable ground for believing that infringing copies of the work are being sold or offered for sale, issue a warrant in accordance with the form prescribed authorising any constable to seize the infringing copies and to bring them before a Court of summary jurisdiction:

(b) If satisfied by evidence that there is reasonable ground for believing that infringing copies of the work are to be found in any house, shop, or other place, issue a warrant in accordance with the form prescribed authorising any constable to search, between sunrise and sunset, the place where the infringing copies are supposed to be, and to seize and bring them or any copies reasonably suspected to be infringing copies of the work before a Court of summary jurisdiction.

(2.) A Court of summary jurisdiction may, on proof that any copies brought before it in pursuance of this section are infringing copies of the work, order them to be destroyed, or to be delivered up, subject to such conditions, if any, as the Court thinks fit, to the owner of the copyright in the work.

Owner of performing right may forbid performance in infringement of right.

17.—(1.) The registered owner of the sole right to perform or authorise the performance of a musical or dramatic work in New Zealand or any part thereof, or the agent of such owner appointed in writing, may, by notice in writing in the prescribed form, forbid the performance in public of the work in infringement of his right, and require any person to refrain from performing or taking part in the performance in public of the work in infringement of his right; and every person to whom a notice has been given in accordance with this section who performs or takes part in the performance in public of the work in infringement of the right of such owner is liable on summary conviction to a fine not exceeding ten pounds.

(2.) Every person who gives notice in pursuance of this section without just cause is liable on summary conviction to a fine of twenty pounds.

(3.) In any prosecution under the last preceding sub-section the defendant shall be deemed to have given the notice without just cause unless he proves to the satisfaction of the Court that at the

APPENDIX D. NEW ZEALAND.

time of giving the notice he was the registered owner of the sole right to perform or authorise the performance of the work in New Zealand or any part thereof, or the agent of such owner appointed in writing, and had reasonable ground for believing that the person to whom the notice was given was about to perform or take part in the performance of the work in infringement of the right of such owner.

Application of fines.

18. Where proceedings are instituted in any Court of summary jurisdiction, by or on behalf of the owner of the copyright in any work or the owner of the sole right to perform or authorise the performance of any work, in respect of any offence in infringement of his right, any fine imposed shall be paid to him by way of compensation for the injury sustained by him, but in any other case any fine imposed in respect of any offence against this Act shall be paid into the Consolidated Fund.

Limitation of summary proceedings.

19.—(1.) No proceedings shall be instituted in a Court of summary jurisdiction in respect of any offence against this Act after the expiration of six months from the date of the offence.

(2.) An appeal to the Supreme Court shall lie from any conviction or order (including any dismissal of any information, complaint, or application) of a Court of summary jurisdiction in respect of any offence or matter under this Act, and such appeal shall be made within the time and in the manner provided by regulations.

Certain provisions not to apply to works of architecture.

20. Sections fourteen to eighteen hereof shall not apply to any case to which section twelve hereof, relating to infringement of copyright in the case of a work of architecture, applies.

Importation of Copies.

Importation of infringing copies.

21.—(1.) Copies made out of New Zealand of any work in which copyright subsists which if made in New Zealand would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Minister of Customs that he is desirous that such copies should not be imported into New Zealand, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of the Customs Law Act, 1908. For the purposes of this section notices given to the Commissioners of Customs and Excise of the United Kingdom, and communicated by them to the Minister of Customs, shall be deemed to have been given by the owner to the Minister of Customs.

(2.) Before detaining any such copies, or taking any further proceedings with a view to the forfeiture thereof, the Minister of Customs may re[illegible] regulations under this section, whether as to information, cou[illegible] or other matters, to be complied with, and

may satisfy himself in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3.) There shall be publicly exposed in the office of the Collector of Customs at every port in New Zealand lists of all works in which copyright subsists and as to which the owner of the copyright, by himself or his agent, has duly given a notice to the Minister of Customs pursuant to sub-section one hereof.

(4.) The Governor may, by Order in Council gazetted, make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section; and may by such regulations determine the information, notices, and security to be given, and the evidence requisite, for any of the purposes of this section, and the mode of verification of such evidence.

(5.) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(6.) The regulations may provide for the informant reimbursing the Minister of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(7.) Section ninety-two of the Customs Law Act, 1908, and the first paragraph of the Third Schedule to the said Act (relating to the importation of prohibited books) are hereby repealed. Repeal.

Special Provisions as to certain Works.

22.—(1.) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer; and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter; and in the provisions of this Act with respect to the grant of compulsory licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author. Works of joint authors.

(2.) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

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Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3.) For the purposes of this Act "a work of joint authorship" means a work produced by the collaboration of two or more authors, in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4.) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous works.

23.—(1.) In the case of a literary, dramatic, or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter; and the proviso to section six hereof shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2.) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author, and the manuscript is of a work which has not been published, nor performed in public, nor delivered in public, shall be *primâ facie* proof of the copyright being with the owner of the manuscript.

Provisions as to Government publications.

24. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government Department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

Provisions as to mechanical instruments.

25.—(1.) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works; but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside in New Zealand if it has established a place of business in New Zealand.

(2.) It shall not be deemed to be an infringement of copyright in any musical work for any person to make in New Zealand records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) That such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(b) That he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that—

(1.) Nothing herein shall authorise any alterations in or omissions from the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii.) For the purposes of this provision a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3.) The rate at which such royalties as aforesaid are to be calculated shall—

(a) In the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per centum; and

(b) In the case of contrivances sold as aforesaid after the expiration of that period, five per centum,

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so, however, that the royalty payable in respect of a contrivance shall in no case be less than a halfpenny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if at any time after the expiration of seven years from the commencement of this Act it appears to the Governor in Council that such rate as aforesaid is no longer equitable, he may, after such public inquiry as he may direct, make an Order either decreasing or increasing that rate to such extent as under the circumstances may seem just; but any Order so made shall be

provisional only, and shall not have any effect unless and until confirmed by Parliament; but, where an Order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4.) If any such contrivance is made reproducing two or more different works in which copyright subsists, and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5.) When any such contrivances by means of which a musical work may be mechanically performed have been made, then for the purposes of this section the owners of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6.) For the purposes of this section the Governor in Council may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties; and any such regulations may include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7.) In the case of musical works published before the commencement of this Act the foregoing provisions shall have effect, subject to the following modifications and additions:—

(a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply.

(b) The rate of two and one-half per centum shall be substituted for the rate of five per centum as the rate at which royalties are to be calculated; but no royalties shall be payable in respect of contrivances sold before the first day of April, nineteen hundred and fifteen, if contrivances reproducing the same work had been lawfully made or placed on sale in New Zealand before the commencement of this Act.

(c) Notwithstanding any assignment made before the commencement of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives, and not to the assignee, and the royalties aforesaid shall be payable to and for the benefit of the author of the work or his legal personal representatives.

(d) The saving contained in this Act of the rights and interests arising from or in connection with action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the commencement of this Act, except on the terms and subject to the conditions laid down in this section.

(e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8.) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that—

(a) The person who at the commencement of this Act is the owner of such original plate shall be the first owner of such copyright; and

(b) Nothing herein shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance if this provision had been in force at the time of the making of the first-mentioned contrivance.

Provision as to political speeches.

26. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

Provisions as to photographs.

27. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived; and the person who was the owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside in New Zealand if it has established a place of business in New Zealand.

Reciprocal protection of copyright.

28.—(1.) The Governor may by Order in Council direct that this Act shall extend—

(a) To works first published in any part of the British dominions

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to which the Order relates in like manner as if such works were first published in New Zealand; and

(b) In respect of residence in any part of the British dominions to which the Order relates, in like manner as if such residence were residence in New Zealand;

and thereupon, subject to the provisions of this section and of the Order, this Act shall apply accordingly.

(2.) Any Order made in pursuance of this section may provide—

(a) That the term of copyright shall not exceed that conferred by the law of the part of the British dominions to which the Order relates;

(b) That the enjoyment of the rights conferred by virtue of the Order shall extend to New Zealand only, and shall be subject to the accomplishment of such conditions and formalities as are prescribed by the Order;

(c) For the modification of any provision of this Act as to ownership of copyright or otherwise, having regard to the law of the part of the British dominions to which the Order relates; and

(d) That this Act may extend to existing works in which copyright subsists in the part of the British dominions to which the Order relates, but subject to such modifications, restrictions, and provisions as are set out in the Order.

(3.) An Order in pursuance of this section shall be made only if the Governor in Council is satisfied that the part of the British dominions in relation to which the Order is proposed to be made has made, or has undertaken to make, such provisions, if any, as he thinks sufficient for the protection of works first produced or published in New Zealand, and entitled to copyright therein.

Provisions as to Orders in Council.

29.—(1.) The Governor may by Order in Council alter, revoke, or vary any Order in Council made by him in pursuance of any power conferred upon him by this Act; but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2.) Every Order in Council made by the Governor in Council in pursuance of any power conferred upon him by this Act shall be published in the *Gazette*, and shall be laid before Parliament as soon as may be after it is made.

Provisions as to designs registrable under the Patents, Designs, and Trade Marks Act.

30.—(1.) This Act shall not apply to designs capable of being registered under the Patents, Designs, and Trade Marks Act, 1911, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

(2.) Regulations may be made under section one hundred and twenty-three of the Patents, Designs, and Trade Marks Act, 1911,

for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

Works of foreign authors first published in New Zealand.

31. If it appears to the Governor in Council that a foreign country does not give or has not undertaken to give adequate protection to the works of New Zealand authors, he may by Order in Council direct that such of the provisions of this Act as confer copyright on works first published in New Zealand shall not apply to works published after the date specified in the Order the authors whereof are subjects or citizens of such foreign country and are not resident in New Zealand, and thereupon those provisions shall not apply to such works.

Existing works.

32.—(1.) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall as from that date be entitled to the substituted right set forth in the second column of that Schedule, or to the same interest in such a substituted right, and to no other right or interest; and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that—

(a) If the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has before that date assigned the right, or granted any interest therein for the whole term of the right, then at the date when but for the passing of this Act the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled, at his option, either—

(i) On giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or

(ii) Without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore, subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to

the author as, failing agreement, may be determined by arbitration; or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment.

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, must be advertised in the *Gazette* and in the *Patent Office Journal*, and in one newspaper published in each of the Cities of Wellington, Auckland, Christchurch, and Dunedin.

(b) Where any person has, before the first day of July, nineteen hundred and thirteen, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would but for the passing of this Act have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2.) For the purposes of this section the expression "author" includes the legal personal representatives of a deceased author.

(3.) Subject to the provisions of sub-sections seven and eight of section twenty-five hereof, copyright shall not subsist in any work made before the commencement of this Act otherwise than under and in accordance with the provisions of this section.

PART II.—INTERNATIONAL COPYRIGHT.

Power to extend Act to foreign works.

33.—(1.) The Governor may by Order in Council direct that this Act (except such of the provisions thereof, if any, as may be specified in the Order) shall extend—

(a) To works first published in a foreign country to which the Order relates, in like manner as if they were first published in New Zealand;

(b) To literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects;

(c) In respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in New Zealand;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly:

Provided that—

(a) Before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), the Governor shall be satisfied that that foreign country has made or has undertaken to make such provisions, if any, as it appears to the Governor expedient to require for the protection of works entitled to copyright under the provisions of Part I. of this Act:

(b) The Order in Council may provide that the term of copyright in New Zealand shall not exceed that conferred by the law of the country to which the Order relates:

(c) The provisions of section fifty hereof (relating to the delivery of copies of books to the Registrar) shall not apply to works first published in such country, except so far as is provided by the Order:

(d) The Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the Order:

(e) In applying the provisions of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country:

(f) In applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased.

(2.) An Order in Council under this section may extend to all the several countries named or described therein.

PART III.—COPYRIGHT OFFICE.

Registrar of Copyright.

34.—(1.) The Governor may from time to time appoint such person as he thinks fit to be Registrar of Copyright, and in like manner may appoint a place to be the Copyright Office.

(2.) The person who at the commencement of this Act holds the office of Registrar under the Copyright Act, 1908, shall be and act as Registrar under this Act.

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(3.) The place at the commencement of this Act used as the Copyright Office shall be deemed to have been appointed under this Act.

Copyright office.

35.—(1.) The Governor may at any time appoint a fit and proper person to be Deputy Registrar to act in the case of the illness, incapacity, or absence of the Registrar, or in the case of any vacancy in the office of Registrar; and while so acting such Deputy shall have all the powers and privileges, and shall perform all the duties, and be subject to the responsibilities, of the Registrar.

Deputy registrar.

(2.) The fact of the Deputy Registrar acting as aforesaid shall be conclusive evidence of his authority so to do, and no person shall be concerned to inquire whether the occasion has arisen requiring or authorising him so to act.

Seal.

36. There shall be a seal of the Copyright Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Fees.

37. There shall be paid in respect of application for the registration of copyrights and in respect of other matters with relation to copyrights such fees as may from time to time be prescribed by the Governor in Council, and those fees shall be paid into the Public Account and form part of the Consolidated Fund.

Registration optional.

38. Registration of copyright shall be optional, but the special remedies provided for by sections fifteen, sixteen, and seventeen of this Act may be taken advantage of only by registered owners.

Copyright registers.

39. The following Registers of Copyright shall be kept by the Registrar at the Copyright Office:—

(a) The Register of Literary (including Dramatic and Musical) Copyright.

(b) The Register of Fine Arts Copyrights.

Mode of registration.

40. The owner of any copyright under this Act, or of the sole right to perform or authorise the performance of any musical or dramatic work in New Zealand or any part thereof, may obtain registration of his right in the manner prescribed.

Registration of assignments, &c.

41. When any person becomes entitled to any registered copyright or any other right under this Act by virtue of any assignment or transmission, or to any interest therein by license, he may obtain registration of the assignment, transmission, or license in the manner prescribed.

How registration is to be effected.

42. The registration of any copyright or other right under this Act, or of any assignment or transmission thereof, or of any interest therein by license, shall be effected by entering in the proper register the prescribed particulars relating to the right, assignment, transmission, or license.

43. In the case of an encyclopædia, newspaper, review, magazine, or other periodical work, or a work published in a series of books or parts, a single registration for the whole work may be made.

Registration of work published in a series.

44.—(1.) No notice of any trust (expressed, implied, or constructive) shall be entered in any Register of Copyrights under this Act or be receivable by the Registrar.

Trusts not registered.

(2.) Subject to this section, equities in respect of any copyright under this Act may be enforced in the same manner as equities in respect of other personal property.

45. Every Register of Copyrights under this Act shall be *primâ facie* evidence of the particulars entered therein; and documents purporting to be copies of any entry therein or extracts therefrom certified by the Registrar and sealed with the seal of the Copyright Office shall be judicially noticed and admitted in evidence without further proof or production of the originals.

Register to be evidence.

46. Certified copies of entries in any register under this Act or of extracts therefrom shall, on payment of the prescribed fee, be given to any person applying for them.

Certified copies.

47. Each register under this Act shall be open to public inspection at all convenient times on payment of the prescribed fee.

Public inspection of registers.

48. The Registrar may, in prescribed cases and subject to the prescribed conditions, amend or alter any register under this Act by—

Correction of register.

(a) Correcting any error in any name, address, or particular; and

(b) Entering any prescribed memorandum or particular relating to copyright or other right under this Act.

49.—(1.) Subject to this Act the Supreme Court may, on the application of the Registrar or of any person aggrieved, order the rectification of any register under this Act by—

Rectification of register by the Court.

(a) The making of any entry wrongly omitted to be made in the register; or

(b) The expunging of any entry wrongly made in or remaining on the register; or

(c) The correction of any error or defect in the register.

(2.) An appeal shall lie to the Court of Appeal from any order for the rectification of any register made by the Supreme Court or a judge thereof under this section.

50.—(1.) Every person who makes application for the registration of a copyright in a book shall deliver to the Registrar one copy of the whole book, with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and bound, sewed, or stitched together, and on the best paper on which the book is printed.

Copies to be delivered on registration.

(2.) Every person who makes an application for the registration of the copyright in a work of art shall deliver to the Registrar one copy of the work of art or a representation of it.

(3.) The Registrar shall refuse to register the copyright in any book until sub-section one of this section has been complied with, or the copyright in a work of art until sub-section two of this section has been complied with.

(4.) Each copy or representation delivered to the Registrar in pursuance of this section shall be retained at the Copyright Office.

False representation to registrar.

51. Every person who wilfully makes any false statement or representation to deceive the Registrar or any officer in the execution of this Act, or to procure or influence the doing or omission of anything in relation to this Act or any matter thereunder, is liable on summary conviction to imprisonment for a term not exceeding two years.

Copies to be delivered to General Assembly Library.

52.—(1.) The publisher of every book which is first published in New Zealand after the commencement of this Act, and in which copyright subsists under this Act, shall within one month after the publication deliver at his own expense two copies of the book to the Librarian of the General Assembly Library, who shall give a written receipt for them.

(2.) The copies delivered to the Librarian of the General Assembly Library shall be copies of the whole book, with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and bound, sewed, or stitched together, and on the best paper on which the book is printed.

(3.) If a publisher fails to comply with this section he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the copies.

(4.) For the purpose of this section the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, map, plan, chart, or table, but shall not include any second or subsequent edition of a book unless that edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

Power to make regulations.

53. The Governor in Council may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act or for the conduct of any business relating to the Copyright Office.

Repeals.

54.—(1.) The Copyright Act, 1908, and section one hundred and thirty-two of the Patents, Designs, and Trade Marks Act, 1911, are hereby repealed.

(2.) The Imperial enactments referred to in the Second Schedule hereto shall, as from the commencement of this Act, cease to have any force or effect in New Zealand.

SCHEDULES.

FIRST SCHEDULE.

EXISTING RIGHTS.

Existing Right.	Substituted Right.
(a) *In the case of Works other than Dramatic and Musical Works.*	
Copyright	Copyright as defined by this Act (*a*).
(b) *In the case of Musical and Dramatic Works.*	
Both copyright and performing right..	Copyright as defined by this Act (*a*).
Copyright, but not performing right ..	Copyright as defined by this Act, except the sole right to perform or authorise the performance of the work or any substantial part thereof in public.
Performing right, but not copyright ..	The sole right to perform or authorise the performance of the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings:—

"Copyright," in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date, and statutory copyright wherein depends on publication, includes the right at common law, if any, to restrain publication or other dealing with the work:

"Performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law, if any, to restrain the performance thereof in public.

SECOND SCHEDULE.

IMPERIAL ENACTMENTS.

8 Geo. II. c. 13.—The Engraving Copyright Act, 1734.
7 Geo. III. c. 38.—The Engraving Copyright Act, 1767.
17 Geo. III. c. 57.—The Prints Copyright Act, 1777.
54 Geo. III. c. 56.—The Sculpture Copyright Act, 1814.
3 & 4 Will. IV. c. 15.—The Dramatic Copyright Act, 1833.
5 & 6 Will. IV. c. 65.—The Lectures Copyright Act, 1835.
6 & 7 Will. IV. c. 59.—The Prints and Engravings Copyright Act, 1836.
5 & 6 Vict. c. 45.—The Copyright Act, 1842.
7 & 8 Vict. c. 12.—The International Copyright Act, 1844.
10 & 11 Vict. c. 95.—The Colonial Copyright Act, 1847.

(*a*) In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under sect. 18 of the Imperial Copyright Act, 1842.

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15 & 16 Vict. c. 12.—The International Copyright Act, 1852.
25 & 26 Vict. c. 68.—The Fine Arts Copyright Act, 1862.
38 & 39 Vict. c. 12.—The International Copyright Act, 1875.
39 & 40 Vict. c. 36.—The Customs Consolidation Act, 1876: Section 152 (prohibiting the importation of foreign reprints of books under copyright).
45 & 46 Vict. c. 40.—The Copyright (Musical Compositions) Act, 1882.
49 & 50 Vict. c. 33.—The International Copyright Act, 1886.
51 & 52 Vict. c. 17.—The Copyright (Musical Compositions) Act, 1888.

UNITED STATES.

COPYRIGHT ACT, 1909, AS AMENDED BY THE COPYRIGHT ACTS, 1912 AND 1914.

An Act to Amend and Consolidate the Acts respecting Copyright.

[March 4, 1909.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

Exclusive right to print, publish and vend.

(a) To print, reprint, publish, copy and vend the copyrighted work;

Exclusive right to translate, dramatize, arrange and adapt, &c.

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a non-dramatic work; to convert it into a novel or other non-dramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

Exclusive right to deliver lectures, sermons, &c.

(c) To deliver or authorise the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

To represent dramatic works, or make record, or exhibit or perform, &c.

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

To perform music and make arrangement, setting, or record.

(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in sub-section (a) hereof, to make any arrangement or setting of it or of the melody of it in

any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: Provided, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign State or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: And provided further, and as a condition of extending the copyright control to such mechanical reproductions, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit: And provided further, That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defence to any suit, action, or proceeding for any infringement of such copyright.

Act not retroactive.

Music by foreign author.

Control of mechanical musical reproduction.

Royalty for use of music on records, &c.

Notice of use of music on records.

License to use music on records.

In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand the Court may award taxable costs to the plaintiff and a reasonable counsel fee, and the Court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this Act, not exceeding three times such amount.

Failure to pay royalties.

The reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs.

Reproduction of music on coin-operated machines.

Right at common law or in equity.

2. That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.

Component parts of copyrightable work.

Composite works or periodicals.

3. That the copyright provided by this Act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act.

Works protected.

4. That the works for which copyright may be secured under this Act shall include all the writings of an author.

Classification of copyright works.

Books, composite, cyclopædic works; directories, gazetteers, &c.

5. That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopædic works, directories, gazetteers, and other compilations;

(b) Periodicals, including newspapers;

(c) Lectures, sermons, addresses, prepared for oral delivery;

(d) Dramatic or dramatico-musical compositions;

(e) Musical compositions;

(f) Maps;

(g) Works of art; models or designs for works of art;

(h) Reproductions of a work of art;

(i) Drawings or plastic works of a scientific or technical character;

(j) Photographs;

(k) Prints and pictorial illustrations;

(l) *Motion-picture photo-plays:*

(m) *Motion-pictures, other than photo-plays* (*a*)*:*

Classification does not limit copyright.

Provided, nevertheless, That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act.

Compilations, abridgments, dramatizations, translations, new editions.

6. That compilations or abridgments, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

Subsisting copyright not affected.

(*a*) (l) and (m) were added by the Act of 1912.

7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: Provided, however, That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorise any use or appropriation of such copyright material without the consent of the copyright proprietor.

Not subject-matter of copyright: works in public domain; government publications.

8. That the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this Act: Provided, however, That the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign State or nation, only:

Copyright to author or proprietor for terms specified in Act.

Foreign authors who may secure copyright protection.

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

Alien authors domiciled in U. S.

(b) When the foreign State or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or when such foreign State or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

Authors, when citizens of countries granting reciprocal rights.

International agreement.

The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require.

Presidential proclamation.

9. That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking *ad interim* protection under section twenty-one of this Act.

Publication with notice initiates copyright.

10. That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section fifty-five of this Act.

Registration of copyright.

Copyright certificate.

11. That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim

Copyright protection of unpublished

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of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic, musical, or *dramatico-musical* composition; *of a title and description, with one print taken from each scene or act, if the work be a motion picture photo-play*; of a photographic print if the work be a photograph; *of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photo-play*; or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies under sections twelve and thirteen of this Act where the work is later reproduced in copies for sale (*b*).

works: lectures, dramas, music, &c.

Deposit of copies after publication.

Two complete copies of best edition.

12. That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, *or if the work is by an author who is a citizen or subject of a foreign State or nation and has been published in a foreign country, one complete copy of the best edition then published in such foreign country* (*c*), which copies *or copy*, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with.

Periodical contributions.

Work not reproduced in copies for sale.

No action for infringement until deposit of copies.

Failure to deposit copies.

Register of copyrights may demand copies.

Failure to deposit on demand.

13. That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial

(*b*) The words in *italics* indicate alterations made by the Act of 1912.
(*c*) The words in *italics* were inserted by the Act of 1914.

possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void.

Fine $100 and retail price of two copies, best edition. Forfeiture of copyright.

14. That the postmaster to whom are delivered the articles deposited as provided in sections eleven and twelve of this Act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant.

Postmaster's receipt.

15. That of the printed book or periodical specified in section five, sub-sections (a) and (b) of this Act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of type-setting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking *ad interim* protection under this Act.

Printed from type set within the United States.

Book in foreign language excepted.

Lithographic or photo-engraving process.

Printing and binding of the book.

Illustrations in a book.

Separate lithographs and photo-engravings.

Books for blind excepted.

Books in foreign languages excepted.

16. That in the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorised to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorised agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall state also the place where and the establishment or establish-

Affidavit of American manufacture.

Printing and binding of the book.

ments in which such type was set or plates were made or lithographic process, or photo-engraving process or printing and binding were performed and the date of the completion of the printing of the book or the date of publication.

Establishment where printing was done.

Date of publication.

17. That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanour, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited.

False affidavit, a misdemeanor; fine, $1,000 and forfeiture of copyright.

Notice of copyright.

18. That the notice of copyright required by section nine of this Act shall consist either of the word "Copyright" or the abbreviation "Copr.," accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in sub-sections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: Provided, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four (*d*).

Notice on maps, copies of works of art, photographs, and prints.

Notice on accessible portion.

Notice on existing copyright works.

Notice of copyright on book.

On periodical.

One notice in each volume or periodical.

19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: Provided, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice.

Omission of notice by accident or mistake.

20. That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement

Innocent infringement.

(*d*) See note at foot of the Act, *post*, p. 718.

no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the Court, in its discretion, shall so direct.

Book published abroad in the English language....

21. That in the case of a book published abroad in the English language before publication in this country, the deposit in the copyright office, not later than thirty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an *ad interim* copyright, which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of thirty days after such deposit in the copyright office.

Ad interim copyright for thirty days.

Extension to full term.

22. That whenever within the period of such *ad interim* protection an authorised edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in section fifteen of this Act, and whenever the provisions of this Act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the full term elsewhere provided in this Act.

Deposit of copies, filing of affidavit.

Duration of copyright: first term, twenty-eight years.

Posthumous works, periodicals, cyclopædic or composite works.

23. That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: Provided, That in the case of any posthumous work or of any periodical, cyclopædic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: And provided further, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopædic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight

Renewal term twenty-eight years.

Other copyrighted works, first term twenty-eight years.

Renewal term twenty-eight years; to author, widow, children, heirs or next of kin.

years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: And provided further, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

Notice that renewal term is desired.

Copyright ends in twenty-eight years unless renewed.

Extension of subsisting copyrights.

24. That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: Provided, however, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: Provided, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term.

Proprietor entitled to renewal for composite work.

Renewal application.

Infringement of copyright.

25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

Injunction.

(a) To an injunction restraining such infringement;

Damages.

(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the Court shall appear to be just, and in assessing such damages the Court may, in its discretion, allow the amounts as hereinafter stated, but in case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, *and in the case of the infringement of an undramatised or non-dramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of one hundred dollars; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted*

Proving sales.

Newspaper reproduction of photograph: recovery, $50—$200.

Infringement by motion pictures: Undramatized or non-dramatic work, maximum damages, $100.

work, and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of five thousand dollars nor be less than two hundred and fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty. *But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him* (*e*):

Dramatic work, maximum damages, $5,000. Maximum recovery, $5,000. Minimum recovery, $250.

First. In the case of a painting, statue, or sculpture, ten dollars for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Painting, statue, or sculpture, $10 for every infringing copy.

Second. In the case of any work enumerated in section five of this Act, except a painting, statue, or sculpture, one dollar for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Other works, $1 for every infringing copy.

Third. In the case of a lecture, sermon, or address, fifty dollars for every infringing delivery;

Lectures, $50 for every infringing delivery.

Fourth. In the case of dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance;

Dramatic or musical works, $100 for first and $50 for subsequent infringing performance. Other musical compositions, $10 for every infringing performance.

(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the Court may prescribe, all articles alleged to infringe a copyright;

Delivering up infringing articles.

(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the Court may order;

Destruction of infringing copies, &c.

(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorised manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the Court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section one, sub-section (e), of this Act: Provided

Infringement by mechanical musical instruments.

Injunction may be granted.

Recovery of royalty.

(*e*) The words in *italics* were added by the Act of 1912.

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also, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory licence provision of this Act, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the Court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section one, sub-section (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

Notice to proprietor of intention to use.

Damages, three times amount provided.

Temporary injunction.

Rules for practice and procedure.

Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States (*f*).

Judgment enforcing remedies.

26. That any Court given jurisdiction under section thirty-four of this Act may proceed in any action, suit, or proceeding instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided.

Proceedings, injunction, &c., may be united in one action.

27. That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action.

Penalty for wilful infringement.

28. That any person who wilfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and wilfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the Court: Provided, however, That nothing in this Act shall be so construed as to prevent the performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from a free public library, public school, church choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit.

Oratorios, cantatas, &c., may be performed.

False notice of copyright (penalty for).

Fraudulent removal of notice; fine $100-$1,000.

Issuing, selling, or importing article bearing false notice; fine $100.

29. That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall know-

(*f*) See these Rules, *post*, p. 718.

ingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars.

Importation prohibited of articles bearing false notice and *piratical* copies.

30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

Prohibition of importation of books.

31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorised by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this Act, shall be, and is hereby, prohibited: Provided, however,

Exceptions to prohibition of importation:

That, except as regards piratical copies, such prohibition shall not apply:

Works for the blind.

(a) To works in raised characters for the use of the blind;

Foreign newspapers or magazines.

(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorisation;

Books in foreign languages of which only translations are copyrighted.

(c) To the authorised edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;

Importation of authorised foreign books permitted.

(d) To any book published abroad with the authorisation of the author or copyright proprietor when imported under the circumstances stated in one of the four sub-divisions following, that is to say:

For individual use and not for sale.

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

For the use of the United States.

Second. When imported by the authority or for the use of the United States;

For the use of societies, libraries, &c.

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

Libraries purchased *en bloc*.

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons of families arriving from foreign countries and are not intended for sale:

Books brought personally into the United States.

Imported copies not to be used to violate copyright.

Provided, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

Seizure of unlawfully imported copies.

32. That any and all articles prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the Court, as the case may be, shall direct: Provided, however, That all copies of

Copies of authorised books imported may be returned.

authorised editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve wilful negligence or fraud.

Secretary of Treasury and Postmaster-General to make rules to prevent unlawful importation.

33. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.

Jurisdiction of courts in copyright cases.

34. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognisable by the circuit courts of the United States the district Court of any Territory, the Supreme Court of the District of Columbia, the district Courts of Alaska, Hawaii, and Porto Rico, and the Courts of first instance of the Philippine Islands.

District in which suit may be brought.

35. That civil actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

Injunctions may be granted.

36. That any such Court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to

prevent and restrain the violation of any right secured by said laws, according to the course and principles of Courts of equity, on such terms as said Court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this Act may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other Court or judge possessing jurisdiction of the defendants.

Certified copy of papers filed.

37. That the clerk of the Court, or judge granting the injunction, shall, when required so to do by the Court hearing the application to enforce said injunction, transmit without delay to said Court a certified copy of all the papers in said cause that are on file in his office.

Judgments, &c. may be reviewed on appeal or writ of error.

38. That the orders, judgments, or decrees of any Court mentioned in section thirty-four of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said Courts, respectively.

No criminal proceedings shall be maintained after *three* years.

39. That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

Full costs shall be allowed.

40. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the Court may award to the prevailing party a reasonable attorney's fee as part of the costs.

Copyright distinct from property in material object.

41. That the copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.

Transfer of any copy of copyrighted work permitted.

Copyright may be assigned, mortgaged, or bequeathed by will.

42. That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

Assignment executed in foreign country to be acknowledged.

43. That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorised by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be *primâ facie* evidence of the execution of the instrument.

APPENDIX D. UNITED STATES.

Assignments to be recorded.

44. That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

Register of copyrights to record assignments.

45. That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

Assignee's name may be substituted in copyright notice.

46. That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act.

Copyright records.

47. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

Register of copyrights and assistant register of copyrights.

48. That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorised by law.

Register of copyrights to deposit and account for fees.

49. That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters, and shall also make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the

Shall make monthly report of fees

applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

Bond of register of copyrights.

50. That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

Annual report of register of copyrights.

51. That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act.

Seal of copyright office.

52. That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

Rules for the registration of copyrights.

53. That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorised to make rules and regulations for the registration of claims to copyright as provided by this Act (*g*).

Record books.

Entry of copyright.

54. That the register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this Act, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof.

Certificate of registration.

55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain his name and address, the title of the work upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book the certificate shall also state the receipt of the affidavit as provided by section sixteen this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate shall be admitted in any Court as *primâ facie* evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration.

Certificate for book to state receipt of affidavit.

Certificate may be given to any person.

Receipt for copies deposited.

(*g*) See these Rules, *post*, p. 721.

Index to copyright registrations.

56. That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any Court as *primâ facie* evidence of the facts stated therein as regards any copyright registration.

Catalogue of copyright entries.

Catalogue cards.

Catalogues and indexes *primâ facie* evidence.

Distribution of catalogue of copyright entries.

57. That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished to all parties desiring them at a price to be determined by the register of copyrights, not exceeding five dollars per annum for the complete catalogue of copyright entries and not exceeding one dollar per annum for the catalogues issued during the year for any one class of subjects. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time.

Subscription price.

Superintendent of documents to receive subscriptions.

Record books, &c. open to inspection.

Copies may be taken of entries in record books.

58. That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress.

Disposition of copyright deposits.

Preservation of copyright deposits.

59. That of the articles deposited in the copyright office under the provisions of the copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other Governmental libraries in the District of Columbia for use therein.

60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the registor of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: Provided, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: And provided further, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it.

Disposal of copyright deposits.

Manuscript copies to be preserved.

61. That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright, deposited under the provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: Provided, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. For every additional certificate of registration made, fifty cents. For recording and certifying any instrument of writing for the assignment of copyright, or any such license specified in section one, sub-section (e), or for any copy of such assignment or license, duly certified, if not over three hundred words in length, one dollar; if more than three hundred and less than one thousand words in length, two dollars; if more than one thousand words in length, one dollar additional for each one thousand words or fraction thereof over three hundred words. For recording the notice of user or acquiescence specified in section one, sub-section (e), twenty-five cents for each notice if not over fifty words, and an additional twenty-five cents for each additional one hundred words. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, one dollar. For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents. For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, fifty cents for each full hour of time consumed in making such

Fees.

Fee for registration.

Fee for certificate.

Fee for recording assignment.

Fee for copy of assignment.

Fee for recording notice of user upon mechanical musical instruments.

Fee for comparing copy of assignment.

Fee for recording renewal of copyright.

Fee for recording transfer of proprietorship.

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search: Provided, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time.

Fee for search.

Only one registration required for work in several volumes.

62. That in the interpretation and construction of this Act "the date of publication" shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorised edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word "author" shall include an employer in the case of works made for hire.

Definitions: "Date of publication." "Author."

63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in Courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Repealing clause.

Date of enforcement.

64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

Approved, March 4, 1909.

NOTE TO SECTION 18, PROVISO.

The Act of June 18, 1874, provides that the notice of copyright to be inscribed on each copy of a copyrighted work shall consist of the following words:

"Entered according to Act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington"; or, . . . the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18—, by A. B."

RULES ADOPTED BY THE SUPREME COURT OF THE UNITED STATES FOR PRACTICE AND PROCEDURE UNDER SECTION 25 OF AN ACT TO AMEND AND CONSOLIDATE THE ACTS RESPECTING COPYRIGHT, APPROVED MARCH 4, 1909. TO GO INTO EFFECT JULY 1, 1909.

1. The existing rules of equity practice, so far as they may be applicable, shall be enforced in proceedings instituted under section twenty-five (25) of the Act of March fourth, nineteen hundred and nine, entitled "An Act to amend and consolidate the Acts respecting copyright."

2. A copy of the alleged infringement of copyright, if actually made, and a copy of the work alleged to be infringed, should accompany the petition, or its absence be explained; except in cases of

alleged infringement by the public performance of dramatic and dramatico-musical compositions, the delivery of lectures, sermons, addresses, and so forth, the infringement of copyright upon sculptures and other similar works and in any case where it is not feasible.

3. Upon the institution of any action, suit, or proceeding, or at any time thereafter, and before the entry of final judgment or decree therein, the plaintiff or complainant, or his authorised agent or attorney may file with the clerk of any Court given jurisdiction under section 34 of the Act of March 4, 1909, an affidavit stating upon the best of his knowledge, information, and belief, the number and location, as near as may be, of the alleged infringing copies, records, plates, molds, matrices, &c., or other means for making the copies alleged to infringe the copyright, and the value of the same, and with such affidavit shall file with the clerk a bond executed by at least two sureties and approved by the Court or a commissioner thereof.

4. Such bond shall bind the sureties in a specified sum, to be fixed by the Court, but not less than twice the reasonable value of such infringing copies, plates, records, molds, matrices, or other means for making such infringing copies, and be conditioned for the prompt prosecution of the action, suit or proceeding; for the return of said articles to the defendant, if they or any of them are adjudged not to be infringements, or if the action abates, or is discontinued before they are returned to the defendant; and for the payment to the defendant of any damages which the Court may award to him against the plaintiff or complainant. Upon the filing of said affidavit and bond, and the approval of said bond, the clerk shall issue a writ directed to the marshal of the district where the said infringing copies, plates, records, molds, matrices, &c., or other means of making such infringing copies shall be stated in said affidavit to be located, and generally to any marshal of the United States, directing the said marshal to forthwith seize and hold the same subject to the order of the Court issuing said writ, or of the Court of the district in which the seizure shall be made.

5. The marshal shall thereupon seize said articles or any smaller or larger part thereof he may then or thereafter find, using such force as may be reasonably necessary in the premises, and serve on the defendant a copy of the affidavit, writ, and bond by delivering the same to him personally, if he can be found within the district, or if he can not be found, to his agent, if any, or to the person from whose possession the articles are taken, or if the owner, agent, or such person can not be found within the district by leaving said copy at the usual place of abode of such owner or agent, with a person of suitable age and discretion, or at the place where said articles are found, and shall make immediate return of such seizure, or attempted seizure, to the Court. He shall also attach to said articles a tag or

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label stating the fact of such seizure and warning all persons from in any manner interfering therewith.

6. A marshal who has seized alleged infringing articles, shall retain them in his possession, keeping them in a secure place, subject to the order of the Court.

7. Within three days after the articles are seized, and a copy of the affidavit, writ and bond are served as hereinbefore provided, the defendant shall serve upon the clerk a notice that he excepts to the amount of the penalty of the bond, or to the sureties of the plaintiff or complainant, or both, otherwise he shall be deemed to have waived all objection to the amount of the penalty of the bond and the sufficiency of the sureties thereon. If the Court sustain the exceptions it may order a new bond to be executed by the plaintiff or complainant, or in default thereof within a time to be named by the Court, the property to be returned to the defendant.

8. Within ten days after service of such notice, the attorney of the plaintiff or complainant shall serve upon the defendant or his attorney a notice of the justification of the sureties, and said sureties shall justify before the Court or a judge thereof at the time therein stated.

9. The defendant, if he does not except to the amount of the penalty of the bond or the sufficiency of the sureties of the plaintiff or complainant, may make application to the Court for the return to him of the articles seized, upon filing an affidavit stating all material facts and circumstances tending to show that the articles seized are not infringing copies, records, plates, molds, matrices, or means for making the copies alleged to infringe the copyright.

10. Thereupon the Court in its discretion, and after such hearing as it may direct, may order such return upon the filing by the defendant of a bond executed by at least two sureties, binding them in a specified sum to be fixed in the discretion of the Court, and conditioned for the delivery of said specified articles to abide the order of the Court. The plaintiff or complainant may require such sureties to justify within ten days of the filing of such bond.

11. Upon the granting of such application and the justification of the sureties on the bond, the marshal shall immediately deliver the articles seized to the defendant.

12. Any service required to be performed by any marshal may be performed by any deputy of such marshal.

13. For services in cases arising under this section, the marshal shall be entitled to the same fees as are allowed for similar services in other cases.

RULES AND REGULATIONS FOR THE REGISTRATION OF CLAIMS TO COPYRIGHT (*h*).

Copyright under Act.

1. Copyright under the Act of Congress entitled: "An Act to amend and consolidate the Acts respecting copyright," approved March 4, 1909, is ordinarily secured by printing and publishing a copyrightable work with a notice of claim in the form prescribed by the statute. Registration can only be made *after* such publication, but the statute expressly provides, in certain cases, for registration of manuscript works.

WHO MAY SECURE COPYRIGHT.

Persons entitled to copyright.

2. The persons entitled by the Act to copyright protection for their works are:

(1) The *author* of the work, if he is:

(a) A citizen of the United States, or

(b) A resident alien domiciled in the United States at the time of the first publication of his work, or

(c) A citizen or subject of any country which grants either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens. The existence of reciprocal copyright conditions is determined by presidential proclamation.

(2) The *proprietor* of a work. The word "proprietor" is here used to indicate a person who derives his title to the work from the author. If the author of the work should be a person who could not himself claim the benefit of the Copyright Act, the proprietor can not claim it.

(3) The *executors, administrators* or *assigns* of the above-mentioned author or proprietor.

REGISTRATION.

Copyright registration.

3. After the publication of any work entitled to copyright, the claimant of copyright should register this claim in the Copyright Office. An action for infringement of copyright can not be maintained in Court until the provisions with respect to the deposit of copies and registration of such work shall have been complied with.

A certificate of registration is issued to the applicant and duplicates thereof may be obtained on payment of the statutory fee of 50 cents.

(*h*) Copyright Office Bulletin, No. 15.

SUBJECT-MATTER OF COPYRIGHT.

Works subject to copyright.

4. The Act provides that no copyright shall subsist in the original text of any work published prior to July 1, 1909, which has not been already copyrighted in the United States (sect. 7).

Section 5 of the Act divides the works for which copyright may be secured into eleven classes, as follows:

(a) *Books.*—This term includes all printed literary works (except dramatic compositions) whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term "book" as used in the law includes tabulated forms of information, frequently called charts; tables of figures showing the results of mathematical computations, such as logarithmic tables; interest, cost, and wage tables, &c., single poems, and the words of a song when printed and published without music; librettos; descriptions of moving pictures or spectacles; encyclopædias; catalogues; directories; gazetteers and similar compilations; circulars or folders containing information in the form of reading matter other than mere lists of articles, names and addresses, and literary contributions to periodicals or newspapers.

Blank books, &c., not copyrightable.

5. The term "book" can not be applied to—

Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, diaries or journals, bank deposit and cheque books; forms of contracts or leases which do not contain original copyrightable matter; coupons; forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness and not in their merit as literary compositions.

Directions on scales, or dials, or mathematical or other instruments; puzzles; games; rebuses; labels; wrappers; formulæ on boxes, bottles, and other receptacles of articles for sale or meant to accompany such articles.

Advertisements or catalogues which merely set forth the names, prices, and places where articles are for sale.

Prefaces or other introductory matter to works not themselves entitled to copyright protection, such as blank books.

Calendars are not capable of registration as such, but if they contain copyrightable reading matter or pictures they may be registered either as "books" or as "prints" according to the nature of the copyrightable matter.

Periodicals.

6.—(b) *Periodicals.*—This term includes newspapers, magazines, reviews, and serial publications appearing oftener than once a year; bulletins or proceedings of societies, &c., which appear regularly at intervals of less than a year; and, generally, periodical publica-

tions which would be registered as second-class matter at the post office.

Lectures, &c

7.—(c) *Lectures, sermons, addresses*, or similar productions, prepared for oral delivery.

Dramatic compositions, &c.

8.—(d) *Dramatic and dramatico-musical compositions*, such as dramas, comedies, operas, operettas and similar works.

The designation "dramatic composition" does not include the following: Dances, ballets, or other choreographic works; tableaux and moving picture shows; stage settings or mechanical devices by which dramatic effects are produced, or "stage business"; animal shows, sleight-of-hand performances, acrobatic or circus tricks of any kind; descriptions of moving pictures or of settings for the production of moving pictures. (These, however, when printed and published, are registrable as "books") (*i*).

Dramatico-musical compositions, &c.

9. *Dramatico-musical compositions* include principally operas, operettas, and musical comedies, or similar productions which are to be acted as well as sung.

Songs separately published.

Ordinary songs, even when intended to be sung from the stage in a dramatic manner, or separately published songs from operas and operettas, should be registered as musical compositions, not dramatico-musical compositions.

Musical compositions.

10.—(e) *Musical compositions*, including other vocal and all instrumental compositions, with or without words.

But when the text is printed alone it should be registered as a "book," not as a "musical composition."

"Adaptations" and "arrangements" may be registered as "new works" under the provisions of section 6. Mere transpositions into different keys are not expressly provided for in the Copyright Act; but if published with copyright notice and copies are deposited with application, registration will be made.

Maps.

11.—(f) *Maps.*—This term includes all cartographical works, such as terrestrial maps, plats, marine charts, star maps, but not diagrams, astrological charts, landscapes, or drawings of imaginary regions which do not have a real existence.

Works of art.

12.—(g) *Works of art.*—This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

Productions of the industrial arts utilitarian in purpose and character are not subject to copyright registration, even if artistically made or ornamented.

Toys, games, &c.

No copyright exists in toys, games, dolls, advertising novelties,

(*i*) See now as to photo-plays, the Act of 1912 and Regulations, *post*, p. 735.

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instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles.

Reproductions of works of art.

13.—(h) *Reproductions of works of art.*—This term refers to such reproductions (engravings, woodcuts, etchings, casts, &c.) as contain in themselves an artistic element distinct from that of the original work of art which has been reproduced.

Drawings or plastic works.

14.—(i) *Drawings or plastic works of a scientific or technical character.*—This term includes diagrams or models illustrating scientific or technical works, architects' plans, designs for engineering work, &c.

Photographs.

15.—(j) *Photographs.*—This term covers all positive prints from photographic negatives, including those from moving-picture films the entire series being counted as a single photograph), but not photogravures, half tones, and other photo-engravings.

Prints and pictorial illustrations.

16.—(k) *Prints and pictorial illustrations.*—This term comprises all printed pictures not included in the various other classes enumerated above.

Articles for use not copyrightable.

Articles of utilitarian purpose do not become capable of copyright registration because they consist in part of pictures which in themselves are copyrightable, *e.g.*, puzzles, games, rebuses, badges, buttons, buckles, pins, novelties of every description, or similar articles.

Postal cards can not be copyrighted as such. The pictures thereon may be registered as "prints or pictorial illustrations" or as "photographs." Text matter on a postal card may be of such a character that it may be registered as a "book."

Mere ornamental scrolls, combinations of lines and colors, decorative borders, and similar designs, or ornamental letters or forms of type are not included in the designation "prints and pictorial illustrations." Trade marks can not be copyrighted nor registered in the Copyright Office.

HOW TO SECURE REGISTRATION.

Registerable works.

17. Copyright registration may be secured for:
(1) Unpublished works.
(2) Published works.

UNPUBLISHED WORKS.

Unpublished works are such as have not at the time of registration been printed or reproduced in copies for sale, or been publicly distributed. They include: (a) Lectures, sermons, addresses, or similar productions for oral delivery; (b) dramatic and musical compositions; (c) photographic prints; (d) works of art (paintings, drawings, and sculpture), and (e) plastic works.

In order to secure copyright in such unpublished works, the following steps are necessary (*k*):

Registration of unpublished works.

18.—(1) In the case of lectures, sermons, addresses, and dramatic and musical compositions, deposit one type-written or manuscript copy of the work.

This copy should be in convenient form, clean and legible, the leaves securely fastened together, and should bear the title of the work corresponding to that given in the application.

The entire work in each case should be deposited. It is not sufficient to deposit a mere outline or epitome, or, in the case of a play, a mere scenario, or a scenario with the synopsis of the dialogue.

Unpublished photograph.

19.—(2) In the case of photographs, deposit one copy of a positive print of the work. (Photo-engravings or photogravures are not photographs within the meaning of this provision.)

Photograph of work of art.

20.—(3) In the case of works of art, models or designs for works of art, or drawings or plastic works of a scientific or technical character, deposit a photographic reproduction.

In each case the deposited article should be accompanied by an application for registration and a money order for the amount of the statutory fee.

Reproduction of unpublished work.

21. Any work which has been registered as an unpublished work, if reproduced in copies for sale or distribution, must be deposited a second time (two copies, accompanied by an application for registration and the statutory fee) in the same manner as is required in the case of works published in the first place.

PUBLISHED WORKS.

Deposit of Copies.

Deposit of copies.

22. After publication of the work with the copyright notice inscribed, two *complete* copies of the best edition of the work must be sent to the Copyright Office (*l*), with a proper application for registration correctly filled out and a money order for the amount of the legal fee.

The statute requires that the deposit of the copyright work shall be made "promptly," which has been defined as "without unnecessary delay." It is not essential, however, that the deposit be made on the very day of publication.

Definition of "published work."

23. Published works are such as are printed or otherwise produced and "placed on sale, sold, or publicly distributed" (*i.e.*, so that all persons who desire copies may obtain them without restriction or condition other than that imposed by the copyright law).

(*k*) As to dramas, see further Regulations, *post*, p. 733.

(*l*) Under the Act of 1914 only one copy of a work published in a foreign country is now required: see *post*, p. 737.

APPENDIX D. UNITED STATES.

Representation on the stage of a play is not a publication of it, nor is the public performance of a musical composition publication. Works intended for sale or general distribution must first be printed with the statutory form of copyright notice inscribed on every copy intended to be circulated.

NOTICE OF COPYRIGHT.

Form of notice.

24. The ordinary form of copyright notice for books, periodicals, dramatic and musical compositions is "Copyright, 19— (the year of publication), by A. B. (the name of the claimant)." The name of the claimant printed in the notice should be the real name of a living person, or his trade name if he always uses one (but not a pseudonym or pen name), or the name of the firm or corporation claiming to own the copyright. The copyright notice should not be printed in the name of one person *for the benefit of another*. The beneficiary's name should be printed in such cases.

Short form of notice.

25. In the case of maps, photographs, reproductions of works of art, prints or pictorial illustrations, works of art, models or designs for works of art, and plastic works of a scientific or technical character, the notice may consist of the letter C, inclosed within a circle, thus (C), accompanied with the initials, monogram, mark, or symbol of the copyright proprietor. But in such cases the name itself of the copyright proprietor must appear on some accessible portion of the work, or on the mount of the picture or map, or on the margin, back, or permanent base or pedestal of the work.

Notice upon each copy.

26. The prescribed notice must be affixed to each copy of the work published or offered for sale in the United States. But no notice is required in the case of foreign books printed abroad seeking *ad interim* protection in the United States, as provided in section 21 of the Copyright Act.

AMERICAN MANUFACTURE OF COPYRIGHT BOOKS.

Works produced in United States.

27. The following works must be manufactured in the United States in order to secure copyright:

(a) All "books" in the English language and books in any language by a citizen or domiciled resident of the United States must be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text of such books be produced by lithographic process or photo-engraving process, then by a process wholly performed within the limits of the United States; and the printing of the text and binding of the book must be performed within the limits of the United States.

(b) All *illustrations* within a book produced by lithographic process or photo-engraving process and all *separate lithographs* or *photo-engravings* must be produced by lithographic or photo-engraving process wholly performed within the limits of the United States, except when the subjects represented in such illustrations in a book or such separate lithographs or photo-engravings "are located in a foreign country and illustrate a scientific work or reproduce a work of art."

Books by foreign authors.

28. Books by foreign authors in any language other than English are not required to be printed in the United States.

Books printed abroad.

In the case of books printed abroad in the English language an *ad interim* term of copyright of thirty days from registration made in the Copyright Office within thirty days after publication abroad may be secured; but in order to extend the copyright to the full term of protection, an edition of the work must be published in the United States within the thirty days *ad interim* term, printed or produced within the limits of the United States as required in section 15 of the Copyright Act.

APPLICATION FOR REGISTRATION.

Application for registration.

29. The application for copyright registration required to be sent with each work (see No. 20) must state the following facts, without which no registration can be made:

(1) The *name* and address of the claimant of copyright.

(2) The *nationality* of the author of the work.

(3) The *title* of the work.

(4) The name and address of person to whom certificate is to be sent.

(5) In the case of all *published* works the actual date (year, month, and day) when the work was published.

Name of author.

30. In addition, it is desirable that the application should state for record the name of the author. If, however, the work is published anonymously or under a pseudonym and it is not desired to place on record the real name of the author, this may be omitted. In the case of works made for hire, the employer may be given as

Nationality of author.

the author. By the nationality of the author is meant citizenship, not race; a person naturalized in the United States should be described as an American. An author, a citizen of a foreign country having no copyright relations with the United States, may secure copyright in this country, if at the time of publication of his work he is a permanent resident of the United States. The fact of such permanent residence in the United States should be expressly stated in the application. Care should be taken that the title of the work, the name of the author, and the name of the copyright claimant

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should be correctly stated in the application, and that they should agree exactly with the same statements made in the work itself.

APPLICATION FORMS.

Application forms.

31. The Copyright Office has issued the following application forms, which will be furnished on request, and should be used when applying for copyright registration:

A[1]. Book by citizen or resident of the United States.

A[1] new ed. New edition of book by citizen or resident of the United States.

A[1] for. Book by citizen or resident of a foreign country, but manufactured in the United States.

A[2]. Edition printed in the United States of a book originally published abroad in the English language.

A[3]. Book by foreign author in foreign language.

A[4]. *Ad interim*. Book published abroad in the English language.

A[5]. Contribution to a newspaper or periodical.

B[1]. Periodical. For registration of single issue.

B[2]. Periodical. General application and deposit.

C. Lecture, sermon, or address.

D[1]. Published dramatic composition.

D[2]. Dramatic composition not reproduced for sale.

D[3]. Dramatico-musical composition.

E[1]. Published musical composition.

E[2]. Musical composition not reproduced for sale.

F. Published map.

G. Work of art (painting, drawing, or sculpture); or model or design for a work of art.

I. Drawing or plastic work of a scientific or technical character.

J[1]. Photograph published for sale.

J[2]. Photograph not reproduced for sale.

K. Print or pictorial illustration.

AFFIDAVIT OF MANUFACTURE.

Affidavit for book.

32. In the case of books by American authors and all books in the English language the application must be accompanied by an affidavit, showing the following facts:

(1) That the copies deposited have been printed from type set within the limits of the United States; or from plates made within the limits of the United States from type set therein; or if the text be produced by lithographic process or photo-engraving process, that such process was wholly performed within the limits of the United States. Stating, in either case, the place and the establishment where such work was done.

(2) That the printing of the text has been performed within the

limits of the United States, showing the place and the name of the establishment doing the work.

(3) That the binding of such book has been performed within the limits of the United States, showing the place and the name of the establishment where the work was done. This can be omitted if the work is unbound.

(4) That the completion of the printing of said book was on a stated day, or that the book was published on a given date.

Date of publication.

Section 62 of the Copyright Act defines the date of publication as "the earliest date when copies of the first authorised edition *were placed on sale, sold, or publicly distributed* by the proprietor of the copyright or under his authority."

Affidavit must be under seal.

33. The affidavit may be made before any officer authorised to administer oaths within the United States who can affix his official seal to the instrument.

The applicant and the officer administering the oath for such affidavit are specially requested to make sure that the instrument is properly executed, so as to avoid the delay of having it returned for amendment. Experience shows that among the common errors made by applicants are the following:

Errors by applicants.

Failure to write in the "venue," that is, the name of the county and State, and to make sure that the notary's statement agrees.

Reciting a corporation or partnership as affiant. Oaths can be taken only by individuals.

Failure to state in what capacity the affiant takes the oath, whether as claimant, agent of the claimant, or printer. Where a corporation or firm is the claimant, the affiant should swear as agent.

Failure to state the *exact date* of publication or completion of printing. The month alone is insufficient.

Failure to sign the affidavit. The signature should correspond exactly with the name of the affiant stated at the beginning. Corporation or firm names must not appear in this place.

Failure to obtain signature of the notary after swearing to the contents.

Failure to obtain the seal of the notary.

Swearing before an officer not authorised to act in the place stated in the venue.

Variance between names and dates as stated in the affidavit and the application.

The affidavit must never be made before the day of publication.

By whom affidavit may be made.

34. The affidavit may be made by: (1) The person claiming the copyright; or (2) his duly authorised agent or representative residing in the United States; or (3) the printer who has printed the book.

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The person making the affidavit must state in which of the above-mentioned capacities he does so.

Book in foreign language.

35. In the case of a foreign author applying for a book in a language other than English, no affidavit is required, as such books are not subject to the manufacturing clause.

In the case of a foreign author applying for a book in the English language, the same affidavit must be made as in that of an American author, except where a book is deposited for *ad interim* protection under section 21. In such cases the affidavit must be filed when the *ad interim* copyright is sought to be extended to the full term.

The affidavit is only required for BOOKS.

PERIODICALS (FORM B).

Periodicals.

36. Application should be made in the same manner as for books, depositing two copies, but no affidavit is required.

Separate registration is necessary for each number of the periodical published with a notice of copyright, and can only be made after publication. It is not possible to register the title of the periodical in advance of publication.

CONTRIBUTIONS TO PERIODICALS (FORM A[5]).

Contributions to periodicals.

37. If special registration is requested for any contribution to a periodical, *one* copy of the number of the periodical in which the contribution appears should be deposited promptly after publication.

The entire copy should be sent; sending a mere clipping or a page containing the contribution does not comply with the statute.

The date of publication of a periodical is not necessarily the date stated on the title-page. The application should state the day on which the issue is "first placed on sale, sold, or publicly distributed," which may be earlier or later than the date printed on the title-page.

AD INTERIM APPLICATIONS (FORM A[4]).

Ad interim copyright.

38. Where a book in the English language has been printed abroad, an *ad interim* copyright may be secured by depositing in the Copyright Office one complete copy of the foreign edition, with an application containing a request for the reservation and a money order for $1. Such applications should state: (1) Name and nationality of the author; (2) Name and nationality of the copyright claimant; (3) Exact date of original publication abroad.

The deposit must be made within thirty days from publication abroad. Whenever, within the thirty days' period of *ad interim* protection, an edition manufactured in the United States is published, and two copies are deposited, the copyright claim therein may be registered the same as any other book (Form A[2]).

MAILING APPLICATIONS AND COPIES.

Address of mail matter.

39. All mail matter intended for the Copyright Office should be addressed to the "Register of Copyrights, Library of Congress, Washington, D.C." No letters dealing with copyright matters should be addressed to individuals in the office.

Copyright matter designed for deposit in the Copyright Office will be transmitted by the postmaster free of charge when requested. The postmaster will also, when requested, give a receipt for matter so delivered to him for transmission.

No franking label is issued by the Copyright Office for this purpose.

FEES.

Copyright fees.

40. The fee required to be paid for copyright registration is $1, except that in case of photographs it is only 50 cents when no certificate of registration is desired.

Remittances.

All remittances to the Copyright Office should be sent by money order or bank draft. Postage stamps should not be sent for fees or postage. Checks can not be accepted unless certified. Coin or currency inclosed in letter or packages if sent will be at the remitter's risk.

Publishers may for their own convenience deposit in the Copyright Office a sum of money in advance against which each registration will be charged.

ASSIGNMENTS OF COPYRIGHT.

Assignments of copyright.

41. When a copyright has been assigned the instrument in writing signed by the proprietor of the copyright may be filed in this office for record within six calendar months after its execution without the limits of the United States or three calendar months within the United States.

After having been recorded the original assignment will be returned to the sender with a sealed certificate of record attached.

Fee for recording assignment.

42. The fee for recording and certifying an assignment is $1 up to 300 words; $2 from 300 to 1,000 words; and another dollar for each additional thousand words or fraction thereof over 300 words.

Name of assignee in claim.

43. After the assignment has been duly recorded, the assignee may substitute his name for that of the assignor in the copyright notice on the work assigned. Such substitution or transfer of ownership will be indexed in this office upon request, at a cost of 10 cents for each work assigned.

NOTICE OF USER OF MUSICAL COMPOSITIONS.

Notice of user of music.

44. Whenever the owner of the copyright in a musical composition uses such music in phonographs himself or permits anyone else to

do so, he must send a notice of such use by him or by any other person to the Copyright Office to be recorded.

Notice in absence of license.

45. Whenever any person in the absence of a license intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce the same mechanically, the Act requires that he shall serve notice of such intention upon the copyright proprietor and must also send a duplicate of such notice to the Copyright Office.

APPLICATION FOR THE RENEWAL OR EXTENSION OF SUBSISTING COPYRIGHTS.

Renewals and extensions.

46. Application for the renewal or extension of a subsisting copyright (except copyright of a composite work) may be filed within one year prior to the expiration of the existing term by:

(1) The author of the work if still living;

(2) The widow, widower, or children of the author if the author is not living;

(3) The author's executor, if such author, widow, widower, or children be not living;

(4) If the author, widow, widower, and children are all dead, and the author left no will, then the next of kin.

Renewal for composite work.

47. If the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor is entitled to the privilege of renewal and extension.

Renewal fee.

48. The fee for the recording of the renewal claim is 50 cents. Application for the renewal or extension of copyright can not be recorded in the name of an assignee nor in that of any person not expressly mentioned in section 24 of the Act.

SEARCHES.

Searches.

49. Upon application to the Register of Copyrights search of the records, indexes, or deposits will be made for such information as they may contain relative to copyright claims. Persons desiring searches to be made should state clearly the nature of the work, its title, the name of the claimant of copyright and probable date of entry; in the case of an assignment, the name of the assignor or assignee or both, and the name of the copyright claimant and the title of the music referred to in case of notice of user.

Search fee.

The statutory fee for searches is 50 cents for each full hour of time consumed in making such search.

DRAMAS.

INSTRUCTIONS FOR SECURING COPYRIGHT REGISTRATION IN THE UNITED STATES UNDER THE UNITED STATES COPYRIGHT ACT OF MARCH 4, 1909.

In order to secure the registration of a claim to copyright in the United States for any dramatic composition, the following procedure is required under the copyright law of the United States:—

I. If the drama is a new work which has been printed and sold as a book:

(1) Print upon the back of the title-page the copyright notice in the form prescribed by the copyright statute. The usual and a correct form is the word "Copyright"; the year date of publication (*i.e.*, the year when copies were first sold, offered for sale, or publicly distributed); and the name of the person who claims the copyright; *e.g.*, "Copyright, 1912, by John Smith."

(2) Promptly after such publication of the play send by post prepaid two (2) copies addressed: Register of Copyrights, Library of Congress, Washington, D.C., U.S.A.

(3) These copies must be accompanied by a claim to copyright in the work, setting out—

(a) The full title of the play.

(b) The name of the person who claims the copyright, his nationality and address.

[This must be the real name and not the pen name, stage name, or pseudonym. It is this name which must appear in the printed notice, and the form of the name in the printed notice should exactly agree with the name stated in the application for record.]

(c) The nationality of the author or authors (*i.e.*, the name of the country of which they are at the time of making the application citizens or subjects) must be given, or if permanent residents of the United States, that fact should be stated.

[If the dramatic work is an adaptation or translation, then it is the name of the country of which the author of the adaptation or translation is a citizen or subject that must be stated.]

(4) The name of the author or authors should also be given, if printed in the book; or, if not so printed and no objection exists to placing the names on record. But it is not obligatory to disclose the name of the author.

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(5) The application must state the exact date of publication, *i.e.*, "the earliest date when copies of the first authorised edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority."

This application can be made by letter, provided all the essential facts are clearly set out. It would, however, be more conveniently supplied to the Copyright Office by using the application form called "D[1]," which will be sent upon request.

(6) With the application must be sent an international post-office money order to pay the statutory registration fee of $1 (=about *4s. 2d.*). This fee includes a certificate of registration under seal of the Copyright Office, which will be posted free of further charge to the address indicated in the application. The money order should be made payable to the Register of Copyrights. Personal cheeks or domestic British money orders or British postal notes cannot be received.

The copyright is for a first term of twenty-eight years from publication, with a right of renewal for twenty-eight years more. Old plays which are now first printed as books cannot be registered to secure the statutory copyright. The law does not require that the drama be printed in the United States.

II. If the drama is a new work and has not been printed and published, it may be registered as a dramatic composition "not reproduced in copies for sale" by proceeding as follows:

(a) Deposit in the Copyright Office one clean and complete copy, either manuscript or typewritten;

(b) Send with it an application for registration of claim to copyright exactly as above, omitting only the date of publication. (Application form "D[2]" can be used for this purpose.)

[If it is the intention presently to print and sell the drama, there would seem to be no advantage in registering the manuscript, as the law expressly requires a second deposit of two printed copies, and registration when the work has been "reproduced in copies for sale."]

Address all matter to The Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C., U.S.A.

THORVALD SOLBERG,
Register of Copyrights.

MODEL OF BLANK "D'," REQUEST FOR REGISTRATION OF A PUBLISHED DRAMATIC COMPOSITION.

REGISTER OF COPYRIGHTS, WASHINGTON, D. C.

Date, .

Of the DRAMATIC COMPOSITION named herein, TWO complete copies of the best edition first published on the date stated herein are hereby deposited to secure copyright registration, according to the provisions of the Act of March 4, 1909. $1 (statutory fee for registration) is also inclosed. The copyright is claimed by the undersigned:

Name and address of copyright claimant, .

Name of Author, but if a translation, then name of the Translator, .

Country of which the author or translator is a citizen, .

[*An alien author domiciled in the United States should write here in addition to citizenship "domiciled in U. S."*]

Brief title of work, .

Exact date of publication, . [Must be stated.]

[*Date (day, month, and year) when placed on sale, sold, or publicly distributed.*]

Send certificate of registration to, .

Name and address of remitter, .

MOTION PICTURES.

DIRECTIONS FOR SECURING REGISTRATION UNDER THE AMENDATORY COPYRIGHT ACT OF AUGUST 24, 1912.

The amendment of the Copyright Act, approved August 24, 1912, provides for obtaining copyright for two new classes of works, namely:

Class "l," "Motion-picture photo-plays"; and Class "m," "Motion pictures other than photo-plays."

In order to secure registration of claims to copyright for such works the following steps should be taken in compliance with the express provisions of the Act cited.

MOTION-PICTURE PHOTO-PLAYS.

I. Motion-picture photo-plays not reproduced in copies for sale.

Deposit in the Copyright Office, Washington, D.C.—

(1) the title of the motion-picture photo-play,

(2) a description of the work, preferably either printed or typewritten,

(3) a photograph taken from each scene of every act.

These deposits should be accompanied by an application for recording the claim to copyright. For this purpose use application

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form "L²," which will be furnished by the Copyright Office upon request. Also send with the application a post office or express money order to pay the statutory registration fee of $1.00.

II. Motion-picture photo-plays reproduced in copies for sale.

When the motion-picture photo-play has been published (*i.e.*, placed on sale, sold, or publicly distributed) with the required notice of copyright upon each copy, promptly after such publication deposit in the Copyright Office two complete copies of the work, accompanied by an application for recording the claim to copyright in the published work. For this purpose use application form "L¹," which will be furnished by the Copyright Office upon request. Also send with the application a post office or express money order to pay the statutory registration fee of $1.00.

MOTION PICTURES OTHER THAN PHOTO-PLAYS.

I. Motion pictures other than photo-plays not reproduced in copies for sale.

Deposit in the Copyright Office, Washington, D.C.—

(1) the title of the motion picture,

(2) a descripti[illegible] the work, preferably either printed or typewritten,

(3) two or more photographs taken from different sections of the complete motion picture.

These deposits should be accompanied by an application for recording the claim to copyright. For this purpose use application form "M²," which will be furnished by the Copyright Office upon request. Also send with the application a post office or express money order to pay the statutory fee of $1.00.

II. Motion pictures other than photo-plays reproduced in copies for sale.

When the work has been published (*i.e.*, placed on sale, sold, or publicly distributed) with the required notice of copyright upon each copy, promptly after such publication deposit in the Copyright Office two complete copies of the work, accompanied by an application for recording the claim to copyright in the published work. For this purpose use application form "M¹," which will be furnished by the Copyright Office upon request. Also send with the application a post office or express money order to pay the statutory fee of $1.00.

In all cases the money order remitting the registration fee should be made payable to the "Register of Copyrights." Send the title, description, prints, copies, application and fee in one parcel, addressed to the Register of Copyrights, Washington, D.C.

If any motion picture has been registered as a work "not reproduced in copies for sale," it must nevertheless be registered a second time if it has been afterward published.

THORVALD SOLBERG,
Register of Copyrights.

DEPOSIT OF WORKS OF FOREIGN AUTHORS.

The copyright law of the United States has been amended by the Act of Congress, approved March 28, 1914, providing, in the case of a work by an author who is a citizen or subject of a foreign State or nation and which has been published in a foreign country, that of the best edition published in such foreign country one complete copy shall be promptly deposited in the Copyright Office at Washington, after publication, in lieu of two copies as heretofore required (*a*).

This provision of law applies to books, dramas, music, maps, photographs, prints and all other works by foreign authors published in a foreign country, which are not required by the copyright laws to be printed or manufactured in the United States in order to secure copyright protection in the United States.

The new Act does not change any provisions of the Copyright Act of March 4, 1909, as regards the requirements of American manufacture.

The application for registration should state the place and foreign country where the work was first published.

Only one copy should be deposited in the case of any such work published abroad. Attention is particularly directed to this amendment in order that no more than the one copy required may be sent, as the Copyright Office has no funds with which to defray the postage for the return of any extra copies received.

Application forms to be used for filing claims to copyright in accordance with the new provision of law will be at once prepared and will be forwarded to all persons requesting them. Meantime it will be possible to use the old application forms for published works by changing with a pen "two copies" to "one copy" wherever these words occur in the forms.

THORVALD SOLBERG,
Register of Copyrights.

(*a*) See sect. 12 of the Act of 1909, as amended by the Act of 1914, *ante*, p. 704.

APPENDIX E.

RULES AND ORDERS, ETC. MADE UNDER THE COPYRIGHT ACT, 1911.

THE COPYRIGHT ROYALTY SYSTEM (GENERAL) REGULATIONS, 1912. DATED JUNE 7, 1912 (*a*).

The Board of Trade, in pursuance of the powers conferred by section 3 of the Copyright Act, 1911, hereby make the following regulations:—

Preliminary.

(1.) These Regulations may be cited as the Copyright Royalty System (General) Regulations, 1912, and shall come into operation on the 1st day of July, 1912.

Notice.

(2.) The notice required by section 3 of the Copyright Act, 1911, shall contain the following particulars:—

(a) The name and address of the person intending to reproduce the work;

(b) The name of the work which it is intended to reproduce and (if necessary) a description sufficient to identify it;

(c) The manner in which it is intended to reproduce the work (*e.g.*, whether by printing, lithography, photography, &c.);

(d) The price or prices at which it is intended to publish the work;

(e) The earliest date at which any of the copies will be delivered to a purchaser.

(3.) The notice shall, not less than one month before any copies of the work are delivered to a purchaser, be sent by registered post or published by advertisement as follows:—

(a) If the name and an address within the United Kingdom of the owner of the copyright, or his agent for the receipt of notice, are known or can with reasonable diligence be ascertained, the notice shall be sent to such owner or agent at such address;

(*a*) Statutory Rules and Orders, 1912, No. 532.

(b) If such name and address are not known and cannot with reasonable diligence be ascertained, the notice shall be advertised in the *London Gazette;* the advertisement in the *London Gazette* shall give the particulars required by paragraphs (a) and (b) of Regulation (2), and shall also state an address from which a copy of the notice described in Regulation (2) may be obtained.

Payment of Royalties.

(4.)—(a) Unless otherwise agreed, royalties shall be payable by means of adhesive labels purchased from the owner of the copyright and affixed to the copies of the work.

After the person reproducing the work has given the prescribed notice of his intention to reproduce the work the owner of the copyright shall by writing sent by registered post intimate to him some reasonably convenient place within the United Kingdom from which adhesive labels can be obtained and on demand in writing and tender of the price shall supply from such place adhesive labels of the required denominations at a price equal to the amount of royalty represented thereby.

Subject to these Regulations, no copy of the work shall be delivered to a purchaser until such label or labels denoting the amount of royalty have been affixed thereto.

(b) In cases when royalties are payable by means of adhesive labels if at any time labels of the required denomination are not available either because—

(i) after the expiration of 14 days from the date of the prescribed notice the owner of the copyright has not duly sent to the person reproducing the work an intimation of some reasonably convenient place within the United Kingdom from which such labels can be obtained; or

(ii) the owner of the copyright refuses or neglects to supply such labels within 14 days after demand duly made,

copies of the work may be delivered to purchasers without having labels affixed thereto: and the amount of royalties shall be a debt due from the person reproducing the work to the owner of the copyright, and the person reproducing the work shall keep an account of all such copies sold by him.

(c) For the purposes of this Regulation, "the date of the prescribed notice" means—

(i) in cases when the notice is required to be sent by registered post, the date when the notice would in ordinary course of post be delivered;

(ii) in cases when the notice is required to be advertised in the *London Gazette,* the date of such advertisement.

APPENDIX E.

(d) Where royalties are by agreement payable in any other mode than by means of adhesive labels the time and frequency of the payment shall be such as are specified in the agreement.

(e) The adhesive label supplied as aforesaid shall be an adhesive paper label, square in shape, the design to be entirely enclosed within a circle and the side of the label not to be greater than $\frac{3}{4}$ inch in length. The label shall not bear the effigy of the Sovereign or any other person, nor any word, mark or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting any duty payable to the Government.

Interpretation.

(6.) In these Regulations the expression "owner of the copyright" has the same meaning as in section 3 of the Copyright Act, 1911.

Dated this 7th day of June, 1912.

H. LLEWELLYN SMITH,
Secretary to the Board of Trade.

THE COPYRIGHT ROYALTY SYSTEM (MECHANICAL MUSICAL INSTRUMENTS) REGULATIONS, 1912. DATED JUNE, 7, 1912 (*b*).

The Board of Trade, in pursuance of the powers conferred by section 19 (6) of the Copyright Act, 1911, hereby make the following regulations:—

Preliminary.

(1.) These Regulations may be cited as the Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, and shall come into operation on the 1st day of July, 1912.

Notice.

(2.) The notice required by section 19 (2) of the Copyright Act, 1911, shall contain the following particulars:—

(a) The name and address of the person intending to make the contrivances;

(b) The name of the musical work which it is intended to reproduce and of the author (if known); and (if necessary) a description sufficient to identify the musical work;

(c) The class of contrivance on which it is intended to reproduce the musical work (*e.g.*, whether discs, cylinders or music rolls);

(*b*) Statutory Rules and Orders, 1912, No. 533.

(d) The ordinary retail selling prices of the contrivances, and the amount of the royalty payable on each contrivance in respect of the musical work;

(e) The earliest date at which any of the contrivances will be delivered to a purchaser;

(f) Whether any other work is to be reproduced on the same contrivance with the musical work specified in accordance with paragraph (b).

(3.) The notice shall, not less than 10 days before any contrivances on which the musical work is reproduced are delivered to a purchaser, be sent by registered post or published by advertisement as follows:—

(a) If the name and an address within the United Kingdom of the owner of the copyright, or his agent for the receipt of notice, are known, or can with reasonable diligence be ascertained, the notice shall be sent to such owner or agent at such address;

(b) If such name and address are not known and cannot with reasonable diligence be ascertained, the notice shall be advertised in the *London Gazette;* the advertisement in the *London Gazette* shall give the particulars required by paragraphs (a) and (b) of Regulation (2), and shall also state an address from which a copy of the notice described in Regulation (2) may be obtained. Any number of musical works may be included in the same advertisement.

The notice may be given either before or after the 1st day of July, 1912.

Payment of Royalties.

(4.)—(a) Unless otherwise agreed, royalties shall be payable by means of adhesive labels purchased from the owner of the copyright and affixed in the manner provided by these Regulations.

After the person making the contrivances has given the prescribed notice of his intention to make or sell the contrivances, the owner of the copyright shall by writing sent by registered post intimate to him some reasonably convenient place within the United Kingdom from which adhesive labels can be obtained and on demand in writing and tender of the price shall supply from such place adhesive labels of the required denominations at a price equal to the amount of royalty represented thereby.

Subject to these Regulations no contrivance shall be delivered to a purchaser until such label or labels denoting the amount of royalty have been affixed thereto, or in the case of cylinders, to which it is not reasonably practicable to affix the labels, until such label or labels have been affixed to a carton or box enclosing the cylinder.

APPENDIX E.

(b) In cases where royalties are payable by means of adhesive labels if at any time labels of the required denominations are not available either because—

(i) after the expiration of five days from the date of the prescribed notice of the intention of the person making the contrivance to make or sell such contrivances the owner of the copyright has not duly sent to the person making the contrivances an intimation of some reasonably convenient place within the United Kingdom from which such labels can be obtained; or

(ii) the owner of the copyright refuses or neglects to supply such labels within three days after demand duly made,

contrivances may be delivered to purchasers without having labels affixed thereto or to the carton or box enclosing the same; and the amount of royalties shall be a debt due from the person making the contrivances to the owner of the copyright and the person making the contrivances shall keep an account of all such contrivances sold by him.

(c) For the purposes of this Regulation "the date of the prescribed notice" means—

(i) in cases where the notice is required to be sent by registered post, the date when the notice would in ordinary course of post be delivered;

(ii) in cases where the notice is required to be advertised in the *London Gazette*, the date of such advertisement.

(d) In cases where royalties are payable on contrivances made before the commencement of the Copyright Act, 1911, the person making such contrivances may give notice of his intention to sell them, containing *mutatis mutandis* the same particulars and given in the same manner as is prescribed by these Regulations in the case of the notice required by section 19 (2) of the Copyright Act, 1911.

(e) Where royalties are by agreement payable in any other mode than by means of adhesive labels, the time and frequency of the payment shall be such as are specified in the agreement.

(f) The adhesive label supplied as aforesaid shall be an adhesive paper label, square in shape, the design to be entirely enclosed within a circle and the side of the label not to be greater than $\frac{3}{4}$ inch in length. This label shall not bear the effigy of the Sovereign or any other person, nor any word, mark, or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting any duty payable to the Government.

Ordinary retail selling price.

(5.) The ordinary retail selling price of any contrivance shall be calculated at the marked or catalogued selling price of single

copies to the public, or, if there is no such marked or catalogued selling price, at the highest price at which single copies are ordinarily sold to the public.

Inquiries.

(6.) The inquiries referred to in section 19 (5) of the Copyright Act, 1911, shall be directed to the owner of the copyright by name or (if his name is not known and cannot with reasonable diligence be ascertained) in general terms to "the owner of the copyright" of the musical work in respect of which the inquiries are made, and shall contain—

(a) a statement of the name of the musical work in respect of which the inquiries are made and of the author (if known), and (if necessary) a description sufficient to identify it;

(b) a statement of the name, address and occupation of the person making the inquiries;

(c) an allegation that a contrivance has previously been made by means of which the musical work may be mechanically performed, with the trade name (if known) and a description of such contrivance;

(d) an inquiry whether the contrivance so described was made with the consent or acquiescence of the owner of the copyright.

(7.) The inquiries shall be sent by registered post or published by advertisement as follows:—

(a) if an address within the United Kingdom of the owner of the copyright is known or can with reasonable diligence be ascertained, the inquiries shall be sent to such address; or

(b) if such address is not known and cannot with reasonable diligence be ascertained, the inquiries shall be advertised in the *London Gazette*.

(8.) The prescribed time for reply to such inquiries shall be:—

(a) in cases where the inquiries are required to be sent by registered post 7 days after the date when the inquiries would in ordinary course of post be delivered;

(b) in cases where the inquiries are required to be advertised in the *London Gazette* 7 days after the date of such advertisement.

Interpretation.

(9.) In these Regulations the expression "owner of the copyright" has the same meaning as in section 19 (2) of the Copyright Act, 1911.

Dated this 7th day of June, 1912.

H. LLEWELLYN SMITH,
Secretary to the Board of Trade.

APPENDIX E.

THE DESIGNS RULES, 1912. DATED JUNE 26, 1912 (*c*).

By virtue of the provisions of the Patents and Designs Act, 1907, and the Copyright Act, 1911, the Board of Trade do hereby make the following Rules:—

Preliminary.

1. These Rules may be cited as the Designs Rules, 1912, and shall come into operation on the 1st day of July, 1912.

Designs excluded from protection under Copyright Act, 1911.

2. A design shall be deemed to be used as a model or pattern to be multiplied by any industrial process within the meaning of section 22 of the Copyright Act, 1911—

(a) When the design is reproduced or is intended to be reproduced in more than fifty single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set, as defined by Rule 5 of the Designs Rules, 1908;

(b) Where the design is to be applied to (1) printed paper hangings, (2) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces, (3) textile piece goods, or textile goods manufactured or sold in lengths or pieces, (4) lace, not made by hand.

Dated this 26th day of June, 1912.

H. LLEWELLYN SMITH,
Secretary to the Board of Trade.

REGULATIONS DATED JUNE 19, 1912, MADE BY THE COMMISSIONERS OF CUSTOMS AND EXCISE UNDER SECTION 14 OF THE COPYRIGHT ACT, 1911 (1 & 2 GEO. 5, c. 46) AS TO THE DETENTION AND FORFEITURE OF COPIES INFRINGING COPYRIGHT (*d*).

The Commissioners of Customs and Excise in pursuance of the powers vested in them by section fourteen of the Copyright Act, 1911, hereby prescribe the following Regulations which are to be observed on and after the first day of July, nineteen hundred and twelve.

1. The notice in writing to be given to the Commissioners of Customs and Excise (hereinafter referred to as the said Commissioners) under section fourteen of the Copyright Act, 1911, by the owner of the copyright in any book or other printed work in which

(*c*) Statutory Rules and Orders, 1912, No. 661.
(*d*) Statutory Rules and Orders, 1912, No. 1,714.

copyright subsists under the said Act or his agent who is desirous that copies thereof printed or reprinted out of the United Kingdom shall not be imported into the United Kingdom shall be in the Form No. 1 in the Schedule hereto or as near thereto as circumstances permit.

2. Any notice in regard to any book or other printed work in which copyright subsisted on the 30th day of June, nineteen hundred and twelve, which was given to and accepted by the said Commissioners on or before that day pursuant to section forty-two of the Customs Consolidation Act, 1876, or section one of the Revenue Act, 1889, shall for a period of twelve months from the first day of July, nineteen hundred and twelve, if the copyright so long subsists be treated as a notice given under section fourteen of the Copyright Act, 1911, unless the notice is withdrawn or superseded or the said Commissioners require a further notice to be given.

3. The notice in writing to be given to the said Commissioners under section fourteen of the Copyright Act, 1911, by the owner of the copyright in any work (other than a book or other printed work) in which copyright subsists under the said Act or his agent who is desirous that copies thereof made out of the United Kingdom shall not be imported into the United Kingdom may be either a general notice in the Form No. 2 in the Schedule hereto or as near thereto as circumstances permit or a special notice in the Form No. 3 in the same schedule relating to a particular importation.

4. Every notice given in pursuance of these Regulations in the Form No. 1 or No. 2 in the Schedule hereto shall be accompanied by a statutory declaration in the Form No. 4 in the same Schedule.

5. Before any article which appears, or is alleged, to be a copy of a work to which a notice applies is detained, or any further proceedings with a view to the forfeiture thereof under the law relating to the Customs are taken, the person who signed the notice whether as owner or agent shall, if required so to do, give to the said Commissioners in writing such further information and evidence, verified if so required by a statutory declaration, as they consider necessary to satisfy them that the article in question is liable to detention and forfeiture.

6. In the case of any detention in consequence of a notice in the Form No. 3 given to the said Commissioners the person who signed the notice whether as owner or agent must if so required deposit with the Collector of Customs and Excise or other Chief Officer of Customs and Excise at the port or place of detention a sum of money sufficient in the opinion of that Officer to cover any expense which may be incurred in the examination required by reason of his notice of the goods detained, and if upon the examination of the goods the said Collector or other Chief Officer is satisfied that there is no ground for their detention, they will be delivered.

APPENDIX E.

7. If any goods are placed under detention in consequence of any notice given in pursuance of these Regulations, the said Commissioners may require the person who signed the notice to give an undertaking in writing to reimburse them all expenses and damages incurred in respect of the detention, and of any proceedings for forfeiture subsequently taken if such an undertaking has not already been given, and may also require him within four days after the detention to enter into a bond with two approved sureties in such form and for such amount as the said Commissioners may require.

8. Any deposit of money previously made will be returned on the completion of the bond.

9. In these Regulations—

"Owner of the copyright" has the same meaning as in section fourteen of the Copyright Act, 1911.

"Book or other printed work" means every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart, or table separately published.

Dated this 19th day of June, 1912.

Signed by Order of the Commissioners of Customs and Excise.

J. P. BYRNE,

E. C. CUNNINGHAM,

Secretaries.

THE SCHEDULE.

FORM No. 1.

Notice.

Relating to Copyright Books and other printed works.

To the Commissioners of Customs and Excise.

I, , of , hereby give you notice that copyright in the original work (*a*) mentioned in the Schedule hereto now subsists under the Copyright Act, 1911, and that (*b*) the owner of the copyright in the said work (*a*) and that (*c*) desirous that copies of the said work (*a*) printed or reprinted out of the United Kingdom shall not be imported into the United Kingdom.

Dated this day of , 19 .

(Signature) .

(*d*) .

(*a*) or works.

(*b*) If notice is given by the owner insert "I am"; if given by an agent insert name of owner and the word "is."

(*c*) "I am" or "he is."

(*d*) If an agent insert "Agent of owner."

SCHEDULE.

Title of Book (*e*) .

Description of printed work, if not a book .

Full name of Author or Authors .

Whether Author or Authors alive, if not, date of death .

When and where (*f*) book or printed work first published .

(NOTE.—Where advantage has been taken of the provisions of the Copyright Act, 1911, as to simultaneous publication, the date and place stated should be those which entitle the work to copyright in the United Kingdom.)

(*e*) The notice may apply to a number of books or printed works, in which case the particulars in the Schedule must be given as respects each book or printed work.

(*f*) It is sufficient to state the *country* of first publication.

FORM NO. 2.

Notice.

Relating to Copyright Works, other than Books or other printed Works.

To the Commissioners of Customs and Excise.

I, , of , hereby give you notice that copyright in the original work mentioned in the Schedule hereto now subsists under the Copyright Act, 1911, and that (*a*) the owner of the copyright in the said work, and that (*b*) desirous that copies of the said work made out of the United Kingdom shall not be imported into the United Kingdom.

Dated the day of , 19 .

(Signature) .

(*c*) .

SCHEDULE.

Title of Work (if any) .

Full description of Work .

Initials or Marks (if any) usually placed on copies of work .

Full name of Author or Authors .

Whether Author or Authors alive, if not, date of death .

When and where (*d*) work first published .

(NOTE.—Where advantage has been taken of the provisions of the Copyright Act, 1911, as to simultaneous publication, the date and place stated should be those which entitle the work to copyright in the United Kingdom.)

If work not published:—

Whether Author British subject or not .

If not a British subject name of country in which Author was resident, or domiciled at date of the making of the work .

In the case of photographs, phonographic records and music rolls, date of making the original negative or original plate .

(*a*) If notice is given by the owner, insert "I am," if given by an agent, insert name of owner and the word "is."

(*b*) "I am," or "he is."

(*c*) If an agent, insert "Agent of owner."

(*d*) It is sufficient to state the *country* of first publication.

FORM No. 3.

Notice.

Relating to a particular importation.

To the Commissioners of Customs and Excise.

I, , of , hereby give you notice that I am the owner (*a*) of the copyright in a certain original work as to which copyright now subsists under the Copyright Act, 1911, and that the undermentioned goods, that is to say, (*b*) are about to be imported into the (*c*) Port of on or about the day of next in the (*d*) from .

That such goods are liable to detention and forfeiture as being (*e*) .

And I request that the said goods may be detained and dealt with accordingly, and I hereby undertake to reimburse the Commissioners of Customs and Excise all expenses and damages to be incurred in respect of the detention, and of any proceedings for forfeiture which may be subsequently taken.

Dated this day of , 19 .

(Signature) .

(*f*) .

(*a*) or agent for the owner.

(*b*) Describe the goods, number of packages, marks used, and any other particulars necessary for their identification.

(*c*) or Sub-Port.

(*d*) Describe the ship, and give name or indication.

(*e*) State if the goods are copies of the original work made out of the United Kingdom, or how otherwise the goods are liable to detention and forfeiture.

(*f*) If an agent, insert "Agent of owner."

FORM No. 4.

STATUTORY DECLARATION.

I, , of , do solemnly and sincerely declare that the contents of the Notice hereto annexed are true, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared by the above-named , at , this day of , 19 , before me , a Commissioner for Oaths.

THE NATIONAL LIBRARY OF WALES (DELIVERY OF BOOKS) REGULATIONS, 1912. DATED JUNE 25, 1912 (*b*).

The Board of Trade in pursuance of section 15 (5) of the Copyright Act, 1911, hereby make the following Regulations:—

(1.) These Regulations may be cited as the National Library of Wales (Delivery of Books) Regulations, 1912, and shall come into operation on the 1st day of July, 1912.

(2.) The books, of which copies are to be delivered to the National Library of Wales in pursuance of section 15 of the Copyright Act, 1911, shall not include any book of the following classes, viz.:—

Books (other than books written wholly or mainly in Welsh or any other Celtic language, or relating wholly or mainly to the antiquities, language, literature, philology, history, religion, arts, crafts, or industries of the Welsh or other Celtic peoples, or relating wholly or mainly to the natural history of Wales) of which:

(i) The number of copies in the published edition does not exceed 300; or

(ii) The number of copies in the published edition does not exceed 400 and the published price of each volume exceeds 5*l*.; or

(iii) The number of copies in the published edition does not exceed 600 and the published price of each volume exceeds 10*l*.

(3.) For the purposes of these Regulations the published edition of a book includes all copies of the same work published by the same publisher or his successor in business in a form substantially the same with respect to printing, illustrations and general condition.

Dated this 25th day of June, 1912.

H. LLEWELLYN SMITH,
Secretary to the Board of Trade.

(*b*) Statutory Rules and Orders, 1912, No. 635.

TREASURY MINUTE DATED 28TH JUNE, 1912.

My Lords read section 18 of the Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), which enacts that—

> "Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work."

The above statutory provision renders it necessary to reconsider the Treasury Minute of the 31st August, 1887 (presented to the House of Commons No. 335 of 1887), and to define anew the practice to be followed with regard to Crown copyright.

The Treasury Minute divided Government publications into the following classes:—

(1) Reports of Select Committees of the two Houses of Parliament, or of Royal Commissions.
(2) Papers required by statute to be laid before Parliament, *e.g.*, Orders in Council, Rules made by Government Departments, Accounts, Reports of Government Inspectors.
(3) Papers laid before Parliament by Command, *e.g.*, Treaties, Diplomatic Correspondence, Reports from Consuls and Secretaries of Legation, Reports of Inquiries into Explosions or Accidents, and other Special Reports made to Government Departments.
(4) Acts of Parliament.
(5) Official books, *e.g.*, King's Regulations for the Army or Navy.
(6) Literary or *quasi*-literary works, *e.g.*, the Reports of the "Challenger" Expedition, the Rolls Publications, the State Trials, the "Board of Trade Journal."
(7) Charts and Ordnance Maps.

A considerable and increasing number of Government works fall into the three last classes above set forth, and My Lords see no reason why such works—often produced at considerable cost—should be reproduced by private enterprise for the benefit of individual publishers. For the future, publications which fall within this description will bear an indication on the title-page that the Crown copyright is reserved. The Controller of the Stationery Office will act on a notification by the department responsible for the production of the work that it is desired that Crown copyright should be expressly reserved subject to reference to Their Lordships in case of

doubt. Any infringement of copyright in these cases should be brought to the notice of the Controller of the Stationery Office by the heads of departments, so far as works prepared or published by or under their direction are concerned.

The Controller of the Stationery Office will refer to this Board for instructions as to whether any infringement of Crown copyright shall be made the subject of legal proceedings.

The publications which fall into the first four classes are issued for the use and information of the public, and it is desirable that the knowledge of their contents should be diffused as widely as possible. In the case of these publications no steps will ordinarily be taken to enforce the rights of the Crown in respect of copyright. The rights of the Crown will not, however, lapse, and should exceptional circumstances appear to justify such a course it will be possible to assert them. In such a case, the department concerned should acquaint the Controller of the Stationery Office as early as possible of the special circumstances which render it desirable to depart from the general rule permitting full and free reproduction of works in these categories, and the Controller will, subject to the direction of Their Lordships, take such measures as may seem appropriate to enforce the right of the Crown.

Acts of Parliament must not, except when published under the authority of the Government, purport on the face of them to be published by authority.

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