COPYRIGHT LAW

AND THE

COPYRIGHT ACT, 1911.

BY

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WITH A

TREATISE ON FRENCH COPYRIGHT LAW

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LONDON:
WATERLOW AND SONS LIMITED, LONDON WALL.

1912.

WATERLOW AND SONS LIMITED,

PRINTERS,

DUNSTABLE AND LONDON.

KF
2991
.C7
H81
1921

PREFACE.

THE Copyright Act of 1842 has long ceased to satisfy the requirements of the present day. The author's ownership of the dramatized versions of his books; the artist's interest in copies of his pictures; the musician's rights in the reproduction of his music; the architect's property in his designs; all these were found to be either wholly unprotected or insufficiently safeguarded.

The Copyright Act, 1911, which is intended to be part of an international scheme, has been framed with the approval of authors, artists and laymen alike, to insure that the interests of talent shall be better protected than hitherto. Under the new Act the period of copyright is lengthened and provisions made for altered circumstances. The introduction of the cinematograph has necessitated the protection of the artist. The gramophone was outside the purview of the old Copyright Act, whilst the musician found that the reproduction of his works by mechanical contrivances deprived him of the fruits of his labours. On all these points by the new Act the necessary protection has been afforded.

It is too much to expect that the course of time will not produce other methods of reproduction outside the protection of the Copyright Act which may call for further legislation.

The new Act, it is hoped, affords abundant safeguards that all copyright interests may reasonably require.

The Author has attempted within a small compass to embrace a general summary of the principles of Copyright Law, with most of the leading cases. The full text of the new Act, the Musical Copyright Acts, 1902 and 1906, and all important sections of any unrepealed Acts bearing on the subject, as also a translation of the Revised Convention of Berne, will be found included in the book.

A treatise of the law relating to copyright in France by Mons. Théry, of the English and French Bars, is appended.

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THE

JOINT STOCK COMPANIES' PRACTICAL GUIDE,

BY

HENRY HURRELL & CLARENDON G. HYDE,

BARRISTERS-AT-LAW.

This invaluable Guide contains the text of the Companies (Consolidation) Act, 1908, and the Law relating to Companies is fully dealt with and a full Index given.

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INTRODUCTION.

THE Copyright Act, 1911, is by far the most important Copyright Act that has ever been passed in this country.

It repeals no less than seventeen Acts absolutely; it repeals considerable portions of other Acts, and is intended, as far as practicable, to establish a complete code of copyright law.

The provisions of the Act extend substantially to the whole of the British Empire, subject to the power of the self-governing dominions to deal with it as they please.

Power is given to His Majesty by Order in Council to give equal rights to such foreign countries as give reciprocal rights to this country.

The Act marks a great step towards Imperial and International uniformity in the matter of copyright.

The term "copyright" means the sole right to produce or reproduce any work in any form and in any language; it applies to all original literary, musical, dramatic and artistic work, and it gives the owner of such copyright the sole right to convert a novel into a play, or a play into a novel; and it extends copyright to the right of reproduction by mechanical means, as, for example, by the gramophone.

The principal alterations effected are:—

(1) It gives copyright generally during the life of an author and for fifty years after his death instead of for forty-two years, or during the life of the author and for seven years after his death, whichever might be the longer period.

(2) It simplifies the procedure for protection of lectures and speeches.

(3) It prevents any infringement of a musical composer's rights by mechanical machines such as pianolas and gramophones.

(4) It gives copyright in certain cases to gramophone discs and pianola rolls.

(5) Architectural works are also protected by it, including any building having an artistic character or any model of such building; but processes or methods of construction are not so protected.

The Act extends practically to the whole of His Majesty's dominions, subject, however, as regards self-governing dominions, to certain limitations.

The self-governing dominions are (s. 25 (1)) Canada, Australia, New Zealand, South Africa, and Newfoundland. The Act will only apply to any such dominion if declared by its Legislature to be in force either without any modifications or additions, or with modifications and additions relating exclusively to procedure and remedies, or necessary to adapt the Act to the circumstances of such dominion (s. 26 (1)).

The Legislature of any British possession may modify or add to the Act, but except in so far as relates to procedure, any such additions or modifications must apply only to the works of authors resident in the possession (s. 27).

The Act may also be extended to any territories under the protection of His Majesty, and to Cyprus.

It gives power either twenty-five years, or in certain cases thirty years, after the death of an author to any one to reproduce the work in question for sale (but apparently not to perform a musical or dramatic piece in public) by giving the prescribed notice and paying ten per cent' royalties (s. 3), and also on complaint being made to the Privy Council to grant licences on terms to reproduce or perform works which have been unreasonably withheld from the public (s. 4).

Where the author is the first owner of the copyright he cannot, after the passing of the Act (16th December, 1911), dispose of his copyright beyond twenty-five years after his

death except by will, and the remaining twenty-five years devolve on his legal personal representatives (s. 5 (2)). The effect of this somewhat extraordinary provision seems to be that neither the author (excepting by will) nor his creditors can deal with this last twenty-five years during the author's lifetime, but on his death, as such interest becomes part of his, the author's, estate it will probably become available, if necessary, for payment of his creditors. Collective works are, however, excepted from this provision.

The Act simplifies proof in case of an infringement (secs. 6-9), and also gives summary remedies against dealing with infringing copies (s. 11).

One of the objects of the Act was to enable this country to ratify the Revised Convention of Berne of 1908, which has already been ratified by France, and which, when ratified by this country, will place British authors in certain respects as regards legal proceedings in a more favourable position in France than French subjects. (*See* Treatise on French Law in Appendix A.)

Publishers are bound to deliver a copy of every book published to the British Museum, and, if demanded in writing within twelve months, a copy to each of the Universities of Oxford, Cambridge, Edinburgh and Dublin, and also with certain limitations as to books, a copy to the National Library of Wales. This is the first time that this Library has been entitled to such privilege (s. 15).

This Act applies to designs which are capable of being registered under the Patents and Designs Act, 1907, but which are not used or intended to be used as models or patterns to be multiplied by any industrial process, and the Board of Trade are empowered to make rules for determining what designs shall be deemed to be so used (s. 22).

The rights of copyright under the Act or under any other Act which may, for the time being, be in force are now substituted for the common law rights of copyright but the

jurisdiction to restrain a breach of trust or confidence is expressly retained (s. 31).

The Act comes into operation in the United Kingdom on the 1st July, 1912, unless an earlier date is fixed by an Order in Council.

It should be noted that registration is not now necessary to secure copyright, nor is it necessary for a person to be registered before taking proceedings for infringement.

SUBJECTS OF COPYRIGHT.

Copyright means the sole right to produce or reproduce the work, or any substantial part of it, and, if the work is unpublished, to publish it (s. 1 (2)).

Prior to the Act by the Common Law, and now by the Act, an author of any unpublished work, whether kept for his private use or pleasure, or otherwise, is entitled to withhold the same altogether, or so far as it pleases him, from the knowledge of others. Thus, where the late Prince Albert and Queen Victoria had made certain drawings and etchings for their own use, and not for publication, and impressions and copies of such etchings had been surreptitiously taken, it was held that the defendants must be restrained from publishing or in any way using such copies, and even from publishing a catalogue containing a description of such etchings or drawings, as such description could only have been formed from the impressions and copies so improperly obtained (*Prince Albert* v. *Strange*, 1 *Mac.* & G. 25).

Compilations and selections from former works and partly of original compositions, such as gazetteers, dictionaries, road books, calendars, maps, etc., may be the subject of copyright, although the subject matter is open to common observation and inquiry (*Lewis* v. *Fullarton*, 2 Beav. 6), and so may

mere corrections and additions to an old work (*Cary* v. *Longman*, 3 Esp. 273).

Advertisements classified under headings denoting the different trades (*Lamb* v. *Evans* (1893), 1 Ch. 218), railway guides (*Leslie* v. *Young* (1894), A.C. 335), bookseller's descriptive catalogues (*Hollen* v. *Arthur*, 32 L.J. Ch. 771), and a catalogue prepared by a provincial chemist of drugs sold by him arranged with an alphabetical list of such articles and their prices (*Collis* v. *Cater*, 78 L.T. 613), are all subjects of copyright.

If any person, by pains and labour, collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those questions and explanations of these phenomena, whether such explanations are furnished by his own general knowledge or out of works consulted by him for the express purpose, such collection of questions and answers is sufficient to constitute an original work, the copyright of which will be protected (*Jarrold* v. *Houlston*, 3 Kay & J. 708).

Copyright may exist in only small portions of a serial story (*Low* v. *Ward*, L.R. 6 Eq. 415), and a reprint of a work of which the copyright has expired, with notes and illustrations from other works, create a new copyright. Thus, an annotated edition of one of Shakespeare's plays was held to be a subject matter of copyright (*Moffatt* v. *Gill*, 86 L.T. 465).

A report of a speech in which the speaker claims no rights is entitled to copyright. Thus, where verbatim reports of certain speeches were made expressly for the "Times," and the reporters of such speeches duly assigned their rights in such reports to the proprietors of that newspaper, it was held that such proprietors were entitled to the copyright of the reports, and that they could prevent anyone from copying them (*Walter* v. *Lane* (1900), A.C. 539).

An illustrated catalogue of furniture which contained no letterpress, and which was not published for sale, but was simply used as an advertisement (*Maple* v. *Junior Army and Navy Stores*, 21 Ch.D. 369; *Davis* v. *Benjamin* (1906), 2 Ch. 491), a catalogue of monumental designs published by a cemetery stonemason (*Grace* v. *Newman*, L.R. 19 Eq. 623), maps (*Stannard* v. *Lee*, L.R. 6 Ch. 346), and mere lists of articles for sale (*Collis* v. *Cater*, 78 L.T. 613) may all be entitled to copyright, and any other work which is a mere copy with colourable variations will be restrained by injunction (*Longman* v. *Winchester*, 16 Ves. 269).

A printed card, cut to the exact size and showing the back and palm of a hand, which opened as a book and on the inside represented on the palm of the hand the lines of life and palmistry and had on the back some verses (*Hildesheimer* v. *Dunn*, 64 L.T. 452), a list of brood mares (*Weatherby* v. *International Horse Agency* (1910), 2 Ch. 297), and a translation, whether produced by personal application and expense or by gift (*Wyatt* v. *Barnard*, 3 Ves. & B. 77), were all held to be entitled to copyright.

A person who writes words to an old air and provides an accompaniment, and publishes them together, is entitled to copyright in the whole work. Anyone is entitled to publish the old air, but not the words or the accompaniment (*Leader* v. *Purday*, 18 L.J.C.P. 97).

Metal models of mounted yeomen sold as toys, where there was evidence that they were anatomically correct, and that they displayed artistic skill, were held entitled to protection (*Britain* v. *Hawks*, 86 L.T. 765), and so were certain devices for gold foil ornaments on Christmas Cards, which were stamped by a die (*Millar* v. *Polak*, 1908, 1 Ch. 433), and also new and original casts of fruit and leaves (*Caproni* v. *Alberti*, 65 L.T. 785.)

The proprietors of a newspaper may quite possibly have copyright in a sheet of advertisements in respect of the

collocation and conatenation of such advertisements. They could not prevent any person, who furnished them with an advertisement, from inserting it in another paper, yet they might have a right of action against a paper that took the whole or a substantial part of a sheet of advertisements arranged by them (*see Lamb* v. *Evans* (1893), 1 Ch. 218).

A cardboard pattern sleeve, having upon it scales, figures and descriptive words for adapting it to sleeves of any dimensions, was held not capable of copyright under old Act, although it might possibly be the subject of a patent (*Hollinrake* v. *Truswell* (1894), 3 Ch. 420).

The face of a barometer displaying special letterpress (*Davis* v. *Comitti*, 54 L.J. Ch. 419); an album for holding photographs, with pictorial borders containing views of castles with short description attached (*Schove* v. *Schmincke*, 33 Ch.D. 546); and an envelope inside of which was enclosed, 1st, a piece of cardboard, so cut that when held up to the light, it cast a shadow resembling the well-known picture "Ecce Homo," and, 2nd, a slip of paper, with printed lines from Longfellow, which served as a key to the use of the piece of cardboard (*Cable* v. *Marks*, 52 L.J. Ch. 107), were all held not to be entitled to copyright under the old law.

Where the proprietors of a weekly sporting paper stated every Monday the names of the horses likely to win particular races on each day during the week, it was held that such words (the names) were not in law the subject of copyright (*Chillon* v. *Progress Printing Co.*, 71 L.T. 664).

As a general rule there cannot be copyright in the title of a book consisting of common English words, but it is possible that there may be copyright in a long title requiring invention (*Croich* v. *Arnold*, 54 S.J. 49). The adoption of words as the title of a book may, however, make a trade mark, and entitle the owner to say to anyone else, "You must not sell another novel under the same title, so as to lead the

public to believe that they are buying my novel when they are actually buying yours." For instance, if, whilst the copyright in "Vanity Fair" was still subsisting, anyone had published a novel and called it "Vanity Fair," leaving out the author's name, a purchaser would probably assume that it was written by Mr. Thackeray (*Dicks* v. *Yates*, 18 Ch.D. 76).

On the same principle the defendant in one case was restrained from offering his work for sale, in any form calculated to deceive persons into the belief that it was the plaintiff's work, "Hemy's Royal Modern Tutor for the Piano," although such work was not registered so as to secure copyright (*Metzler* v. *Wood*, 8 Ch.D. 606); and where certain publishers adapted words to an old air, and gave the song the name of "Minnie," and procured it to be sung and to become a favourite song, and then published it with a portrait of the singer on the title page, it was held that the publishers had obtained a right of property in the name and description, and were entitled to protection for it (*Chappell* v. *Davidson*, 2 Kay & J. 123).

Where a publisher adopted the name "Punch and Judy" for a periodical sold for 1d., it was held to be no infringement of the rights of the well-known publication "Punch," which was sold at 3d., as the public were not likely to be misled into purchasing one in mistake for the other (*Bradbury* v. *Beeton*, 39 L.J. Ch. 57); and the Court refused to restrain a person from publishing the Post Office Bradford Directory, as not being an interference with the rights of the Post Office Directory of the West Riding of Yorkshire (*Kelly* v. *Byles*, 13 Ch.D. 682).

There is no copyright in a libellous or immoral work (*Stockdale* v. *Onwhyn*, 5 B. & C. 173), or in prints or pictures of an indecent, immoral or libellous tendency (*Fores* v. *Johnes*, 4 Esp. 97), and Lord Eldon said the law does not give protection to those who contradict the Scriptures (*Laurence* v. *Smith*, Jacob 471).

Where a person falsely represented that a certain book was a translation of a work by Sturm, whereas no such work of Sturm's in fact existed, it was held that this was in the nature of *crimen falsi*, and that there was no copyright in such a book (*Wright* v. *Tallis*, 14 L.J.C.P. 283).

There is no copyright in ideas, or schemes, or systems, or methods; it is confined to their expression, and, if their expression is not copied, there is no infringement, and the author of a system of book-keeping was held not entitled to any monopoly of the system but could only prevent other persons from copying his description of it (*Baker* v. *Selden*, 11 Otto 99 (Amer.)).

The name of the editor, printed upon the title page, seems to form no part of the title of the book (*Crookes* v. *Petter*, 3 L.T. 225).

AUTHOR.

The author of a work is, subject to certain limitations contained in the Act, the first owner of the copyright of the work.

In the case of a photograph, engraving, or portrait ordered and made for valuable consideration, in the absence of any agreement to the contrary, the person ordering is the first owner of the copyright; and where the author is in the employment under a contract of service or apprenticeship, and the work is made in the course of such employment, the employer is, in the absence of an agreement to the contrary, the first owner of the copyright (s. 5 (1)).

In the case of records and pianola rolls, etc., the owner of the original plate, from which such records or rolls are derived, is deemed to be the author (s. 19).

Speaking generally, the author is the person who creates the work—the person, in fact, to whom it owes its origin.

Where a person writes a book, or composes music, there is not much difficulty in deciding who the author of such book or music is.

There are, however, many cases where the question is not so simple.

The person who forms the plan and scheme of a work, and who employs and pays different artists of his own selection, upon certain conditions, to contribute to such work, may, possibly, be the author of such work (*see Barfield* v. *Nicholson*, 2 Sim. & S. 1); and where a musician was employed to compose music to be performed with Shakespeare's play "Much Ado about Nothing," the general design of which representation was formed by the employer, who adapted it to the stage, it was held that such employer was substantially the author and designer, as the music was merely an accessory to the play (*Hatton* v. *Keane*, 1 L.T. 10; *Wallerstein* v. *Herbert*, 16 L.T. 453); and where the plaintiffs sent out questions to a number of golf players, and from the answers compiled biographical notes in their golf annual, it was held that they were the authors of such biographical notes (*Nisbet* v. *Golf Agency*, 23 T.L.R. 370).

The adapter of a play who introduces into his version material alterations is an author and can claim copyright (*Tree* v. *Bourlet*, 74 L.T. 77).

But where the plaintiffs employed a person to adapt a foreign dramatic piece for the English stage, it was held that this employment did not make the plaintiffs the authors; as where the employers merely suggest the subject, and have no share in the design or execution of the work, the whole of which, so far as any character of originality belongs to it, flows from the mind of the person employed, in such a case it seems an abuse in terms to say that the employers are the authors (*Shepherd* v. *Conquest*, 25 L.J.C.P. 127); and a person who simply suggests the general ideas

on which a dramatic sketch is framed does not seem to be an author, either alone or jointly with the actual writer of the sketch (*Tate* v. *Fullbrook* (1908), 1 K.B. 821). Although the employer in both these cases was held not to be the author, yet in such cases, under the present Act, he might quite possibly be held to be the first owner of the copyright (*see* s. 5 (1) (*b*)).

Unless there is a special contract, express or implied, reserving to the author a qualified copyright, the purchaser of a manuscript is at liberty to alter and deal with it as he pleases (*Coe* v. *Coe*, 11 Hare 118); but he must not deal with it in such a way as to libel the author. Thus, where the plaintiff, an author, sold the copyright of a law book to a publisher, who subsequently published another edition of such book, edited by another person, but not stated to be so, and which purchasers were likely to suppose was edited by the plaintiff, such edition having errors and mistakes in it calculated to injure plaintiff's reputation as an author, it was held that an action lies for this against the publisher, and that the question whether the edition purports to be edited by the plaintiff is a question for the jury; but that whether the alleged mistakes and errors be so or not, and whether they are such as are calculated to injure the plaintiff's reputation as an author, are questions for the Court (*Archbold* v. *Sweet*, 5 Car. & P. 219). In such a case the Court will not grant an injunction to restrain a libel before the case has been submitted to a jury (*Lee* v. *Gibbings*, 67 L.T. 263).

If an author sells a work, and covenants not to do anything which may be detrimental to the sale of the work, and if afterwards the author and a partner publish a rival work, the partner will be restrained as well as the author (*Barfield* v. *Nicholson*, 2 Sim. & S. 1).

An "Edition."—The meaning of the word is the issuing the work to the public at successive periods. An edition consists

of so many copies as the publisher issues, or intends to issue, to the public at one time. The new edition is usually put forth to the trade in the first instance on certain terms, and they take the first thousand and the second thousand and so on. If a person chooses to print 20,000 copies and keeps them by him, thinking it expedient to issue to the public only a limited number, keeping the other copies under lock and key, the next issue of such copies would be an edition in every sense of the word; and where a work is stereotyped every fresh issue is a new edition (*Bentle* v. *Bentley*, 27 L.J. Ch. 254).

When an author agrees to write a treatise for a certain periodical, which is abandoned after his work has commenced, he is entitled to a *quantum meruit* and the publishers are not entitled to claim the completion of the treatise, so that it may be published in a separate form for general readers, but they are bound to pay the author a reasonable sum for the work actually done (*Planché* v. *Colburn*, 5 C. & P. 58); but where an author agrees to supply a publisher with manuscript to be printed by the latter, the profits to be divided equally between them, the publisher can maintain an action against the author if he refuses to supply the manuscript after part of the work has been printed (*Gale* v. *Leckie*, 2 Stark. 107).

The Court will not specifically enforce the performance of an agreement to compose and write reports of cases in a Court of Justice, to be published by a particular individual for a stipulated remuneration; nor interfere by injunction to restrain the author from permitting reports written by him to be published by another person (*Clarke* v. *Price*, 2 Wils. C.C. 157).

In such a case, if the author expressly agrees not to permit anyone else to publish such reports, the result would probably be different (*see Morris* v. *Coleman*, 18 Ves. 437).

Where two persons write a practically similar play or book, without copying in any way one from the other, it seems that the person who has written and finished his play or book before

the other is entitled to the copyright (*Reichardt* v. *Saple* (1893), 2 Q.B. 308).

When an author agrees to give certain persons the sole power of printing and publishing a book for all time, that is parting with the copyright; but an agreement that certain publishers shall publish a book at their own risk, and that if the publication results in a loss that they shall bear it, but that if there is a profit they shall pay half of it to the author, that is not parting with the copyright, which still remains vested in the author. Such an agreement is merely personal, and the benefit cannot be assigned without the consent of the other party to it (*Stevens* v. *Benning*, 6 D.M. & G. 223; *Jude's Musical Compositions* (1906), 2 Ch. 886).

An agreement that a publisher shall publish a book at his own expense and pay the author a royalty on the copies sold, is not an agreement on the part of the author not to bring out another edition until all the first edition is sold. It is probably an exclusive contract, and so long as the publishers are allowed by the author to publish, no one else can publish, neither the author himself nor an assign from him; but unless the agreement is to continue for a fixed period the author can terminate it at any moment, and then the publisher, who has no lien on the copyright, retains his right of selling the copies he has printed at his own expense in reliance on the agreement, and the author can immediately bring out another edition with a different publisher (*Warne* v. *Routledge*, L.R. 18 Eq. 497). But where an author agrees that a publisher shall publish his work and shall be allowed interest on all the money advanced, and that he shall have a certain share of the profits, the publisher then has a lien on the copyright for his disbursements (*Brook* v. *Wentworth*, 3 Anst. 881).

Where an agreement recited that a publisher was desirous of purchasing a new edition of a book which an author had prepared, and the publisher agreed to print 2,500 copies at

his own cost and to pay the author a certain sum by instalments, it was held that the publisher was not merely a purchaser of the 2,500 copies but was in equity an assignee of the copyright to the extent that he was to be the sole publisher of it until all the 2,500 copies were sold; and it was also held that the publisher was entitled to rely in proceedings for infringement on certain passages, which were also contained in former editions in which the author had the sole copyright, as well as in the new matter (*Sweet* v. *Cater*, 11 Sim. 572).

An author can agree to assign the copyright of a book not yet in existence, and such an agreement may be in the form of an agreement to assign (*Ward Lock* v. *Long* (1906), 2 Ch. 550).

Where a publisher purchased the copyright and sole right of sale of a book for four years, and during such period printed a stock of books some of which were unsold at the end of the four years, it was held that he could not be restrained from selling his unsold stock of copies (*Howitt* v. *Hall*, 6 L.T. 348). It is clear that the publisher had no right to print more copies after the period of four years had expired, but he had the right to sell all the copies previously printed by him *bona fide*.

Similarly, in the absence of a special agreement to the contrary, the assignor of a copyright is entitled, after the assignment of the copyright, to continue selling copies of the work printed by him before the assignment and still remaining in his possession (*Taylor* v. *Pillow*, L.R. 7 Eq. 418).

An author who sells the copyright of a publication, together with the right to use his name in connection with it, and who subsequently enters into the purchaser's service and agrees to give his whole time to such service and not to engage in any other business, can be restrained from advertising a rival work (*Ward* v. *Beeton*, L.R. 19 Eq. 207).

Where the plaintiff entered into a contract with the defendant for the performance of certain literary services, and, subsequently, whilst this contract was still subsisting entered into another with the defendant, which second contract was inconsistent in many respects with the first and could not be carried into effect if the first still subsisted, it was held that the second put an end to the first contract (*Pullmore* v. *Colburn*, 3 L.J. Ex. 314).

If a partner in a periodical withdraws from the publication and determines the partnership, he *will* not be restrained from advertising a work of a similar description under a new name, or the discontinuance of the former periodical so far as his connection with it is concerned. Thus, where Charles Dickens, who was a partner in the periodical "Household Words," gave notice to dissolve the partnership, and subsequently sent a circular to booksellers stating that "Household Words" was about to be discontinued, but that a new periodical "All the Year Round" was to be started to be conducted by him, it was held that although there might be some question as to Mr. Dickens' right to say that "Household Words" was to be discontinued, yet that he had a perfect right to say that it was to be discontinued as far as he was concerned (*Bradbury* v. *Dickens*, 28 L.J. Ch. 667).

Where an author is employed to write articles on certain terms as to price, but the question of copyright is not mentioned, it is to be inferred that the copyright belongs to the employee; and such inference may be fairly drawn where there are no special circumstances and the only material facts are the employment and the payment (*Laurence* v. *Aflalo* (1904), A.C. 17; *Street* v. *Benning*, 24 L.J.C.P. 175).

These two cases were decided on s. 18 of the Copyright Act, 1842, which is repealed; but under the present Act (s. 5 (1) (*b*)) the decisions would quite possibly be different, as when a work is part of a magazine, in the absence of any agreement to

the contrary, the author is entitled to restrain its publication otherwise than as part of a magazine, or similar periodical.

An agreement by a publisher not to publish in future a magazine of a particular description is analogous to an agreement by a tradesman not to deal in a particular article, and is not void as a too general restraint on trade (*Ainsworth* v. *Bentley*, 14 W.R. 630).

Where an author purports to sell the copyright of a book and gives a receipt saying that the copyright belongs to him, that is in effect an express warranty that he has the title to such copyright, and if he has no such title he is liable to an action for breach of warranty of title (*Simms* v. *Marryat*, 20 L.J.Q.B. 454); and where a printer was restrained from publishing certain manuscript which was given to him to print by a person who had no authority to do so, the printer subsequently recovered damages against such person for having represented that he had the right to have the manuscript printed (*Queensberry* v. *Shebbeare*, 2 Eden. 329; 4 Burr. 2331).

If an author undertakes to furnish a new history of a country, this is not fulfilled by his furnishing a book which is a translation of an entire previously existing history with the author's own continuation and some additions (*Paton* v. *Duncan*, 3 Car. & P. 336).

The remedy of an author suing in England in respect of a foreign copyright depends entirely on English Law (*Baschet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73.)

When an author allows a publisher to advertise himself as the owner of the copyright, although such copyright may not have been assigned to the publisher in writing, it seems that such copyright should be dealt with as the publisher's property if he becomes bankrupt (*Re Curry*, 12 Ir. Eq. R. 382).

Title Page.—The name of the editor forms no part of the title, and where an agreement between editor and proprietor

provided that the title of a journal should not be altered without the editor's consent the Court refused to restrain the proprietors from omitting the editor's name from the title page (*Crookes* v. *Petter*, 3 L.T. 225).

Author Dead.—When an owner has acquired an unpublished manuscript under an author's will such owner is *primâ facie* the owner of the copyright (s. 17 (2)). It was held that on the death of an author the copyright in his unpublished works became vested in the proprietor of the manuscript—the actual sheets of paper from which the book is first published (*Macmillan* v. *Dent* (1907), 1 Ch. 107).

When the proprietor of a journal employs an editor who edits, and also supplies the articles for such journal, upon the terms that the copyright in all such articles shall belong to the proprietor, but the editor himself employs and pays the actual contributors of the articles, it is doubtful whether the copyright of the articles is vested in such proprietor (*Brown* v. *Cooke*, 16 L.J. Ch. 140).

When an author agrees to write a tale for a periodical, such tale to extend over a year commencing at a fixed date, and portions of it are to be delivered each week during the year, and the author is to receive £10 for each weekly portion, such agreement is a yearly one and cannot be terminated as a weekly engagement (*Still* v. *Cassell*, 2 Jur. (N.S.) 348).

Joint Authors.—A work of joint authorship means a work of two or more authors in which the contribution of one author is not distinct from that of the other author or authors (s. 16).

If two persons undertake jointly to write a play, agreeing in the general outline and design, and sharing the labour of writing it out, each would be contributing to the whole production and they are joint authors, and the two may be said to be joint authors of the whole play, notwithstanding

that different portions are respectively the sole productions of either; but where a person employs an author to write a play upon a subject suggested by the employer, mere additions or alterations to the play by the employer will not make him a joint author (*Levy* v. *Rutley*, L.R. 6 C.P. 523).

The part owner of a dramatic entertainment cannot grant a licence for its representation without the consent of all the other owners, and where the owner of a moiety of an opera granted the defendant a licence for its representation, it was held that the defendant was liable to pay the plaintiffs (the owners of the other moiety) one-half the penalty of 40*s.* for each representation, under 3 Will. IV. c. 15, s. 2 (*Powell* v. *Head*, 12 Ch.D. 686).

Publisher's Bankruptcy.—Where an author sold a book to a publisher in consideration of the payment of royalties on the sale of the book, and the publisher subsequently became bankrupt, and then his trustee continued the sales of the book, it was held that the author could only prove for damages, and was not entitled to be paid the royalties in full, as the copyright was vested in the bankrupt to do with it as he pleased (*Re Grant Richards* (1907), 2 K.B. 33). In this case, by the agreement the publisher expressly purchased the "author's entire copyright" in consideration of the royalties. An author would be well advised rather to enter into an agreement similar to that in *Stevens* v. *Benning*, 6 D.M. & G. 223, which pays him by royalties but still does not divest him of the copyright.

The Act repeals the greater portion of the Fine Art Copyright Act, 1862, but the following sections are still in force:—

(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 other-

wise 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 any part thereof, as or for the unaltered work of such author or maker:

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.

(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 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, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more creditable witnesses, shall convict the offender, and find him liable in the penalty or penalties aforesaid, as also in expenses, and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such

judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses, 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.

As will be seen this Act was passed for the protection of artists. It will be noted that in the first three cases provided for, it is necessary that the act in question should be done fraudulently, but in the fourth case if the act is done at all, whether fraudulently or not, the person charged can be convicted.

Thus, where a publisher sold a picture or engraving, which he knew had been altered without the artist's consent, he was held liable, although he might not have acted fraudulently, but only with knowledge of the alterations (*Carlton Illustrators* v. *Coleman* (1911), 1 K.B. 771). In this case the artist was also held to be entitled to an injunction restraining future breaches.

An agreement to write or to publish a book is a personal agreement, and bankruptcy puts an end to all claim of the bankrupt or his trustee to the performance of the contract by the solvent party. The skill, judgment, integrity and personal character and reputation of a publisher are matters of importance to an author, on which the success and reputation of his works may greatly depend, and by the publisher's bankruptcy an author is discharged from his contract (*see Gibson* v. *Carruthers*, 8 M. & W. 343).

Where it was agreed that the plaintiff should write a book which the defendant should publish, and that the profits should be divided equally, and the defendants subsequently became bankrupt, it was held that the contract was a personal one, and that such a contract did not vest the copyright in the defendant, and that the trustee in bankruptcy had no right to reprint or to publish the book, as the bankruptcy put an end to the joint adventure, and that the plaintiff was free to employ another publisher, so long as he did not interfere with the sale of what was left of the current edition (*Lucas* v. *Moncrieff*, 21 T.L.R. 683). If an author undertakes to compose a book, and dies before completing it, his executors are discharged from the contract, for the undertaking is merely personal in its nature, and by the intervention of the author's death has become impossible to be performed (*Marshall* v. *Broadhurst*, 1 Tyr. 349).

RIGHTS OF AUTHORS TO COPYRIGHT.

Unpublished Works.—Until publication, if author at time of making the work is a British subject; or, if he is a foreigner, if he is domiciled within the parts of His Majesty's dominions to which the Act extends during the making; or where the work has extended over a considerable time, if during any substantial part of that period he was either a British subject or was domiciled within such parts of the dominions (s. 35 (4)).

Published Works.—On publication, an author is entitled if the work is first published in the parts of the dominion to which the Act extends, whether he is a British subject or not, for his life and for fifty years after his death (s. 3). For this purpose a work is deemed to be first published in such parts, although it may have been published simultaneously in some

other places, if the publication in such parts of the dominions was genuine and intended to satisfy the reasonable requirements of the public (s. 35 (3)).

Works Published before Act.—When copyright is subsisting at the commencement of the Act they are by substitution entitled to practically similar rights to those of works published after the Act, but when an author has assigned his copyright in such works and the original copyright would expire but for the Act, then, in the absence of express agreement, the remnant of copyright reverts to the author or to his legal personal representatives. In the case of music, the rights of making mechanical contrivances to perform the same and the rights to the royalties on the making such contrivances belong to the author or his representative, notwithstanding any assignment made before the Act (s. 19 (7) (*c*)). Provision is made in the section for the prior owner of the copyright continuing to produce the work on payment of royalties, and where the work is incorporated in a composite work of which such prior owner is the proprietor, then he can continue such reproduction without payment (s. 24 (1) (*a*)).

As to joint author's rights, *see* notes to s. 16 (1).

Publications are deemed to be simultaneous if the time between the publications does not exceed fourteen days, or such longer time as may be fixed by an Order in Council.

Where an author is employed to write, for instance, for a newspaper, then, in the absence of an agreement to the contrary, the employer is the first owner of the copyright but the author, in the absence of an agreement to the contrary, can restrain the publication of his articles otherwise than as part of a newspaper or similar periodical (s. 5 (1) (*b*)).

Death of Author.—Published Works.—Twenty-five years after, or in the case of a work subsisting at the passing of the Act, thirty years after, anyone, on giving the requisite

notice and paying royalties of ten per cent. on the published price, has the right to publish the work (s. 3). In the case of a dead author's unpublished works copyright until publication and for fifty years after publication (s. 17 (1)).

In the case of articles published in a collective work before the Act the author is still entitled to all the rights he had under s. 18 of the Copyright Act, 1842. By that section the proprietor of a magazine or other collective work is entitled to the copyright of the work as published in such magazine, but the author has the right to publish any of his articles in a separate form who by any "contract express or implied may have reserved to himself such right," but such right is without prejudice to the right of the publisher to publish the articles in such magazine.

LETTERS.

The receiver of a private letter is entitled to the property of the paper on which such letter is written, but this does not give such receiver the right to publish it to the world. The receiver of letters has such a property in the paper on which they are written that he can maintain an action of detinue, even against the sender of such letters, if by any means the letters get back into the possession of the sender (*Oliver* v. *Oliver*, 31 L.J.C.P. 4). Unless the letters are confidential the recipient is entitled to assemble other people and read and recite the letters to such people, but he has no right to publish them without the consent of the writer. Thus one, Curl, was restrained from publishing, in a book entitled letters from Swift, Pope and others, any of the letters written to him by the poet Pope, but he was not restrained from publishing the letters written by him to Mr. Pope (*Pope* v. *Curl*, 2 Atk. 342; *Gee* v. *Pritchard*, 2 Swans 402; *Lytton* v. *Devey*, 54 L.J. Ch. 293). Even when

the writer is dead his executors can restrain the executors of the person to whom they were written from publishing private letters without the leave of the executors of the person who wrote them (*Thompson* v. *Stanhope*, Ambler 737); but where the defendant's object was really to vindicate his character from the imputation of giving false intelligence, publicly cast upon him by the plaintiff, and not to make a profit out of publishing the letters in a newspaper of which he was the proprietor, the injunction was dissolved and the Court refused to restrain the defendant from publishing the letters.

The mere fact that the letter in question bears the character of a literary composition gives the recipient no right to publish it, but if the writer casts aspersions on the character of the recipient, such recipient is entitled to publish it if such publication is necessary to vindicate his character from such aspersions (*Perceval* v. *Phipps*, 2 Ves. & B. 19).

Where letters are written confidentially, in such cases the seal of confidence can only be released by the writer himself. Thus where letters were written by the plaintiff for the purpose of giving information to the defendant to be used in a given manner, the defendant was restrained from showing them or any of them to any person or persons, and also from informing any person or persons of them, or any of their contents, contrary to the purpose for which they were written (*Pulin* v. *Gathercole*, 1 Coll. 565); and the Court will in general restrain any person in the possession of letters from publishing them against the will of the writer, except under special circumstances, *e.g.*, as where the publication is necessary for the purpose of clearing the defendant's character (*Labouchere* v. *Hess*, 77 L.T. 559). The Act expressly retains the right to restrain a breach of confidence or trust (s. 31).

A defendant may be ordered to produce private and confidential letters from a stranger, although the writer forbids their production, but the plaintiff will be put upon an undertaking

not to use them for any collateral object (*Hopkinson* v. *Lord Burghley*, L.R. 2 Ch. 447).

The Court of Appeal decided in a case under the Copyright Act, 1842, that although the writer of a letter and his legal personal representatives are entitled to prevent its publication, yet that the copyright in a letter, published after the death of the writer, is vested by such act in the proprietor of the letter itself, *i.e.*, of the paper and the writing upon it (*Macmillan* v. *Dent* (1907), 1 Ch. 107). It should be noted that this case was decided on an Act which is repealed, which gave the property in the copyright to the proprietor of the author's manuscript, *i.e.*, the letter itself. If the owner of the manuscript became such owner by the will of the author the present Act makes him a *prima facie* owner of the copyright (s. 17 (2)).

Where the solicitor of a company writes a letter apparently on behalf of the company, he has no such property in such letter as to entitle him to prevent its publication, although he swears that it was written in his private capacity. If the agent or servant of a company writes a letter to a shareholder it is the property of the company, and the agent or servant cannot say to the company you shall not produce the letter (*Howard* v. *Gunn*, 32 Beav. 462).

LECTURES.

Prior to the Act, in order to protect lectures delivered in public, it was necessary to give notice in writing to two justices within five miles of the place where the lecture was to be delivered, two days at least before delivering the same (5 & 6 Will. 4, c. 65, s. 5). The term lectures includes addresses, sermons, and speeches, and lectures are now protected on the same terms as ordinary literature. Fair dealing with a lecture for the purposes of criticism, review or newspaper summary is not deemed to be an infringement

neither is it an infringement to publish a report of a political public meeting in a newspaper (s. 20). When a lecture is delivered in public a newspaper is entitled to publish a report of it unless such publication is expressly prohibited by a conspicuous 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 affixed in a position near the lecturer.

The term "lectures" includes address, speech and sermon (s. 35 (1)).

At Common Law an author had the undisputed right to his manuscript so long as it remained unpublished. He might withhold or communicate it and communicating it he might limit the number of persons to whom it is imparted and impose such restrictions as he pleased upon their use of it. He could enforce the fulfilment of such conditions and claim compensation for any breach. He could not print and sell without publishing his work, but he could legitimately impose restrictions to prevent its publication whether the communication was made by giving copies for private perusal or by recitation before a select audience.

On these grounds lectures delivered to students in class-rooms have been protected and persons have been restrained from publishing them without the consent of the lecturers. All the persons who attend such lectures are under an implied contract not to publish what they hear although they may take it down for their own instruction and use. The Court will restrain not only the persons who attend but also any persons who may have obtained the information as to the lectures from those who were present (*Caird* v. *Sime*, 12 App. Cas. 326; *Abernethy* v. *Hutchinson*, 1 Hall & Twells. 28).

This Common Law right is now taken away but the Act gives him far superior rights as he is now entitled to the copyright of his lecture just as if it was a book.

Tickets Free.—Where a lecture is delivered to an audience limited and admitted by tickets, whether the lecture has been committed to writing or not, the audience are quite at liberty to take the fullest notes for their own personal use but there is an implied contract not to publish such lecture for profit (*Nicols* v. *Pitman*, 26 Ch.D. 374).

NEWSPAPERS.

A NEWSPAPER is a periodical publication whose main or general object is to give the public information as to recent events (*Ill.* v. *Bradbury*, 21 L.J. Ex. 12).

It is entitled to protection under the Act, but the protection given is only in respect of some already published or some composed and not yet published literary production.

There can be no copyright in the prospective series of a newspaper. Copyright may attend upon each successive publication, but that which has no present existence as a publication cannot be the subject of this species of property (*Platt* v. *Walter*, 17 L.T. 157).

Name.—There is nothing analogous to copyright in the name of a newspaper, but the proprietor has the right to prevent any other person from adopting the same name for any other similar publication, and this right is a chattel interest capable of assignment (*Kelly* v. *Hutton*, L.R. 3 Ch. 703).

A newspaper must be registered under the Newspapers Libel and Registration Act, 1881, and default entails serious penalties. Any person making wilful misrepresentation in the Register is liable to a penalty of £100, and if the proprietor of a newspaper wilfully places a wrong person on the Register as the owner, the Courts would probably refuse such proprietor any assistance in regaining

possession of his paper. Thus, where A., the proprietor of a newspaper, prevailed on B to make and deliver to the Stamp Office an affidavit falsely stating that B was the proprietor of such newspaper, and B subsequently without A's consent fraudulently sold the paper to D, on a bill being filed by A's assignee, A being insolvent, to set the sale aside on account of B's fraud, it was held that as B at A's instance violated, 38 Geo. 3, c. 78, the Court would not assist A or his assignee to recover the property in the newspaper (*Harmer* v. *Westmacott*, 6 Sim. 284).

The same principle would probably still apply, but it should be noted that the mere fact that a newspaper is not registered under the Act of 1881 will not prevent the proprietor of such newspaper from suing in respect of an infringement of copyright (*Gale* v. *Devon & Exeter Co.*, 40 Ch.D. 500).

In order to comply with the Post Office Act, 1870, and obtain the benefit of the low rates of postage a newspaper must register at the General Post Office and must consist wholly or in great part of political or other news, or of articles relating thereto, or to other current topics with or without advertisements, and must be published at intervals of not more than seven days and have its full title and date on the top of the first, and the date on the top of every subsequent page.

The proprietor who employs the contributors is, in the absence of any agreement to the contrary, the first owner of the copyright (s. 5 (1) (*b*)).

The contract of employment need not be in writing, and no express words need be used. It was held that the inference that the copyright was intended to belong to the proprietor may be fairly drawn where there are no special circumstances and the only material facts are the employment and payment (*Laurence* v. *Allalo* (1904), A.C. 17), and

where the proprietors of a newspaper agreed to pay the reporters so much per sheet and no mention was made as to the proprietorship of the copyright, it was held that the agreement was made on the implied terms that the copyright should be the property of the proprietors (*Sweet* v. *Benning*, 24 L.J.C.P. 175).

The language of the present Act differs considerably from the Copyright Act, 1842, and these two cases would now, quite possibly, be decided differently. A newspaper proprietor would be well advised to have a written contract signed by the author giving such proprietor the full copyright.

A newspaper or news agency is entitled to collect information from public sources and has a right of property in such information, and where a news agency collected information as to horse races and transmitted it to their subscribers upon the terms that they should not communicate it to third parties the Court restrained a subscriber from communicating such information to a third party in breach of his contract, and also restrained a third party from inducing a subscriber to break his contract by supplying him such information with a view to publication (*Exchange Telegraph* v. *Central News* (1897), 2 Ch. 48); and where the plaintiff, a news agency, collected valuable information as to the prices of stocks and shares and distributed it to their subscribers, and the defendant surreptitiously obtained such information from one of the subscribers and published it, the Court restrained the defendant from infringing the plaintiff's rights by continuing to publish it. In order to support an action for maliciously inducing members to break such contracts with a news agency, proof of special damage need not be given, it is sufficient to prove facts from which it may properly be inferred that some damage must result to the plaintiff from such acts (*Exchange Telegraph* v. *Gregory* (1896), 1 Q.B. 147).

The name of the editor is no part of the title, and where the proprietors of a journal agreed with its editor not to change its name, except by mutual consent, the Court refused to restrain them from discontinuing the use of the editor's name on the title page on the ground that it formed no part of the title (*Crookes* v. *Petter*, 3 L.T. 225).

Articles can be composed at joint expense for proprietors of several newspapers and are entitled to copyright (*Trade Auxiliary Co.* v. *Middlesbrough Association*, 40 Ch.D. 425).

MAGAZINES.

Where an author is employed by the proprietor of a magazine to write an article, then, in the absence of any agreement to the contrary, such proprietor is the first owner of the copyright of such article, but the author can restrain its publication otherwise than as part of a magazine or similar periodical unless there is an agreement to the contrary. (*See* notes to s. 5 (1).) Where the plaintiff wrote an article for an Encyclopædia and was paid the usual price for it but no agreement executed between him and the publishers, it was held under 5 & 6 Vict. c. 45, s. 18, that the plaintiff was entitled to restrain the publishers from publishing such articles separately without his consent (*Hereford* v. *Griffin*, 17 L.J. Ch. 210).

If the proprietor is not entitled to copyright in some portion of a magazine, but is entitled to copyright in other portions of such magazine, he can restrain any one from pirating the portion to which he is entitled to copyright (*Low* v. *Ward*, L.R. 6 Eq. 415).

Where the plaintiff wrote and was paid for an article for the Christmas Number of a periodical called the *Welcome Guest* for the year 1858, and the defendant who subsequently became the proprietor of such periodical, advertised another

publication and included the plaintiff's article without his consent, the defendant was restrained from publishing such article otherwise than or as forming part of the Christmas Number of the *Welcome Guest* for 1858 (*Murray* v. *Maxwell*, 3 L.T. 466).

A republication in supplemental numbers of a selection of various tales previously published in a periodical is a separate publication (*Smith* v. *Johnson*, 33 L.J. Ch. 137).

It was held that, in the absence of evidence to the contrary, the law will infer from the fact of employment of an author to write articles for a magazine and payment for so doing that one of the terms of such employment is that the copyright should belong to the person who so employs and pays the author (*Sweet* v. *Benning*, 24 L.J. Ch. 175) (*Laurence* v. *Aflalo* (1904), A.C. 17). These cases would probably now be doubtful law.

A collective work means any work written in distinct parts by different authors and includes an encyclopædia, dictionary, year book, newspaper, magazine, review, etc. As to the rights of authors in collective works published before Act, *see* end of heading "Authors" (s. 24 (3) (*a*)).

GRAMOPHONES AND PIANOLAS.

Mechanical contrivances for reproducing sounds are themselves entitled to copyright as if they were musical works for fifty years from the making the original plate, and the owner of such plate is deemed to be the author. Thus, if a singer sings a song, in which there is no copyright, into a gramophone and a record is made that record is entitled to copyright and the owner can prevent anyone from copying it although he would have no copyright in the

song itself and could not prevent someone else from having a record made by a singer of the same song (s. 19 (1)).

Music published after Act.—If the work has already been mechanically performed with the consent of the owner of the copyright then anyone can make mechanical contrivances for reproducing it by giving the prescribed notice and paying the royalties, but such contrivances must not alter or omit anything from such work unless similar alterations have been made by the author himself or they are reasonably necessary for the adaptation to the contrivance in question. Royalties payable: 2½ per cent. on the ordinary retail price on all contrivances sold within two years after commencement of the Act and 5 per cent. afterwards (s. 19 (2) and (3)).

Music published before Act.—Anyone can make mechanical contrivances for performing such music simply by giving the prescribed notice and paying the royalties (if any), as the restrictions as to alterations and previous making do not apply to such music. Royalties at rate of 2½ per cent., but if any contrivances reproducing the music had been lawfully made before 1st July, 1910, then no royalties are payable on any such contrivances sold before the 1st July, 1913, but afterwards 2½ per cent (s. 19 (7)).

Although a person may be entitled to make and sell contrivances for reproducing copyright music, yet it does not follow that any such contrivance can be used to perform such music in public without consent. The owner of the copyright is entitled to the sole right of performing the work in public (s. 1 (2)), so it is probable that such owner will be entitled to restrain the performance of his music in public without his consent.

ARTISTIC WORK.

Artistic work includes painting, drawing, sculpture, architectural works of art, and engravings.

After publication copyright subsists for artistic work during the life of the author (the artist) and for a period of fifty years after his death.

Publication means the exhibition in public of an artistic work (s. 1 (3)). As to publication *see* notes to s. 35 (3).

Where a picture is a direct copy of a substantial portion of a copyright work, that portion constitutes an infringement, particularly when the sentiment expressed in the original has also been embodied in such copy (*Brooks* v. *Religious Tract*, 45 W.R. 476).

Where copyright is claimed for a picture which treats an old and common subject as love-making beside a stile, an author is confined to the particular design of painting which he has chosen (*Hanfstaengel* v. *Baines* (1894), A.C. 20).

The mere choice of a subject can rarely if ever give the author an exclusive right to represent the subject. Thus, where the plaintiff published cards with the representation of a hand making a cross at an election, it was held that it was not entitled to protection against an imitation, except possibly from absolutely being copied by photography or otherwise, as there was no copyright in the idea itself (*Kenrick* v. *Lawrence*, 25 Q.B.D. 99).

A Tableau Vivant was held not to be an infringement of a painting, as to be such it must be something which is itself in the nature of a picture, and in so far as it consists of a merely temporary arrangement of living figures, it is not a reproduction of the original painting, although a sketch, picture or photograph taken of such tableau may quite possibly be an infringement (*Hanfstaengel* v. *The Empire Palace* (1894), 2 Ch. 1).

DRAMATIC WORKS.

"Dramatic work" includes pieces for recitation, choreographic work, entertainments in dumb show, the scenic arrangement or acting form of which is fixed in writing, or otherwise; and cinematograph productions where the arrangements, or acting form, or combination of incidents, give the work an original character (s. 35 (1)).

Where one dramatic sketch resembled another in certain accessory matters, such as scenic effects, make-up of actors, etc., but not in the words, it was held to be no infringement as the protection then given to authors was only for something capable of being printed and published (*Tate* v. *Fullbrook* (1908), 1 K.B. 821). A similar case might probably now be decided differently, as the words "entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise" would seem to give copyright to such an entertainment.

A performance at a room in a hospital merely for the entertainment of the nurses and others connected with the hospital, who were admitted free, was held not to infringe, as such performance was rather a domestic or private, than a public performance (*Duck* v. *Bates*, 13 Q.B.D. 843).

Anyone who, for his private profit, permits a theatre to be used for the performance in public of a copyright work without consent is liable, unless he was not aware and had no reasonable ground for suspecting that such performance would infringe (s. 2 (3)).

A "public performance" is probably a performance to which any portion of the public are freely admitted, either with or without payment, and need not necessarily be at a theatre or public hall, but may be at any place which has been appropriated to the dramatic entertainment of a portion

of the public. Profit and the numbers present are very important elements in determining whether a place has been so appropriated on any particular occasion or not.

Where a proprietor let his theatre, and also provided the actors and actresses and properties for a piece, it was held that the proprietor was liable (*Marsh* v. *Conquest*, 33 L.J.C.P. 319); but where the proprietor let his theatre to a person who brought his own company of actors and actresses, it was held that the proprietor was not responsible, as he had not caused the piece in question to be performed (*Lyon* v. *Knowles*, 32 L.J.Q.B. 71).

PHOTOGRAPHS.

Copyright subsists in photographs for a period of fifty years from the making of the original negative from which the photograph is directly or indirectly derived, and the owner of the negative, at the time when it is made, is deemed to be the author of the photograph, and where such an owner is a company it is deemed, for the purposes of the Act, to be resident in the United Kingdom if it has a place of business there (s. 21).

Where the photograph is ordered by some person, and is taken for valuable consideration in pursuance of that order, in the absence of any agreement to the contrary, the person giving the order is the first owner of the copyright. In other cases the author is usually the first owner of the copyright, but where the author is in the employment of some other person, and the photograph is made in the course of his employment, the person so employing the author is, in the absence of any agreement to the contrary, the first owner of the copyright (s. 5 (1) (*b*)).

Before the Act it was often difficult to say who was actually the author of a photograph. Thus, where a firm of

photographers sent an artist in their employ to take a photograph of the Australian cricketers, and the firm subsequently registered themselves as the proprietors and authors of the photograph, it was held that, though they might be the proprietors of the copyright, they were not the authors, and consequently the registration before action brought, which was essential in those days, was invalid (*Nottage* v. *Jackson*, 11 Q.B.D. 627).

Where a person controls the operation of taking the photograph such person seems to be the author, and not the person who performs the manual operations under his control (*Melville* v. *Mirror of Life* (1895), 2 Ch. 531).

When a photograph is taken at the request of the sitter on the terms that the photographer shall be paid for it, the photograph so made is made for valuable consideration in pursuance of the order of the sitter, and, in the absence of an agreement to the contrary, the copyright is in the sitter although the legal property in the negative may be in the photographer (*Bowens* v. *Poole* (1903), 2 K.B. 227). In such a case if a photographer takes such a bad photograph that he cannot compel payment for it he certainly has no right to publish it because he has not been paid (*see Stuckemann* v. *Paton* (1906), 1 Ch. p. 781).

A photographer who takes a photograph for a customer for money will be restrained from exhibiting or selling copies of it on the grounds that there is an implied contract not to use the negative for those purposes and that any such sale or exhibition is a breach of confidence. There is an implied agreement that the prints taken from the negative are to be appropriated to the use of the customer only (*Pollard* v. *Photographic Co.*, 40 Ch.D. 345). The sitter would probably have no right to the negative itself, but he would be at liberty to have any of the copies he received copied and could also prevent the photographer making copies from the

original negative except for himself. The photographer is entitled to the custody of the negative in order to secure himself the exclusive privilege of printing from it should the sitter require copies, but if none are ordered for a considerable time the photographer is probably justified in destroying the negative.

Where two photographs were taken and the photographer exhibited them in his studio without any objection from the customer, but subsequently the photographer sold his business and the purchaser claimed the right to continue to exhibit the two photographs notwithstanding the fact that the customer then objected, it was held that the purchaser had no such right, and he was restrained from exhibiting the photographs (*McCosh* v. *Cror*, 5 F. 670).

Where the owners of schools, particularly a lady owner of a girl's school, admit a photographer into the schools and have photographs taken according to their directions, even though it be at the solicitation of the photographer beforehand uninvited by the owner, there is a "good consideration" within the Fine Arts Copyright Act, 1862, and the copyright of any such photograph in the absence of any agreement to the contrary belongs to the owner of the school in question and not to the photographer (*Stackemann* v. *Paton* (1906), 1 Ch. 774). It should be noted that the words "good consideration" are omitted in the present Act, and such a case would probably now be decided in favour of the photographer.

Where an actress, at the invitation of a photographer, gave a sitting for her photograph, and the photographer made no charge, and in return for the sitting furnished her with a number of complimentary copies, and also multiplied copies for himself which he sold. It was held that the photographer had a copyright in the photograph, and that the mere permission to take the photograph was not a "good or valuable consideration" (*Ellis* v. *Marshall*, 64 L.J.Q.B. 757).

A drawing on a larger scale may be a copy of an original photograph, and consequently may infringe (*Bolton* v. *Aldin*, 65 L.J.Q.B. 120).

Where the plaintiffs supplied photographs for reproduction in certain illustrated magazines belonging to the defendants at agreed prices for each occasion that any of such photographs were used, and the plaintiffs afterwards put an end to this arrangement, it was held that they were entitled to do so, and that they could restrain the defendants from subsequently using any of the photographs, as the arrangement only amounted to an offer to allow the use of any of the photographs the defendants might accept, and till acceptance as to any photograph, such offer could be withdrawn (*Borden* v. *Amalgamated Pictorial* (1911), 1 Ch. 391).

LEGAL PROCEEDINGS.

The owner of the copyright is entitled to take proceedings to restrain any infringement of his copyright, and it is not now necessary for him to be registered as such owner before taking such proceedings.

The plaintiff is presumed to be the owner, and the copyright is presumed to be still subsisting in the work in question unless this is formally disputed by the defendant.

Where, however, it is disputed and the author's name is printed on the work in the usual manner, such author is presumed, unless the contrary is proved, to be the author, and if the author's name is not but the publisher's name is so printed, such publisher is presumed for the purpose of the proceedings to be the owner of the copyright (s. 6).

The plaintiff is entitled to claim damages for the infringement and also to recover all the infringing copies which are deemed to be the property of the copyright owner (s. 7).

If the defendant can prove that he did not know and had no reasonable means of knowing that copyright subsisted in the work in question, the plaintiff is only entitled to an injunction or interdict but not to damages (s. 8).

The plaintiff is not entitled to restrain the construction of a building which has been commenced, although such building may infringe the copyright in his architectural work, neither can he obtain an order for its demolition, and his remedy seems to be a claim for damages.

A plaintiff is entitled to take proceedings for the recovery of the possession or for the conversion of all pirated copies of his copyright work, and a defendant would seem to be liable if he has sold or otherwise dealt with such copies, although he may have acted quite innocently, unless possibly he may be protected by s. 8 (*see Monsell* v. *Tolley Printing Co.* (1908), 2 Ch. 141).

A copy is that which comes so near to the original as to give the persons seeing it the idea created by the original (*West* v. *Francis*, 5 B. & Ald. 737).

Unpublished information was entitled to protection under the Common Law and now is entitled to copyright under the Act, and where prices were collected for the plaintiff by a member of the Stock Exchange and circulated to subscribers who agreed not to disclose or supply the same to non-subscribers, it was held that the defendants who had wrongfully induced subscribers to give the information to non-subscribers were liable in damages and that special damage need not be proved, it is sufficient to prove that the act done is likely to damage the plaintiffs (*Exchange Telegraph Co.* v. *Gregory* (1896), 1 Q.B. 147).

Piracy.—"Copyright" means the sole right to produce or reproduce a work. It is the right to multiply copies of an original work. An infringement means producing or

reproducing the work in question without the consent of the owner of the copyright (secs. 1 and 2).

If you complain of infringement you must prove that the part alleged to be infringed is original, and, if it is not, there is no infringement of copyright (*Dicks* v. *Yates*, 18 Ch.D. 76).

Copyright is infringed by any person who sells, or offers to sell, or let for hire, or distributes for the purposes of trade, or to such an extent as to affect prejudicially the owner, or imports for sale or hire any work which he knows infringes copyright (s. 2 (2)).

It is piracy to collect together and reprint from the Law Reports all the cases upon a particular subject, though the collection and classification may be new—and with the addition of several previously unpublished decisions and notes. Law Reports are to be considered (as to copyright) as any other literary work (*Hodges* v. *Welsh*, 2 Ir. Eq. R. 266).

A work may be a piracy from another, though the passages copied are stated to be quotations, and are not so extensive as to render the piratical a substitute for the original work (*Bohn* v. *Bogue*, 10 Jur. 420).

To publish in the form of quadrilles and waltzes airs from a copyright opera is an act of piracy (*D'Almaine* v. *Boosey*, 1 Y. & C. 289).

To constitute piracy a material and substantial part must be pirated, and, though an appreciable part be taken, it does not follow that the copyright is infringed if such part be very unimportant and trifling in relation to the whole composition (*Chatterton* v. *Cave*, 3 App. Cas. 483).

It is not only quantity but value that is considered, as a writer may take all the vital parts of another's book, though it may be but a small proportion of the book in quantity (*Bramwell* v. *Halcomb*, 3 Myl. and Cr. 737), and a writer may also take a small portion of another's book, but such

portion may be a great proportion to the matter in his own book (*Kelly* v. *Hooper*, 1 Y. & Coll. C.C. 197).

An author cannot prevent a subsequent writer from making use of the authorities quoted by him, even if such writer was put on the track by the earlier work, but the subsequent writer must go to the common source, and not copy the quotations from the earlier work (*Pike* v. *Nicholas*, L.R. 5 Ch. 251). A subsequent compiler of a dictionary, map, guide book or directory, when there are certain common objects of information which must, if described correctly be described in the same words, 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 mile stones for himself; and in that of a map of a newly-discovered island he must go through the whole process of triangulation, just as if he had never seen any former map, and generally he is not entitled to take one word of the information previously published, without independently working out the matter for himself, from the same common sources of information; and the only use that he can legitimately make of a previous publication is to verify his own calculations and results when obtained (*Kelly* v. *Morris*, L.R. 1 Eq. 697).

In deciding questions as to whether an author infringes when he takes extracts from another author's work we must look at the nature and objects of the selections made, the quantity and value of the material used, and how such use may prejudice the sale of the original work (*Scott* v. *Stanford*, L.R. 3 Eq. 718); and where one man puts into his work an essential part of another man's work there is evidence of piracy; and where a defendant reproduced the pictures published in *Punch* for the same purpose as they were originally published, namely, to amuse the readers, he was held to have infringed (*Bradbury* v. *Hotten*, L.R. 8 Ex. 1).

Where part of a work complained of is a transcript of another work, or with only colourable additions and variations, and is prepared without any real independent literary labour, such portion of the work is piratical (*Jarrold* v. *Heywood*, 18 W.R. 279).

In the case of a map the later publisher is not entitled to save himself the labour and expense of actual survey, and to copy the map previously published, and when a work consists of a selection from various authors, two writers may make the same selection, but that must be by resorting to the original authors and not by taking advantage of the selection already made by another person (*Longman* v. *Winchester*, 16 Ves. 269).

A person who lithographed copies of a musical composition for the private use of the members of a musical society, who performed gratuitously, was held to have infringed (*Novello* v. *Sudlow*, 12 C.B. 177); and so was a company which bought a Telegraph Code and by its aid compiled a new and independent work, which, however, contained most of the words in the Telegraph Code, and then distributed such independent work among their own agents (*Ager* v. *P. & O. Navigation Co.*, 26 Ch.D. 637).

Where an engineer made a report on the terms that if a proposed company was formed, and his report published, he should be paid £1,000 for it; but that if the company was not formed the report was to be returned to him, it was held that as the proposed company was not formed the report belonged to the engineer and that he could restrain others from using it (*Kenrick* v. *Danube Collieries*, 39 W.R. 473).

When the owner of a picture assigns the right of producing an engraving of one size, the right of producing copies by engravings of other sizes remains in such owner, and can be assigned by him to any other person (*Lucas* v. *Cooke*, 13 Ch.D. 872).

A person is not entitled to publish a work as a continuation of another man's work, so as to take the credit which has been acquired by such work. Thus, where the defendant, who had published a magazine for the plaintiff, discontinued such publication and then published a magazine of his own as a continuation of the plaintiff's, he was restrained from so doing, and was also restrained from using the letters he received from correspondents whilst he was the plaintiff's publisher (*Hogg* v. *Kirby*, 8 Ves. 215).

Where there are two rival works a Court of Equity will restrain the proprietor of one of them from advertising it in terms calculated to induce the public to believe that it is the other work, but will not restrain him from publishing an advertisement disparaging the other work (*Seeley* v. *Fisher*, 11 Sim. 581).

A receipt for the purchase-money was held to be no proof of an assignment, and the date on the title page not to be conclusive proof of the time of actual publication (*Lover* v. *Davidson*, 1 C.B. (N.S.) 182).

The plaintiff in a copyright action has a right to a full and particular discovery as to the original sources from which the defendant alleges himself to have drawn his work (*Kelly* v. *Wyman*, 17 W.R. 399).

Falsely to deny that he has copied or taken any idea or language from another work is a strong indication of an "*animus furandi*" (*Jarrold* v. *Houlston*, 3 Kay & J. 708).

The evidence of the person who has seen an original painting is admissible to prove that another painting, which he has also seen, is an infringement without producing the original (*Lucas* v. *Williams* (1892), 2 Q.B. 113).

Permission to perform certain music without fee at any entertainments which are absolutely free does not justify a performance of such music at a hotel where the public pay nothing for hearing the music, but the performers are paid

for their services by the proprietor, who hopes by this means to make a profit in carrying on the business of the hotel (*Sarpy* v. *Holland* (1908), 2 Ch. 198).

The following acts do not constitute infringement (s. 2 (1)):—

(i) Any fair dealing for criticism, review, newspaper summary or for private study.

(ii) When the author is not owner of copyright of an artistic work using any mould, model or plan, but he must not repeat main design.

(iii) Making or publishing drawings or photographs of sculpture if permanently placed in a public place; or of paintings, drawings, or photographs (but not architectural drawings or plans) of any architectural work of art.

(iv) Publishing in a school book, which consists mainly of non-copyright matter, short passages from other books except copyright school books, but not more than two from the same author, within five years by the same publisher, and the source must be acknowledged.

(v) Publishing a public lecture in a newspaper, unless it is expressly forbidden.

(vi) Reading or reciting by one person reasonable extracts.

A person cannot restrain the construction of a building, which has been commenced, although it may infringe such person's copyright in some architectural work, neither can he obtain an order for its demolition and such building is not deemed to be his property (s. 9). His remedy seems to be a claim for the damages he has sustained.

All actions must be commenced within three years of the infringement (s. 10) and the costs of all parties are in the absolute discretion of the Court (s. 6 (2)).

There is no power to restrain by injunction an infringement of copyright outside the jurisdiction, although the infringer may be a British subject resident in England (*Monson Bound* v. *Harris* (1895), 1 Ch. 534).

In the absence of a special agreement to the contrary, the assignor of the copyright of a work is entitled, after the assignment, to continue selling copies of the work, printed by him before the assignment, remaining in his possession (*Taylor* v. *Pillow*, L.R. 7 Eq. 418).

Cutting woodcuts out of pamphlets lawfully published, and mounting them on cards, and selling such cards, does not seem to be piracy (*Frost* v. *Olive Publishing Co.*, 24 T.L.R. 649).

An injunction was refused where it appeared doubtful whether the book in question did not tend to impugn the doctrines of the Scriptures, as according to Lord Eldon "the law does not give protection to those who contradict the Scriptures" (*Laurence* v. *Smith*, Jacob 471), and was also refused where the publication was of such a nature that an action could not be sustained (*Walcot* v. *Walker*, 7 Ves. 1), and where a work is libellous or immoral no action for pirating it will lie (*Stockdale* v. *Onwhyn*, 5 B. & C. 173).

A copy is that which gives to every person seeing it the idea created by the original (*West* v. *Francis*, 5 B. & A. 737), and a pattern for Berlin woolwork, the maker of which was aided in its production by an engraving, was held not to be a copy (*Dicks* v. *Brooks*, 15 Ch.D. 22).

Where the defendants Lloyds contracted with the defendant Gavin to print a book for him, and actually printed some of the sheets, including the title page, but no pirated matter, and then relinquished the rest of the contract; and the defendant Gavin then employed other printers to print other sheets which contained pirated matter, it was held that though the book bore on the title page "Printed at Lloyds" that Lloyds,

who were ignorant of the piracy, had not printed or caused to be printed such pirated matter (*Kelly* v. *Cairn & Lloyds* (1902), 1 Ch. 631).

Where the proprietors granted the plaintiff "the sole licence" to produce a play for twelve months, except in London and suburbs, and the plaintiff sued the defendant for having produced the play at Manchester without his sanction, it was held that as the plaintiff did not hold an assignment of the acting rights, but only a "sole licence," he had no right to sue in his own name (*Neilson* v. *Horniman*, 26 T.L.R. 188). This case is probably still good law.

By the Act the owner of the copyright is the person entitled to sue (s. 6 (1)), but a mere licensee is in no sense an owner of the copyright. A license passes no interest but only makes an action lawful which without it would be unlawful, and an exclusive license is a leave to do a thing and a contract not to allow anyone else to do the thing and apparently confers no right on the licensee to sue in his own name (*Heap* v. *Hartley*, 42, Ch.D. 461). Under a license to "print, publish, and sell" certain music, it was held that the licensee was not bound to print and publish it in his own name. Thus, where such a licensee printed 100,000 copies of certain music and sold them to the defendants who paid him for them, and the licensee, at the request of the defendants, put the words "printed and published by the defendants" on the front page, it was held that this was authorised by the license (*Booth* v. *Lloyd*, 26 T.L.R. 549).

Summary Remedies.—The Act makes provision for prosecuting any person who infringes any copyright work.

Any person who knowingly makes, sells or lets for hire, imports or exhibits in public by way of trade any infringing work is liable to a fine 40s. for each copy, but not to exceed £50 for each transaction, and for a second offence to such

fine or imprisonment with or without hard labour for two months (s. 11).

Any person knowingly having or making a plate for producing infringing copies or knowingly for profits, causing a copyright work to be performed without consent, is liable to a fine of £50 or in case of a second conviction to such fine or to imprisonment for two months with or without hard labour.

The Court has power to order all copies which it considers infringe to be destroyed or delivered to owner of copyright, whether alleged offender is convicted or not.

An appeal to Quarter Sessions is given in case of conviction (s. 12).

INTERNATIONAL COPYRIGHT.

By an Order-in-Council the Act may be applied to foreign countries (s. 29),

(*a*) to works first published in a foreign country;

(*b*) to the literary, dramatic, musical and artistic works of authors, citizens of or resident in a specified country, as if the authors were British subjects.

Except as to a country included in the Berne or other Convention, His Majesty must be satisfied that British authors are properly protected in such foreign country.

Unless the Order provides for same, the rights of copyright conferred will not include any rights as to making records, perforated rolls or other mechanical devices by which the work may be performed (s. 19 (7) (*e*)).

The celebrated Convention of Berne, which formed a Union of the contracting countries for the international protection of the rights of authors over their literary and artistic works, has been revised by the new Convention which was signed at Berlin on the 13th November, 1908.

This new Convention was signed by Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, Japan, The Liberian Republic, Luxembourg, Monaco, Norway, Sweden, Switzerland and Tunis.

The Convention has not as yet been ratified by this country, but it will doubtless be so almost immediately, as one of the principal objects for passing the Act was to enable this to be done.

The literary and artistic works include books, pamphlets and other writings, dramatic and choreographic works, pantomimes, musical compositions with or without words, works of design, painting, architecture, sculpture, photography.

Works of art applied to industrial purposes are also protected, so far as the domestic legislation of each contracting country allows.

Translations, adaptations, arrangements of music and other reproductions are also protected as original works, but without prejudice to the rights of the author of the original work.

Authors, who are subjects or citizens of any one of the countries of the Union, are entitled to the same rights as the native authors posses in the other countries of the Union for their works, whether unpublished or first published in one of the countries of the Union, and are entitled to exercise such rights without any formality, and are not even bound to prove the existence of copyright in the country of origin of the work in question (Art. 4) and are not now bound in the case of musical works to forbid their public performance (Art. 11). These are variations of the Berne Convention, made to remove the difficulty encountered by an author when he was obliged to prove that the work in question was entitled to copyright in the country of the Union where it was first published, as it was often a difficult matter to produce the necessary evidence with regard to foreign law, and in the case of musical works by the original Berne Convention, if an author desired to retain the

performing right, it was necessary to declare on the title page or at the head of the work that the public performance was forbidden. It was held in the Court of Appeal (*Sarpy* v. *Holland* (1908), 2 Ch. 198), that it was only necessary that this declaration should be made in the language of the country of origin, but as this requirement apparently led to confusion it has been abolished, and there is now no necessity for making any such declaration.

Infringement.—In the case of proceedings for infringement, a person is *prima facie* considered to be the author if his name is indicated in the usual manner on the work in question, and in the case of anonymous or pseudonymous works the publisher is entitled to take proceedings on behalf of the author, and is deemed to be his legal representative (Art. 15).

The country of origin of unpublished works is the author's country, and of published works the country of first publication, and in the case of simultaneous publication in several countries of the Union, the country the laws of which grant the shortest period of protection.

Where works are published simultaneously in a country outside and also in a country inside the Union, the latter country is the country of origin.

Authors, subjects of one country of the Union, who first publish a work in another country of the Union, have the same rights as native authors of the latter country, and authors who are not subjects of any country of the Union, who publish their works in a country of the Union, are entitled to the same rights as native authors, and to all the rights granted by the convention (Arts. 5 and 6).

Publication in the Convention means the issue of copies by a publisher. The representation of a dramatic piece, the performance of a musical work, the exhibition of a work of art,

and the construction of a work of architecture, do not, however, constitute such publication.

Protection may last for the life of the author and for fifty years after his death, but must not exceed the term fixed by the country of origin, and is regulated by the law of the country where the protection is claimed (Art. 7).

Authors have the sole right of translating, or of authorising the translation, of their works.

Newspapers.—Serial stories, and tales published in a newspaper, are entitled to copyright, but any newspaper article, unless the reproduction is expressly forbidden, may be reproduced in another newspaper if the source be indicated. Items of news having no literary character are not protected by the Convention (Art. 9).

Authors have the sole right of authorising adaptation of their works to pianolas, gramophones, etc., and of authorising the public performance of the same, but this provision is not to affect works which have been lawfully adapted to mechanical instruments before the coming into force of the Convention. The manufacture and sale of instruments for the mechanical reproduction of copyright music does not seem to be considered as constituting an infringement of copyright, and pianola rolls and gramophone discs themselves are not protected.

Cinematographs.—Authors are entitled to the exclusive right of authorising the reproduction and public representation of their works by cinematography (Art. 14).

Cinematography itself is also protected, if the work is of a personal and original character, but this is, of course, without prejudice to the rights of the original author.

The remedy of an author suing in England, in respect of an infringement of a foreign copyright, depends entirely on the

English law, and he seems not to be limited to the remedies which he would have in the country of origin. Thus, where a Frenchman sued in respect of an infringement here, he was held to be entitled to an injunction, though such remedy is unknown in France, the country of origin of the work in question (*Bachet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73).

The text of the Revised Convention (English translation) is given in Appendix B. When such Convention is ratified by this Country, an English author will be able to take proceedings for any infringement of his copyright in a foreign country (comprised in the Convention), say France, without registration, or deposit, or any other formality.

Until the ratification of the Revised Convention of Berne, 1908, the Berne Convention, 1886, as amended by the additional Act of Paris, 1896, governs the relations between this country and the other members of the Berne Copyright Union in regard to International Copyright.

There is, however, a treaty between Austria-Hungary and Great Britain of the 24th April, 1893, still in force which gives reciprocal rights to the subject and residents of each of these countries.

Where a work is first published in any other country, not Great Britain or Austria-Hungary, but by a subject or resident of one of these countries, in order that it may be entitled to protection under the Treaty it must be entitled to protection in the country in which it is published and the duration of copyright will not exceed the period of protection given in such country.

If a work is not published in English within ten years after the expiry of a year from its first publication or where it is published in numbers from the publication of each number the right of translation is lost.

Authorised translations are protected, but when the translating rights are lost through not being within the period of ten years, then the authorised translator cannot prevent others from translating the work in question.

British authors must prove their right to copyright here but they need not comply with the requirements and formalities in Austria, but in Hungary they must, in addition, comply with all the requirements there.

In the absence of proof to the contrary if the authors name or when there is no authors name if the publishers name is indicated in the usual manner that is sufficient proof.

In cases of doubt, however, the Courts are entitled to call for further proof.

THE COPYRIGHT ACT, 1911.

THE COPYRIGHT ACT, 1911.

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An Act

To amend and consolidate the Law relating to Copyright.

[1 & 2 *Geo. V. c.* 46.] [16*th 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 herein-after 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 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 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 10 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.

This section seems to be confined to works that can be sold and to give no power to anyone to perform a musical or dramatic piece in public.

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.

It is clear from this provision that unless some special agreement is made that a contributor to a newspaper or magazine can prevent his contributions being used except for a paper or magazine, and the employer would certainly be wise to have an agreement in writing giving him the absolute copyright in the contributions in question if he desires to reproduce them in a different form.

In the absence of any "agreement" to the contrary. This "agreement" need not be in writing and not even in expressed terms, as the terms may be gathered from the transactions themselves.

Where there is an express agreement between the parties, the Court simply construes its terms, but if there is no express agreement the question is what is the inference to be drawn from the circumstances of the particular case. Regard must be had to the employment and payment and the kind of work which the one party does for the other and the inference of fact can freely be drawn, that the work is done upon the terms that the copyright shall belong to the employer when the work would practically be of no use to anyone except him (*Lamb* v. *Evans* (1893), 1 Ch. 218). When an author is employed to write *prima facie* you will infer from the fact of employment and payment that one of the terms is that the copyright should belong to the employers (*Sweet* v. *Benning*, 16 C.B. 459; *Laurence* v. *Idala* (1904), A.C. 17).

(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, 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.

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. Exemption of innocent infringer from liability to pay damages, &c.

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. Restriction on remedies in the case of architecture.

(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.

10.—An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement. Limitation of actions.

Summary Remedies.

11.—(1) If any person knowingly— Penalties for dealing with infringing copies, &c.

(*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.

2 Edw. 7. c. 15. 6 Edw. 7. c. 36.

(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.

The following is the

Musical (Summary Proceedings) Copyright Act, 1902.

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.

On seizure of any such copies, they shall be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit.

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.

The following is the

Musical Copyright Act, 1906.

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 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: 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.

(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.

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.

3.—In this Act—

Definitions.

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:

The expression "musical work" means a musical work in which there is a subsisting copyright.

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:

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;

(*c*) in Scotland has the same meaning as in the Police (Scotland) Act, 1890;

(*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:

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.

4.—This Act may be cited as the Musical Copyright Act, 1906. Short title.

These two Musical Copyright Acts, which are still in force, were passed for the purpose of preventing pirated music being hawked about the streets. It will be seen that the police have considerable powers under these Acts.

Continuation of Copyright Act, 1911.

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.

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 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.

39 & 40 Vict. c. 36.

(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.

The Customs Consolidation Act, 1876, prohibits the importation of certain goods and articles. The effect of Section 14 is that copies of any work of which copyright subsists which would infringe copyright if imported are included in such table of prohibitions and restrictions. This section lays down the terms on which such importation can be prohibited, and the Commissioners of Customs and Excise will doubtless make certain regulations respecting the detention and forfeiture, etc., of any copies imported that may be seized.

Delivery of Books to 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. **Delivery of copies to British Museum and other libraries.**

(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 accordance 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 be substituted for the reference to the date of the death of the author.

The effect of this somewhat involved subsection seems to be that if A and B are joint authors of a work and A dies first—

(*a*) if B lives for more than fifty years afterwards on B's death the copyright ceases;

(*b*) if B dies forty years after A the copyright subsists for ten years after B's death;

(*c*) if B survives A by more than twenty-five years, on the expiration of twenty-five years anyone can reproduce the work on giving the prescribed notice and paying the royalties. (In the case of a work published before the Act the period is thirty years);

(*d*) if B dies less than twenty-five years after A then on B's death anyone can reproduce the work at once by giving notice and paying the royalties.

(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 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 *prima 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.

This will cover all blue books, consular reports, etc.

It seems that anyone may print Acts of Parliament if they are accompanied with notes, but they must be *bona fide* notes (*See Baskett* v. *Cunningham*, 1 W.Bl. 370).

As to the English translation of the Bible, Lord Mansfield said: "The copy of the Hebrew Bible, the Greek Testament or the Septuagint does not belong to the King. It is common. But the English translation he bought therefore it has been concluded to be his property. If any man should turn the Psalms or the writings of Solomon or Job into verse, the King could not stop the printing or sale of such work; it is the author's work. The King has no power of control over the subject matter; his power rests in property. His whole right rests upon the foundation of property in the Copy by the Common Law. What other ground can there be for the Kings having

a property in the Latin Grammar (which is one of his ancientest copies) than that it was originally composed at his expense."

The Crown has given the Universities of Oxford and Cambridge certain rights of printing the Bible, New Testament, and the Book of the Common Prayer, etc., within the limits of such Universities, and they claim a concurrent right with the King's Printer or his assigns (*see* note to s. 33).

Recently Messrs. Eyre & Spottiswoode, who, by Royal Letters Patent, have a right of printing and publishing the New Testament, procured a name to be expunged from the Registry Book of the Stationer's Co. which name was registered as the proprietor of the Copyright in the book entitled "The Red Letter New Testament, the Testament of our Lord and Saviour Jesus Christ (authorised version), with all the words recorded therein as having been spoken by our Lord, printed in colour" (*In re The Red Letter New Testament*, 17 T.L.R. 1).

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 herein-after 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 a contrivance 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 half-penny 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 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:

(c) 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.

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 registerable 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.

This is intended to preserve the rights of people who incurred expenditure before 26 July, 1910, but it should be noted that notwithstanding this saving clause any person who constructs a mechanical contrivance for reproducing sound, such as a gramophone or pianola, can only do so on the terms stated in s. 19, ss. 7 *b*.

(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) 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 subsection, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this subsection, 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;

(*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 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 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.

19 & 50 Vict. c. 33.

International Copyright Act, 1886.

5. (1) Where a work, being a book or dramatic piece, is first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, the author or publisher, as the case may be, shall, unless otherwise directed by the Order, have the same right of preventing the production in and importation into the United Kingdom of any translation not authorised by him of the said work as he has of preventing the production and importation of the original.

(2) Provided that if after the expiration of ten years, or any other term prescribed by the Order, next after the end of the year in which the work, or in the case of a book published in numbers each number of the book, was first produced, an authorised translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the United Kingdom of an unauthorised translation of such work shall cease.

(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 possession 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.

The Copyright Act, 1775 (15 Geo. 3 c. 53), gives the Universities of Oxford and Cambridge, the four Scotch Universities, and the Colleges of Eton, Westminster and Winchester the sole right of printing and publishing such books as have been or shall be bequeathed or given to them.

This right is given in perpetuity or for a limited period if the gift or bequest is only for a limited period and is subject to the conditions stated in the Act.

The Act provides that all books subsequently given or bequeathed must be entered in the Register of the Company of Stationers within two months after such bequest or gift is known, and the clerk to such company must give a certificate of such entry and may take a fee of

sixpence for it. It should be noted that this Act is now repealed, and it seems that no further copyrights can be acquired under it, as it is expressly limited to those copyrights which the Universities and Colleges "already possess."

The Universities of Oxford and Cambridge claim a right concurrently with the King's Printer or his assigns to print the Bible, the New Testament and the Book of Common Prayer within the limits of such Universities, and in the year 1802 they obtained an injunction restraining one, Richardson, from selling certain Bibles in England, although such Bibles were printed by the King's Printer in Scotland on the ground that such Universities had a concurrent right with the King's Printer in England or his assigns to print and sell Bibles in England and they claimed that no one else had any such right (*Oxford and Cambridge* v. *Richardson*, 6 Ves. 689).

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 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;

"Works 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 been 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.

The sale of a picture is not a publication of it, and the publication of a wood engraving in a magazine with an article describing the picture is not a publication of the picture itself.

The exhibition of a picture at a public exhibition or gallery where copying is not permitted is not a publication of the picture, nor is the exhibition of the picture for the purpose of obtaining subscribers to an engraving of it (*Turner* v. *Robinson*, 10 Ir. Ch. R. 510).

As to publication of lectures, *see* heading "Lectures."

(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.

The domicil of a person is that place or country in which his habitation is fixed without any present intention of removing therefrom (*Re Craigwish* (1892), 3 Ch. 180). A person can change his or her domicil, but this is a proceeding of a serious nature and an intention to make such a change must be proved by satisfactory evidence, and a person having a domicil of origin in one country does not loose it and acquire a domicil in another country by making his home in that country for many years unless the circumstances clearly show his intention to abandon his original domicil (*Huntly* v. *Gaskell* (1906) A.C. 56).

Repeal.

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:

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.

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.

FIRST SCHEDULE.

Existing Rights.

Existing Rights.	Substituted Right.
(a) In the case of Works other than Dramatic and Musical Works.	
Copyright	Copyright as defined by this Act.*
(b) In the case of Musical and Dramatic Works.	
Both copyright and performing right	Copyright as defined by this Act.*
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.

* 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 section eighteen of the Copyright Act, 1842.

SECOND SCHEDULE.

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 Viet. c. 45.	The Copyright Act, 1842 ...	The whole Act.
7 & 8 Viet. c. 12.	The International Copyright Act, 1844.	The whole Act.
10 & 11 Viet. c. 95.	The Colonial Copyright Act, 1847	The whole Act.
15 & 16 Viet. c. 12.	The International Copyright Act, 1852.	The whole Act.
25 & 26 Viet. 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 copyright engravings," and "in any "such Act as aforesaid." Sections nine to twelve.
38 & 39 Viet. c. 12.	The International Copyright Act, 1875.	The whole Act.
39 & 40 Viet. 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 Viet. c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 & 50 Viet. c. 33.	The International Copyright Act, 1886.	The whole Act.

Session and Chapter.	Short Title.	Extent of Repeal.
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."
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."

APPENDIX A.

TREATISE ON FRENCH COPYRIGHT.

The revised Convention of Berne has been approved by the French Government and duly promulgated, but as the provisions of French law, which are inconsistent with the clauses of that convention, have not yet been repealed, such provisions are still binding as between French subjects and the convention is, it seems, applicable only to subjects of other nations who are a party to it, foreigners being thus in some cases under more favourable conditions than French subjects.

Although England has not yet ratified the revised convention, it is understood that it will do so as soon as the Copyright Bill becomes law, and as the following pages are written for the use of English readers, it has been thought that the method which is more likely to meet their future requirements, is to merely state how the French law stands at present between French subjects and to point out how it is effected in the more important cases by the provisions of the convention. Minor changes will be found by reference to Appendix B where a complete translation of the Convention is given.

Copyright which is described in French law under the name of "Propriété littéraire et artistique" includes (1) Literary copyright (2) Dramatic and musical copyright (3) Fine art copyright.

The fundamental law on the subject is the law of the 19th-24th July, 1793, by which it is enacted that:

ART. 1. The authors of writings of any description, musical composers, the authors of pictures, or of sketches who shall cause to be executed engravings of their pictures or of their sketches, shall have, during their whole life, the sole right to sell their works or to cause the same to be sold or distributed throughout the territory of the Republic or to grant the whole or part of their ownership.

ART. 2. Their heirs or assigns shall have the same right during ten years from the death of the author (altered by law of 1866, *see post*).

ART. 3. Police officers shall at the request and to the benefit of the authors, composers, painters, designers and others their representatives or assigns, cause to be confiscated all copies of publications printed or engraved without the formal and written permission of the authors.

ART. 6. Any citizen who shall bring into existence either a literary work or an engraving of any description shall deposit two copies of the same at the Bibliotheque Nationale or at the Cabinets des Estampes of the Republic, a receipt of which shall be given him by the Librarian, failing which he shall not be allowed to institute proceedings for infringement.

ART. 7. The legal representative of the author of a literary work or of an engraving or of any other production of the mind or of the genius in connection with fine art shall have, during ten years, the exclusive ownership of the same (altered by Law of 1866).

LAW OF THE 14TH JULY, 1866.

The term during which heirs, irregular successors,* donees, legatees of an author, musical composer or artist are entitled to the right granted by previous laws is extended to fifty years from the death of the author.

The other provisions of the law refer to the respective rights of husband and wife, which are not material for the present purpose.

Articles 425 to 429 of the Penal Code are also important, not only on account of the penalties enacted against offenders, but also because those articles are often referred to in order to complete or explain the provisions of the civil law which, in some cases, are not quite explicit. These articles are as follows :—

ART. 425. Any publication of writings, musical compositions, sketches, pictures, or of any other production being partly or in the whole either in print or engraving, made in breach of the laws and regulations concerning the right of ownership of authors, is an infringement of copyright and any such infringement, is a misdemeanour.

ART. 426. The sale of infringing copies, the importation into France of works which after having been printed in France were pirated abroad is a misdemeanour of the same kind.

ART. 427. The penalty against any person guilty of such infringement and against the importer is a fine of from 100 to 2,000 francs, and against the sellers of from 25 to 500 francs. The seizure of infringing copies shall be ordered as against the importer and the seller. The plates, casts and matrices of the counterfeited goods shall also be seized.

ART. 428. Any director, entertainment manager, company of players who shall cause to be performed in his or their theatre, dramatic works in breach of the laws and regulations concerning the right of ownership of the authors shall be liable to a fine of from 50 to 500 francs and to the seizure of the proceeds.

ART. 429. In the cases set out in the four above articles such proceeds shall be handed over to the owner in order to indemnify him as far as possible against the loss he has sustained. The balance of the damages due to him, or the whole of the said damages, if there has been no sale of the confiscated goods or seizure of the proceeds, shall be assessed in the usual way.

Literary Copyright.

Article 1 of the law of 1793 is, as may be noticed, very wide and applies to writings of any description, they are protected whatever may be their importance and their object, the application is not confined to merely literary work. It was thus held that a letter, or a

* Irregular successors include brothers and sisters of a bastard child, the surviving husband and wife, and the State.

notice, however short it may be, and even if intended only for commercial purposes came within the act. There may be a copyright also in price lists and catalogues when there is some sort of intellectual exertion in the making of them. This would apply although the subject matter is matter of common knowledge, but is brought forward in an original or new manner, and the Court of Nancy decided in *Ide Aimon* v. *Levy* that such right applies not only to productions which are exclusively original, but also to those which are borrowed from the common stock but which have been carefully selected, arranged in a peculiar order and cleverly adapted to a particular purpose whatever it may be. Nancy, 18th April, 1893.

In the case of a catalogue of stamps made for collectors by a well-known Parisian dealer, the court dismissed the latter's application for damages, because the catalogue was a mere list in alphabetical order, the text of which was divided in two columns with names of the countries in thick print and vignettes of the stamps surrounded by the text which was only the statement of the color and price of the stamps. Although such catalogue might be very useful to collectors, there was no particular taste or originality in its arrangement, and any one who had the same stamps to sell was entitled to advertise them in the same form (*In re Money*, 20th December, 1896, Gazette des Tribunaux, 6th February, 1896).

There is, therefore, no copyright in a work unless it has required some sort of intellectual labour. The reports of news in the newspapers when they are limited to a mere statement of fact, and do not include comment or such details which would require actual literary work in order to be properly brought before the public, do not come within the act. It may be as well to point out here with regard to agency news and telegrams that, although there is no copyright in respect of them, they are the private property of those who have secured them, often at heavy expense, until they become common knowledge by publication. The owner of a newspaper was at the same time printer of another paper which had subscribed to a news agency, and took advantage of this to publish in his own paper news from the agency to which he was not a subscriber. The Court held that he was liable to damages (Alcan Levy, Cass., 25th Mai, 1900, S. 1901, 1, 89).

There is a copyright in articles which require intellectual work; however, newspapers are in the habit of freely borrowing extracts from one another and the rule is on that account to be broadly construed.

There is no copyright in official documents, laws, decrees, law reports, circulars from ministers and government officials, etc.

With regard to law reports the consequence of the rule that in the interest of the public there should be no restraint on their publication is that counsel's speeches and arguments in which otherwise there is a copyright can also be published so far as they are necessary as a comment or explanation of the judgment. Semble, therefore, that a *bona fide* publication of the same by way of newspaper or law report would not be an infringement of copyright, but they could not be published separately without the author's permission. The same rule, it seems, would apply to political speeches (Gastambide, No. 26-27).

An author can himself become guilty of infringement of his own rights if he sells an edition of his work to another, and subsequently publishes a second edition before the previous one is exhausted (Rosen, Cessation, 19 December, 1893, S. 94, 1, 313).

It was held that there is a copyright in sermons and lectures (Masle, Lyon, 17th July, 1815, S. 45, 2, 469; Tribunal de la Seine, 9th December, 1893; Pouillet Prop. Litt. No. 58). The same rule applies to a literary work read in public by the author.

Plagiarism is akin to piracy, and it may be difficult to mark the limit where the former ends and the latter begins; it is a matter to be decided in each case by the court according to circumstances. It was held, however, that in order to amount to infringement of copyright the purloining complained of should be so substantial as to cause a material damage to the right of ownership of the author (Cassation, 21th May, 1845, *In re Muller* v. *Lavoffre*, S. 45, 1, 765).

An account of a book published in a magazine, being as a matter of fact a summary of the book relating all the important events and quoting the striking passages, was held to amount to an infringement of the copyright (Plon Nourrit et cie, Tribunal de la Seine, 3rd June, 1892, S. 92, 2, 262).

Anthologies or collections of short pieces or of beautiful passages from authors are an infringement of copyright (Tribunal de la Seine, 15th December, 1882, *In re Gedalge*, Gazette du Palais, 83, 1, 72. Pouillet Propriété Littéraire, No. 511).

The translation of a French literary work into a foreign language without the author's consent is an infringement of copyright (*In re Rosa*, Rouen, 7th Nov., 1845, S. 46, 2, 521). But when it is made with such consent there is also a copyright in the translation.

In the case of *Le Faure Delcourt and Fugard* v. *Heritiers Dumas et Guillardet* (Paris, 25th January, 1900, S. 1900, 2, 227) the Court of Appeal of Paris held that writing a novel from a drama would, although the subject was some historical event, amount to an infringement of copyright when the characters, the feelings expressed by them, the passions by which they are actuated, and the various incidents of the plot are the same in the novel as in the play, notwithstanding the fact that a number of subsidiary events have been added in the novel.

The effect of these decisions is that the authors right of ownership is not limited to the form in which he expresses his thoughts or the story which he has invented, but extends to the whole of the fiction with the characters, feelings, episodes, etc., which he has created.

It follows that the mere conversion of a novel into a play, and *vice versa*, would *a fortiori* be an infringement of copyright.

Deposit.—In pursuance of article 6 of the law of 1793, two copies of any work of literature or engraving are to be deposited at the Bibliotheque Nationale. This deposit must be made before an action can be maintained for the infringement of copyright, but the failure to comply with the law does not affect the existence of the copyright (*Re Boussion*, Besancon, 22nd November, 1893: Annales de la propriete Litteraire et industrielle, 894, 117: and *Re Ayse*, Paris, 28th March, 1883; Ann. Prop. Litt. and Ind., 1884, 84).

Loi de 1881. However, in 1881 a law was passed (loi du 20th Juillet, 1881, sur la Liberte de la presse), which as a matter of public policy and quite independent of any question of copyright, enacted that a copy of any print intended for publication was to be deposited either at the

Ministère de l'Intérieur (Home Office) in Paris or in the country at the Préfecture or Sous Préfecture in the towns where there is one, and at the Mairie in the other towns; and such deposit was held to be a valid substitute for the deposit required by the law of 1793 (Cass., 1st March, 1831, S. 1831, 1, 65; 26th Aug., 52, S. 1853, 1, 234; 17th November, 1904, S. 1908, 1, 378).

The consequence however of articles 5 and 15 of the Revised Convention of Berne, read together is that foreign authors are under no requirement whatever except that their name should appear in the usual way on the work. Provisions are thus less stringent to them than they are to French subjects.

Dramatic and Musical Copyright.

Dramatic and Musical Copyright may be looked at from a two-fold point of view, either in respect of the "Droit d'Edition" or right of publication, *i.e.*, the right of multiplying copies of a work and publishing them, or in respect of the "Droit de Representation" or the exclusive right of performance of a work.

A right of publication—Both dramatic and musical works, come within the provisions of the law of the 19th-24th July, 1791, which refers to "authors of writings of any description and musical composers," and the rules applicable to the literary copyright, should obtain *mutatis mutandis*. Variations, orchestration or arrangements, made without the consent of the author, are thus an infringement of copyright. This is so, whatever may be the process by which the copy is made: it is not necessary that it should be made by the same process as the original. This rule would apply for instance to manuscript copies when made for commercial purposes. It was also a well settled point of law that the reproduction of a musical work on a barrel organ or musical box was an infringement. (Cassation, 13th Fevrier, 1863, s. 63, 1, 161), but a statutory exception was created by the law of the 16th May, 1866, which provides that the manufacture and sale of instruments intended to mechanically perform musical tunes which are private property, is not an infringement of copyright.

This law was passed to give satisfaction to the Swiss Government at a time when a commercial understanding was anticipated to be established between the two countries.

Fifteen years ago when improvements were made in the manufacture of organs and perforated rolls came into use instead of pegged barrels a question arose in respect of the construction of this law. The authors claimed that these rolls were as a matter of fact copies of the work which could be sold separately and that the manufacture of them amounted to publication or edition and were as such an infringement of copyright. The defendants alleged that the rolls were only a constitutive part of the mechanism, as the organ or piano could not be used without them. The Court decided this to be so and that therefore they came within the provisions of the law of 1866 (Court of Appeal of Paris, 9th January, 1895, 2, 309).

The same rule was held to apply to gramophone records. (*See post*, under heading "Gramophone.") (Paris, 1st February, 1905, S. 1907,

2, 113.) However, the law of 1866, being a departure from general principles the construction of it should be limitative.

This rule would still obtain between French people, but as between French subjects and subjects of States who have ratified the Revised Convention it is superseded by the provisions of this convention (*cf.* Article 13 of the Convention).

It has been submitted that the meaning (Article 13, paragraph 3) is that only such contrivances as had been manufactured before the 1st October, 1908, were not an infringement. The construction of this provision must be more extensive as it is intended to apply to all contrivances present and future by which a tune is delivered which previously to the passing of the convention could be so delivered without infringement of copyright. The right thus granted by the convention should not, however, be extended from a tune to the whole work (*cf.* Documents parlementaires (1910), Annexe No. 3226).

Right of Performance, or Droit de Representation. There is no difficulty so far as the dramatic works are concerned. A law was passed on the 19th January, 1791, as the result of the agitation created by the playwriters in defence of their own rights, which protects them against the representation of their works on the stage without their consent. As this law does not specifically refer to musical works the position of musical composers is not so clear on that point. Article 428 of the Code Penal provides that "any theatrical or entertainment manager, or any association of artists who shall cause to be performed on his or their theatre dramatic works in breach of the laws and rules in respect of the author's ownership shall be liable to a fine of not less than 50 francs nor more than 500 and the forfeiture of the price of the seats"; and it is generally admitted that the effect of this law is to protect musical works. "Dramatic works" include any work which can be performed or represented in any manner either on the stage or in any public place (Ge-rambide No. 261, Darras 378). Light music, songs, comic songs, arietas and dances would therefore come within such works as well as high class music, and authors can object to words in comic operas or musical farces, etc., being adapted to tunes composed by them.

When operatic or other music is adapted for dances, the author of the adaptation, if made with the permission of the original author, has a copyright in the arrangement.

Ballets, pantomimes and other similar works are protected as being dramatic as well as musical works.

It is not allowed even as an exceptional case to perform a musical or dramatic work without the author's permission, however, there are frequently performances by managers who have an agreement with the Société des Auteurs, of works written by members of the Société, but this does not estop the members from specifically forbidding the performance of one of their works. Only public performances involve an infringement of copyright. Although the question as to whether a performance is public or private is often a matter of circumstances in respect of which it is difficult to lay any hard and fast rule, the test of a public performance is usually when the public is admitted without a direct and personal invitation. Although a narrow application of the law of 1791 and of

article 428 might restrict it to performances in a theatre, it has been held that the law applies to any public performance.

The fact that a performance is gratuitous is no defence to a claim for an infringement, and arrangements were made to authorise popular musical societies to perform in public, on payment of a nominal yearly subscription, works in which there is a copyright, provided that they should not derive any profit either direct or indirect from such performance.

It should be noticed that the enactment of the law of the 16th of May, 1866, in pursuance of which the manufacture and sale of instruments mechanically performing musical tunes which are private property is not an infringement of copyright, is strictly limited to the right of publication by means of the manufacture and sale, and does not extend to the right of performance. The purchaser of such instruments is therefore not allowed to use them for a public performance, and the owner of a merry-go-round, who had as a part of his show a barrel organ playing tunes during the rides, was held to be guilty of infringement of copyright for having had musical tunes thus performed without the author's consent (*In re Hugues*, S. 82, 1, 92).

Deposit.—The deposit is not required to enable the authors to prosecute infringement by way of performance, it is required only in cases of infringement by way of publication. In the latter case, if a deposit has been made in pursuance of the law of 1881, such deposit is a valid substitute for the deposit required by the law of 1793. The deposit required by the law of 1881 is of three copies in case of music.

The effect of the Revised Convention is that no deposit is required from foreign authors before they can prosecute infringers.

Biographs and Gramophones.—Although questions arising in connection with biographs and gramophones are to be settled according to the general principles of law, as this is a comparatively new matter and points may be raised both as to literary and dramatic and musical copyright, it has been thought more convenient to deal with them under a separate heading.

With regard to biographs, a film made of a number of photographs representing the events related in a dramatic or literary work amounts to publication of such work and is an infringement under the provisions of the law of 19th-24th July, 1793.

The exhibition of such films in a public place may also amount to a performance of the work within the meaning of the law of 13th-19th January, 1791. The facts on which this was decided by the Paris Court of Appeal were as follows: A performance of *Faust* was made by means of a film which gave the same succession and number of tableaux, with the same characters as those in Gounod's opera. The defendant's contention was that he had borrowed the subject of the performance from Goethe's work as Messrs. Gounod, Barbier and Carré themselves had done it previously. It was held that although the plot of the opera was borrowed from Goethe it was an original composition on account of the way in which it had been adapted for scenic effects and arranged for stage performance and also on account of the new characters and tableaux which had been added to it, whilst there was nothing new in the biographical performance, which

was merely a succession of scenes closely following the arrangement made for the opera (*Heritiers Barbier, Cierre et Gounod*, Cour de Paris, 1re Chambre, 10th November, 1906, S. 1910, 2, 259).

It is often a fine question to decide whether a film follows closely enough the details of a work so as to amount to an infringement; it is, of course, a finding of fact. The only point with which we are concerned is the rule of law according to which, when the succession of the events of a dramatic work, ballet or pantomime are printed on the film and may thus be easily followed and understood by anyone, they fall under the provisions of the law of 1793 as being a copy of the work, and when the film is employed for a performance on the screen such performance is to be treated as a stage performance.

One can easily realise that the rule will apply much more frequently to operatic pieces or ballets than to comedies or drama, as the features of the latter works are the humour, the study of characters and of purely intellectual feelings and the intricacy of the plot and cannot be expressed in dumb show as the less complicated emotions represented in an opera or ballet (*cf. Moineaux dit Courteline* v. *Société des Cinema Pathe*, 12th May, 1909, Court of Appeal of Paris, S. 1910, 2, 258).

Phonographs.—A judgment of the Cour de Cassation confirmed in 1908 a decision of the Court of Paris which deals very exhaustively with the chief question which could be raised in respect of phonographs (Cassation, 21 Juillet, 1908, S. 1909, 1, 121).

An action was brought against the Compagnie générale des gramophones by Messrs. Enoch & Co. for infringement of their copyright on the ground that the manufacture of records of works in which they had a sole copyright, amounted to publishing without licence copies of the said works.

The alleged infringements were in respect (1) of words without music (2) of songs including both music and words (3) of musical pieces.

The Court held, in respect of (1), that the law of 1793 applied whatever was the mode of publication, that the law of 1866 (*see above*) refers only to music and should not be extended to anything else and that there was therefore an infringement of copyright; in respect of (2) that the same rule applied and that the author of the words had the right to forbid the performance of the tune with his words. As to (3) it was decided in the lower court that in pursuance of the law of 1866 there was no infringement of copyright as to the pieces which were only music (Paris, 1st February, 1905, S. 1907, 2, 113) (*see above*). Rule under (3) would still obtain between French people, but would not apply between a Frenchman and a subject of one of the States who have ratified the Revised Convention. Gramophone records would now under article 13 of the said convention be an infringement.

Theatrephones.—It was held by the Tribunal of first instance of Paris that the use of a theatrephone amounted to a breach of the author's privilege. However, this question does not seem to have had the test of a decision in the Court of Appeal or in the Cour de Cassation. Semble, that the position in this case is somewhat different from what it is

in the case of a gramophone which enables one to make an entirely independent performance whilst the theatrephone only enables one to listen from outside and with the consent of those who give it, to a performance which is perfectly legal and made with the author's permission. But if the author is paid on a proportion of the proceeds, the sum paid by the theatrephone company to put up their apparatus in the theatre should be taken into account to make up the amount of the proceeds.

Fine Art Copyright.

Article 1 of the law of 1793 is not quite clear, but its true meaning is that painters and engravers have the exclusive ownership not only of their works but also of the engravings which they cause to be made of the same.

There was some doubt as to whether the architects and sculptors were entitled to the same protection and there were conflicting decisions on that point, but since the 11th March, 1902, the controversy is legally settled by the incorporation in the law of 1793 of the words architects, sculptors and ornament designers.

There is a copyright in maps (Paris, 5th May, 1877, P. 77, 2, 111 : Tribunal correctionel de la Seine 22 Avril, 1880 ; Annales de la Propriete Industrielle, 84, 533)

Theatrical scenery is also considered to be a work protected by the fine art copyright, and newspapers are not entitled to reproduce them without the author's consent (Paris, 30th December, 1898 ; Societe du Theatre de la Porte Saint Martin D. 1900, 2, 28).

A very important controversy arose in respect of photographs as to whether they were a production of the human mind and were to be considered as drawings. There are conflicting decisions on the matter, and it is quite possible that things will remain in the same condition as they were on the last occasion when the question was brought before the Court of Cassation. The Court held that the lower Court in deciding that the photographs in respect of which the action was brought was a sketch, had dealt with a question of fact which the Cour de Cassation had no jurisdiction to examine.*

However unsatisfactory such decision may be, it now rests with the Tribunals or the Courts of Appeal to decide in a given case whether the photograph in respect of which an action is brought, is a work of art or not. The tendency of the Courts is to reckon as works of art all photographs in which the choice of the subject, the effects of light and shade, etc. differentiate the photograph from a common-place snap-shot and show the intelligence and taste of the operator.

Deposit.—(*a.*) *Engravings.* The law of 1793 provides that the author of an engraving shall deposit a copy of his work in order to be able to prosecute infringements.

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* The "Cour de Cassation" was established as a supreme court intended to maintain the uniformity of the law in France; its appellate jurisdiction is therefore strictly limited to points of law, and it is not competent to deal with issues of fact.

The failure to comply with this provision does not affect the right of ownership, but when there is an infringement, the deposit must be made before prosecution is allowed. Since the law of 1881 (*see* above, under literary copyright), the deposit made in pursuance of such law is a valid substitute for the deposit required by the law of 1793. Such deposit to be of three copies in the case of music, engravings and any published work other than printed matter.

The revised Convention, by Article 2, includes among the works protected: musical works, with or without words, drawings, pictures, works of architecture, sculpture, engravings, lithographies. The effect of this Article, if read with Articles 4 and 15, is that there are no legal *requirements to be complied with before infringements can be prosecuted* by authors who are subjects of one of the states who are parties to the convention, their position being thus more favourable than the position of French subjects in France.

(*b*) *Pictures and Sculptures.* Pictures are not included in the provisions of the law of 1793, as the deposit is required only when an engraving of the picture is made. Sculptures and other fine art works made of solid substance such as wood, ivory, marble, bronze, etc., do not come either within the provisions of the law of 1793 as to the deposit. The authors of such works are therefore entitled to prosecute infringements without having previously effected a deposit (*In re Mathis and Sauvelet* v. *Carpeaux*, Court of Appeal of Paris, 26th Feb., 1868, Sons. Cassation, S. 68, 1, 372).

Revised Convention.—Arts. 2–4–15. Subject to the rules as to Industrial Art, foreigners protected by the Revised Convention are, in pursuance of articles 2–4–15 of the said Convention, not required to make any deposit of pictures or sculptures in order to be able to prosecute infringements.

Industrial Arts.—Many difficulties have arisen in the past with regard to ornament sculpture, i.e., such sculpture as is used for the ornamentation of manufactured objects, such as clocks, fire dogs, candelabras, etc. These were held to be not fine art works, but industrial designs, and to fall within the provisions of another law, viz., the law on industrial designs of the 18th March, 1806, according to which it was necessary in order to secure the ownership of a design to file a specimen of the same at the registry office of the council of the Prudhommes secretary, and it was held that the law was not applicable unless the design had been registered before being made use of in public, or for commercial purposes (Cas., 1st July, 1850, s. 51, 1, 787; 14th May, 1891, s. 91, 1, 493).

Some artists, and especially sculptors, were therefore in a very unsatisfactory position, as it was often a fine question whether some works were fine art or industrial art, or what they were originally intended for, and it thus happened that when a sculptor, on the assumption that one of his works was mere artistic work dealt with it without previously depositing the required specimen, if on his bringing an action for infringement of copyright, the work was held to be one of industrial art, he was deprived of his right of ownership.

It was only in 1902 that redress was given to the artists by the law of the 11th March, which provides that henceforth the law of 1793 shall read as follows :

"1. The authors of writings of any description, musical composers, architects, sculptors, the authors of pictures or of sketches, who shall cause, etc.

"2. The same right shall belong to sculptors and ornament designers, whatever may be the merit of the work and the purpose for which it is intended."

The effect of this enactment is that sculptors and ornament designers (dessinateurs d'ornement) are no more governed by the provisions of the law of 1806, but are brought under the general rule, viz., the law of 1793, and no deposit is required as a condition precedent to the right of ownership.

Two years ago the reform was carried on further, the law of 1806 was repealed altogether by the law of the 14th July, 1909. The distinction between industrial art which was the consequence of the law of 1806 is thus done away with, the new law applies to designs and models of all kinds, and artists as well as manufacturers, may enjoy the rights granted by that law, these rights with regard to the former being supplemental to those granted by the laws of 1793 and 1902. It is not possible to deal exhaustively here with the law of 1909, the chief features of which are as follows :—(1.) The right of ownership is irrespective of any deposit. (2.) The deposit is optional and is *prima facie*, but rebuttable evidence of depositor's ownership. (3.) The right of ownership is not lost by making the design known to the public before deposit. (4.) No action lies in pursuance of that law before deposit which can be made at any time. The deposit can be made on very cheap terms and can be kept secret for 25 years except when an action is brought in pursuance of it.

Ownership of Copyright.—The author of a work is as a rule the first owner of the copyright therein. There are some cases, however, where the rule may be different : it was held for instance that the painter who for the purpose of painting a portrait causes a photograph to be made under his directions is the author of the copyright, because he is really the author of the work and the photographer was a mere instrument in his hands (*In re Wheel*, L. *Trade*, S. 70.2.77).

In another instance it was held that the person who had had the idea of making a biographic dictionary and who had superintended the whole work, allotted to each writer his part of the work, giving to each of them all the materials, was in fact the author of the work and that the continuance of copyright was to be reckoned as from his death.

These cases can hardly be quoted as exceptions to the general rule, as it is only a question as to who is the author. Practically the most important exception to the rule is in the case where the work is made on order. *There is no difficulty as to this exception when the agreement* involves a waiver of the right of ownership, or when the author is in the employment of another person and the work was made in the course of such employment, but in other cases it becomes difficult to say who is the first owner of the copyright of the work made on order.

There was an attempt lately to settle the point by way of legislation, and a law was passed on the 9th April, 1910, by which it was enacted that "the sale of a work of art does not include, unless otherwise agreed, the sale of the copyright."

The law would be quite clear in the case of the purchase of a picture from the author, but one may question whether it applies to the case where a person orders his portrait from a painter, as it is not a purchase and sale, but an agreement for the hiring of work, when it seems there should be no limitation to ownership of the hirer.

Assuming that in such case the author should retain his copyright, he would not have the right to use it without the permission of the person whose portrait he made (*In re Roger*, 8th July, 87, S. 90, 2, 241).

Semble, however, that there is an exception in the case where a photo is taken gratuitously.

The law deals only with works of art and does not refer to literary copyright, in respect of which one may conceive that the same questions, though less frequently, arise.

With regard to the law of the 9th April, it was submitted in the report made to the Chamber of Deputies before the passing of the law, that the "agreement to the contrary" need not be express, but could be implied from the circumstances, for instance, in case of the purchase of a model of a chandelier or of a lamp by a dealer in such articles, as it may be considered as self evident that the purchase is effected by the buyer for the purpose of reproducing the model.

With regard to purchases made by the State, in pursuance of an Order of the 3rd November, 1878, it is always stated in the agreement made on behalf of the State, that the sale of the work includes the sale of the right to reproduce or to allow the work to be reproduced.

It was also stated in the report that the grant of the right of reproduction to the author did not entitle him to interfere with the ownership of the buyer; he would not, for instance, when the picture is in a private collection, be allowed to enter on the premises to take a photograph of it, he would not even have a right to cause a photograph to be taken of it, without the consent of the owner, while the picture is put up at some public exhibition.

Remedies. - The remedies are by way of action either before the "Tribunaux Civils" or before the "Tribunaux Correctionnels." It is optional for the plaintiff as a preliminary of the action to cause infringing copies to be seized by the public officer, in pursuance of Section 3 of the law of 1793, and this is often done as a convenient mode of securing evidence of the infringement, but a seizure made in excess of the plaintiff's rights would make him liable to damages.

The result of the action is the confiscation of infringing copies and damages as provided for by articles 427-430 of the Code Penal, which, *see supra*.

MAURICE THÉRY.

bis QUAI AUX FLEURS,
PARIS.

APPENDIX B.

THE REVISED CONVENTION OF BERNE, 1908.
ENGLISH TRANSLATION.

ART. 1. The Contracting States are constituted into an 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.

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.

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 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.

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.

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 this 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 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.

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 authorizing 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 chrestomathies (*selections of choice passages from an author or authors*), 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.

Authors of dramatic or dramatico-musical works shall be protected during the existence of their right over the original work against the unauthorized 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 specially included among the unlawful reproductions to which the present Convention applies: Unauthorized 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 authorizing (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 authorizing 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 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.

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.

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.

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 authorize 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 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.

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.

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. 25. States outside the Union which make provisions 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. 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 which made it, the Convention remaining in full force and effect for the other countries of the Union.

APPENDIX C.

FORMS.

Every assignment of copyright or grant of a license must be in writing, otherwise it will not be valid (s. 5 (2)).

The following is a Publishing Agreement, and does not divest the owner of his copyright. If it is intended that the copyright should pass, the agreement should expressly say so (see form of absolute assignment). Many of the Clauses of this following form will do equally well to incorporate in a form containing a clause assigning the copyright absolutely.

Form No. 1.

Publishing Agreement.

AN AGREEMENT made the day of , 19 , between of in the County (hereinafter called the Author) of the one part and of in the County of (hereinafter called the Publisher) of the other part

WHEREAS the Author has prepared *or* is engaged in preparing a book *or* treatise called *or* on the subject of ,

AND WHEREAS it is agreed between the Parties hereto that the Publisher should print and publish the same, NOW IT IS HEREBY AGREED AS FOLLOWS:—

1. The Author shall fully prepare the whole of the said book for the press on or before the day of 19 , and shall correct the proof sheets.

2. The Publisher shall direct the mode of printing the said book, and shall bear and pay all the charges thereof and of publishing the same (except as hereinafter mentioned), and shall take all the risk of publication upon himself.

3. After deducting from the produce of the sale of the said book all charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including an allowance of £ per cent. on the gross amount sold for commission and risk of bad debts, the profits remaining shall be divided equally, one moiety to the Author and one moiety to the Publisher.

4. The accounts in connection with the sale and expenses of the said book shall be made up at the end of every year, and the Publisher shall account for all the copies of the book which are sold at the wholesale booksellers' price, reckoning copies as copies, unless it be thought advisable to dispose of any copies or of the remainder, at a lower price, which shall be left to the judgment and discretion of the Publisher.

5. The cost of all the alterations and corrections in the proof sheets and revises in excess of the sum of per sheet shall be borne by the Author and shall be deducted from his share of the profits.

6. In case all the copies of the said book shall have been sold and a second or subsequent edition of the said book shall be required by the public, the Author shall make all necessary alterations and additions thereto, and the Publisher shall reprint and publish the said second and every subsequent edition of the said book on the above conditions.

7. In case all the copies of any edition of the said book shall not have been sold within five years after the time of publication, the said Publisher shall be at full liberty to dispose of the remaining copies so unsold either by public auction or private sale, or in such other manner as he may deem advisable, so that the account may be finally settled and closed.

8. The Publisher agrees to supply the Author with copies free of charge, and with such further copies as he may from time to time require at per copy.

In Witness whereof

Form No. 2.

Customer and Publisher.

An Agreement made the day of , 19 , between of in the County of (hereinafter called the Customer) of the one part and of in the County of (hereinafter called the Publisher) of the other part,

Whereas the Publisher is the proprietor of a picture, by called .

And whereas the Publisher agrees to print and publish, and the Customer agrees to purchase copies of the same, now it is hereby agreed between the parties hereto as follows:—

1. The Publisher agrees to print posters and, or other advertisements, as the Customer may from time to time require in which the said picture shall be reproduced by (*here specify process*) process in the qualities, sizes, and at the prices following:—

(here state qualities, sizes, prices, &c.).

No. 1.
No. 2.
No. 3.
No. 4.

2. The Customer hereby agrees to purchase from time to time at the prices above-mentioned not less than:—

of No. 1, or of No. 2, or
of No. 3, or of No. 4,

and further agrees to purchase posters and, or other advertisements, to a total amount of not less than £ before the day of .

3. The Publisher shall not be bound to supply more than
of No. 1, or of No. 2, or
of No. 3, or of No. 4, at any one time (or in any period of).

4. If at the expiration of the period of the Customer shall fail in any (*here state period*) terminating on the day of , to take posters and, or other advertisements, to a total amount of £ , then the Publisher shall be at liberty by notice in writing to the Customer to determine this Agreement; and the Publisher agrees for a period of after such determination not to use the said picture for any other poster or advertisement for any other person.

5. The copyright in the said picture shall remain with the Publisher and be his absolute property.

In Witness whereof

Form No. 3.

Artist's Agreement.

An Agreement made the day of between of (hereinafter called the Artist) of the one part and of (hereinafter called the Publisher) of the other part.

Whereas the Artist is the author of a picture called
And Whereas the Publisher has agreed with the Artist to print and publish the same, And Whereas it is agreed that the Publisher shall have the option of acquiring the entire copyright of the said picture upon the terms hereinafter mentioned, now it is hereby agreed between the parties hereto as follows:—

1. The Publisher agrees to

(*Here state what he agrees to do, such as to submit picture to possible customers and if orders result to prepare blocks, etc., to produce posters, etc.*)
and also agrees to endeavour to obtain orders for posters, or other advertisements, which will represent the said picture, and on the receipt on or before the day of , of orders, or such less number as the Publisher may consider sufficient, the Publisher agrees to pay the Artist the sum of £ for such picture, and on the payment of such sum the copyright in the picture shall become the absolute property of the Publisher.

2. The Artist agrees to give the Publisher the option of acquiring up to the day of , the entire copyright in the said picture upon the said terms.

In Witness whereof

Form No. 4.

For Newspaper Proprietor.

To
Proprietor of the
I, , agree that you shall be entitled to the entire copyright without reserve of all the articles or other contributions written or contributed by me for

(*Here give description of newspaper or magazine*).

(Signed)

Form No. 5.

Short Form of Absolute Assignment.

The Publisher agrees to purchase the Author's entire copyright without any reserve in all parts of the world of a work entitled
and the Author agrees to sell such copyright to the Publisher and also to deliver the complete manuscript executed in a proper manner to the Publisher on or before the day of , As a consideration the Publisher agrees to pay the Author a Royalty of on each copy of the work sold.

Form No. 6.

The following form of receipt was held to be an assignment of the copyright (*Lucy* v. *Toole*, 15, L.T. 512).

Absolute Assignment.

In consideration of the sum of £ paid by
I assign to my

(*Here give description of work*).

(Signed)

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