THE
LAW OF COPYRIGHT

BY

GEORGE STUART ROBERTSON, M.A.

OF THE INNER TEMPLE AND THE OXFORD CIRCUIT
BARRISTER-AT-LAW
FORMERLY FELLOW OF NEW COLLEGE, OXFORD
IRELAND SCHOLAR, ELDON LAW SCHOLAR, ETC.
AUTHOR OF 'CIVIL PROCEEDINGS BY AND AGAINST THE CROWN', ETC.

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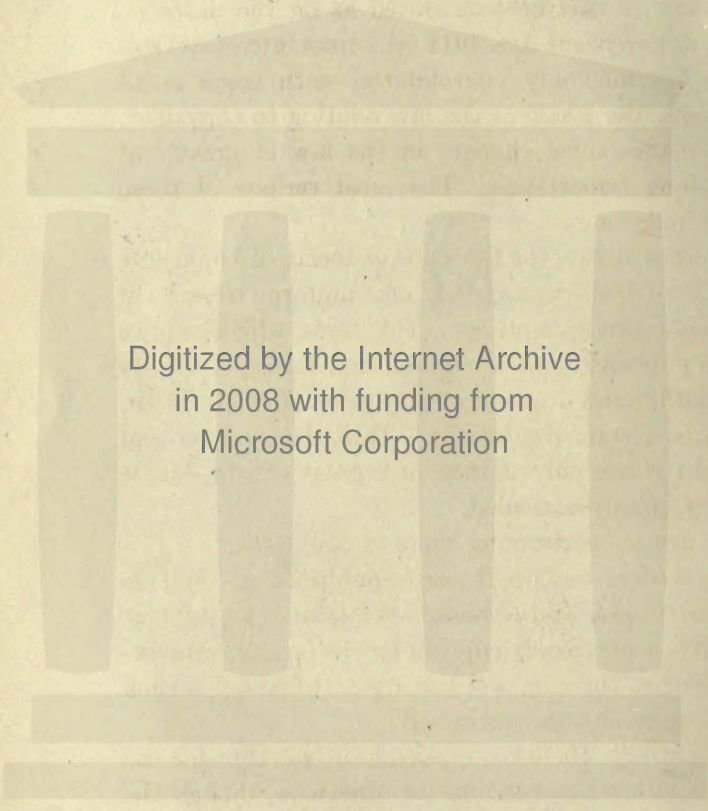

PREFACE

THE law in this book is stated as on the dates on which the Copyright Act, 1911 (*a*), comes into operation.

The Act not only consolidates, with some small exceptions, the whole of the law relating to copyright, it also makes some changes in the law of great and far-reaching importance. The most serious of these are the following :

1. It substitutes, for the various terms of copyright which have hitherto existed, one uniform term with some important exceptions. This term, which applies alike to published and to unpublished works, is the life of the author and a period of fifty years after his death, subject to certain limitations. Thus the legal term of copyright is not only unified to a great extent, but is also very greatly extended.

2. It merges performing right in copyright.

3. It confers copyright on unpublished as well as published works, and abolishes the quasi-copyright at common law previously enjoyed by the former, preserving, however, the common law right to have a breach of trust or confidence restrained.

4. It entirely abolishes registration, whether for the purposes of legal proceedings or otherwise, though the Crown still has power, for the purposes of international copyright, to impose conditions and formalities.

5. It unifies the law as regards copyright in different classes of works, literary, dramatic, musical, and

(*a*) 1 & 2 Geo. V, c. 46.

artistic, and provides for copyright for the first time in 'architectural works of art'.

6. It introduces a new principle by limiting, or seeking to limit, the power of an owner of copyright to assign the whole of his right, by providing that an author who is the first owner of the copyright may not, otherwise than by will, assign it or grant an interest in it for a period extending more than twenty-five years from his death.

7. It brings mechanical contrivances for producing sound within the scope of the law of copyright, outside which they had been held to lie by judicial interpretation, and enacts elaborate, and sometimes remarkable, provisions in connexion with their admission within the law.

In addition to these main alterations there are many minor changes, all in the direction of simplicity, a simplicity which, it is to be feared, is occasionally more specious than real. It has sometimes been attained by the omission of any proper definition of the terms used. 'Literary work', 'dramatic work', and 'work of sculpture' are not given any full definitions; 'musical work' is not defined at all, neither is 'proprietor', nor 'author'. The consequence is that a large portion of the existing case law will still be found to be of value in the interpretation of the new statute.

The Act must be taken to extend to a very great variety of original literary, dramatic, musical, and artistic work, from the lowest species to the highest, from the curate's sermon to the judge's judgment, from the Punch and Judy show to the latest production of Mr. X, the greatest living dramatist, from the work of the pavement artist to that of Mr. Y, the greatest living painter, and from a book on the law

of copyright to the verses of Mr. Z, the greatest living poet.

As it contains in itself no sufficient guidance as to the boundaries within which it operates, it is necessary, for this reason too, to refer to the case law in order to discover and to fix some limits. The case law will also be found important in deciding the meaning of many other provisions contained in the statute. It must, of course, be used with caution, as, though decided *in pari materia*, it was decided on statutes differing, sometimes widely, in their terms from the present Act.

I have endeavoured, while rearranging in some sort of order the disorderly provisions of the Act, to preserve and apply so much of the store of legal decisions as seemed to be still applicable or capable of being adopted. In addition, as seems to be inevitable in the case of a new statute, I have ventured to express reasoned opinions on a good many points which are not illuminated by authority, and also to illustrate a good many matters from my experience of the various species of work which fall within the law of copyright.

With these prefatory remarks I leave this book to the lenient judgment of its readers.

G. S. R.

TEMPLE,
February 5, 1912.

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CHAPTER I

EXTENT AND COMMENCEMENT OF THE COPYRIGHT ACT, 1911

Extent of Act.

THE Copyright Act, 1911 (*a*), except such of its provisions as are expressly restricted to the United Kingdom (*b*), extends throughout the King's dominions (*c*). But it does not extend to any self-governing dominion, that is to say, Canada, Australia, New Zealand, South Africa, and Newfoundland (*d*), except under certain conditions (*e*), and the Legislature of any British possession may modify or add to its provisions in its application to such possession with certain limitations (*f*). It may also be extended by Order in Council to any British protectorate and to Cyprus (*g*). There are also provisions for the extension of the Act by Orders in Council to foreign works and foreign authors, and such Orders in Council will apply to all the King's dominions

(*a*) 1 & 2 Geo. V, c. 46; short title given ibid., s. 37 (1), p. 233 *post*.

(*b*) The only provisions so expressly restricted are ss. 11, 12 (summary remedies), by s. 13. Section 15 (delivery of copies to libraries), however, and s. 34 (compensation to libraries) appear to have no application outside the United Kingdom, though s. 15 may be applied by an Order in Council for the purposes of international copyright (s. 29 (1)).

(*c*) Copyright Act, 1911, s. 25 (1), p. 224 *post*.

(*d*) Ibid., s. 35 (1), p. 230 *post*.

(*e*) Ibid., ss. 25, 26; see p. 179 *post*.

(*f*) Ibid., s. 27; see p. 182 *post*.

(*g*) Ibid., s. 28; see p. 183 *post*. The manner in which Orders in Council are to be made is provided in s. 32, p. 229 *post*. They shall not affect prejudicially any existing rights or interests, and must provide for their protection (ibid.).

except self-governing dominions and except such parts of the dominions as are excluded by any such Order. The Governor in Council of any self-governing dominion to which the Act extends may make similar Orders in Council as regards such dominion (*h*).

Commencement of Act.

The Act comes into operation :

(i) In the United Kingdom on July 1, 1912, or such earlier date as may be fixed by Order in Council.

(ii) In a self-governing dominion to which it extends, at such date as may be fixed by the Legislature of the dominion.

(iii) In the Channel Islands at such date as may be fixed by the States.

(iv) In any other British possession, to which it extends, on the proclamation of it within the possession by the Governor (*i*).

It will be seen from these provisions that the difference in time between the passing of the Act (i.e. December 16, 1911) and its commencement is very substantial, and this may lead to difficulties which will be pointed out in due course.

Repeals pending commencement.

The repeals effected by the Act, which include every Act relating to copyright, with the exception of the two Acts relating to the summary proceedings in the case of infringement of copyright in musical works (*k*), ss. 7, 8 of the Fine Arts Copyright Act, 1862 (*l*), and the Canada Copyright Act, 1875 (*m*), do not come into force in any part of the King's dominions until the Act comes into operation in that part (*n*).

(*h*) Copyright Act, 1911, ss. 29, 30; see p. 181 *post*.
(*i*) Ibid., s. 37 (2), p. 233 *post*.
(*k*) See p. 161 *post*.
(*l*) 25 & 26 Vict. c. 68, printed p. 198 *post*.
(*m*) 38 & 39 Vict. c. 53, printed p. 200 *post*.
(*n*) Copyright Act, 1911, s. 36, Sched. II., pp. 232, 235 *post*.

CHAPTER II

SUBJECTS OF COPYRIGHT

General provisions.

UNDER the conditions described in the chapter on the Acquisition of Copyright (*a*), copyright extends to every original (*b*), literary, dramatic, musical, and artistic work (*c*). It is now proposed to discuss the various species of works which are the subjects of copyright.

LITERARY WORKS

Definition of 'literary work'.

There is no definition of 'literary work' in the Act, but there is a provision that it includes 'maps, charts, plans, tables, and compilations' (*d*), and we are therefore thrown back to some extent on the existing case law on the subject for an explanation of the term. It must be remembered, however, that the cases were mainly dealing with the meaning of the word 'book' in the Copyright Act, 1842 (*e*), s. 2, which was there defined as 'every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published'. The use of the term 'literary work' removes most of the limitations to which the word 'book' has been interpreted as being subject, inasmuch as the word 'literary' must not be

(*a*) p. 39 *post*.

(*b*) See p. 29 *post*. In the same chapter are discussed the questions relating to sedition, blasphemy, immorality, and deceit which, on general principles, disentitle a work from obtaining copyright.

(*c*) Copyright Act, 1911, s. 1 (1), p. 203 *post*.

(*d*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.

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

taken as implying the possession of literary merit; but rather as the quality of being composed in words (dramatic works being separately dealt with) as opposed to being composed in musical sounds or artistic shapes. That literary merit is not required will be seen from the enumeration of the works which have been held to be subjects of copyright.

Literary nature necessary.

It is necessary, nevertheless, that the work should be of a literary nature and not merely a non-literary combination or device, unless it can be called a map, chart, plan, table, or compilation. Thus the following things have been held not to be proper subjects of copyright: 'Frederick Lillywhite's Registered Scoring Sheet,' for recording cricket scores, the only original feature of which was a space or 'tablet' for recording 'Runs at the fall of each wicket' (*f*); 'The Christograph: the Christian's Puzzle. Suitable for all sects and denominations. Every family should have it. Price, with key, sixpence,' which was a piece of cardboard, throwing a shadow resembling a picture, 'Ecce Homo,' together with a slip of paper with a quatrain by Longfellow, which even the Court was constrained to condemn as doggerel, while it described the whole as 'not a literary work but a child's trick' (*g*); the card or dial of a 'forecast barometer', which had no use apart from the instrument (*h*); 'The Castle Album,' an album for holding photographs with pictorial borders, containing views of castles with short descriptions attached (*i*); 'The Cosmopolitan Sleeve Chart, 1886,' a cardboard pattern of the outer side of a woman's sleeve, with lines

(*f*) *Page* v. *Wisden* (1869), 20 L.T. 435.
(*g*) *Cable* v. *Marks* (1882), 52 L.J.Ch. 107.
(*h*) *Davis* v. *Comitti* (1885), 54 L.J.Ch. 419.
(*i*) *Schove* v. *Schmincké* (1886), 33 Ch.D. 546.

and figures and some explanatory letterpress printed on it, enabling a person to cut a complete sleeve for any arm without computation and with simple measurements (*k*); 'One Horse Selections,' a list of horses selected by various authorities as likely to win on the day in question (*l*); 'Un Cliché Ivrogne, by not Aesop,' a scrawl written by the plaintiff one evening when he 'found himself under the influence of alcohol' and published by him for the benefit of science (*m*).

On the other hand, Kekewich J. held that there could be copyright in 'The Happy Hand', a card with a picture outside of the back of a woman's hand, which opened bookwise and had within on one side a picture of the palm of the hand and on the other verses by a Mr. Weatherley (*n*).

Compilations are now specifically included in literary works by the statute (*o*), but such inclusion cannot be taken to mean that all compilations indiscriminately are included. They must still be 'original' (*p*), and therefore it is still of value to examine the species of compilations which have been held to be entitled to copyright under the old law. Many instances of such compilations will be found in the cases cited below under the headings Editions, Selections, and Trade Catalogues (*q*), and in the chapter on Infringement of Copyright (*r*). Compilations.

Where a non-copyright text is edited with labour and skill the edited text is the subject of copyright (*s*), and Editions.

(*k*) *Hollinrake* v. *Truswell*, [1894] 3 Ch. 420.
(*l*) *Chilton* v. *Progress Printing and Publishing Co.*, [1895] 2 Ch. 29.
(*m*) *Fournet* v. *Pearson, Ltd.* (1897), 14 T.L.R. 82.
(*n*) *Hildesheimer & Faulkner* v. *Dunn & Co.* (1891), 64 L.T. 452.
(*o*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.
(*p*) Ibid., s. 1 (1).
(*q*) *Infra* and pp. 11, 12 *post*. (*r*) p. 99 *post*.
(*s*) *Parry* v. *Moring* (1903), MacGillivray, Cop. Cas. 1901–4, 119.

so, of course, are any original annotations, introduction, or *apparatus criticus*, with which the text is provided (*t*).

It is not clear how far the specific inclusion of 'compilations' among literary works by the Act of 1911 (*u*) covers works of this nature.

New editions.

Where a new and corrected or altered edition of a literary work is made, (i) if the corrections or alterations are made with labour and skill by the author of the work so edited, the copyright in the corrections and alterations runs for the same time as that in the work, namely the life of the author and fifty years thereafter; (ii) if they are made with labour and skill by another person, copyright in them runs for the life of that person and fifty years thereafter. This is the case whether such person makes such corrections or alterations under a contract of service or apprenticeship or not (*x*), and whether the work so edited is still copyright or not at the time when the new edition is made. Whether sufficient labour and skill has been employed to entitle such other person to copyright will be a question of fact in each case (*y*).

(*t*) See *Tonson* v. *Walker* (1752), 3 Swan. 672, at p. 678 (Milton, with notes); *Cary* v. *Kearsley* (1802), 4 Esp. 168; *Saunders* v. *Smith* (1838), 3 My. and Cr. 711; *Adam & Charles Black* v. *Alexander Murray & Son* (1870), 9 R. 341 (Lockhart's edition of Scott's *Minstrelsy of the Scottish Border*); *Moffatt & Paige, Ltd.* v. *George Gill & Sons, Ltd.* (1902), 86 L.T. 465 (*As You Like It*, with notes). See also as to 'collective works' and 'works of joint authorship', pp. 58, 73, *post*.

(*u*) Copyright Act, 1911, s. 35 (1).

(*x*) See p. 44 *post*.

(*y*) These conclusions seem to follow from ss. 1, 3, and 5 of the Copyright Act, 1911. Subject, but only subject, to them, reference may be made to the cases under the old law, *Cary* v. *Longman* (1801), 1 East, 358; *Robinson's Assignees* v. *Wilkins* (1805), 8 Ves. 223 n. 1; *Hedderwick* v. *Griffin* (1841), 3 D. 383; *Murray* v. *Bogue* (1852), 1 Drew, 353; *Hutchings* v. *Sheard*, [1881] W.N. 20; *Thomas* v. *Turner* (1886), 33 Ch.D. 292.

Illustrations.

The provisions of the Act of 1911 remove the difficulties which have arisen as to the question whether illustrations form part of a book so as to enable the owner to sue for breach of copyright when he has complied with the provisions relating to literary works only and not with those relating to artistic works (*z*), and whether a collection of pictures, without letterpress which could be copyright, was a book and the subject of copyright (*a*). Since both species of works are now placed on the same footing with regard to copyright, subject to certain exceptions immaterial for this purpose, it is now of no importance here whether the illustrations are to be regarded as part of the book or as separate artistic works, though the distinction has some bearing on the question whether a work is one of joint authorship or 'collective' (*b*). The question has arisen most frequently in connexion with trade catalogues (*c*), but it was also discussed in connexion with *The Comical Creatures from Wurtemberg, including the story of Reynard the Fox; with twenty Illustrations, drawn from the Stuffed Animals contributed by Hermann Ploncquet, of Stuttgard, to the Great Exhibition*, which was pirated by *The Story Book for Young People, by Aunt Mary* (*d*).

Law reports.

The Term Reports were regarded as the subject of copyright (*e*), as were the Irish reports by Crawford and Dix (*f*). In both these cases the copyright was

(*z*) See *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267; *Comyns* v. *Hyde* (1895), 72 L.T. 250 (coloured supplement to a newspaper); *Petty* v. *Taylor*, [1897] 1 Ch. 465.

(*a*) See *Maple & Co.* v. *Junior Army and Navy Stores* (1882), 21 Ch.D. 369. (*b*) See pp. 58, 73 *post*. (*c*) See p. 12 *post*.

(*d*) *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267.

(*e*) *Butterworth* v. *Robinson* (1801), 5 Ves. 709; compare *Saunders* v. *Smith* (1838), 3 My. & Cr. 711.

(*f*) *Hodges* v. *Welsh* (1840), 2 Ir.Eq.R. 266.

regarded as extending to the whole of the reports. In a subsequent case, dealing with an infringement of the *Jurist* reports (*g*), the Court drew some distinction between the marginal or head note and the body of the report, pointing out the special skill required for the composition of the former; but they apparently held that there was copyright in the report as a whole, though the infringement was only in fact in respect of the marginal or head notes, which the defendants had embodied in a digest of cases. It is not easy to see, however, how there could be copyright in verbatim reports of the judgments of the Courts, particularly where they were written judgments, though there might be where the reported judgment was constructed from that which had been actually delivered by the exercise of meritorious skill. It would seem that the judge is the 'author' of his judgment, whether written or oral, and possesses copyright in it, unless the right is in the Crown (*h*), and such copyright could not be acquired by the reporter or reporters who reported it (*i*). Similarly counsel seem to be the 'authors' of their speeches, but the summaries of the arguments of counsel, which appear in law reports, would usually be the product of such labour and skill as to entitle them to copyright.

Maps, charts, plans, and tables.

These are specifically included among literary works by the statute (*k*). The repealed Copyright Act, 1842, (*l*) s. 2, included in the term 'book' 'every map, chart,

(*g*) *Sweet* v. *Benning* (1855), 16 C.B. 459. See also *Sweet* v. *Maugham* (1840), 11 Sim. 51. (*h*) See p. 66 *post*.

(*i*) The law was otherwise under the Copyright Act of 1842 (5 & 6 Vict. c. 45), s. 3; see *Walter* v. *Lane*, [1900] A.C. 539. See further, p. 138 *post*.

(*k*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.

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

or plan separately published'. Previously maps were held to be artistic works (*m*). It has been held that a cardboard pattern sleeve, with lines and figures and some explanatory letterpress on it, is not a 'map, chart, or plan' (*n*). The addition of the word 'tables' (*o*) to the definition by the Act of 1911 does not seem to affect the validity of this decision.

The words 'map' and 'chart', however, are not confined to geographical or topographical maps and charts, but would extend, for instance, to anatomical physiological charts (*p*).

News. The form of expression in which news is conveyed is the subject of copyright. 'There is or may be copyright in the particular forms of language or modes of expression by which information is conveyed, and not the less so because the information may be with respect to the current events of the day' (*q*). In the case just cited, the *St. James's Gazette* had copied a large number of news articles or paragraphs from *The Times*, and vainly sought to set up a custom permitting such copying under certain conditions and to retaliate on *The Times* with a *tu quoque*. A news agency has been held entitled to an injunction to restrain the unauthorized reproduction of unpublished news as to the prices of stocks and shares supplied to it by the Stock Exchange (*a*). This would now be

(*m*) See *Stannard* v. *Lee* (1871), L.R. 6 Ch. 346, at p. 349, per Mellish L.J.; *Stannard* v. *Harrison* (1871), 24 L.T. 570.

(*n*) *Hollinrake* v. *Truswell*, [1894] 3 Ch. 420.

(*o*) For a case on the infringement of tables of calculations, see *King* v. *Reed* (1804), 8 Ves. 223 n.; *Bailey* v. *Taylor* (1824), 3 L.J. (O.S.), Ch. 66.

(*p*) *Hollinrake* v. *Truswell*, [1894] 3 Ch. 420, at p. 427, per Davey L.J. See also *Hollinrake* v. *Truswell*, [1893] 2 Ch. 377, at p. 379, Wright J.

(*q*) *Walter* v. *Steinkopff*, [1892] 3 Ch. 489, at p. 495, North J.

(*a*) *Exchange Telegraph Co., Ltd.* v. *Gregory & Co.*, [1896] 1 Q.B. 147.

a breach of copyright under the Act of 1911 (*b*). The same agency was granted an injunction to restrain a subscriber from communicating to a third party news collected from a public source and supplied on condition that there should be no such communication, and to restrain such third party from inducing a subscriber so to communicate such news (*c*). A Melbourne paper obtained an injunction against a country paper which had copied without authority Reuter telegrams published in its columns (*d*).

News-papers.

There have been discussions in reported cases whether a newspaper was a 'book' or not (*e*), but there can be no doubt that it is a 'literary work', at any rate for the purposes of the Copyright Act, 1911. Cases have occurred in which proprietors of newspapers have sued for the infringement of copyright matter prepared for and belonging to them jointly (*f*), and these do not appear to be affected by the provisions as to ownership in the Act of 1911 (*g*). Where an article has been used by a sub-editor as the basis of a paragraph in a newspaper, there may be a doubt as to who is the author of the paragraph for the purpose of a suit for infringement of copyright (*h*).

(*b*) See p. 101 *post*.

(*c*) *Exchange Telegraph Co., Ltd.* v. *Central News, Ltd.*, [1897] 2 Ch. 48 (horse-racing news); *Exchange Telegraph Co., Ltd.* v. *Howard* (1906), 22 T.L.R. 375 (cricket news).

(*d*) *Wilson* v. *Lake* (1875), 1 Vict. L.R.Eq. 127.

(*e*) See *Walter* v. *Howe* (1881), 17 Ch.D. 708, overruling *Cox* v. *Land and Water Journal Co.* (1869), L.R. 9 Eq. 324.

(*f*) *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1889), 40 Ch.D. 425; *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), 40 Ch.D. 500.

(*g*) See p. 70 *post*.

(*h*) See *Springfield* v. *Thame* (1903), 89 L.T. 242, and p. 145 *post*.

Selections.

There can be copyright in a selection, if it displays sufficient labour and skill to justify it and is not merely a mechanical collection. Thus, it has been held in India that there was copyright in Palgrave's *Golden Treasury of Songs and Lyrics*, and that it was infringed by an almost identical collection published with certain alterations in order and with notes for the purpose of examinations (*i*).

Titles.

'I do not say that there could not be copyright in a title, as, for instance, in a whole page of title or something of that kind requiring invention. However, it is not necessary to decide that. But, assuming that there can be copyright in a title, what does copyright mean? It means the right to multiply copies of an original work. If you complain that a part of your work has been pirated, you must show that that part is original, and if it is not original you have no copyright' (*k*). In that case it was sought to restrain the publication of a novel by Miss Braddon called *Splendid Misery*, and any other work of the same title or the same title with additions, on the ground that the plaintiff had already published a tale called *Splendid Misery; or, East End and West End.* It would seem, therefore, that there could only be copyright in a title if the title were of a very special nature (*l*), in fact something more than a bare title and more akin to a literary composition. So it was said by Cairns L.J. that 'it must be held that there cannot be what is termed copyright in a single

(*i*) *Macmillan* v. *Suresh Chunder Deb* (1890), Ind.L.R. 17 Cal. 951. See also *Lennie* v. *Pillans* (1843), 5 D. 416.

(*k*) *Dicks* v. *Yates* (1881), 18 Ch.D. 76, at p. 89, per Jessel M.R.

(*l*) Cases to the contrary, such as *Mack* v. *Petter* (1872), L.R. 14 Eq. 431 (*The Birthday Scripture Textbook*), and *Weldon* v. *Dicks* (1878), 10 Ch.D. 247 (*Trial and Triumph*), must be regarded as no longer law.

word, although the word should be used as a fitting title for a book. The copyright contemplated by the Act must not be in a single word, but in some words in the shape of a volume or part of a volume, which is communicated to the public, by which the public are benefited, and in return for which a certain protection is given to the author of the work' (*m*).

These principles, however, do not affect the right of the user of a title to prevent the colourable imitation of it by another person by way of a common law fraud (*n*).

It would seem that certain observations made with regard to the titles of newspapers must be taken to be subject to the principles enumerated above. Thus Page Wood L.J. said 'that there is nothing analogous to copyright in the name of a newspaper, but that the proprietor has a right to prevent any other person from adopting the same name for any other similar publication' (*o*), and Knight Bruce L.J. spoke of 'the right to publish newspapers bearing particular names' (*p*).

Trade catalogues.

There can be copyright in a catalogue, and it is immaterial that the catalogue is not offered for sale but is merely used to promote the sale of something else (*q*). Thus Hotten's catalogue called *A Handbook to the Topography and Family History of England and Wales* was held to be the subject of copyright (*q*). The following have also been regarded as being capable of copyright: a book of

(*m*) *Maxwell* v. *Hogg* (1867), L.R. 2 Ch. 307, at p. 318 (on the title of a magazine, *Belgravia*).

(*n*) *Dicks* v. *Yates* (1881), 18 Ch.D. 76, and p. 172 *post*.

(*o*) *Kelly* v. *Hutton* (1869), L.R. 3 Ch. 703, at p. 708.

(*p*) *Ex parte Foss, Ex parte Baldwin, In re Baldwin* (1858), 2 De G. & J. 230, at p. 235.

(*q*) *Hotten* v. *Arthur* (1863), 1 H. & M. 603.

lithographic sketches of monumental designs compiled on behalf of a cemetery mason for trade purposes (*r*); an illustrated catalogue of furniture containing no letterpress which could be the subject of copyright (*s*); an illustrated catalogue with particulars of patent pavement lights (*t*); an *Illustrated Book of Shop-fittings* (*u*); books of designs of carriages (*x*); *The Art and Virtue of Dressing Well*, including drawings of two men in Chesterfield overcoats (*y*); *The Bath Drug Company's Price Current* (*z*); an *Illustrated Catalogue of Some of the Newest and Latest Designs in Suits, Coats, &c., suitable for Autumn and Winter 1898* (*a*); an illustrated catalogue consisting almost entirely of engravings of trucks, trolleys, barrows, and wagons (*b*); a price sheet illustrated with designs of furniture (*c*). These would all fall within the term 'compilations', which are now specifically included by statute in the term 'literary work' (*d*), if original.

Translations.

It was held in an early case that there was copyright in a translation 'whether produced by personal application and expense, or gift' (*e*). This must now be read subject to the provision in the Copyright Act,

(*r*) *Grace* v. *Newman* (1875), L.R. 19 Eq. 623.

(*s*) *Maple & Co.* v. *Junior Army and Navy Stores* (1882), 21 Ch.D. 369. This decision overruled *Cobbett* v. *Woodward* (1872), L.R. 14 Eq. 407, a case on a similar catalogue.

(*t*) *Hayward Bros.* v. *Lely & Co.* (1887), 56 L.T. 418.

(*u*) *Harris* v. *Smart*, [1889] W.N. 92.

(*x*) *Cooper* v. *Stephens*, [1895] 1 Ch. 567.

(*y*) *Petty* v. *Taylor*, [1897] 1 Ch. 465.

(*z*) *Collis* v. *Cater, Stoffell & Fortt, Ltd.* (1898), 78 L.T. 313.

(*a*) *W. Marshall & Co., Ltd.* v. *A. H. Bull, Ltd.* (1901), 85 L.T. 77.

(*b*) *Slingsby* v. *Bradford Patent Truck and Trolley Co.*, [1905] W.N. 122.

(*c*) *Davis* v. *Benjamin*, [1906] 2 Ch. 491.

(*d*) Copyright Act, 1911, s. 35 (1), and see p. 5 *ante*.

(*e*) *Wyatt* v. *Barnard* (1814), 3 V. & B. 77.

1911, which reserves the right of translation into any language to the author of the work (*f*), and to the application of the Act to foreign countries. If a foreign work were entitled to the benefits of the Act, an unauthorized translation of it or any substantial part of it would clearly be an infringement and could not acquire copyright.

Dramatic Works

Meaning of 'dramatic work.'

The term '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 (*g*), and 'cinematograph' includes any work produced by any process analogous to cinematography (*g*).

A 'dramatic work', of course, is not confined to the forms above enumerated, but includes these, in addition to the forms which would, in ordinary parlance, be included in the expression.

The words as to the fixing of the scenic arrangement or acting form apply apparently to 'piece for recitation' as well as to 'choreographic work' and 'entertainment in dumb show'. There will be no copyright in such productions, at any rate as dramatic works, if the scenic arrangement or acting form is left to the taste and discretion of the performers, as is so often the case in music-hall entertainments and pantomimes. But the fixing need not be in writing. It would be

(*f*) See p. 120 *post*.
(*g*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.

enough, apparently, if it had become fixed by constant performance.

Cinematograph productions.

The last part of the definition gives the protection of dramatic works to cinematograph and similar productions, which are given an original character by their arrangement, acting form, or combination of incidents. This seems to be intended to be limited to productions which are constructed from incidents arranged *ad hoc*, and not to include productions based upon a series of events which happened in the ordinary course of nature, though it is possible that a particular and original combination of pictures of such events might fall within the definition. In the case of cinematographic photographs, however, there seems to be no reason why the provisions as to copyright in photographs (*h*) should not apply, and there may thus be a conflict as to the term for which copyright in such productions runs, since the photograph term runs for fifty years from the making of the negative (*i*), while the cinematograph production term, if the production be a dramatic work, runs for the life of the author and fifty years thereafter. So, too, there may be a conflict as to the ownership of copyright, since the owner in the case of a photograph is the owner of the negative at the time when it was made (*k*), and the owner in the case of a cinematograph production, if a dramatic work, is its author.

It is difficult to see what is meant by 'acting form' as applied to a cinematograph production.

Case law on 'dramatic work'.

The authorities on the repealed Acts may still be of value in determining what falls within the expression 'dramatic work', apart from the forms included in

(*h*) See pp. 21, 25 *post*. (*i*) See p. 46 *post*.
(*k*) See p. 75 *post*.

the above definition, though the point on which several of them turned, namely, whether a piece was dramatic as well as musical, is now practically immaterial, since both species now stand substantially in the same position with regard to copyright. Thus it has been held that a written introduction to a pantomime called *Princess Battledore, or Harlequin Shuttlecock* was a 'dramatic piece or entertainment' (*l*). Lord Denman C.J. defined as being 'dramatic in its widest sense' 'any piece which, on being presented by any performer to an audience, would produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience' (*m*). This is not a very lucid definition; the Chief Justice should have gone on to define 'regular drama'. Subsequent cases, where it was decided that songs, to wit, 'Come to Peckham Rye' (*n*), and 'Oh, Jenny, dear' (*o*), were 'dramatic pieces', are of no value for the present purpose, particularly after the decision which determined that 'Daisy Bell' was not (*p*).

It is not quite clear, in view of the above statutory definition, to what extent the scenic effects or 'business' as distinguished from the verbal substance constitute a dramatic work and are capable of infringement (*q*).

Adaptations.

A copyright can be obtained in an adaptation with substantial alterations of another dramatic work (*r*).

(*l*) *Lee* v. *Simpson* (1847), 3 C.B. 871.

(*m*) *Russell* v. *Smith* (1848), 12 Q.B. 217, at p. 236.

(*n*) *Clark* v. *Bishop* (1872), 25 L.T. 908.

(*o*) *Roberts* v. *Bignell* (1887), 3 T.L.R. 552.

(*p*) *Fuller* v. *Blackpool Winter Gardens and Pavilion Co.*, [1895] 2 Q.B. 429.

(*q*) See the discussion of the matter, p. 124 *post*.

(*r*) *Tree* v. *Bowkett* (1891), 74 L.T. 77 (*Trilby*); *Hatton* v. *Kean* (1859), 7 C.B. (N.S.) 268 (*Much Ado about Nothing*).

In the case on *Much Ado about Nothing* it was held that music, which was written for the adaptation by the direction and under the superintendence of the defendant, became part of the dramatic work and belonged to the defendant.

Copyright could, *a fortiori*, be obtained in a dramatic work, which borrowed its plot or some incidents from a non-copyright work, as Shakespeare borrowed plots from Bandello and Ser Giovanni, and Peele and others from the Bible.

Musical Works

Meaning of 'musical work'.

There is no definition of 'musical work' in the Copyright Act, 1911, except in one provision for the purpose of mechanical contrivances, and in its widest meaning it would seem to cover any combination of sounds, whether with or without merit as music in the ordinary western sense. The songs of the Ojibways, for instance, or the music of the Japanese sometimes strike the European ear as not being music at all, but it would seem that they would be capable of copyright, if original. Neither can the number of sounds be a safe criterion. Musical themes not seldom consist of two notes only, and sometimes even of one (see, for instance, Cornelius's song, 'Ein Ton' (*s*), and would apparently constitute a 'musical work', but in the case of such small combinations it would generally be impossible to establish their originality. When coupled with original harmonization, however, they might be the subject of copyright (*t*).

(*s*) Compare Borodin's *Dissonance* for a similar experiment.

(*t*) As a curiosity, it may be mentioned that the German Reichsgericht has held that the principal theme of Richard Strauss's *Ein Heldenleben* is not a 'melody', and therefore that the reproduction of it in Noren's *Kaleidoskop* was not an infringement of copyright. The position of a Court which has to decide what is or is not a 'melody' deserves much sympathy.

Original harmonic, contrapuntal, or orchestral devices, too, might well be the subject of copyright.

For the purpose of the provision relating to mechanical contrivances 'musical work' is to be deemed to include any words so closely associated therewith as to form part of the same work, but not to include any mechanical contrivance for the reproduction of sounds (*u*). For the other purposes of the Act, therefore, it must be taken that the words forming part of vocal music are not part of the musical work, but are a literary work, and the combination of the two is a collective work (*x*), and if, as might conceivably be the case, the result of collaboration without any distinction between the work of the authors, a work of joint authorship (*y*).

The Musical (Summary Proceedings) Copyright Act, 1902 (*z*), s. 3, defines 'musical work', for the purposes of that Act, as 'any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced' (*a*). This very wide definition includes as music 'melody' without harmony, or harmony without 'melody', or both together, and would cover all the instances suggested above. If this section is ever seriously discussed in Court, the tribunal will find itself in the unfortunate position of the Reichsgericht (*b*).

Arrangements.

Copyright is not limited to music which is in its original form; it may also extend to arrangements of original copyright music, which may thus acquire a copyright of their own; or to arrangements of non-copyright music. Whether such arrangements are

(*u*) Copyright Act, 1911, s. 19 (2), see p. 132 *post*.
(*x*) See p. 58 *post*.
(*y*) See p. 73 *post*.
(*z*) 2 Edw. VII. c. 15.
(*a*) See p. 162 *post*.
(*b*) See note (*t*), p. 17 *ante*.

sufficiently original to entitle them to copyright must be a question of fact in each case. In the case where the original music is copyright, and the arrangement has not been authorized, it seems reasonable to suppose that a high degree of originality in the arrangement would be required to enable it to acquire a copyright of its own (*c*).

For arrangements of modern orchestral music for other instruments a high degree of skill is usually required, and these would therefore be usually entitled to copyright, at any rate if authorized by the composer.

It has been held that a pianoforte arrangement of Nicolai's *Die Lustigen Weiber von Windsor* was the subject of copyright—an arrangement of a simple opera, which cannot have required a very vast degree of skill (*d*).

On similar principles, arrangements of non-copyright songs have been held to be entitled to copyright. B took a non-copyright air known as 'Pestal', from the name of the composer, wrote words to it, and procured C to write an accompaniment. The combination was then acquired by A, who added a preface to it, and sued for an infringement of the whole, though in fact the infringement only related to the accompaniment. He succeeded (*e*). A song called 'Minnie', the words composed by George Linley, the melody taken from a non-copyright song called 'Lillie Dale', and arranged with accompaniments by the same com-

(*c*) The observations of Kelly, C.B., in *Wood* v. *Boosey* (1868), L.R. 3 Q.B. 223, at pp. 228, 229, seem not to lay enough stress on the difference between authorized and unauthorized arrangements, and only to require a similar degree of originality for each.

(*d*) *Wood* v. *Boosey, ubi supra.*

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

poser, was regarded as entitled to copyright (*f*), and so was 'The Low Back'd Car', adapted from an old air 'The Jolly Ploughboy' (*g*).

These decisions would apply to the collections of folk-songs, which have become so common in recent years, such as those arranged by Balakirev, Bourgault-Ducoudray, Korbay, and Cecil Sharp.

Original treatment of non-copyright or copyright matter.

On similar principles, copyright will subsist in musical works, which make use in other ways of non-copyright matter, or even of copyright matter, for the purpose of original composition, such, for instance, as the composition of variations on a theme, e.g. Brahms's variations on Haydn's choral *Sancti Antoni* or Chaikovsky's variations in his pianoforte trio (*h*), or the utilization of such matter in the course of a larger composition, such as that of student songs in Brahms's *Akademische Fest-Ouvertüre*, or of national tunes in Wagner's *Kaisermarsch*, or Strauss's use in *Salome* of a trumpet-call already used by Suppé and perhaps by Mendelssohn. The right to copyright here comes from the originality of the treatment. But it might well be that, even in the case of an eminent composer, the originality of the treatment might not be such as to justify copyright. Thus Handel would have been hard put to it to claim copyright, or to resist judgment for infringement, in respect of a large part of *Israel in Egypt* and *The Triumph of Time and Truth*, or for the minuet in *Samson*.

Double copyright.

Double copyright, no doubt, could be obtained in

(*f*) *Chappell* v. *Sheard* (1855), 2 K. & J. 117; *Chappell* v. *Davidson* (1855), 2 K. & J. 123; (1856) 8 D.M. & G. 1.

(*g*) *Lover* v. *Davidson* (1856), 1 C.B. (N.S.) 182.

(*h*) It was said in *D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288, at p. 302, that 'the adding variations makes no difference in the principle', but this must be understood *secundum subiectam materiem*.

respect of two different arrangements of the same material by the same composer. Thus Handel could have obtained copyright in respect of the love duet 'No, no, non vo' fidarmi', and also in respect of the pious rearrangement of the same material in the chorus 'For unto us a Child is born'.

Collections.

There may, of course, be copyright in a musical work, which forms part of a collection, whether the remainder of the collection be or be not copyright (*i*). It would seem that, in certain circumstances, music written for a play may form part of it for copyright purposes (*k*).

Mechanical contrivances.

Records, perforated rolls, and other contrivances by which sounds may be mechanically reproduced are entitled to copyright as though they were musical works, subject to certain differences as to term and ownership (*l*).

The words 'other contrivances' must be read as strictly *eiusdem generis* with records and perforated rolls; otherwise one could obtain copyright in a steam siren or a humming-top.

Artistic Works

Meaning of 'artistic work'.

'Artistic work' is described as including 'works of painting, drawing, sculpture, and artistic craftsmanship, and architectural works of art and engravings and photographs' (*m*). Of the contents of this description, 'work of sculpture' is further described as including 'casts and models' (*m*); 'architectural work of art'

(*i*) See *White* v. *Geroch* (1819), 2 B. & A. 298. This case, of course, dealt with a very different state of the law, and is only referred to by way of analogy.

(*k*) Compare *Hatton* v. *Kean* (1859), 7 C.B. (N.S.) 268.

(*l*) Copyright Act, 1911, s. 19 (1); and see pp. 45, 75 *post*.

(*m*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.

is said to mean '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' (*m*); 'engravings' are described as including 'etchings, lithographs, woodcuts, prints, and other similar works not being photographs' (*m*), while 'photograph' includes 'photo-lithograph and any work produced by any process analogous to photography' (*m*).

'Works of artistic craftsmanship'

'Works of artistic craftsmanship' appear to mean works executed artistically other than the particular species of artistic works enumerated in the definition, and would include such things as art jewellery, art needlework, art beadwork, art basketwork, art furniture, and so on.

Sculpture.

'Sculpture' has been given a wide meaning in the only two reported cases on the matter, having been held to include casts of vegetable objects used for instruction and drawing (*n*), and also toy models of soldiers (*o*). But it must be remembered that these decisions were given on the words of a statute which was couched in extraordinarily wide terms (*p*), and it is doubtful how far the expression 'works of sculpture', including 'casts and models' (*m*), would be held to cover such things. Probably, however, it would be held to embrace them.

(*m*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.

(*n*) *Caproni* v. *Alberti*, [1891] W.N. 200.

(*o*) *Britain* v. *Hanks Bros. & Co.* (1902), 86 L.T. 765.

(*p*) Sculpture Copyright Act, 1814 (54 Geo. III. c. 56), s. 1, now repealed; set out p. 27 *post*.

Blocks and plates made for the purpose of producing engravings, etchings, woodcuts, and the like, are doubtless protected as artistic works, even if no prints have been made from them, so that it would be an infringement to make unauthorized reproductions from them either in the form of prints or in the form of other blocks (*q*). Blocks and plates.

It appears that the word 'drawings' would include designs which were not intended for sale as such, but were used for the production of dies, by which reproductions were struck off and sold (*r*). Drawings.

It has been held, however, that 'drawing' does not cover such a production as the representation of a hand holding a pencil in the act of marking a cross in a particular square which was used for the guidance of illiterate voters at elections. The Court suggested that perhaps, if an imitation were exact, it might be restrained, but that nothing short of an exact imitation would be enough (*s*). 'The first question which arises is, what is and what is not the nature of the right conferred under the Act upon the author by the registration of the drawing of which he is the author. It is perhaps easier to say what it is not than to give a satisfactory definition of what it is, and I think that I am upon very safe ground in saying that the mere choice of subject can rarely, if ever, confer upon the author of the drawing an exclusive right to represent the subject, and certainly where the subject chosen is merely the representation to the eye of a simple

(*q*) Compare *Cooper* v. *Stephens*, [1895] 1 Ch. 567; *W. Marshall & Co., Ltd.* v. *A. H. Bull, Ltd.* (1901), 85 L.T. 77; *Millar & Lang, Ltd.* v. *Polak*, [1908] 1 Ch. 433.

(*r*) *Millar & Lang, Ltd.* v. *Polak, ubi supra.*

(*s*) *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q.B.D. 99; compare *Millar & Lang, Ltd.* v. *Macniven & Cameron. Ltd.* (1908), 16 S.L.T. 56.

operation which must be performed by every person who records a vote, there cannot possibly be an exclusive right to represent in a picture that operation. It may well be that something special in the way of artistic treatment even of this simple operation, if it existed, might be the subject of copyright; but nothing of the kind has been suggested or exists in the present case, and if it does exist without being discovered it has not been imitated, for there is nothing which by any flight of imagination can be called artistic about either the plaintiffs' or the defendants' representation of a hand making the mark of a cross. It may be also that even the coarsest, or the most commonplace, or the most mechanical reproduction of the commonest object is so far protected on registration that an exact reproduction of it, such as photography, for instance, would produce, would be an infringement of copyright. But in such a case it must surely be nothing short of an exact literal reproduction of the drawing registered that can constitute the infringement, for there seems to me to be in such a case nothing else that is not the common property of all the world' (*t*).

Meaning of 'artistic'.

These words, it may be remarked with respect, are eminently sensible, but it seems very doubtful how far 'artistic work' in the present Copyright Act can be taken to imply artistic merit. It will be remembered that 'literary work' does not necessarily imply literary merit, and it would seem likely that 'artistic work' means merely 'work of art' in the popular sense, that is to say a graphic work as opposed to a work of writing or of music. Against this may be set the fact that in the definition of 'architectural works of art'

(*t*) *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q.B.D. 99, at pp. 101, 102, Wills J.

the word 'artistic' must mean something more than graphic and imply some degree of artistic merit. The Court, when the matter is discussed, will have no small difficulty in deciding what is artistic and what is not in relation to an 'architectural work of art'. Many of us would say, for instance, that a plain old Georgian house was much more artistic than the queer-shaped erections which are put up in garden cities, but the builders of the latter would not admit this. Some day, perhaps, the Courts will have to decide how far a thing is artistic because it has a queer shape, though the ordinary tribunal is probably one of the worst means that could be desired for settling questions of aesthetics. They may be aided, or hindered, by the additional qualification that the work has to be 'original'.

Photographs.

The word 'photograph' of course includes a photograph of another artistic work, if made with authority (*u*), but, if unauthorized, it would seem to be incapable of copyright, since it seems unlikely that sufficient skill and labour could have been expended upon such a reproduction as to entitle it to a copyright of its own (*x*). It is possible, however, that a photograph of an arrangement of several artistic works, whether the subjects of copyright or not, might acquire copyright in special circumstances.

Registrable designs.

The Copyright Act, 1911, does not apply to designs capable of being registered under the Patents and Designs Act, 1907 (*a*), 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

(*u*) Compare *Graves' Case* (1869), L.R. 4 Q.B. 715.
(*x*) Compare p. 29 *post*.
(*a*) 7 Edw. VII, c. 29.

process. Whether designs are to be deemed to be so used may be determined by general rules made by the Board of Trade under the Patents and Designs Act, 1907, s. 86 (*b*). A design which is capable of being registered under the Patents and Designs Act, 1907, is any new and original design applicable to any article of manufacture or any substance artificial or natural or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined (*c*).

But it does not include 'a design for a sculpture or other thing within the protection of the Sculpture Copyright Act, 1814' (*c*). This last-mentioned Act (*d*) was repealed by the Copyright Act, 1911, and the resulting position is not very clear (*e*). In these circum-

(*b*) Copyright Act, 1911, s. 22, p. 221 *post*.

(*c*) Patents and Designs Act, 1907, ss. 49 (1), 93.

(*d*) 54 Geo. III, c. 56.

(*e*) The Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38 (1), provides that where any subsequent Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted. This has been applied in *Stevens* v. *General Steam Navigation Co., Ltd.*, [1903] 1 K.B. 890, but there the repealing Act re-enacted a definition to replace the repealed definition. The Copyright Act, 1911, contains no definition of 'work of sculpture' except the provision that it includes casts and models. *Quaere* therefore whether s. 38 (1) of the Interpretation Act, 1889, applies here at all, and whether we are not thrown back on the earlier cases, such as *R.* v. *Stock* (1838), 8 A. & E. 405; *R.* v. *Merionethshire* (1844),

stances it is worth while to give here the list of the matters which fall within the Sculpture Copyright Act, 1814. It includes 'any new and original sculpture, or model, or copy, or cast, of the human figure, or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto- or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any such subject containing or representing any of the matters or things hereinbefore mentioned whether separate or combined' (*f*).

As to other designs, the object of the Act is to exclude from copyright industrial designs, unless they are not intended to be used industrially (*g*). The provision presumably would not affect designs which formed part of a work which was otherwise the subject of copyright, such as a trade catalogue or a literary work dealing with some industrial process and illustrated by designs (*h*); but it would, it seems, apply to a design used in the binding of such a work.

6 Q.B. 343; *R.* v. *Smith* (1873), L.R. 8 Q.B. 146, the effect of which is that if Act A is incorporated by reference in Act B, the repeal of Act A by Act C does not affect it in so far as it is incorporated in Act B.

(*f*) Sculpture Copyright Act, 1814, s. 1.

(*g*) See p. 25 *ante*.

(*h*) See the cases cited, pp. 7, 12 *ante*, and *Walter Macfarlane & Co.* v. *Oak Foundry Co.* (1883), 10 R. 801, cited p. 34 *post*.

Lectures

Meaning of lecture.

'Lecture' includes 'address, speech, and sermon' (*i*), and therefore has a very extended meaning, covering most species of oral utterance by one person. The collocation of 'address, speech, and sermon' is not very artistic; every sermon is, presumably, both an address and a speech, every address is a speech, and every speech is an address, though every speech is not a sermon and every address is not a sermon. Whether a judge's judgment is a 'lecture' is discussed hereafter (*k*).

(*i*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.
(*k*) p. 66 *post*.

CHAPTER III

ORIGINALITY AND IMPROPRIETY

Originality

Necessity of originality.

Copyright only subsists in an 'original' literary, dramatic, musical, or artistic work (*a*).

A summary of the authorities in which the question of originality has been discussed would be merely a repetition of many of the cases which have been cited n the preceding (*b*), and will be cited in a subsequent (*c*), chapter. In the former will be found definitions and discussions of the works which will be, or have been, admitted to copyright as 'original'; in the latter are set out those works which have been held to be not 'original' because an infringement of 'original' works. Particular attention should be paid to those works which are on the border line of originality, such as editions of works (*d*), trade catalogues (*e*), and other compilations (*f*), and to works which have been held to infringe the copyright subsisting in them (*g*). The result would appear to be that originality does not necessarily connote invention, but may be attained by the expenditure of sufficient skill and labour to take the work out of the category of infringement. Probably the statute does not alter this result (*h*).

Artistic works of reproduction.

In its application to artistic works of reproduction, such as engravings and prints, and in particular to photo-

(*a*) Copyright Act, 1911, s. 1 (1), p. 203 *post*.

(*b*) p. 3 *ante*.

(*c*) p. 99 *post*.

(*d*) See p. 5 *ante*.

(*e*) See p. 12 *ante*.

(*f*) See p. 5 *ante*.

(*g*) See p. 101 *post*.

(*h*) In spite of what was said by Lord Halsbury L.C. in *Walter* v. *Lane*, [1900] A.C. 539, at p. 546.

graphs, the word originality cannot mean more than originality of process, which is practically equivalent, in the case of the less worthy processes of reproduction, to the bona fide expenditure of labour and skill in the making of the reproduction.

Impropriety

Improper works incapable of copyright.

There is no provision in the existing statute law which renders a work incapable of copyright on the ground that it is seditious, immoral, or blasphemous, or calculated to deceive the public (*i*); but it is apprehended that these principles still apply, inasmuch as under the old law they did not rest on statute but on decisions of the Courts, based on a sense of fitness. It is therefore necessary to examine them more closely. The general principle seems to have been that a work could not be protected by injunction which was such that an action could not be maintained upon it (*j*).

Seditious works.

Southey's *Wat Tyler* was left without protection by Lord Eldon L.C., on the ground that it was calculated to do injury to the public, apparently by the expression of views which he considered revolutionary (*k*), and in pursuance of his desire to stop what he called elsewhere 'the unhallowed profits of libellous publications' (*l*).

Blasphemous works.

Lord Eldon L.C. refused to restrain the infringement of *Lectures on Physiology, Zoology, and the Natural History of Man*, delivered at the College of Surgeons, with the words, 'Looking at the general tenour of the work, and at many particular parts of it, recollecting

(*i*) See *Wright* v. *Tallis* (1845), 1 C.B. 893, at p. 907, Tindal C.J.

(*j*) *Southey* v. *Sherwood* (1817), 2 Mer. 435; compare *Cowan* v. *Milbourn* (1867), L.R. 2 Ex. 230.

(*k*) *Southey* v. *Sherwood* (1817), 2 Mer. 435.

(*l*) *Walcot* v. *Walker* (1802), 7 Ves. 1, at p. 2.

that the immortality of the soul is one of the doctrines of the Scriptures, considering that the law does not give protection to those who contradict the Scriptures, and entertaining a doubt, I think a rational doubt, whether this book does not violate that law, I cannot continue the injunction ' (*m*). Similarly he is said to have just previously refused an injunction to restrain the piracy of Byron's *Cain*, and left the owner of the copyright to his legal remedy, if any. He had had the advantage or disadvantage of having read *Paradise Lost* during the preceding Long Vacation as ' sollicitae iucunda obliuia uitae ' (*n*). Nowadays the attitude of the Courts towards what is called in law blasphemy has changed, and they examine rather the manner than the matter, permitting a reasonable latitude in the discussion of religious topics and the criticism of doctrines accepted by many persons in this country so long as the decencies of controversy are observed (*o*), and no doubt this attitude would be applied in the case of copyright, if the question arose.

Immoral works.

The Memoirs of Harriette Wilson, described by Abbott C.J. as professing to be ' a history of the amours of a courtesan '—containing ' in some parts matter highly indecent, and in others matter of a slanderous nature upon persons named in the work '—was refused protection. The Chief Justice said : ' Upon the plainest principles of the common law, founded as it is, where there are no authorities, upon common sense and justice, this action cannot be maintained. It

(*m*) *Lawrence* v. *Smith* (1822), Jac. 471.

(*n*) *Murray* v. *Benbow* (1822), 4 St. Tr. (N.S.) 1409.

(*o*) See *R.* v. *Hetherington* (1840), 4 St. Tr. (N.S.) 563 ; *R.* v. *Bradlaugh* (1883), 15 Cox C.C. 217 ; *R.* v. *Ramsay* (1883), ibid., 231. Probably *R.* v. *Boulter* (1908), 72 J.P. 188, is not to be taken as affecting these liberal principles.

would be a disgrace to the common law could a doubt be entertained upon the subject ; but I think no doubt can be entertained, and I want no authority for pronouncing such a judicial opinion ' (*p*). Lord Ellenborough C.J. similarly said that he would tell a jury to give no damages if a composition appeared upon the face of it to be a libel so gross as to affect public morals, but refused to regard as such a song called ' Abraham Newland ', which was described by counsel for the defendant as ' a gross and nefarious libel upon the solemn administration of British justice '. The words of the song certainly do not bear out this description, and Lawrence J. pointed out that the same criticism would apply to *The Beggar's Opera* (*q*). In the case of the 6th, 7th, and 8th cantos of *Don Juan*, Leach V.C. refused to interfere in equity to protect the work, and left the author to his remedy, if any, at law. Lord Byron may or may not have been grateful to his counsel for admitting that ' the work contained much bad taste and many bad jokes ' (*r*).

The same principle applies, of course, to artistic works as much as to literary works, as where it was sought to restrain the *London Illustrated Standard* from copying seven pictures comprised in a publication called *Le Panorama*, and the action failed as to two of the pictures on the ground of their indecency. It was further held that in such a case there should be no

(*p*) *Stockdale* v. *Onwhyn* (1826), 5 B. & C. 173, reported at *nisi prius* 2 C. & P. 163. The same book had been the subject of proceedings in *Poplett* v. *Stockdale* (1825), 2 C. & P. 198, where the printer was held disentitled to recover from the publisher for printing it, and Best C.J. made as strong remarks as those of Abbott C.J. cited above.

(*q*) *Hime* v. *Dale* (1803), 2 Camp. 27 n.

(*r*) *Lord Byron* v. *Dugdale* (1823), 1 L.J. (O.S.) Ch. 239.

costs, as the defendants were *in pari delicto* in the matter of impropriety (*s*).

Works calculated to deceive.

A book entitled *Evening Devotions, or The Worship of God in Spirit and in Truth, for Every Day in the Year ; from the German of C. C. Sturm*, which had not in fact been translated from the works of Sturm, a then well-known religious writer, but had been written by one Huish, was held to be incapable of copyright, on the ground that there was a serious design on the part of the owner to impose on the credulity of the purchaser. 'The cases in which a copyright has been held not to subsist where the work is subversive of good order, morality, or religion,' said Tindal C.J., 'do not, indeed, bear directly on the case before us ; but they have this analogy with the present inquiry—that they prove that the rule which denies the existence of copyright in these cases, is a rule established for the benefit and protection of the public. And we think the best protection that the law can afford to the public against such a fraud as that laid open by this plea, is, to make the practice of it unprofitable to its author' (*t*).

Where an illustrated catalogue of trucks and wagons suggested on more than a hundred pages out of 470 that the plaintiff was the patentee of his articles, when in fact he only had foreign patents for them, and some of the

(*s*) *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73. Compare *Fores* v. *Johnes* (1802), 4 Esp. 97, where it was held that *assumpsit* would not lie to recover the value of prints of an obscene or immoral tendency, or libellous prints.

(*t*) *Wright* v. *Tallis* (1845), 1 C.B. 893. Such cases, indeed, could also rest on the general principle that a plaintiff must come into equity with clean hands (see *Hayward Bros.* v. *Lely & Co.* (1887), 56 L.T. 418, at p. 421), applied to a similar application connected with a trade-mark in *Leather Cloth Co., Ltd.* v. *American Leather Cloth Co., Ltd.* (1863), 4 D. J. & S. 137, affirmed on another ground (1865), 11 H.L.C. 523.

pictures contained an exaggerated representation of the buildings occupied by the plaintiff, it was held that it amounted to ' an attempt to get trade regardless of the way in which it was obtained ', and an injunction to restrain infringement was refused (*u*). This seems rather a strong case, as, apart from the false statements as to the patents, the Court was prepared to regard the other misrepresentations as merely puffing or exaggerated advertisements. The plaintiff had in fact patents for the articles, though not in England; and in a previous case it had been held that a catalogue was not incapable of copyright because certain articles were described as patent, though the patent had expired, the Court being moved by the consideration that the patents were in existence when the catalogue was first made, and that it therefore legitimately acquired copyright (*x*).

It would seem to follow necessarily that a work which was itself an infringement could not obtain protection against an unauthorized reproduction, though the reason would perhaps be not so much any deceit practised on the public as the inherent incapacity of an infringing work to possess copyright (*y*).

(*u*) *Slingsby* v. *Bradford Patent Truck and Trolley Co.*, [1905] W.N. 122.

(*x*) *Hayward Bros.* v. *Lely & Co.* (1887), 56 L.T. 418. The Court of Session has gone still further, in holding in an action for infringement that averments were irrelevant which alleged that a catalogue stated designs to be registered which in some cases had never been registered and in others had ceased to be registered (*Walter Macfarlane & Co.* v. *Oak Foundry Co.* (1883), 10 R. 801).

(*y*) See the remarks of Erle C.J. in *Reade* v. *Conquest* (1862), 11 C.B. (N.S.) 479, at p. 492.

CHAPTER IV

PUBLICATION

PUBLICATION, in relation to any work (*a*), is defined as the issue of copies of the work to the public. It is stated not to include the performance (*b*) 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. It is also provided that the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works (*c*). Neither is a work (except for the purpose of infringement) to be deemed to be published or performed in public, nor is a lecture to 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 (*d*). Acquiescence, presumably, means passive, as opposed to active, consent. Meaning of publication.

The result of this provision is to restrict the meaning of 'publication' within narrow limits, and consequently to increase very largely the list of unpublished works. Simultaneously, however, the Act has greatly diminished the importance of publication, by creating copyright in unpublished works as well as in published

(*a*) See p. 3 *ante*.
(*b*) For the definition of 'performance', see p. 122 *post*.
(*c*) Copyright Act, 1911, s. 1 (3), p. 204 *post*.
(*d*) Ibid., s. 35 (2), p. 232 *post*.

works, and making the term of copyright run from the making of the work in most cases.

There must be an actual issue of copies of the work to the public, and even this is further limited in the case of works of sculpture and architectural works of art by the proviso that the issue of photographs and engravings of such works is not to be deemed a publication of the works. 'Photograph' includes photo-lithograph and any work produced by any process analogous to photography (*e*); 'engravings' include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs as above defined (*e*). It would appear, therefore, that works of sculpture and architectural works of art can only be published by the issue to the public of drawings or paintings of them, or of models or other copies of them in three dimensions. Why the issue of hand-drawings, water- or oil-colour paintings, and pastels reproducing them should constitute publication, and that of photographs and engravings should not, is somewhat inexplicable. In fact, as regards artistic works in general, the very wide meaning given to 'publication' by some decided cases (*f*) is now abolished, and, indeed, the Act seems to go to the other extreme.

Publication of dramatic and musical works.

As regards dramatic and musical works, the provision that public performance is not publication creates an important change. Previously public representation was necessary to the acquisition of statutory performing right, printing and publication to the acquisition of copyright. This distinction now disappears,

(*e*) Copyright Act, 1911, s. 35 (1).

(*f*) *Turner* v. *Robinson* (1860), 10 Ir.Ch.R. 510; *Blank* v. *Footman, Pretty & Co.* (1888), 39 Ch.D. 678; but see *Britain* v. *Hanks Bros. & Co.* (1902), 86 L.T. 765.

and copyright includes performing right. Inasmuch, however, as public performance is not publication, a dramatic or musical work which has been publicly performed, but copies of which have not been issued to the public, is still an unpublished work; and, apparently, copyright in it can only be obtained if the author is a British subject or resident or domiciled within the parts of the King's dominions to which the Copyright Act, 1911, extends (*g*). If, however, copies of it are issued to the public first in such parts of the King's dominions, then it becomes a published work, and the author acquires copyright whoever he may be and wherever he resides or is domiciled.

Private and public performance.

A private performance clearly would not be a publication, though the Act does not say so (*h*), and the same observation applies to the private delivery of a lecture and the private exhibition of an artistic work. Whether an exhibition, delivery, or performance is private or public is not always easy to decide (*i*), but the distinction has now lost its importance, as in neither case is there publication.

Issue of copies to the public.

The issue of copies of the work to the public need not, it seems, be an issue for sale or for valuable consideration (*k*); how far a circulation of copies among a limited circle of friends or other persons would constitute

(*g*) See p. 41 *post*; subject, of course, to the provisions as to international copyright.

(*h*) See *Wall* v. *Taylor* (1883), 11 Q.B.D. 102; *Duck* v. *Bates* (1884), 13 Q.B.D. 843.

(*i*) See p. 123 *post*, and *Werckmeister* v. *American Lithographic Co.* (1904), 134 Fed. Rep. 321.

(*k*) *Novello* v. *Sudlow* (1852), 12 C.B. 177; compare *Jewelers' Mercantile Agency, Ltd.* v. *Jewelers' Weekly Publishing Co.* (1898), 9 Smith (155 N.Y.) 241, reversing (1895), 84 Hun (91 N.Y.S.C.) 12.

an issue to the public, must depend on the facts of each case (*l*). The test in the case of an issue to a limited circle would seem to be whether the circle is really limited or whether it is one to which, though ostensibly limited, any one can belong by some means or other, so as to obtain copies at will.

It will be noted that, apparently by careless drafting, the words 'the issue' only are used in connexion with the issue of photographs and engravings of works of sculpture and architectural works of art. No doubt the meaning here too is 'the issue to the public'. A loan of photographs in order that engravings might be made from them was held not to amount to a publication of the photographs (*m*).

(*l*) Contrast *Novello* v. *Sudlow, ubi supra*, with *Kenrick* v. *Danube Collieries and Minerals Co., Ltd.* (1891), 39 W.R. 473, and the news agency cases in note (*j*), p. 171 *post*.

(*m*) *Mayall* v. *Higbey* (1862), 6 L.T. 362.

CHAPTER V

ACQUISITION OF COPYRIGHT

Published Works

Summary statement.

Copyright in a published work subsists if it is first published or published simultaneously (i) in the British Empire, other than the self-governing dominions; (ii) in a self-governing dominion by which the Copyright Act, 1911, is adopted; (iii) in a foreign country, to which the Act is extended. The authorities for this statement follow.

Acquisition of copyright in published works.

Copyright in a published (*a*) work subsists throughout the parts of the King's dominions to which the Copyright Act, 1911, extends (*b*) for the term provided (*c*), if the work was first published within such parts of the King's dominions (*d*). It is to be deemed to be so first published, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of the King's dominions is colourable only and is not intended to satisfy the reasonable requirements of the public. Simultaneous publication in two places for this purpose covers publication at an interval of not less than fourteen days or such longer period as may, for the time being, be fixed by Order in Council (*e*).

(*a*) As to publication, see p. 35 *ante*.

(*b*) See p. 1 *ante*.

(*c*) See p. 44 *post*.

(*d*) Copyright Act, 1911, s. 1 (1), p. 203 *post*.

(*e*) Ibid., s. 35 (3), p. 232 *post*. See *Cocks* v. *Purday* (1848), 5 C.B. 860; *Buxton* v. *James* (1851), 5 De G. & Sm. 80.

It seems clear from these provisions that copyright in a published work can be acquired by an alien friend, who does not reside in the King's dominions to which the Act applies, either at the time of publication or at any other time, as well as by a British subject (*f*). The terms of the provision seem even to embrace a work which is the property of an alien enemy, but an alien enemy could not sue in a British Court to protect his right.

Exclusion of certain foreign works.

There is a special provision, however, that if it appears to the King that a foreign country does not give, or has not undertaken to give, adequate protection to the works of British authors, he may, by Order in Council, direct that the above provisions shall not apply to works published after the date specified in the Order, the authors of which are subjects or citizens of such foreign country and are not resident in the King's dominions (*g*).

It will be noticed that the provision does not apply to such subjects or citizens as are resident in the King's dominions—apparently all his dominions and not merely those to which the Act extends. They, it seems, can go on securing copyright in spite of the misdeeds of their Government.

Such an Order will not affect prejudicially any rights or interests acquired or accrued at the date when it comes into operation, and must provide for their protection (*h*).

International copyright.

The above provisions as to acquisition of copyright may be extended to foreign works by Order in

(*f*) See the debate on these matters in *Routledge* v. *Low* (1868), L.R. 3 H.L. 100; and see *Reid* v. *Maxwell* (1886), 2 T.L.R. 790.

(*g*) Copyright Act, 1911, s. 23. As to residence, see p. 41 *post*.

(*h*) Copyright Act, 1911, s. 32 (1), p. 229 *post*.

Council, subject to the provisions of the Act (*i*); and it is, of course, only to works to which such an extension is so made that the general statement at the head of this chapter applies.

Unpublished Works

Summary statement.

Copyright in an unpublished work subsists if the author is at the date of its making (i) a British subject, or (ii) resident or domiciled within the British Empire, other than the self-governing dominions, or (iii) resident or domiciled in a self-governing dominion by which the Copyright Act, 1911, is adopted, or (iv) a subject or citizen of a foreign country to which the Act is extended, or (v) resident or domiciled in a foreign country to which the Act is extended. The authorities for this statement follow.

Acquisition of copyright in unpublished works.

Copyright in an unpublished (*k*) work subsists throughout the parts of the King's dominions to which the Act extends (*l*) for the term provided (*m*) if the author was at the date of the making of the work, or, if such making extended over a considerable period, during any substantial part of such period, a British subject or resident within the parts of the King's dominions to which the Act extends (*n*). 'Resident' for this purpose includes a person who is domiciled (*o*). A body corporate is to be deemed to be so resident, if it has established a place of business within such parts, for the purposes of the first owner-

(*i*) See p. 186 *post*.
(*k*) As to publication, see p. 7 *ante*.
(*l*) See p. 1 *ante*. (*m*) See p. 44 *post*.
(*n*) Copyright Act, 1911, ss. 1 (1), 35 (4), pp. 203, 232 *post*.
(*o*) Ibid., s. 35 (5), p. 232 *post*.

ship of copyright in mechanical contrivances and photographs (*p*).

Abolition of common law right.

The Act abolishes the common law right analogous to copyright which used to exist in unpublished works (*q*) and substitutes, by the above provision, copyright of a similar kind to that conferred on published works. Consequently such distinctions as there used to be between the incidents of the common law right in unpublished works and copyright in published works have ceased to exist. If, for instance, there was ever any common law right in lectures, which had never been reduced to writing, so as to entitle the lecturer to restrain the publication of them on that ground, and not merely on the ground of breach of confidence or implied contract (*r*), it is now replaced by the rights with regard to lectures conferred by the Act (*s*).

Residence and domicile.

In order to obtain copyright for an unpublished work, the author need not be a British subject so long as he is resident or domiciled within the parts of the King's dominions to which the Act applies. 'Resident' explains itself. 'Domiciled' is quite distinct from 'resident'. A person may either possess a domicile of origin or a domicile of choice. The former prevails, unless there is clearly shown, in the particular case, a fixed and settled purpose to abandon that domicile for another (*t*). It will be noted that the Act does not require domicile for the purpose of copyright in unpublished works; mere residence is enough; but, in case the author is not actually resident at the requisite time,

(*p*) Copyright Act, 1911, ss. 19 (1), 21. (*q*) See p. 169 *post*.

(*r*) See *Abernethy* v. *Hutchinson* (1825), 1 H. &. T. 28; *Nicols* v. *Pitman* (1884), 26 Ch.D. 374; *Caird* v. *Sime* (1887), 12 App. Cas. 326.

(*s*) See p. 136 *post*.

(*t*) See *Winans* v. *A.-G.*, [1904] A.C. 287; *Marchioness of Huntly* v. *Gaskell*, [1906] A.C. 56.

it will suffice if he is domiciled in the parts of the King's dominions to which the Act applies.

The rather curious provision as to works, the making of which extends over a considerable period, may give rise to difficulty. What is a 'substantial part'? How long, for instance, would Goethe have had to reside in order to acquire copyright in *Faust* before its publication? or Pimen in Pushkin's *Boris Godunov*, if he had wanted a copyright in the chronicles, which he compiled during nearly the whole of a long life?

In the case of unpublished works of considerable age, it will often be difficult to prove that the author satisfied the requirements of the Act during the time of their making or a substantial part of it. Probably the Court would be satisfied with presumptive, and would not require direct, evidence.

International copyright.

These provisions, like those relating to published works, may be extended to foreign countries in manner provided by the Act (*u*); and it is to such countries only that the general statement above has any application.

(*u*) See p. 186 *post*.

CHAPTER VI

DURATION OF COPYRIGHT

Term of Copyright

General statement.

The term for which copyright subsists is, except so far as otherwise provided, the life of the author and a period of fifty years after his death (*b*). A single uniform term, subject to certain important exceptions stated below, is thus substituted for the variety of terms which existed previously in respect of works which are the subject of copyright. The new term applies to unpublished as well as to published works. Even in cases where a person other than the author is the first owner of copyright by the statute (*c*), the term runs for the life of the author and fifty years after his death.

Works of joint authorship.

In the case of a work of joint authorship, which means 'a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors' (*d*), copyright subsists during the life of the author who first dies and for the term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer (*e*). This provision is not affected by the fact that some one or more of the joint authors do not satisfy the

(*b*) Copyright Act, 1911, s. 3, p. 207 *post*.
(*c*) See pp. 77, 80 *post*.
(*d*) Copyright Act, 1911, s. 16 (3), p. 216 *post*.
(*e*) Ibid., s. 16 (1), p. 215 *post*.

conditions conferring copyright as laid down by the Act (*f*).

Posthumous works.

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 subsists till publication, or performance or delivery in public, whichever first happens, and for a term of fifty years thereafter (*g*).

It will be observed that this provision does not apply to all artistic works, but only to engravings. Photographs are specially provided for elsewhere (*h*). Other posthumous artistic works will be subject to the general provision of the Act and enjoy copyright for fifty years from the death of the author, whether published or not.

Mechanical contrivances.

Copyright in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced subsists for fifty years from the making of the original plate from which the contrivance was directly or indirectly derived (*i*), and 'plate' includes any matrix or other appliance by which records, perforated rolls, or other such contrivances are or are intended to be made (*k*).

Where such a contrivance was made before the commencement of the Act (*l*), copyright, as from the commencement of the Act, subsists for fifty years

(*f*) Copyright Act, 1911, s. 16 (2), p. 215 *post*.
(*g*) Ibid., s. 17 (1), p. 216 *post*. (*h*) See p. 46 *post*.
(*i*) Ibid., s. 19 (1), p. 217 *post*. (*k*) Ibid., s. 35 (1), p. 230 *post*.
(*l*) As to this date, see p. 2 *ante*.

from the making of such original plate, as if the Act had been in force at the time of such making, except in the case of a contrivance which would have infringed copyright in some other such contrivance if this provision had been in force at the time of its making (*m*).

Photographs.

Copyright in photographs, including photo-lithographs or any works produced by any process analogous to photography (*n*), subsists for fifty years from the making of the original negative from which the photograph was directly or indirectly derived (*o*).

Government publications.

Where any work has, before or after the commencement of the Act, been prepared or published by or under the direction or control of the Crown or any Government department, the copyright, subject to any agreement with the author, belongs to the Crown, and continues for fifty years from the date of the first publication of the work. This provision is without prejudice to any rights or privileges of the Crown (*p*).

International copyright.

An Order in Council made for the purpose of international copyright (*q*) may provide that the term of copyright within the parts of the King's dominions to which the Act extends shall not exceed, in the case of works to which the Order applies, that conferred by the law of the country to which the Order relates (*r*).

Limitations on Term of Copyright

Reproduction after notice and payment of royalties.

At any time after the expiration of twenty-five years, or in the case of a work in which copyright subsisted on December 16, 1911, thirty years, from the death of the author of a published work, the work may

(*m*) Copyright Act, 1911, s. 19 (8), p. 221 *post*.

(*n*) Ibid., s. 35 (1), p. 230 *post*. (*o*) Ibid., s. 21, p. 221 *post*.

(*p*) Ibid., s. 18, p. 217 *post*, and see the chapter on Crown Copyright, p. 65 *post*.

(*q*) See p. 186 *post*. (*r*) Copyright Act, 1911, s. 29 (1).

be lawfully reproduced for sale, if the person reproducing it proves that he has given notice in writing of his intention, and that he has paid to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of 10 per cent. on the price at which he publishes the work. The mode in which such notice is to be given and the particulars to be contained in it, and the mode, time, and frequency of the payment of such royalties, are to be prescribed by regulations made by the Board of Trade, in which they may prescribe also, if they think fit, the payment in advance, or the otherwise securing of the payment, of such royalties (*t*).

Works of joint authorship.

In the case of a work of joint authorship, copyright runs for fifty years after the death of the author who dies first, or during the life of the author who dies last, whichever period is the longer (*u*), and it is further provided, by a provision which appears to be intended to apply to the present section, that the period during which the powers conferred by it apply, that is to say, from the time when they came into force till the termination of the copyright, is to run from (i) twenty-five or thirty years, as the case may be, from the death of the joint author who dies first or (ii) the death of the joint author who dies last, to the termination of the copyright, whichever period is the shorter (*u*).

Let X be the length of life of the joint author who dies first, and let Y be the length of life of the joint author who dies last, and let Z be the length of copyright.

Case I. Y is greater than X by less than 50 years. Then $Z=X+50$.

(*t*) Copyright Act, 1911, s. 3, p. 207 *post*.
(*u*) Ibid., s. 16 (1); see p. 73 *post*.

Sub-case A. Y is greater than X by less than 25 years. X+25 is greater than Y. Z−(X+25) is less than Z−Y. Therefore the section applies for the period Z−(X+25).

Sub-case B. Y=X+25.

Here Z−(X+25)=Z−Y.

Therefore the section applies for either period, as they are the same.

Sub-case C. Y is greater than X by more than 25 years.

X+25 is less than Y.

Z−Y is less than Z−(X+25).

Therefore the section applies for the period Z−Y.

Case II. Y is greater than X by 50 years or more.

Then Z equals or is greater than X+50 and Z=Y.

Z−Y is less than Z−(X+25).

Therefore the section applies for the period Z−Y, which in fact is non-existent, since Z=Y.

The above cases may be applied to works in which there was copyright on Dec. 16, 1911, by substituting 30 for 25.

Post-humous works.

Where a literary, dramatic, or musical work, or an engraving is posthumous (*v*), the date of publication or performance, or delivery in public, is to be treated as the date of the death of the author for the purpose of the above provision (*x*).

Payment of royalties.

Difficulties may well arise under the above provision as to the payment of royalties in the case of 'collective' works (*y*), where the copyright is not all owned by one person, or in the case of partial assignments or grants of interest, where the assignee becomes owner of the

(*v*) See p. 45 *ante*.

(*x*) Copyright Act, 1911, s. 17 (1), p. 216 *post*.

(*y*) See p. 58 *post*.

copyright for the purpose of the portion assigned or interest granted to him (*z*), and also in the case of works of joint authorship. These may be in part removed by the Board of Trade regulations, but one would think that they were matters which ought to have been dealt with specifically in the Act.

Compulsory licences.

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

It should be observed that this provision does not apply to artistic works, and if it was intended to apply to lectures, delivery should have been referred to as well as performance, as in other sections where lectures are dealt with (*c*).

The observations already made as to the difficulties which may arise in certain cases (*d*) may be taken to be repeated here. It seems remarkable that there should be power to grant a compulsory licence against the owner of a part of a copyright or of an interest in

(*z*) By s. 5 (3) of the Act.
(*a*) Copyright Act, s. 16 (1), p. 215 *post*, and see p. 44 *ante*.
(*b*) Ibid., s. 4. (*c*) See p. 137 *post*.
(*d*) p. 48 *ante*.

a copyright alone, or against the owner of the copyright in part of a 'collective work'. In the case of joint authorship, probably the authors are to be taken to own the copyright in combination (*e*), so that an order could only be made against them in combination and not singly.

(*e*) See p. 73 *post*.

CHAPTER VII

COPYRIGHT IN EXISTING WORKS

Substituted Rights

General provision.

Where any person is immediately before the commencement of the Act entitled to any of the rights specified below in any work or to any interest in such a right, he is, as from that date, entitled to the substituted right specified below, or to the same interest in such substituted right, and to no other right or interest. Such substituted right subsists for the term for which it would have subsisted if the Act had been in force when the work was made and the work had been one entitled to copyright thereunder (*a*).

The provision applies to any person who is so entitled, whether as original owner, or by assignment, devolution, or otherwise.

Literary and artistic works.

Where immediately before the commencement of the Act any person was entitled to copyright in a literary or artistic work, or, where such a work was unpublished, to the common law right, if any, to restrain publication or other dealing with the work (*b*), he is entitled to copyright under the Act in the work (*c*).

(*a*) Copyright Act, 1911, s. 24 (1), p. 222 *post*.

(*b*) Copyright in paintings, drawings, and photographs under the old law began when they were made, and not when they were published (Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1, and see *Tuck & Sons* v. *Priester* (1887), 19 Q.B.D. 629), and therefore, even before publication, they were protected by copyright and not by common law right.

(*c*) Copyright Act, 1911, s. 24 (1), Sched. I, pp. 222, 234 *post*.

Articles in periodicals.

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 above right is subject to the right of publishing the essay, article, or portion in a separate form reverting to the author after the term of twenty-eight years from its first publication, or any such right of separate publication reserved to the author by any contract, express or implied (*d*).

Musical and dramatic works.

(1) Where, immediately before the commencement of the Act, any person was entitled to both copyright and performing right in a musical or dramatic work (terms which include, in the case of an unpublished work, the common law right, if any, to restrain publication or other dealing with the work or the public performance thereof respectively), he is entitled to copyright under the Act, subject to the reservation of the right of separate publication in the case of essays, articles, or portions forming part of and first published in a review, magazine, or other periodical or work of a like nature (*e*).

(2) If he was so entitled to copyright, but not to performing right, he becomes entitled to copyright under the Act, except the sole right to perform the work or any substantial part of it in public (*f*).

(3) If he was so entitled to performing right, but not to copyright, he becomes entitled to the sole right to

(*d*) Copyright Act, 1911, s. 24 (1), Sched. I. This right was given to the author by s. 18 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), now repealed, and is preserved by the Act of 1911 as above stated. The provision of that section, that the proprietor of the periodical shall not publish the article in separate form during the twenty-eight years without the consent of the author or his assignees, appears not to be preserved. The Act of 1911 uses the words 'other periodical or work' instead of the words 'other periodical works' of the Act of 1842.

(*e*) Copyright Act, 1911, s. 24 (1), Sched. I, pp. 222, 234 *post*; see *supra*.

(*f*) Copyright Act, 1911, s. 24 (1), Sched. I.

perform the work in public, but to none of the other rights comprised in copyright under the Act (*f*).

These provisions are subject, in the case of musical works, to certain special provisions with regard to mechanical contrivances (*g*).

Duration of Rights

Term of copyright.

The term for which copyright subsists is the life of the author and a period of fifty years after his death (*h*).

Reproduction after notice and payment of royalties.

A work in which copyright subsisted on December 16, 1911, may, at any time after the expiration of thirty years from the death of the author, be reproduced without infringement of copyright after the giving of a notice and the payment of a royalty of 10 per cent. on the published price, as prescribed by Board of Trade regulations (*i*).

Effect of Prior Assignment

Assignment only extends to original term.

If the author of any work, in which any of the specified rights (*k*) subsist at the commencement of the Act, or his legal personal representatives has or have, 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 the Act, the right would have expired, the specified substituted right (*l*) will pass to the author of the work or his legal personal representatives, in the absence of express agreement to the contrary, and any such interest created before the

(*f*) Copyright Act, 1911, s. 24 (1), Sched. I.

(*g*) See p. 61 *post*.

(*h*) Copyright Act, 1911, s. 3. See p. 44 *ante*.

(*i*) Ibid. This provision has been dealt with, p. 46 *ante*. The period is thirty years in this case, as against twenty-five years in the case of other works.

(*k*) See p. 51 *ante*.

(*l*) See ibid.

commencement of the Act and then subsisting will determine, subject to the conditions mentioned below (*m*).

The effect of this provision is to limit the extent of assignments or grants of interest to the duration of the term of copyright conferred by the old law, so that the remainder of the much longer term conferred by the Act of 1911 belongs to the author or his legal personal representatives, subject to the provisions which are set out hereafter.

This effect is prevented if there is an express agreement to the contrary. It does not appear that such an agreement need have been made after the commencement of the Act. An agreement, for instance, to assign or grant an interest in a copyright for the subsisting term or any greater term which might be conferred by statute would satisfy the phrase 'express agreement', whenever it was made.

An author may therefore contract himself out of the benefit of this clause by an express agreement, subject to the provision which nullifies all assignments or grants of interest by authors, who are the first owners of copyright, otherwise than by will, so far as they extend more than twenty-five years after the author's death (*n*).

Assignments and grants made between the passing and the commencement of the Act.

This last provision applies to assignments and grants made after the passing of the Act, i.e. December 16, 1911, but the present provision applies to assignments and grants made before the commencement of the Act, a very different date. What is the position with regard to assignments and grants made between the passing of the Act and its commencement in cases where the original term of copyright extends more than twenty-

(*m*) Copyright Act, 1911, s. 24 (1), (2), pp. 222, 224 *post*.
(*n*) Ibid., s. 5 (2); see p. 95 *post*.

five years beyond the author's death ? Take, for instance, a literary work published in 1905, the author of which died in 1912. Copyright under the old law would last till 1947 ; under the Act of 1911 it would last till 1962. Suppose that the author assigned the whole of the copyright on December 18, 1911. The assignment, on the one hand, by s. 5 (2) of that Act, would only carry copyright till 1937, and thereupon the copyright would revert to the legal personal representatives of the author, subject to none of the provisoes to s. 24 (1). Section 24 (1), on the other hand, states that ' at the date when, but for the passing of this Act, the right would have expired,' i.e. 1947, the balance of the term passes to the author's legal personal representatives, subject to those provisoes. But it has already gone to them, subject to no such provisoes, in 1937. Is the result that they hold it subject to no provisoes for ten years, and then the provisoes attach, or do the provisoes never attach at all ?

Probably the solution is that an assignment or grant made after the passing of the Act, and therefore subject to the limitation imposed by s. 5 (2), is not an assignment or grant ' for the whole term of the right ' as contemplated by s. 24 (1), even though it purports to be so, and therefore the provisions of s. 24 (1) do not come into operation.

Provisions in favour of prior assignees and grantees.

The person who, immediately before the date at which the right would have expired, but for the passing of the Act, was the owner of such right or interest, is entitled :

(1) On giving the notice mentioned below (*o*), to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the

(*o*) See p. 57 *post*.

right for such consideration as, failing agreement, may be determined by arbitration ;

(2) 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 or his legal personal representatives within three years after the date at which the right would have expired but for the passing of the Act, of such royalties to the author or his legal personal representatives as, failing agreement, may be determined by arbitration, except in the case of a ' collective work ', which is the subject of a special provision (*p*).

The prior assignee or grantee of the right or interest may therefore either give the prescribed notice and obtain an assignment or grant covering the remainder of the extended term of copyright on arbitration terms, or he may merely continue to reproduce or perform the work in like manner as theretofore, paying a royalty on arbitration terms, if it be demanded within three years, except in the case of a ' collective work '.

Meaning of ' in like manner as theretofore '.

The words ' in like manner as theretofore ' probably must not be interpreted very strictly as meaning in exactly the same way as that in which the rights under the assignment or grant have been previously exercised ; they more probably mean that the assignee or grantee is entitled to go on exercising such rights as he possessed under the assignment or grant, though not necessarily in precisely the same way as that in which he has in fact previously exercised them. Thus, it would seem, if the assignment or grant gave him power to bring out new and altered editions of a work, he will be entitled to go on doing so, pretty clearly in a case

(*p*) Copyright Act, 1911, s. 24 (1), (2), pp. 222, 224 *post*. As to ' collective ' works, see p. 58 *post*.

where he has previously in fact brought out new and altered editions, and perhaps also where he has not in fact done so but has had power under his assignment or grant to do so. It is more difficult to say whether any special terms provided in the original agreement or grant, on which such new and altered editions were to be brought out, would still apply, or whether the matter is left at large and the parties must agree or have recourse to arbitration under the provision now under discussion for the ascertainment of the terms. One is inclined to think, in view of the scheme of the section, that the latter is the correct view.

The terms of an agreement which were not dependent on the fact that a copyright or an interest in it was or was not vested in any particular person would presumably remain unaffected by the operation of the provisions which have just been discussed.

Manner of giving notice.

Notice under the above provision must be given not more than one year nor less than six months before the date at which the right would have expired, if the Act had not been passed, and must be sent by registered post to the author or his legal personal representatives, or, if he or they cannot with reasonable diligence be found, advertised in the *London Gazette* and in two London newspapers (*q*).

If the right would have expired less than six months after the commencement of the Act, it would appear in strictness to be impossible to give notice at all, and the Act ought to have made provision for this. But it would be as well, in such cases, if there is time to do so after the passing of the Act, to give notice, for what it is worth, more than six months before the expiration of the original term.

(*q*) Copyright Act, 1911, s. 24 (1), (2), pp. 222, 224 *post*.

'Collective' works.

Where the work, with which the above provisions have dealt, is incorporated in a 'collective work' and the owner of the right or interest is the proprietor of that collective work, he is entitled to give the prescribed notice and obtain an assignment or grant on arbitration terms, or to continue to reproduce or perform the work without any such assignment or grant and without any payment (*r*).

The latter and most advantageous course is that which he will naturally adopt. The word 'proprietor' is not defined in the Act, and appears to have been inartistically introduced from the old law, where it was often used as synonymous with 'owner' in regard to copyright. It appears to mean, in the present context, a person who is entitled to deal at will with the copyright in all the portions of the collective work, not necessarily by assignment but by grant or arrangement with the owners of the copyright in such portions (*s*).

'Collective work' is defined as '(i) an encyclopaedia, dictionary, year-book, or similar work; (ii) a newspaper, review, magazine, or similar periodical; and (iii) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated' (*t*).

The two first heads of this definition perhaps need no comment. The last head bears evident signs of conflation. The second half of it includes everything which

(*r*) Copyright Act, 1911, s. 24 (1), p. 223 *post*.

(*s*) Compare Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18, now repealed; *Trade Auxiliary Co.* v. *Middlesborough District Tradesmen's Protection Association* (1889), 40 Ch.D. 425; *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), ibid., 500; *Liverpool General Brokers' Association, Ltd.* v. *Commercial Press Telegram Bureaux, Ltd.*, [1897] 2 Q.B. 1.

(*t*) Copyright Act, 1911, s. 35 (1).

can possibly fall under the first half, and the first half is therefore unnecessary. It covers any work in which the works or parts of works of different authors are incorporated, whether such works are *eiusdem generis* or not; that is to say, a work combined of one or more literary, dramatic, musical, or artistic works in any permutation or combination, so long as they, or any of them, are by more than one author, is a collective work. It matters not whether the works are distinct or not distinct, or whether they are written contemporaneously or in collaboration or not. Thus works of joint authorship (*u*) are collective works. To take examples, a novel by A with a frontispiece by B is a collective work; a hymn written by Y and provided with a tune by Z is a collective work; so is a play by A provided with a prologue or stage-directions by B or an interpolated song by C; and so is a picture by A provided with a motto by X. In cases, too, where a work of a certain class (*v*) is made to order for valuable consideration or a work is made under a contract of service and apprenticeship, although the person ordering or the employer is the first owner of the copyright, the person who made it is still the author (*x*). Therefore, a book by E with an index by F, who is a paid servant in the employ of the publisher, is a collective work. It is probable that such results as these were not contemplated by the Legislature, but they seem to follow from the definition.

The case where one author's work is subject to copyright and the other's is not is not so clear. It is specifically provided in the case of works of joint authorship that the work of the latter author is to be

(*u*) Defined Copyright Act, 1911, s. 16 (3); see p. 73 *post*.
(*v*) See p. 73 *post*. (*x*) See p. 80 *post*.

disregarded except for the purpose of the duration of copyright (*y*), but there is no similar provision here, and the natural conclusion is that in the present case it is not to be disregarded. To support the opposite view, it must be contended that 'author' means the author of a copyright work, but there is no definition of 'author' in the Act.

If this view is right, a non-copyright text of Homer edited by A would be a collective work, and A would be entitled to no payment under this section, a remarkable result. There can be no doubt, however, in any case that a text of Homer, edited or provided with an *apparatus criticus* by A, and provided with notes by B, is a collective work, since an edited text of a non-copyright work may be the subject of copyright (*z*). An anthology of non-copyright work, edited by A, would be either a collective work or a work by A alone, according to the opinion held on the question raised above.

In the case of a work in a series of volumes, each of which was written by a single author, it would seem that the work must be regarded as a whole and not by taking each volume separately, and that, therefore, it is a collective work.

Compensation for expenditure incurred before July 26, 1910.

Where any person has, before July 26, 1910, 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 the Act, have been lawful, nothing in the above provisions is to diminish or prejudice any rights

(*y*) See p. 73 *post.* (*z*) See p. 5 *ante.*

or interests arising from or in connexion with such action which 'are' subsisting and valuable at the said date, unless the person, who by virtue of the above provisions becomes entitled to restrain such reproduction or performance, agrees to pay such compensation as, failing agreement, may be determined by arbitration (*a*).

The word 'are' should apparently be 'were', as 'the said date' must mean July 26, 1910. It would seem as though the present tense had been introduced through the subsection having been drafted before that date. The date, one would think, ought to have been fixed later, not long, if at all, before the passing of the Act.

The meaning of the provision is that where expense or liability has been incurred on the faith of a copyright terminating at the date fixed by the old law, the person benefiting by the extension of the term shall compensate the person damnified before he is entitled to enjoy his new advantages.

Mechanical Contrivances

Right to make records and rolls of existing published music.

Any person may make, within the parts of the King's dominions to which the Act extends, records, perforated rolls, or other contrivances for the performance of a musical work published before the commencement of the Act. The term 'musical work' for this purpose includes any words so closely associated therewith as to form part of the same work, but not a contrivance by means of which sounds may be mechanically reproduced (*b*). The exercise of this right is subject to the following conditions:

(*a*) Copyright Act, 1911, s. 24 (1), p. 223 *post*.
(*b*) Ibid. s. 19 (2), (7).

Notice and payment of royalties.

He must have given notice of his intention to make the contrivances in manner prescribed by Board of Trade regulations, and must have paid in the manner so prescribed, to or for the benefit of the owner of the copyright in the work, royalties in respect of all such contrivances sold by him. Such royalties are to be at the rate of $2\frac{1}{2}$ per cent. on the ordinary retail selling price of the contrivance (*b*). No royalties are payable in respect of contrivances sold before July 1, 1913, if contrivances reproducing the same work had been lawfully made or placed on sale within the parts of the King's dominions to which the Act extends before July 1, 1910 (*c*). Subject to the above differences, the provisions as to the assessment and payment of royalties are the same as those enacted in the case of mechanical contrivances for the performance of musical works published after the commencement of the Act (*d*).

Non-effect of assignments before December 16, 1911.

Notwithstanding any assignment made before December 16, 1911, of the copyright in a musical work published before the commencement of the Act, the right conferred by the Act in respect of the making or authorizing the making of such mechanical contrivances belongs to the author or his legal personal representatives and not to the assignee, and the royalties are payable to and for the benefit of the author or his legal personal representatives (*e*).

Expenditure or liability already incurred.

The provisions as to compensation for expenditure or liability incurred before July 26, 1910 (*f*), are not to be construed as authorizing any person who has

(*b*) Copyright Act,1911, s. 19 (2), (3), (7), pp. 217, 218, 219 *post.*
(*c*) Copyright Act, 1911, s. 19 (7) (*b*), p. 220 *post.*
(*d*) Ibid. See p. 131 *post*, where these provisions are dealt with.
(*e*) Copyright Act, 1911, s. 19 (7) (*c*), p. 220 *post.*
(*f*) See p. 60 *ante.*

made such mechanical contrivances to sell any of them, whether made before or after December 16, 1911, except on the terms and subject to the conditions laid down above (*g*).

Mechanical contrivances existing before the commencement of the Act.

Where such a mechanical contrivance was made before the commencement of the Act, copyright, as from the commencement of the Act, subsists therein in like manner and for the like term as if the Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived. The person who, at the commencement of the Act, was the owner of such original plate is the first owner of the copyright (*h*).

No copyright, however, is conferred on any such contrivance by this provision where the making thereof would have infringed copyright in some other such contrivance, if the provision had been in force at the time of such making (*h*).

Foreign works.

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 an extent as may be provided by the Order, include any rights with respect to the making of such mechanical contrivances (*i*).

Crown Copyright

Saving of Crown rights.

The provisions of the Act as to works prepared or published by or under the direction or control of the Crown or a Government department are expressed to be without prejudice to any rights or privileges of

(*g*) Copyright Act, 1911, s. 19 (7) (*d*), p. 220 *post*.

(*h*) Copyright Act, 1911, s. 19 (8), p. 221 *post*. For the definition of 'plate', see ibid., s. 35 (1), p. 230 *post*.

(*i*) Ibid., s. 19 (7) (*e*), p. 220 *post*.

the Crown, and therefore it would seem that the Crown's rights in certain existing works remain unaffected (*k*).

University and Medical Copyright

University copyright.

University copyright is specially excepted from the provisions with regard to existing works (*l*); it is therefore unaffected by them, and continues to exist subject to the limitations imposed elsewhere in the Act of 1911 (*m*).

Medical copyright.

The sole right to publish the *British Pharmacopoeia* (*n*) is not referred to in the Act of 1911, but inasmuch as the specific statute, under which it exists, is not repealed or affected, it must, apparently, be taken that the general statute does not cut it down, in accordance with the maxim *generalia specialibus non derogant* (*o*).

International Copyright

Modifications may be made by Order in Council.

An Order in Council made for the purposes of international copyright (*p*), in applying the provisions of the Act as to existing works, may make such modifications as appear necessary (*q*).

(*k*) Copyright Act, 1911, s. 18. See p. 67 *post*.
(*l*) Copyright Act, 1911, s. 24 (3), p. 224 *post*.
(*m*) See p. 69 *post*.
(*n*) See p. 70 *post*.
(*o*) *Kutner* v. *Phillips*, [1891] 2 Q.B. 267, at p. 272.
(*p*) See p. 186 *post*.
(*q*) Copyright Act, 1911, s. 29 (1), p. 227 *post*.

CHAPTER VIII

CROWN COPYRIGHT

Crown copyright.

WHERE a work, whether before or after the commencement of the Act, has been prepared or published by or under the direction of the Crown or any Government department, the copyright, subject to any agreement with the author, belongs to the Crown, and continues for a period of fifty years from the date of the first publication of the work (*a*). This provision is without prejudice to any rights or privileges of the Crown (*a*).

The words of this provision appear to be wide enough to cover the cases of plates or other originals of engravings, photographs, and portraits ordered and made for valuable consideration, and also of works made under a contract of service or apprenticeship (*b*), and consequently it would appear that, in the case of the Crown, the term of copyright in such cases is only fifty years and not the life of the author and fifty years. Possibly, however, it might be argued that the proviso as to Crown rights and privileges would enable the Crown to claim the larger term in such cases, on the ground that it, like a subject, could acquire copyright under the ordinary provisions of the Act, if it preferred it. The Crown's rights in existing works would appear to be unaffected by the Act (*c*), including the right reserved to the Admiralty to publish the Nautical Almanac or

(*a*) Copyright Act, 1911, s. 18, p. 217 *post*.
(*b*) See pp. 77, 80 *post*.
(*c*) See p. 63 *ante*.

other tables to facilitate the discovery of the longitude at sea (*d*).

Permission to reproduce Government publications.

The Treasury issued a Minute on August 31, 1887, stating which species of Government publications the Crown would allow to be reproduced without restriction. These included Reports of Royal Commissions and Parliamentary Committees, papers required by statute to be laid before Parliament, command papers, Acts of Parliament, and official books, such as the King's Regulations for the Army or Navy. Reproductions of these, however, must not be stated to be published by authority, when not published by the Government. The reproduction of literary or quasi-literary works (*e*), or of charts and ordnance maps, is not allowed. No doubt the policy expressed in this Minute will still be followed.

Judges' judgments.

It is not quite clear whether a judge's judgment, whether written or oral, can be said to be a work prepared or published by or under the direction of the Crown or any Government department. The actual words might cover it, but the intention of the provision does not seem to be directed to such a work.

Perhaps a judge might be regarded as under a contract of service with the Crown. Judges of the High Court in England are paid and their hours of duty are more or less controlled by the Crown, and they are dismissed by the Crown, though only upon an address by both Houses of Parliament. This last fact does not seem to put them in the same category as the dispensary doctor who, being employed by guardians and removable by the Local Government Board for

(*d*) Nautical Almanack Act, 1828 (9 Geo. IV, c. 66), s. 2.

(*e*) As to narrative of a voyage of discovery published by the Crown, see *Nicol* v. *Stockdale* (1785), 3 Swan. 687.

Ireland (*f*), was held not to be under a contract of service. However, it seems scarcely reasonable to regard judges as being under a contract of service, and perhaps they fall rather within the class described by Buckley L.J. (*g*) as exercising their skill to attain an indicated result, even though they do so at more or less fixed times and in fixed places and for a salary.

Bible and Prayer Book.

The ancient rights which the Crown from time to time asserted, and which included a complete control over printing (*h*), are not a useful subject of discussion at the present day, but they are still of practical importance in connexion with the Authorized Version of the Bible and the Book of Common Prayer (*i*).

That the Crown had the sole right to publish the Book of Common Prayer was held to have been settled at a early date (*k*).

The sole right with regard to the Bible only extends to the Authorized Version, apparently, and does not cover the versions which that version superseded, versions of the Bible in the original tongues or in other translations in foreign languages or in English, or paraphrases in verse or otherwise (*l*).

Various reasons have been given by the Courts for

(*f*) *Murphy* v. *Enniscorthy Guardians*, [1908] 2 I.R. 609.

(*g*) In *Simmons* v. *Heath Laundry Co.*, [1910] 1 K.B. 543, at p. 553, see p. 81 *post*.

(*h*) See 6 Bac. Abr. Prerog. F. 5 (ed. 7, p. 506); *Millar* v. *Taylor* (1769), 4 Burr. 2303, at p. 2311.

(*i*) Perhaps the King has also the sole right to print Acts of Parliament (see *Basket* v. *Cambridge University* (1758), 1 W.Bl. 105; *Baskett* v. *Cunningham* (1762), ibid., 370), but this is now of small importance, as no objection is taken by the Crown to their reproduction by private persons.

(*k*) *Millar* v. *Taylor* (1769), 4 Burr. 2303, at pp. 2329, 2381; *Stationers' Co.* v. *Carnan* (1775), 2 W.Bl. 1004.

(*l*) Compare *Millar* v. *Taylor* (1769), *ubi supra*, at p. 2405.

this exclusive right, some plausible and some not, but the principle seems to be well settled, and, as long as Christianity remains the official religion of the country, the appropriateness of it is so obvious that it is not likely to be successfully contested.

The Crown has from time to time granted out the right of printing these works to the King's Printer (*m*). In 8 Car. I, it seems, a patent was granted to the University of Oxford (*n*). This patent was a continuation of earlier patents, and similar patents were granted to the University of Cambridge (*o*). A grant was also made to the King's Printer in Scotland (now a Board) of the right of printing Bibles and Prayer Books for that country (*p*). A similar grant appears to have been made for Ireland (*q*).

(*m*) *Eyre* v. *Carnan* (1781), 6 Bac. Abr. Prerog. F. 5 (ed. 7, p. 509); *In re Red Letter New Testament* (*Authorized Version*) (1900), 17 T.L.R. 1.

(*n*) *Hills* v. *Oxford University* (1684), 1 Vern. 275.

(*o*) See *Basket* v. *Cambridge University* (1758), 1 W.Bl. 105.

(*p*) *Oxford and Cambridge Universities* v. *Richardson* (1802), 6 Ves. 689; *Manners* v. *Blair* (1828), 3 Bli. (N.S.) 391.

(*q*) *Grierson* v. *Jackson* (1794), Ridg. L. & S. 304.

CHAPTER IX

UNIVERSITY AND MEDICAL COPYRIGHT

University copyright.

The Copyright Act, 1911, preserves to the Universities of Oxford, Cambridge, St. Andrews, Glasgow, Aberdeen, and Edinburgh, and the Colleges of Winchester, Eton, and Westminster, any copyright which they already possess under the Copyright Act, 1775 (*a*), but provides that the remedies and penalties for infringement of any such copyright are to be under the Act of 1911 and not under the Act of 1775 (*b*).

It will be observed that the power of acquiring any further copyrights under the Act of 1775 is taken away, inasmuch as the Act of 1911 repeals the Act of 1775 altogether (*c*).

In fact the Universities of Oxford and Cambridge alone have acquired any rights, which still subsist, under the Act of 1775. They enjoy the sole liberty of printing and reprinting the books in which they possessed such rights on December 16, 1911 (for so the word 'already' must apparently be interpreted), in perpetuity, except where any of such books have been

(*a*) 15 Geo. III. c. 53. This was not the beginning of University copyright; see *Millar* v. *Taylor* (1769), 4 Burr. 2303, at pp. 2351, 2388.

(*b*) Copyright Act, 1911, s. 33, p. 229 *post*.

(*c*) Ibid., s. 36, Sched. II. The Act of 1775 was extended to Trinity College, Dublin, by the statute 41 Geo. III. c. 107, which was repealed by s. 1 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), any rights under it being preserved by s. 27 of the same Act; but no such rights were ever acquired.

bequeathed or given to them for any term of years or other limited term. Such exclusive right of printing and reprinting, however, only subsists so long as the books or copies belonging to the Universities are printed only at their own printing presses within the Universities and for their sole benefit and advantage. If they grant or sell, as they have power to do, their exclusive right, or any part thereof, or allow any person or body to print or reprint any of such books, their exclusive right becomes void (*d*), presumably only in respect of the book, the exclusive right in which is sold or granted, though the Act is not at all clear on this point. In case of infringement, the offender can now be proceeded against civilly or for penalties only under the Act of 1911 (*e*).

Medical copyright.

The Medical Council Act, 1862, (*f*), s. 2, gives the General Council of Medical Education and Registration of the United Kingdom 'the exclusive right of publishing, printing, and selling the *British Pharmacopoeia*, but the Treasury may from time to time fix the price at which copies are to be sold to the public'.

This exclusive right is not specifically preserved by s. 24 (3) of the Copyright Act, 1911, as University copyright is preserved, but, as there is no repeal of the Act under which it subsists, it must be taken to be preserved (*g*).

(*d*) Copyright Act, 1775 (15 Geo. III. c. 53), ss. 1, 3.
(*e*) Copyright Act, 1911, s. 33.
(*f*) 25 & 26 Vict. c. 91.
(*g*) See also p. 64 *ante*.

CHAPTER X

OWNERSHIP AND DEVOLUTION OF COPYRIGHT

Ownership

Author of a work generally first owner of copyright.

The author of a work is the first owner of the copyright therein, except in the cases specified in the provisions set out below (*a*). The author of an original literary, dramatic, musical, or artistic work, therefore, possesses the copyright therein, whoever be the owner of the work itself, except in the cases hereinafter mentioned, and unless and so far as there has been an assignment in writing (*b*).

Ownership of copyright in artistic works.

Thus, for instance, the purchaser of an artistic work, unless it is an engraving, photograph, or portrait made for valuable consideration in pursuance of an order (*c*), or has been made by some one under a contract of service or apprenticeship with him (*d*), does not own the copyright in it, although he owns the actual artistic work. If he wishes to do so, he must obtain a written assignment of the copyright. This is an important change from the previous law (*e*). Under it, when a painting or drawing or negative of a photograph was sold or disposed of, the person selling or disposing of it did not retain the copyright unless it was expressly reserved to him by agreement in writing, signed at or

(*a*) Copyright Act, 1911, s. 5 (1), p. 208 *post*.
(*b*) See pp. 89, 94 *post*. (*c*) See p. 77 *post*.
(*d*) See p. 80 *post*.
(*e*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1, now repealed.

before the time of the sale or disposition, by the vendee or assignee (*f*). Now it remains in the vendor, unless he assigns it in writing.

Meaning of 'author'.

The term 'author', which is not defined, appears not to include a person who merely suggests the idea of a work, but means the person who actually creates it (*g*). Whether it includes a person who produces it mechanically, as opposed to the person who really invents it, is not so clear. The section regards a person who makes a work under a contract of service or apprenticeship as being the 'author' of the work (*h*), but it does not necessarily follow from this that such a person who merely carries out mechanically something invented by another is the 'author'. On the other hand, a work is no less 'original', as against the world, because it is brought into being by a person who did not originally invent it, so long as such person has not brought it into being himself. But probably it would be held that the author of a work is the person who is really entitled to the credit of its invention, whoever may have carried out its mechanical production (*i*).

Assignees.

An assignment in writing of a copyright by the owner makes the assignee the owner of the copyright to the extent of the assignment (*k*). Where the assignment

(*f*) See *Levi* v. *Champion & Co., Ltd.* (1887), 3 T.L.R. 286; *Geissendörfer* v. *Mendelssohn* (1896), 13 T.L.R. 91.

(*g*) See *Nottage* v. *Jackson* (1883), 11 Q.B.D. 627; *Kenrick & Co.* v. *Lawrence & Co.* (1890), 25 Q.B.D. 99, at p. 106; *Tate* v. *Fullbrook*, [1908] 1 K.B. 821, at pp. 825, 826, per Vaughan Williams L.J.

(*h*) See p. 80 *post.*

(*i*) See *Barfield* v. *Nicholson* (1824), 2 L.J. (O.S.) Ch. 90, at. p. 102; also reported 2 S. &. S. 1; *Newton* v. *Cowie* (1827), 4 Bing. 234 (engraving); *Stannard* v. *Harrison* (1871), 24 L.T. 570; *Kenrick & Co.* v. *Lawrence & Co.* (1890), *ubi supra.*

(*k*) This seems to follow from the Copyright Act, 1911, s. 5 (2) p. 208 *post.* See p. 89 *post.*

is only partial, the assignee becomes the owner as respects the right in the copyright assigned, and the assignee remains the owner as respects the rights not assigned (*l*).

Works of joint authorship.

Where the authorship is joint, i.e. where a work is produced by the collaboration of two or more authors, and the contribution of one author is not distinct from that of the other author or authors, it is not stated by the statute what the exact tenure of the joint authors, who are each first owners of the copyright, is ; but it is specially provided that, in such a case, where some one or more of the joint authors does or do not satisfy the conditions conferring copyright laid down by the Act, the work is to be treated for the purposes of the Act (except as to the term of copyright) as if the other author or authors had been the sole author or authors of it. Where a married woman and her husband are joint authors of a work, the interest of the married woman in it is her separate property (*m*).

The qualification that the contribution of one author must not be distinct from that of the other author or authors means that it must not be distinguished in any way in the work itself, not that it cannot be distinguished by expert examination. Those of the plays included in the collection called by the names of Beaumont and Fletcher, which were written by Beaumont and Fletcher jointly, are a good instance of joint authorship, though an experienced reader can detect approximately which portions are to be attributed to one author and which to the other. The books of the Hexateuch would provide another instance, though

(*l*) Copyright Act, 1911, s. 5 (3), p. 209 *post*.
(*m*) Ibid., s. 16 (2), (3), (4), pp. 215, 216 *post*.

experts can separate J, E, P, and subordinate texts which are conflated in them, if it were not that in their case there was presumably no 'collaboration', since 'collaboration' seems to imply a preconcerted joint design and does not include a suggestion made by A on which B works, or a subsequent alteration or correction of B's work by A (*n*).

The question of the tenure of the joint authors is not quite easy of solution. Each of them must be regarded as the first owner of the copyright in something, whatever it may be, but *ex hypothesi* the contribution of each of them is not distinguished from that of the others. It has been held that the registered assignees of undivided moieties respectively of a dramatic work were 'tenants in common or part-owners', and that one could not deal with the whole work without the consent of the other (*o*). This decision does not seem to be applicable to joint authorship under the present statute. The Dramatic Copyright Act, 1833 (*p*), s. 1, had a specific provision with regard to survivors, which would have enabled a survivor to sue (*q*), but there is nothing of the sort in the Act of 1911, and equity, at any rate, leans against the existence of joint ownership, which includes the right of survivorship (*r*). On the other hand, the contributions of the authors being indistinguishable, it seems clear that each of them cannot own the copyright in any particular portion of the work. The position therefore seems to be that the authors

(*n*) See *Levy* v. *Rutley* (1871), L.R. 6 C.P. 523; *Shelley* v. *Ross* (1871), ibid., 531 n.

(*o*) *Powell* v. *Head* (1879), 12 Ch.D. 686, followed in *Lauri* v. *Renad*, [1892] 3 Ch. 402.

(*p*) 3 & 4 Will. IV, c. 15.

(*q*) See *Levy* v. *Rutley* (1871), L.R. 6 C.P. 523.

(*r*) *Partriche* v. *Powlet* (1740), 2 Atk. 54, at p. 55.

together own the copyright in the whole work ; so that one of them cannot deal with any part of it without the others, and that on the death of one of them his legal personal representatives take his place.

Mechanical contrivances.

The person who owns the original plate (including any matrix or other appliance by which records, perforated rolls, or other contrivances for the acoustic representation of a work are or are intended to be made (*s*)), from which a record, perforated roll, or other contrivance by means of which sounds may be reproduced, is directly or indirectly derived, at the time when such plate is made, is to be deemed to be the author of such record, perforated roll, or other contrivance (*t*), and therefore the first owner of the copyright.

The Act does not explain what is to be the result, if appliances by which the record or roll are made do not all belong to the same person. The statement that the author is to be the person who owned the original plate at the time when it was made seems more suitable to a purely Irish statute. It is difficult to see how the plate could have an owner at all till after it was made (*u*).

Where such record, roll, or contrivance has been made before the commencement of the Act, the person who at such commencement is the owner of the original plate is to be the first owner of the copyright (*x*).

Photographs.

The person who owns the negative from which a photograph is directly or indirectly derived at the time

(*s*) Copyright Act, 1911, s. 35 (1).

(*t*) Ibid., s. 19 (1), p. 217 *post*.

(*u*) The provision recalls the tale of the traveller in the East who went on to the stage at a scriptural play, and found Adam standing behind the scenes waiting to be created.

(*x*) Copyright Act, 1911, s. 19 (8), p. 218 *post*.

when the negative is made is to be deemed to be the author of, and therefore the first owner of copyright in, the photograph (*y*), which includes photo-lithograph and any work produced by any process analogous to photography (*z*). This provision is intended to settle the difficulty as to who is the author of a photograph (*a*). It must be read subject to the provision as to photographs made to order for valuable consideration (*b*). The form of the words 'at the time when the negative is made' has already been criticized (*c*). Note that it is not the owner of the plate, either before or after exposure, but of the negative when it is made, who is the first owner of the copyright.

Unpublished manuscripts.

The owner, by a testamentary disposition made by an author, of the manuscript of a work, which has not been published or performed or delivered in public, is prima facie the owner of the copyright (*d*). Such ownership can, of course, under this provision, be rebutted. It merely relieves the owner of the manuscript in such cases from having to prove his title to the copyright, if it is not contested. Ownership by testamentary disposition covers the title of an executor, but not that of the administrator of an intestate's estate, and that of a legatee under a will, but not that of a person acquiring the manuscript *ab intestato*. The

(*y*) Copyright Act, 1911, s. 21, p. 221 *post*.

(*z*) Ibid., s. 35 (1).

(*a*) See *Nottage* v. *Jackson* (1883), 11 Q.B.D. 627; *Wooderson* v. *Raphael Tuck & Sons*, [1887] W.N. 209; *Melville* v. *Mirror of Life Co.*, [1895] 2 Ch. 531. The suggestions as to who was the author included the person who operated the camera, the manager who directed him, and the company who employed the manager.

(*b*) p. 77 *post*. (*c*) p. 75 *ante*.

(*d*) Copyright Act, 1911, s. 17 (2), p. 216 *post*.

bequest, it seems, may be residuary and need not be specific (*e*).

Engravings, photographs, and portraits made to order.

In the case of an engraving, photograph, or portrait, where 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 so ordering is the first owner of the copyright (*f*).

This proviso covers engravings and photographs, and also, it would appear, portraits produced by any medium whatever, and whether made in two or three dimensions. ' 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 ' (*g*). ' Engraving ' includes ' etching, lithograph, woodcut, print, and any other similar work, not being a photograph ' (*g*), and ' photograph ' includes ' photo-lithograph and any work produced by any process analogous to photography ' (*g*). An ' agreement to the contrary ', which is necessary to prevent the operation of the provision, must, it would seem, be in writing, inasmuch as it will amount, if not to an assignment of the copyright, at least to the grant of an interest therein (*h*).

The provision will most frequently come into operation with respect to photographs, and its application will usually turn on the question what is ' valuable consideration '. In the ordinary transaction, where a customer visits a photographer and is photographed at his own request for payment, however small, there can be no doubt that the copyright belongs to the

(*e*) See also the discussion as to the publication of letters, p. 133 *post*. (*f*) Copyright Act, 1911, s. 5 (1), p. 208 *post*.
(*g*) Ibid., s. 35 (1), p. 230 *post*. (*h*) See p. 89 *post*.

customer under this provision (*i*), and this is so whether the payment is actually agreed or there is an implied promise to pay (*i*).

It also seems reasonably clear, under the provision as it stands, that in the not uncommon case where a photographer, for his own purposes, invites a customer to be photographed *gratis*, the copyright belongs to the photographer, and this will be so, even though the customer subsequently orders and pays for copies for himself, and even though he gets such copies at a lower rate than he would have done if the original invitation that the photograph should be taken had emanated from himself and not from the photographer. In such a case the 'plate or other original' would not have been ordered by the customer, although the subsequent copies were (*k*). This would be so, *a fortiori*, if the sitter bought no copies, but was merely presented with some complimentary copies (*l*). Where, however, a photographer invited an actor to come to be photographed in character, and after the sitting asked him to be taken in plain clothes, and he subsequently paid for copies of the plain clothes photograph at a 'reprint' price (i. e. at the price of the copies without any price for the sitting), it was held that as to the plain clothes photograph the sitter had the copyright (*m*). It is not altogether easy to follow this decision, unless there

(*i*) *Boucas* v. *Cooke*, [1903] 2 K. B. 227 (photograph of 'the boy preacher').

(*k*) Thus *Crooke* v. *Scots Pictorial Co.* (1905), 13 S.L.T. 132, and *Stackemann* v. *Paton*, [1906] 1 Ch. 774, appear to be no longer law.

(*l*) *Ellis* v. *Horace Marshall & Son* (1895), 64 L.J.Q.B. 757, and see *Boucas* v. *Cooke*, [1903] 2 K.B. 227, and the comments therein on *Melville* v. *Mirror of Life Co.*, [1895] 2 Ch. 531. See also *Davis* v. *Baird* (1903), 37 I.L.T. 50, 518.

(*m*) *Ellis* v. *Ogden* (1894), 11 T.L.R. 50.

were special facts which are not properly stated in the report (*n*). Where the copyright is not in the photographer, he can also be restrained from reproduction, apart from copyright, on the ground of breach of confidence (*o*).

The subsection appears to regard ordering a photograph as meaning the same thing as ordering the negative, and in a general sense the two things must be equivalent. If the negative is regarded as ordered, then presumably it must vest in the person ordering, though the statute does not say so. The matter is of small importance during the pendency of the copyright, inasmuch as the photographer and any assignee of the negative would be unable to use it for reproductions, the copyright being in the person ordering, and would moreover be restrained, if it were necessary, on the ground of breach of confidence (*p*). Similar observations will apply to the ownership of plates for engraving, wood-blocks, and other media of reproduction of a like nature (*q*).

(*n*) Note that all these cases were decided on the words in s. 1 of the repealed Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), namely, 'made or executed for or on behalf of any other person for a good and valuable consideration', much wider and vaguer words than those of the present provision, which require the plate or other original to be ordered and to be made for valuable consideration in pursuance of the order. (*o*) See p. 170 *post*.

(*p*) As to breach of confidence, see p. 170 *post*. The above observations appear to follow the same lines as those made on the repealed law in *Boucas* v. *Cooke*, [1903] 2 K.B. 227, which disapproved of certain observations of Kekewich J. in *Melville* v. *Mirror of Life Co.*, [1895] 2 Ch. 531. It may perhaps be observed that an architect employed to do building work at an inclusive percentage is not entitled as against the building owner to the plans which he prepared in the course of his employment (*Gibbon* v. *Pease*, [1905] 1 K.B. 810).

(*q*) As to the property in such things under the old law, see *Hole* v. *Bradbury* (1879), 12 Ch.D. 886.

Copyright where A orders from B and B's servant makes the work.

From a combination of this provision with that which follows (*r*), it may be that if A orders an engraving, photograph, or portrait from B, and B has it made by C under a contract of service or apprenticeship, the first ownership in the copyright vests in A rather than in B, since A has a sort of prior right in time, and on account, so to speak, of his control of the whole operation, to be the first owner of it, but a literal construction of the two provisions would make both A and B first owners, since the words 'in the absence of any agreement to the contrary' in each provision can only be taken to refer to that provision, i. e. as between A and B, and between B and C respectively.

Works made under contracts of service or apprenticeship.

Where the author is in the employment of some other person under a contract of service or apprenticeship, and the work is made in the course of his employment by that person, such employer is, in the absence of any agreement to the contrary, the first owner of the copyright (*s*).

Meaning of 'contract of service'.

Whether a person is or is not under a 'contract of service' must always be more or less a question of fact. 'I confess my inability to lay down any complete or satisfactory definition of the term contract of service' (*t*). 'It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service; and, similarly, the greater the degree of independence of such control, the greater the

(*r*) *Infra.*

(*s*) Copyright Act, 1911, s. 5 (1), p. 208 *post.*

(*t*) *Simmons* v. *Heath Laundry Co.*, [1910] 1 K.B. 543, at p. 547, per Cozens-Hardy M.R. This was a case on the Workmen's Compensation Act, 1906 (6 Edw. VII, c. 58), Sched. I., where the term is employed.

probability that the services rendered are of the nature of professional services, and that the contract is not one of service. The place where the services are rendered, i. e. whether at the residence of the person rendering the services or not, will also be an element in deciding the case, but is not in my opinion decisive, nor is the question whether the services are rendered to a person in the way of business ' (*u*). ' It is not, of course, every contract under which services are rendered that can be described as a contract of service. . . . A contract of service is one which necessarily involves the existence of a servant. A servant, said Bramwell L.J. (*x*), is ' a person subject to the command of his master as to the manner in which he shall do his work '. To distinguish between an independent contractor and a servant, the test is, says Crompton J. (*y*), ' whether the employer retains the power of controlling the work. Broadly stated, a contract of service does import that there exists in the person serving under the contract an obligation to obey the orders of the person served. A person employed to exercise his skill may or may not be a servant. . . . I do not know whether it is possible to approach more closely to an answer to the question as to what is a contract of service under this Act than to say that in each case the question to be asked is what was the man employed to do ; was he employed upon the terms that he should within the scope of his employment obey his master's orders, or was he employed to exercise his skill and achieve an indicated result in such manner as in his judgment was most likely to

(*u*) *Simmons* v *Heath Laundry Co.*, [1910] 1 K.B. 543, at pp. 549, 550, per Fletcher Moulton J.

(*x*) *Yewens* v. *Noakes* (1880), 6 Q.B.D. 530, at p. 532.

(*y*) *Sadler* v. *Henlock* (1855), 4 E. & B. 570, at p. 578.

ensure success ? Was his contract a contract of service within the meaning which an ordinary person would give to the words ? Was it a contract under which he would be appropriately described as the servant of the employer ? ' (z).

Judged by these criteria, and particularly by the concluding sentences of the judgment of Buckley L.J., it seems that the ordinary sort of agreement between an author and a publisher, whereby the former agrees to write a book for the latter, either for royalties or for the payment of a lump sum, is not a ' contract of service '. The author is not obeying the publisher's orders in the proper sense of the words, but he is employed to exercise his skill and achieve an indicated result in such manner as in his judgment is most suitable. The publisher indicates the result desired ; he does not control the author's work in the sense that he orders him what he is to do from time to time while the work is in progress.

On the other hand, even in the case of literary work, there are many cases in which there is a contract of service ; for instance, the case of such persons as writers, indexers, compilers, and revisers of various kinds, who are paid by salary or wages (an important element in deciding whether there is a contract of service, though not conclusive) and who work according to the constant directions of superiors. There may even be cases of ' contracts of service ' among persons employed to write in dictionaries or encyclopaedias. Dr. Johnson was not under a contract of service with his publishers for the production of his dictionary, but the various Scotsmen and others, whom he employed to assist him

(z) *Simmons* v. *Heath Laundry Co.*, [1910] 1 K.B. 543, at pp. 551–3, per Buckley L.J.

and whom he paid out of what he himself received, were no doubt under contracts of service with him.

A doubtful case would be that of a person who scored a musical composition under contract with the composer. Scoring a musical composition for orchestra is sometimes an exercise of skill, which could not be said to be carried out under the orders of a person who was too ignorant or too lazy or too much occupied to do it himself. On the other hand, it is, in many cases, a more or less mechanical re-embodiment of commonplace musical ideas; and if the score displays no original skill but merely follows slavishly the directions of the composer, the employment may be regarded as merely a contract of service.

The carrying out of the more mechanical parts of the production of artistic works by employees is no doubt a making of them under a contract of service.

The provision may in some cases bear hardly on intelligent employees who have produced original and valuable works during their employment, but they can contract out of it.

Works done on commission generally.

The limitation of this provision to works made under a contract of service or apprenticeship, and the absence of any other provision dealing with works made on commission, other than engravings, photographs, and portraits, appears, on the principle *expressio unius est exclusio alterius* (*a*), to have abolished the effect of those decisions in which the copyright in works made on commission, but not under contract of service, was held to belong to the person giving the commission. Thus a musician, who had written original incidental music

(*a*) This maxim may be 'a valuable servant, but a dangerous master' (*Colquhoun* v. *Brooks* (1888), 21 Q.B.D. 52, at p. 65, per Lopes L.J.), but in the present case its application seems to be clearly legitimate.

to a play, under a general engagement as musical director which included an obligation to write or adapt such music as was required, was held not to have the copyright in such music, but it was held to belong to his employer (*b*). He can scarcely be described as having been under a 'contract of service' for such a purpose as this. Under the present law he would be regarded as in the same position as the plaintiff who, though employed at a weekly salary, was held entitled to the copyright in the music of a Christmas ballet as against his employer, since it was not composed as part of his employment and there was no written assignment of the copyright to the employer (*c*); or as the author of *Old Joe and Young Joe*, a work which he had produced as the result of a journey paid for by other persons, but which he had not assigned to them (*d*). Where B, acting as agent for A, employs C to make a work under a contract of service or apprenticeship, presumably the first owner of the copyright is A and not B (*e*).

Law-reporters.

It seems doubtful whether barrister law-reporters can be regarded as under a contract of service, though no doubt ordinary newspaper reporters of legal cases would be. The barrister law-reporter is left to choose cases at his own discretion and report them to the best

(*b*) *Hatton* v. *Kean* (1859), 7 C.B. (N.S.) 268, followed in the similar case of *Wallerstein* v. *Herbert* (1867), 16 L.T. 453. Compare also *Hildesheimer & Faulkner* v. *Dunn & Co.* (1891), 64 L.T. 452. Where a mason's manager was employed to compile a collection of monumental designs for an advertising catalogue, a work of great skill, his employer was held entitled to the copyright (*Grace* v. *Newman* (1875), L.R. 19 Eq. 623). Not so under the present law, if this employment was not part of his contract of service as manager.

(*c*) *Eaton* v. *Luke* (1888), 20 Q.B.D. 378.

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

(*e*) *Stubbs, Ltd.* v. *Howard* (1845), 11 T.L.R. 507.

of his judgment, for which, no doubt, he is paid a salary, but he is not controlled during the course of his work, though, of course, his productions are subject to selection and correction by his editor (*f*).

Curates and lecturers.

It may be that a curate is under a contract of service with his rector or vicar, and that the copyright in his sermons, for what it is worth, belongs to his employer, and the same may be the case with lecturers in certain circumstances.

In any case of doubt a specific agreement as to the copyright should be made in writing (*g*).

Government publications.

Where a work has, whether before or after the commencement of the Act, been prepared or published by or under the direction or control of the Crown or any Government department, the copyright, subject to any agreement with the author, belongs to the Crown (*h*).

Articles in newspapers and periodicals.

It was formerly the law that a proprietor of an encyclopaedia, review, or periodical, who had employed any person to compose it or any part of it on the terms that the copyright should belong to the proprietor, and who had paid for the composition, should enjoy the copyright as though he were the actual author, subject to certain limitations of term, and subject to a provision that the right of separate publication reverted to the author after twenty-eight years from publication, and that meanwhile the proprietor should not publish the composition separately without the consent of the actual author or his assigns. Power was also given to the actual author to reserve the right of separate publication to himself (*i*).

(*f*) *Sweet* v. *Benning* (1855), 16 C.B. 459, is therefore no longer law on this point.

(*g*) See p. 89 *post*.

(*h*) Copyright Act, 1911, s. 18, p. 217 *post*. This section is further discussed in the chapter on Crown Copyright, p. 65 *ante*.

(*i*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 18, repealed by the Copyright Act, 1911, s. 36, Sched. II. See also p. 52 *ante*.

There is no similar provision in the Copyright Act, 1911, and therefore the author of a portion of a periodical retains the copyright in what he has composed, subject to any assignment or any grant of interest in writing, unless he has composed it under a contract of service or apprenticeship. It is no longer the law, therefore, that a general inference of fact can be drawn to the effect that the copyright belongs to the proprietor of the publication for which the work was done (*k*).

Where an author, who is not working under a contract of service or apprenticeship, and who has not assigned his copyright, has composed a work for a particular periodical, it will not be lawful for the person for whom he has composed it to use it for republication elsewhere, even in another publication which is a colourable reproduction of that for which it was written (*l*).

Author's right to restrain publication.

The rights of an author, if composing under a contract of service or apprenticeship, are still further protected, but only in the case of an article or other contribution to a newspaper, magazine, or similar periodical, by the provision that, in the absence of any agreement to the contrary, there shall be deemed to be a reservation to the author of a right to restrain the publication of his work otherwise than as part of a newspaper, magazine, or similar periodical (*m*).

This provision is unnecessary in cases where such

(*k*) As it was drawn in *Sweet* v. *Benning* (1855), 16 C.B. 459, and *Lawrence & Bullen, Ltd.* v. *Aflalo*, [1904] A.C. 17.

(*l*) Compare *Mayhew* v. *Maxwell* (1860), 1 J. & H. 312; and *Smith* v. *Johnson* (1863), 4 Giff. 632, cases on publishing 'in a separate form' under s. 18 of the repealed Copyright Act, 1842, but which contain a principle which is still applicable.

(*m*) Copyright Act, 1911, s. 5 (1), p. 208 *post*.

work was not done under a contract of service or apprenticeship, and most cases where the author would be likely to wish to restrain republication are such, since the author is the first owner of the copyright and has the undoubted right to restrain the publication of his work by any one, to whom he has not assigned the right of publication in writing, whether the work was done for an encyclopaedia or a periodical or otherwise (*n*).

In the case of such work when done under a contract of service or apprenticeship, the result of the provision is apparently to enable the author, in spite of the fact that his employer is the first owner of the copyright, to restrain him or any one else from reproducing the work in any form otherwise than in a newspaper, magazine, or similar periodical. There is nothing in it, however, to prevent the employer, as first owner of the copyright, from restraining publication in a newspaper, magazine, or similar periodical as well as in any other material form or language under the general provisions of the Act. If the provision was intended to have any wider application, the Legislature has failed to express it. It is not very obvious, moreover, why the author in such a case should not be empowered to restrain publication in a newspaper, magazine, or similar periodical other than one belonging to the employer for whom he has done the work. Such publication is precisely that which it is most essential that he should have power to restrain.

International copyright.

An Order in Council made for the purpose of international copyright (*o*), in applying the provisions of the Act as to ownership of copyright, may make such

(*n*) Compare *Bishop of Hereford* v. *Griffin* (1848), 16 Sim. 190; *Walter* v. *Howe* (1881), 17 Ch.D. 708; *Johnson* v. *George Newnes, Ltd.*, [1894] 3 Ch. 663.

(*o*) See p. 186 *post*.

modifications as appear necessary, regard being had to the law of the foreign country to which the Order relates (*p*).

Devolution

The repealed Copyright Act, 1842 (*q*), s. 25, provided that all copyright should be deemed personal property and should be transmissible by bequest, or in case of intestacy should be subject to the same law of distribution as other personal property, and in Scotland should be deemed to be personal and movable estate. There was a similar provision as to paintings, drawings, and photographs (*r*). No such statutory provision now exists, but no doubt copyright is still to be regarded as personalty. The Copyright Act, 1911, supports this view by its use of the term ' legal personal representatives ' of an author (*s*). An agreement to compose a work is, of course, personal, and does not bind the author's executors (*t*).

As to ' joint authors ', if the view already expressed is correct (*u*), there is no right of survivorship, and the interest of a deceased joint author passes to his legal personal representatives (*x*).

(*p*) Copyright Act, 1911, s. 29 (1).

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

(*r*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 3, now repealed.

(*s*) Copyright Act, 1911, ss. 5 (2), 19 (7) (*c*), 24 (2); executors and administrators in s. 35 (2).

(*t*) *Marshall* v. *Broadhurst* (1831), 1 Tyr. 349.

(*u*) See p. 74 *ante*.

(*x*) A right of survivorship was recognized under the old law in *Levy* v. *Rutley* (1871), L.R. 6 C.P. 523, and *Marzials* v. *Gibbons* (1874), L.R. 9 Ch. 518.

CHAPTER XI

ASSIGNMENT OF COPYRIGHT

Assignments and grants of interest.

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 (i. e. Canada, Australia, New Zealand, South Africa, and Newfoundland (*a*)) or other part of the King's dominions to which the Act extends, and either for the whole or any part of the term of the copyright, and may grant any interest in the right by licence (*b*).

No such assignment or grant is 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 authorized agent (*b*).

The question, which has been often discussed, whether a particular act in the law in respect of a copyright amounted to an assignment or was merely a grant of an interest, has lost some of its importance now that registration has been abolished (*c*). It will now only arise, to speak generally, where there has been a subsequent assignment, and it is a question whether that amounts to a complete assignment or whether it is diminished *pro tanto* by a previous act in the law which may or may not have been a partial assignment or a

(*a*) Copyright Act, 1911, s. 35 (1).

(*b*) Ibid., s. 5 (2), p. 208 *post*; and see p. 93 *post*.

(*c*) See, for instance, *In re Jude's Musical Compositions*, [1907] 1 Ch. 651, a case on registration; *Neilson* v. *Horniman* (1909), 26 T.L.R. 188.

mere licence (*d*); or where there is a question whether publishers, to whom the right has been granted, are entitled to assign their right without the author's consent or not. If the right amounts to an assignment, they are; if it is merely a personal contract between the author and them, they are not (*e*). The principle applies whether the publishers are individuals or a firm, or whether they are a limited company (*f*). Similarly, a publisher's trustee in bankruptcy is not entitled to publish the work, unless there has been an assignment (*g*), but it is otherwise if there has been an assignment (*h*).

Publication in altered form by assignee.

It has been suggested that the assignee of a copyright has the right to make what alterations he chooses when he publishes the work (*i*). It would certainly seem that the author would have no right to restrain this on the ground of copyright, since he has parted with all his right, but he might have a remedy if the altered work were attributed to him without qualification, and his reputation thereby suffered or were likely

(*d*) *London Printing and Publishing Alliance, Ltd.*, v. *Cox*, [1891] 3 Ch. 291; compare *Sweet* v. *Cater* (1841), 11 Sim. 572; *Warne* v. *Routledge* (1874), L.R. Eq. 497; *Heap* v. *Hartley* (1889), 42 Ch.D. 461, a similar case as to a patent for an invention.

(*e*) *Stevens* v. *Benning* (1855), 6 D. M. & G. 223; *Reade* v. *Bentley* (1857), 3 K. & J. 271, (1858) 4 K. & J. 656; *Hole* v. *Bradbury* (1879), 12 Ch.D. 886.

(*f*) *Griffith* v. *Tower Publishing Co. Ltd.*, [1897] 1 Ch. 21.

(*g*) *Lucas* v. *Moncrieff* (1905), 21 T.L.R. 683. Compare *Gibson* v. *Carruthers* (1841), 8 M. & W. 321, at p. 343.

(*h*) *In re Grant Richards, Ex parte Warwick Deeping*, [1907] 2 K.B. 33. Here it was held that the author's proof was only to be for the damages caused by the breach of contract to pay his royalties, and not for the amount in full of the royalties, which would have been payable under his assignment of the copyright to the publisher. Compare *In re Curry, Ex parte Lever* (1848), 12 Ir.Eq.R. 382.

(*i*) See *Cox* v. *Cox* (1853), 11 Hare, 118, at pp. 125, 126.

to suffer. Thus the author of *Archbold*, by which he 'had deservedly acquired great gains in his profession', was held entitled to bring an action against a publisher who had brought out a new edition, edited by another person, without stating that it was so, and recovered £5 damages (*k*). When Mr. (now Sir) Sidney Lee sought an injunction to restrain the publication under his name of an altered form of his *Life of Lord Herbert of Cherbury*, Kekewich J. refused it, holding that the plaintiff's remedy was libel, but that, as it was not a trade libel, an injunction should not be granted (*l*). He said: 'There is no law compelling a man to publish the whole work because he has the copyright in the whole work, nor can he be prevented from publishing extracts from the work; whether it is right for him to publish extracts without saying that they are extracts, whether he can publish the work in a mutilated form without indicating in the text that the work has been mutilated, is a question to my mind of some difficulty, but the question resolves itself into this: Does he thereby injure the author's reputation? What is the author's remedy, his remedy in law? His remedy in law is, I think, undoubtedly libel or nothing' (*m*). If, then, an author wishes to prevent the publication of an altered version of his work, it will be safer for him, when assigning or granting an interest in the copyright, to obtain an undertaking that it will be published in its original form.

Refusal to publish by assignee.

On similar principles, if he wishes to ensure that his work will be published, he should obtain an agreement

(*k*) *Archbold* v. *Sweet* (1832), 5 C. &. P. 219.

(*l*) *Lee* v. *Gibbings* (1892), 67 L.T. 263.

(*m*) Ibid., at pp. 264, 265. See also *Humphreys* v. *D. C. Thomson & Co., Ltd.* (1908), *Times*, April 29, April 30, May 1, an action on a libel of this kind.

to that effect when assigning the copyright in his work or granting a right to publish it. Otherwise, it seems, there will be no obligation on the assignee or grantee to publish. 'If the copyright had passed, it would have placed it in the absolute power of that firm or their successors to publish or not to publish the book, as they should be minded' (*n*).

Publication by grantee in another name.

If the author grants a licence in general terms to another person to print, publish, and sell his work, the latter may exercise his licence by allowing a third person to print, publish, and sell it (*o*).

Equitable assignments by agreement to assign.

A written agreement to assign the copyright of a work, when made, has been held to operate as an assignment of the copyright and to make the person to whom the agreement was given assignee of the copyright (*p*). This appears to be still the law, the only material differences between the repealed Copyright Act, 1842 (*q*), s. 13, and the Act of 1911, s. 5 (2), being that under the former Act it had been held by judicial decision (*r*) that assignments must be in writing, whereas in the present Act this is specifically provided, and that under the present Act there is copyright in unpublished works as well as in published works. The effect of this latter difference will merely be that a publisher can call upon an author to assign the copyright before publication, whereas previously he could not (*rr*).

(*n*) *Hole* v. *Bradbury* (1879), 12 Ch.D. 886, at p. 895, Fry J.

(*o*) *Booth* v. *Edward Lloyd, Ltd.* (1910), 26 T.L.R. 549, a case arising out of the use of a hymn tune called 'Commonwealth' by the defendants in their *Election Song Book*.

(*p*) *Ward, Lock & Co., Ltd.* v. *Long*, [1906] 1 Ch. 550.

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

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

(*rr*) But not, of course, before the work is made; see *Platt* v. *Walter* (1867), 17 L.T. 157.

It would seem, then, that the ordinary authorship agreement, whereby the author covenants to assign the copyright when called upon to do so, operates as an assignment for the purposes of the Act.

Assignments and grants by joint authors.

A joint author, it would seem, could not assign or grant an interest in a work of joint authorship without the written consent of, or co-execution of the document of assignment or grant by, the other joint author or authors (*s*).

Partial and limited assignments.

An assignment may, by the statute, be complete or partial, or limited in duration or in local extent (*t*).

Where there has been such an assignment, the assignee as respects the right assigned, and the assignor as respects the rights not assigned, are to be treated as the owner of the copyright for the purposes of the Act (*u*).

Assignments of musical works before Dec. 16, 1911.

Notwithstanding any assignment before December 16, 1911, of the copyright in a musical work published before the commencement of the Act, any rights conferred by the Copyright Act, 1911, in respect of the making, or authorizing the making, of contrivances by which the work may be mechanically performed (*x*) belong to the author or his legal personal representatives and not to the assignee, and the royalties are payable to and for the benefit of the author or his legal personal representatives (*y*).

It will be observed that the above provision is limited

(*s*) See *Powell* v. *Head* (1879), 12 Ch.D. 686, and p. 74 *ante*.

(*t*) As instances, see *Lucas* v. *Cooke* (1880), 13 Ch.D. 872, where the copyright in a painting was assigned only to the extent of producing engravings of it of a certain size ; and *Holt* v. *Woods* (1896), 17 N.S.W.L.R.Eq. 36, where an assignment was limited to Australia.

(*u*) Copyright Act, 1911, s. 5 (3), p. 209 *post*. See further as to the ownership of assignees, p. 72 *ante*.

(*x*) See p. 61 *ante*.

(*y*) Copyright Act, 1911, s. 19 (7), p. 219 *post*.

to assignments before December 16, 1911, of works published before the commencement of the Act. It covers assignments made before that date of copyright in works published between that date and the commencement of the Act, but not assignments made between December 16, 1911, and such commencement.

Form of assignments and grants.

Assignments and grants of interest must be in writing signed by the owner of the copyright or his duly authorized agent. 'Writing' includes 'printing, lithography, photography, and other modes of representing or reproducing words in a visible form' (*z*). There is nothing to compel such documents to be witnessed or under seal. Whether a person is a 'duly authorized agent' or not depends on the facts and the general law of agency. It has been held for the purposes of a 'consent in writing of the author' within the repealed Dramatic Copyright Act, 1833 (*a*), s. 2, that the secretary of a society called the Dramatic Authors' Society was an authorized agent for the purpose of giving consent to a performance of copyright plays, *My Precious Betsy*, *Going to the Derby*, and *A Desperate Game*, on behalf of the plaintiff, who was a member of the society and, as such, must have been taken to have assented to such consent being given by the secretary (*b*). It would appear that the particular words of an assignment are still immaterial so long as they amount to an assignment. Thus it has been held that an agreement to 'let B have' the copyright amounted to an assignment of a play, *Doing for the Best* (*c*). And probably it would still be held that a receipt in this form, 'Receipt for copyright of'—then followed

(*z*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 20.
(*a*) 3 & 4 Will. IV. c. 15.
(*b*) *Morton* v. *Copeland* (1855), 16 C.B. 517.
(*c*) *Lacy* v. *Toole* (1867), 15 L.T. 512.

a description of the work—'£70. Received on account £20,' signed by the author, amounted to a written assignment of copyright (*d*). But it seems that there would be no doubt now that a pencil memorandum on the manuscript of a song, 'Herewith the MS. of your song "Men"' (*e*), would not be enough to grant any interest in the copyright in the song. *Quaere* how far, in view of the specific statutory provision, the Court is now entitled to infer that there was an assignment or grant in writing duly signed by the author or his authorized agent from circumstances which, in its opinion, can only be explained by the existence of such an assignment (*f*).

Stamp on assignments and grants.

Formerly an assignment by entry in the Registry was exempt from duty by the Copyright Act, 1842 (*g*), s. 13. This provision is now repealed, and apparently any assignment or grant of an interest in copyright made in any valid form must be stamped as a 'conveyance on sale' (*h*).

Statutory limitation on assignments.

Where the author of a work is the first owner of the copyright, no assignment of or grant of interest in the copyright, otherwise than by will, made by him after December 16, 1911, is operative to vest in the assignee or grantee any rights with respect to the copyright 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 devolves on the death of the author on his legal personal

(*d*) *Robinson* v. *Illustrated London News and Sketch, Ltd.* (1907), *Times*, April 26.

(*e*) *Edwardes* v. *Cotton* (1902), 19 T.L.R. 34.

(*f*) *Dennison* v. *Ashdown* (1897), 13 T.L.R. 226, and compare *Hazlitt* v. *Templeman* (1866), 13 L.T. 593.

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

(*h*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 54.

representatives as part of his estate, notwithstanding any agreement to the contrary, and any agreement entered into by him as to the disposition of such reversionary interest is null and void (*i*).

The above provision does not apply to the assignment of copyright in a 'collective work' or a licence to publish a work or part of a work as part of a 'collective work' (*i*).

A 'collective work' means (i) an encyclopaedia, dictionary, year-book, or similar work; (ii) a newspaper, review, magazine, or similar periodical; (iii) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated (*j*); that is to say, apparently, any work in which works or parts of works of different authors, whether literary, dramatic, musical, or artistic, or all or any of them, and whether distinct or not distinct, are included (*k*).

It seems clear, whether the Legislature intended it or not, that the expression as defined includes works of joint authorship (*k*). Therefore, the provision as to such works whereby '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' (*l*), and which is intended, apparently, to refer to the present provision, can have no application, since assignments of copyright in a collective work and licences to publish a work as part

(*i*) Copyright Act, 1911, s. 5 (2) p. 208 *post*.
(*j*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.
(*k*) See further, p. 58 *ante*.
(*l*) Copyright Act, 1911, s. 16 (1), p. 215 *post*.

of a collective work are excluded from the section altogether.

This provision appears to be inserted in order to provide an author with statutory protection against his own supposed improvidence. It is to be observed that it applies to all works by one author alone, but not to the assignment of copyright in a work by more than one author or to a licence to publish a work or part of a work as part of such a work. It is limited to cases where such one author is the first owner of copyright, and therefore does not affect a person who has acquired copyright by having ordered and given consideration for an engraving, photograph, or portrait, or as the employer of an author making a work under a contract of service or apprenticeship. It does not apply to disposition by will, but it does apply equally to a grant of copyright or of any interest therein for more than twenty-five years after the author's death, and to a grant of the reversion or an interest in the reversion of a copyright after that period of limitation has expired. Why the provision should not be made to apply to a work by two authors, which is not in the nature of an encyclopaedia or periodical or the like, is hard to understand. Two authors can be just as improvident as one, and, as already observed, their work falls within the exception, whether they collaborate in the sense already explained (*m*) or not.

Note that the provision applies to assignments and grants made after the passing, not the commencement of the Act. This raises a difficulty with regard to assignments of existing works made after the passing and before the commencement (*n*).

The provision can probably be circumvented, if it

(*m*) See p. 59 *ante*.

(*n*) See p. 54 *ante*.

is desired, by means of the exception in favour of assignments and grants by will. There is nothing to prevent an author making a testamentary disposition of his copyright or of an interest in it in favour of a publisher, and there are well-known means by which the publisher could be assured that the bequest would not be cancelled or varied, or that, if it were, he would receive compensation of another kind.

CHAPTER XII

INFRINGEMENT OF COPYRIGHT

Direct infringement.

INFRINGEMENT consists, subject to certain provisions which will be dealt with in their proper place, in the doing by any person, without the consent of the owner of the copyright, of anything, the sole right to do which is conferred on the owner of the copyright (*a*). Innocence does not excuse infringement, but protects the defendant from all remedies except an injunction or interdict (*b*).

Indirect infringement.

There is also infringement by any person who (1) sells or lets for hire, or by way of trade exposes or offers for sale or hire, (2) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright, (3) by way of trade exhibits in public, (4) imports for sale or hire into any part of the King's dominions to which the Act extends, any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of the King's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation takes place (*c*).

This section sums up, with some variation, the provisions as to indirect infringement in the re-

(*a*) Copyright Act, 1911, s. 2 (1), p. 205 *post*. A combination to infringe copyright may amount to criminal conspiracy (*R.* v. *Willetts* (1906), 70 J.P. 127).

(*b*) See p. 148 *post*.

(*c*) Copyright Act, 1911, s. 2 (2), p. 206 *post*. See also the Canada Copyright Act, 1875, s. 4, p. 197 *post*.

pealed Acts. It will be observed that knowledge of the infringement is now necessary to constitute indirect infringement. It was not necessary in every case under the old law that there should be such knowledge (*d*). The prohibitions against indirect infringement also, it is to be observed, extend, subject to knowledge, to all works which infringe copyright or would infringe copyright, if made in the part of the King's dominions where the prohibited act is done, and thus the complications of some of the repealed statutes are removed (*e*). It is not essential that there should be any trading. It is enough if there is such a distribution as to affect prejudicially the owner of the copyright (*f*). It has been held that a quotation of an approximate price for a copyright work to an individual at his request is not an 'offering for sale' (*g*), and that producing a sample of a work of sculpture and asking for orders in accordance with it is not an 'exposing for sale' (*h*).

There are also certain provisions as to the detention and forfeiture of imported copies which are infringements (*i*).

Rights comprised in copyright.

The Copyright Act, 1911, replaces by a single subsection all the enactments as to the rights comprised in copyright in literary, dramatic, musical, and artistic works, which were contained in the numerous statutes repealed by it, with certain variations (*j*). These, and

(*d*) See *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501; *Tuck & Sons* v. *Priester* (1887), 19 Q.B.D. 629.

(*e*) See *Pitt Pitts* v. *George & Co.*, [1896] 2 Ch. 866.

(*f*) This is in accordance with *Novello* v. *Sudlow* (1852), 12 C.B. 177, and *Ager* v. *Peninsular and Oriental Steam Navigation Co.* (1884), 26 Ch.D. 637.

(*g*) *Wolff* v. *Wood* (1903), *Times*, October 31.

(*h*) *Britain* v. *Kennedy* (1902), 19 T.L.R. 122.

(*i*) See p. 153 *post*.

(*j*) Copyright Act, 1911, s. 1 (2), p. 204 *post*.

the acts which amount to direct infringements of them, will be dealt with in order.

Right of Production or Reproduction in any Material Form

The right of production and reproduction in any material form.

The sole right to produce or reproduce or to authorize the production or reproduction of the work or any substantial part thereof in any material form whatsoever (*k*).

These very wide words are intended to protect the owner's right against infringement in any physical form. Nice questions, however, will still arise as to what constitutes a production or reproduction of a 'substantial part' of the work. 'Substantial' does not necessarily refer to the quantity of the copyright work which is produced or reproduced. The materiality of the portion taken and the way in which it is taken are of more importance than mere quantity in the decision of the question, whether there has been an infringement or not (*l*). The decision, too, will obviously be affected by the nature of the work alleged to be infringed, whether it is a wholly novel production or something in the nature of a compilation.

Meaning of 'substantial part'.

Literary Works. Substantial infringement.

Where there is a production or a reproduction of a complete work, such as a book (*m*) or a newspaper article (*n*), the infringement is generally undoubted, or where large portions of copyright works are taken and reproduced without any sufficient alteration or treatment to justify the plea that sufficient labour and skill has been applied to negative infringement (*o*). Quantity, how-

(*k*) Copyright Act, 1911, s. 1 (2), p. 204 *post*.

(*l*) Acknowledgment does not excuse infringement (*Bohn* v. *Bogue* (1846), 10 Jur. 420).

(*m*) *Routledge* v. *Low* (1868), L.R. 3 H.L. 100.

(*n*) *Walter* v. *Howe* (1881), 17 Ch.D. 708.

(*o*) *Roworth* v. *Wilkes* (1807), 1 Camp. 94; *Campbell* v. *Scott* (1842),

ever, is not by any means the sole element. As Lord Cottenham L.C. said (*p*) : ' When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity but value that is always looked to. It is useless to refer to any particular cases as to quantity.' These remarks were made in connexion with two books on Private Bill procedure ; but the same principle was applied by the House of Lords to a piracy of some information about circular tours which formed a small, but the most original, portion of a monthly penny time-table (*q*). So it was held to be an infringement to take a small portion of a list of registered bills of sale and deeds of arrangement prepared with skill and a good deal of labour and expense (*r*) ; to copy a shipping list (*s*), and a collection of forms of writs and other instruments (*t*) ; to copy a golf annual containing biographical notes compiled by the plaintiffs from the answers of golf players to questions sent to them (*u*) ; to reproduce practically

11 Sim. 31 ; *Bohn* v. *Bogue* (1846), 10 Jur. 420 ; *Sweet* v. *Benning* (1855), 16 C.B. 459. See also *Cary* v. *Faden* (1799), 5 Ves. 24, and cases, which are not reported, cited in *Cary* v. *Longman* (1801), 1 East 358.

(*p*) *Bramwell* v. *Halcomb* (1836), 3 My. & Cr. 737, at p. 738.

(*q*) *Leslie* v. *J. Young & Son*, [1894] A.C. 335.

(*r*) *Trade Auxiliary Co.* v. *Middlesborough and British Tradesmen's Protection Association* (1889), 40 Ch.D. 425 ; *Cate* v. *Devon and Exeter Constitutional Newspaper Co.* (1889), ibid. 500 ; *Trade Auxiliary Co., Ltd.* v. *Irish Trade Protection Agency, Ltd.* (1887), 21 I.L.T.R. 37.

(*s*) *Walford* v. *Johnston* (1846), 20 D. 1160 ; *Maclean* v. *Moody* (1858), 20 D. 1154.

(*t*) *Alexander* v. *Mackenzie* (1847), 9 D. 748.

(*u*) *James Nisbet & Co., Ltd.* v. *Golf Agency* (1907), 23 T.L.R. 370.

the whole of a volume of the *General Stud Book* (*v*); and to reproduce, with some alterations and with the addition of notes, the selection of poetry known as *The Golden Treasury of Songs and Lyrics* (*x*).

Compilations.

There is more difficulty in such cases as these last, where the works are not strictly novel, but consist of compilations from common sources or sources open to all, the originality of which arises from labour and skill expended on system and arrangement, works such as calendars, directories, and the like (*y*). There is nothing to prevent another person from working independently on the sources and producing a substantially identical work, but in such a case the Court would require clear evidence of such independent work. A further complication is introduced by the fact that a subsequent compiler is entitled to utilize a previous work for the purpose of directing him to sources of information, though, having thus discovered such sources, he is bound to exercise honest and independent labour in his use of such sources. Thus it has been said that the compiler of a business directory might not cut out a slip from another similar directory and then, having sent round a canvasser with the slip, and having thus discovered it to be correct, insert the entry in his own directory; but that he might use the directory for the purpose of discovering the names of suitable persons, and then send round a canvasser to

(*v*) *Weatherby & Sons* v. *International Horse Agency and Exchange, Ltd.*, [1910] 2 Ch. 297.

(*x*) *Macmillan* v. *Suresh Chunder Deb* (1890), Ind.L.R. 17 Cal. 951.

(*y*) Cases of infringement of rights in calendars were *Matthewson* v. *Stockdale* (1806), 12 Ves. 270; *Longman* v. *Winchester* (1809), 16 Ves. 269; in a time-table, *Leslie* v. *J. Young & Son*, [1894] A.C. 335; in a telegraph code, *Ager* v. *Peninsular & Oriental Steam Navigation Co.* (1884), 26 Ch.D. 637; in an encyclopaedia, *Mawman* v. *Tegg* (1826), 2 Russ. 385; in a gazetteer, *Lewis* v. *Fullarton* (1839), 2 Beav. 6.

call on them and so compile particulars about them (*z*). The distinction seems to be almost too refined for a practical world. In a slightly higher region of literature, the author of *The Reason Why* sought to defend himself from a plea of infringing Dr. Brewer's *Guide to Science*, an explanation of common phenomena in the form of question and answer, by stating that he had only used the doctor's book as a guide to authorities, and that the resemblances were due to their common sources (*a*). So a defendant, who, in order to win a prize at an Eisteddfod, had eagerly tried to prove that we were all descended from the ancient Britons, was held to be entitled to use the authorities cited by a previous competitor, who had made the same attempt, and not to have infringed, though the ultimate product was not dissimilar to that of the plaintiff (*b*). But where copyright notes on Milton were published with small additions, there was held to have been an infringement (*c*). Where, however, one dictionary was compiled, as the defendant admitted, from another to a considerable extent, it was held that the amount of labour expended on what had been taken was, in the circumstances, such as to prevent the taking from being an infringement (*d*). It seems a little curious that the

(*z*) *Morris* v. *Wright* (1870), L.R. 5 Ch. 279. See also *Kelly* v. *Morris* (1866), L.R. 1 Eq. 697; *Morris* v. *Ashbee* (1868), L.R. 7 Eq. 34; and *Lamb* v. *Evans*, [1893] 1 Ch. 218, all cases on directories; and *Hogg* v. *Scott* (1874), L.R. 18 Eq. 444, at p. 458, Hall V.-C.

(*a*) *Jarrold* v. *Houlston* (1857), 3 K. & J. 708.

(*b*) *Pike* v. *Nicholas* (1869), L.R. 5 Ch. 251. Compare *Jarrold* v. *Heywood* (1879), 18 W.R. 279.

(*c*) *Tonson* v. *Walker* (1752), 3 Swan. 672. See the similar case of *Moffatt & Paige, Ltd.* v. *George Gill & Sons, Ltd.* (1902), 86 L.T. 465 (notes to *As You Like It*); *Rooney* v. *Kelly* (1861), 14 Ir.C.L.R. 158 (a crib to the *Aeneid* with notes).

(*d*) *Spiers* v. *Brown* (1858), 6 W.R. 352.

subsequent expenditure of labour on what has been taken should be held to justify the taking. It reminds one of the arguments used by the apologists for Handel's larcenies.

Abridgments, it seems, may or may not be infringements according to circumstances, though, prima facie, one would suppose that, even if it were assumed to be no theft, if one improved what one took, it would certainly be no less a theft because one spoilt it. Probably the right view is that of Vice-Chancellor Knight Bruce (*e*), that an abridgment of a copyright work cannot lawfully be published by a person other than the owner unless, as in the case of other takings, such labour and skill is expended on it as to prevent it from being an infringement. Similarly Lord Hardwicke L.C. (*f*) seems to have confined legitimate abridgments to those which are substantially new books owing to the 'invention, learning, and judgment' of the author. The present provision surely overrules such reasoning as that on which it was held that a publication in the *Grand Magazine of Magazines* of the narrative of *Rasselas*, 'leaving out all the moral and useful reflections,' was not an infringement (*g*). The Court seemed to think it would be an excellent advertisement for the author. It must also overrule the opinion that 'the act of abridgment is an act of understanding, employed in carrying a large work into a small compass, and rendering it less expensive, and more convenient both to the time and use of the reader, which made an abridgment in the nature

Abridgments.

(*e*) *Dickens* v. *Lee* (1844), 8 Jur. 183.

(*f*) *Gyles* v. *Wilcox* or *Wilcocks* (1740), 2 Atk. 141, at p. 143; 3 Atk. 269.

(*g*) *Dodsley* v. *Kinnersley* (1761), Amb. 403. As to newspaper summaries, see p. 107 *post*.

of a new and a meritorious work' (*h*). This was the result of a consultation between Lord Chancellor Apsley and Mr. Justice Blackstone, 'who as an author himself had done honour to his country' (*h*), and this view seems to have been accepted in the case of a cheap abridgment of that curious work, *An Apology for the Life of G. A. Bellamy* (*i*). On the other hand, a colourable abridgment of the Term Reports, with an alteration in the order of the cases, was restrained (*k*), and the Court was inclined to adopt the same view in the case of an alleged unfair abridgment of a work on the antiquities of Magna Graecia (*l*).

Competition between original and infringing work.

In all cases of alleged infringement the question whether there is a likelihood of competition between the infringing work and the work infringed is an important factor in deciding whether a fair use has been made of the latter or not (*m*).

Production or reproduction in another material form.

Production or reproduction 'in any material form whatsoever' is an infringement, and therefore the infringement need not be in the same material form as the original. Thus the unauthorized production or reproduction of a literary work in shorthand characters (*n*) or in any unusual type, or of a printed work in manuscript or in typewritten characters (*o*), or by lithography or other process (*p*), would be an infringement.

(*h*) *Anon.* (1774), Lofft, 775.

(*i*) *Bell* v. *Walker* (1785), 1 Bro. C.C. 451.

(*k*) *Butterworth* v. *Robinson* (1801), 5 Ves. 709.

(*l*) *Wilkins* v. *Aikin* (1810), 17 Ves. 422.

(*m*) *Weatherby & Sons* v. *International Horse Agency & Exchange, Ltd.*, [1910] 2 Ch. 297, at p. 305, Parker J.

(*n*) *Nicols* v. *Pitman* (1884), 26 Ch.D. 374.

(*o*) Compare *Warne & Co.* v. *Seebohm* (1888), 39 Ch.D. 73.

(*p*) Compare *Novello* v. *Sudlow* (1852), 12 C.B. 177 (a case on a musical work).

Dealing with existing stock after ceasing to own copyright.

There must, however, be production or reproduction, and consequently, where a publisher has in hand a stock of copies, under an arrangement which permits him to deal with the copyright, and the copyright reverts to the author or his representatives under the provisions with regard to 'existing works' (*q*), or where he has subsequently assigned the copyright, he can continue to sell such stock after such reverter or assignment without breach of copyright (*r*).

Fair dealing for purposes of study or criticism.

There is no infringement where there is fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary (*s*). This exception is couched in very wide terms, and its limits are not easy to define. 'Private study' presumably limits copying to copying for private use. It is clear that 'newspaper summary' would not be held to cover such a case as the abridgment of *Rasselas* in a magazine (*t*), but the power thus granted seems to be open to much abuse. Neither would the exception of 'criticism' and 'review' cover, it is apprehended, the power to print the whole or a substantial part of a copyright work for the purpose of publishing annotations and commentaries upon it. The right must be limited to 'the fair extract which the law allows for the purpose of comment, criticism, or illustration' (*u*). But 'it is very difficult to draw the line between that which

(*q*) See p. 53 *post*.

(*r*) *Howitt* v. *Hall* (1862), 6 L.T. 348; *Taylor* v. *Pillow* (1869), L.R. 7 Eq. 418; *Warne* v. *Routledge* (1874), L.R. 18 Eq. 497.

(*s*) Copyright Act, 1911, s. 2 (1), p. 205 *post*.

(*t*) See p. 105 *ante*.

(*u*) *Sweet* v. *Benning* (1855), 16 C.B. 459, at p. 481, per Jervis C.J. Compare *Whittingham* v. *Wooler* (1817), 2 Swan. 428; *Mawman* v. *Tegg* (1826), 2 Russ. 385, at p. 393; *Bell* v. *Whitehead* (1839), 8 L.J. Ch. 141; *Smith* v. *Chatto* (1874), 31 L.T. 775.

is a fair and legitimate use of an author's work for the purpose of extract, or comment, or illustration, and that which amounts to piracy' (*x*). As to 'research', this appears to apply to individual research and not to the general advancement of learning by means of research. If this were not so, it would be lawful for a scientific journal to publish the whole of a copyright work with a view to advancing 'research'. In a recent case the *Electrical Engineer* had to pay damages for reproducing portions of a book on electric traction in four issues commencing a fortnight later than that in which a review of the book had appeared (*y*).

The whole provision, however, is governed by the words 'fair dealing', and no dealing would be held to be fair which unduly injured the owner of the copyright, however laudable it might be in the abstract.

Exception of certain collections for school use.

It is further provided by the Act that there is no infringement where there is a publication in a collection, mainly composed of non-copyright matter, bona 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 (*z*).

This provision, unlike some others, is very strictly limited. It is to be noted that not more than two passages from works by the same author, not merely

(*x*) *Sweet* v. *Benning* (1855), 16 C.B. 459, at p. 488, per Cresswell J.
(*y*) *Harper & Bros.* v. *Biggs & Son* (1907), *Times*, June 27.
(*z*) Copyright Act, 1911, s. 2 (1), p. 205 *post*.

from the same work of the same author, are to be published by the same publisher within five years under these conditions.

DRAMATIC WORKS. Infringement in general.

The infringement of the copyright in printed dramatic works is governed by the same principles as that of the copyright in literary works (*a*)—indeed, a printed dramatic work would fall under the head of literary work as readily as under that of dramatic work. The production by records and films, which are a species of 'material form', is dealt with hereafter (*b*). The words of the present provision would presumably cover such a performance as that of an ordinary drama by marionettes, which would perhaps not come within the next following provision dealing with performance (*c*).

Fair dealing for purposes of study or criticism.

A special exception is made for fair dealing with a work for the purpose of private study, research, criticism, review, or newspaper summary (*d*).

MUSICAL WORKS.

Since copyright in literary, dramatic, and musical works is now unified, no difficulties arise as between the copyright in the words of a song, accompanied recitation, or operatic composition, and these can be more conveniently dealt with under the present head.

Mechanical contrivances.

The present provision covers any material reproduction of a musical work, but there are special provisions with regard to the production of musical works by means of records or perforated rolls (*e*). Copyright in such records, perforated rolls, or other contrivances by means of which sounds may be mechanically reproduced subsists in like manner as if

(*a*) See p. 101 *ante*. (*b*) p. 130 *post*.

(*c*) p. 122 *post*.

(*d*) Copyright Act, 1911, s. 2 (1). See the discussion of this provision in connexion with literary works, p. 107 *ante*.

(*e*) See p. 130 *post*.

such contrivances were musical works (*f*), subject to certain provisions as to the term of copyright (*g*) and as to ownership (*h*), and any reproduction of such records, rolls, and contrivances is therefore a breach of copyright under the above provision (*i*).

Production or reproduction in another material form.

It would be an infringement to reproduce a musical work by some other process (*k*) or in some other notation, e.g. in tonic sol-fa, or to turn an ordinary orchestral score into a score of the simplified non-transposing kind advocated by Dr. Weingartner and others.

Arrangements.

Special difficulties arise in the case of musical works owing to the different forms in which music may be published, and it will be a question of fact in each case whether a substantial part has been reproduced. It has been held, for instance, to be a breach of copyright to make dance music out of Auber's copyright opera *Lestocq*, though only parts of various tunes were taken (*l*).

Lord Chief Baron Abinger made some observations in that case which require modification at the present day: 'It is the air or melody which is the invention of the author and which may in such case be the subject of piracy, and you commit a piracy if, by taking not a single bar but several, you incorporate in the new work that in which the whole meritorious part of the invention consists. . . . The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or

(*f*) Copyright Act, 1911, s. 19 (1), p. 217 *post*.

(*g*) See p. 45 *ante*.

(*h*) See p. 75 *ante*.

(*i*) See also the definition of 'musical work' in the Copyright Act, 1911, s. 19 (2), p. 217 *post*.

(*k*) E.g. by lithography, *Novello* v. *Sudlow* (1852), 12 C.B. 177.

(*l*) *D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288.

accompaniment ' (*m*). Even Auber would have resented the notion that his whole merit consisted in the making of tunes, and, from a modern point of view, harmonic and contrapuntal devices and orchestral colour might be an even more serious object of piracy than melody.

It has also been held that a score for voices and pianoforte arranged by one Brissler from Nicolai's *Die Lustigen Weiber von Windsor* was an independent musical work which could be the subject of copyright (*n*). The judgment was accompanied by some rather curious observations by Baron Bramwell on pianoforte arrangements generally. It seems clear that, as against a third party, such an arrangement would entitle its author to sue for infringement of copyright. But, as between the original author and the arranger, such an arrangement would be a breach of copyright. The vocal portions are obviously a mere copy of the original, and even the pianoforte portions would be, it seems, a taking of a ' substantial part ' of the original. These observations apply even to pianoforte arrangements of modern music which are often works of the highest knowledge and skill. We need only instance such a piece of work as Von Bülow's arrangement of *Tristan und Isolde*, or Herr Otto Singer's arrangements of Richard Strauss's later music dramas. They also apply to arrangements for other combinations of instruments, such as Wilhelmj's arrangement of the ' Preislied ' from *Die Meistersinger* for violin and pianoforte, or arrangements for orchestras of different dimensions to that for which the composition was originally written, or arrangements of orchestral music for military bands. The case, as between composer and

(*m*) *D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288, at pp. 301, 302.
(*n*) *Wood* v. *Boosey* (1868), L.R. 3 Q.B. 223.

arranger, would be strengthened against the arranger, if, as is not infrequently the case, the composer wrote his score originally for pianoforte and subsequently scored it, or had it scored by some one else, for orchestra.

It has also been held, as one would have expected, that the production of an orchestral version from a vocal score without authority (the particular case concerned Offenbach's *Vert-Vert*) is an infringement of copyright (*o*).

Originality of treatment as excusing infringement.

The principle that originality and meritoriousness of treatment applied to copyright matter which has been taken may excuse the taking (*p*) seems to have a clearer application to musical works than to the other subjects of copyright. No one, for instance, would say that Beethoven's conscious or unconscious use in the first movement of his Third Symphony of the theme of Mozart's overture to *Bastien und Bastienne* could have been a breach of copyright, or the imitation of Agathe's great air in *Der Freischütz* by Wagner in the trio of the 'Einzug' in the second Act of *Tannhäuser*, or the resemblance between the principal theme of Humperdinck's *Königskinder* and a phrase in a romance of Sinding's.

Parody.

The case of a deliberate parody is not so simple, but here again the question must turn on the amount of originality displayed in the treatment. It has never been suggested, for instance, that the brilliant parody of *Tannhäuser* was a breach of copyright (*q*).

A special exception is made for 'fair dealing with

(*o*) *Fairlie* v. *Boosey* (1879), 4 App. Cas. 711.

(*p*) See p. 101 *ante*.

(*q*) See the remarks of Channell J. in *Tubb* v. *Laidler* (1911), *Times*, January 27 (a song 'Coal for the Fire' parodied by 'Milk for the Cat').

any work for the purposes of private study, research, criticism, review, or newspaper summary' (*r*). This permits the possibility of fairly using specimens of music to illustrate an article or a pamphlet on a composer, but it presumably would not cover the reproduction of portions of an unpublished musical work in the course of an advance article preceding its performance, an instance of which occurred not long ago. It might also not cover a too substantial reproduction of copyright music for the purpose of one of those guides to musical works, which have become so numerous since Wagner's later period.

Fair dealing for purposes of study or criticism.

The law relating to the various species of artistic works has been unified and extended to architectural works of art (*s*), and the words of the provision which is now under discussion are wide enough to solve most of the problems which have arisen with regard to infringement.

Artistic Works.

If a copy is made from a copy of an original in such a way as substantially to reproduce the original, there is an infringement of the copyright in the original (*t*), but it has been held not to be an infringement of the copyright in a reproduction to make another reproduction from the same original (*u*).

What constitutes infringement.

Nice questions may still arise whether a particular alleged reproduction is really a reproduction of the copyright work of art or not. The works of art which are usually copied, with or without authority, are not those which display any very striking points of origin-

(*r*) Copyright Act, 1911, s. 2 (1). See also p. 107 *ante*.

(*s*) See p. 21 *ante*.

(*t*) *Ex parte Beal* (1868), L.R. 3 Q.B. 387, at p. 394; *Hanfstaengl* v. *H. R. Baines & Co., Ltd.*, [1895] A.C. 20, at p. 30, per Lord Shand.

(*u*) *De Berenger* v. *Wheble* (1819), 2 Stark. N.P. 548. Compare *Lucas* v. *Cooke* (1880), 13 Ch.D. 872.

ality. As was observed by Lord Herschell L.C. in the case of an alleged infringement of a picture called 'Courtship' or 'First Love', 'the idea of a young man courting a young woman at a country stile is of great antiquity' (*x*). The same might be said of many, perhaps most, other pictures which have attained popularity. It is not, therefore, a proper definition of reproduction to say that it is that which comes so near to the original as to give every person seeing it the idea of the original (*y*). Kekewich J. suggested that it should be defined as that which comes so near to the original as to suggest that original to the mind of every person seeing it (*z*). This must not be taken to mean that the whole of the original need be reproduced, but that so much of the original must be reproduced, as to produce on the mind substantially the same impression as the original would produce if it were seen. The question 'must be solved by taking each of the works to be compared as a whole, and determining whether there is not merely a similarity or resemblance in some leading feature or in certain of the details, but whether, keeping in view the idea and general effect created by the original, there is such a degree of similarity as would lead one to say that the alleged infringement is a copy or reproduction of the original or the design—having adopted its essential features and substance' (*a*). What the essential features are will depend on the nature of the picture. In the case of a portrait, for instance, the background and minor accessories

(*x*) *Hanfstaengl* v. *H. R. Baines & Co.*, [1895] A.C. 20, at p. 24.

(*y*) This was the definition given by Bayley J. in *West* v. *Francis* (1822), 5 B. & A. 737, at p. 743.

(*z*) *Hanfstaengl* v. *W. H. Smith & Sons*, [1905] 1 Ch. 519, at p. 526.

(*a*) *Hanfstaengl* v. *H. R. Baines & Co.*, *ubi supra*, at p. 31, per Lord Shand.

might not be essential. In the case of a subject picture, it might well be that the general idea, if sufficiently original to take it out of the category of common property, would be infringed, even though the exact details of the original were not kept. Take, for instance, such a popular subject as a general displaying his domestic proclivities towards a child belonging to the opposing nation during a war. It would be an infringement of this to depict a general displaying similar proclivities in a similar way, even though the faces and dress of the general and the baby were varied, and the furniture of the cottage scene was altered, and the whole rechristened 'Grandfather's Return'. The crudeness and the purpose of the reproduction are immaterial. Thus it was held to be an infringement of a work called 'Nature's Mirror', a draped female looking into a pool, to reproduce it in a magazine as part of a prize competition, though part of the background and the female's wings were omitted, and the whole was of the size of a halfpenny (*b*). It was also held to be an infringement to reproduce 'The Guardian Angel' as an advertisement for pills (*c*), or to make unauthorized use of a poster representing Santa Claus (*d*). The question whether an alleged infringement was substantially a copy of the original was held to have been rightly left to the jury in that form, where the defendant was alleged to have taken an engraving of a celebrated mare, 'Bee's Wing,' and turned it into a woodcut of 'Coronation, Winner of the Derby, 1841' (*e*). Where a butcher's bill-head was

(*b*) *Hanfstaengl* v. *W. H. Smith & Sons*, [1905] 1 Ch. 519.
(*c*) *Hanfstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q.B. 1.
(*d*) *Green* v. *Irish Independent Co., Ltd.*, [1899] 1 I.R. 381.
(*e*) *Moore* v. *Clarke* (1842), 9 M. & W. 692.

copied, it was held to be immaterial that the steer in that copy was facing in the opposite direction (*f*), or that in a copy of a photograph of a lion the tail differed from the tail in the original (*g*). Even if the copy has merits which the original does not possess, it is no less an infringement (*h*).

The instance of the general and the child suggested above is supported by the case of 'Can't you talk?' The engraving represented a collie dog sitting and looking down at a child. The defendants, in a woodcut, substituted a tortoise and two cats for the child, and called the whole 'A Strange Visitor'. It was held that the defendants had taken a substantial part of the engraving and reproduced it in slightly different surroundings (*i*). It has also been held to be an infringement to take the head, bonnet, necktie, and right arm of the Princess of Wales from a copyright photograph and annex them to the remainder of the body of a stout lady for the purpose of advertising a dressholder (*k*). It is, of course, no less an infringement if the reproduction is an enlargement (*l*) or a reduction (*m*) of the original.

There must, however, be production or reproduction,

(*f*) *Whitehead* v. *Wellington* (1911), 55 Sol.J. 272.

(*g*) *Bolton* v. *London Exhibitions, Ltd.*, [1898], 14 T.L.R. 550.

(*h*) *Hanfstaengl* v. *H. R. Baines & Co.*, [1895] A.C. 20, at pp. 26, 27, per Lord Watson.

(*i*) *Brooks* v. *Religious Tract Society*, [1897] W.N. 25.

(*k*) *London Stereoscopic and Photographic Co., Ltd.* v. *Kelly* (1888), 5 T.L.R. 169.

(*l*) *Bolton* v. *Aldin* (1895), 65 L.J.Q.B. 120 (a drawing from a photograph of a tiger).

(*m*) *Gambart* v. *Ball* (1863), 14 C.B. (N.S.) 306 (the 'Horse Fair' and the 'Light of the World'); *Bradbury* v. *Hotten* (1872), L.R. 8 Ex. 1 (pictures in *Punch*). Compare also *Hanfstaengl* v. *Empire Palace*, [1894] 3 Ch. 109, at p. 131.

and therefore it seems to be still law that, after the purchase of a book containing artistic works lawfully reproduced, the subsequent extraction of such artistic works and separate sale of them would not be an infringement of the copyright in such works (*n*). Similarly a publisher in the possession of copies of artistic works lawfully produced could continue to sell them off, even though the copyright no longer belonged to him.

Production and reproduction in another material form.

The above provision covers production or reproduction 'in any material form whatsoever', and so there is no longer any doubt that reproductions in a different material or by a different process are infringements (*o*). Thus it is no longer law that a copy of a picture made on a very large scale and with dioramic effect is no breach of copyright (*p*); and a reproduction of Millais' 'Huguenot' as a pattern for Berlin woolwork (*q*) would now be held to be an infringement. A reproduction by photographs would be, of course, an infringement as hitherto (*r*).

There may be also an infringement of an interest in copyright limited to certain methods of reproduction by a reproduction of the original by such methods (*s*); and there may be an infringement where an arrangement has been made permitting the publication of artistic

(*n*) *Frost & Reed* v. *Olive Series Publishing Co.* (1908), 24 T.L.R. 649.

(*o*) See *Ex parte Beal* (1868), L.R. 3 Q.B. 387, at p. 394; *Hanfstaengl* v. *Empire Palace*, [1894] 2 Ch. 1.

(*p*) *Martin* v. *Wright* (1833), 6 Sim. 297 ('Mr. Martin's grand picture "Belshazzar's Feast"').

(*q*) *Dicks* v. *Brooks* (1880), 15 Ch.D. 22.

(*r*) *Gambart* v. *Ball* (1863), 14 C.B. (N.S.) 306; *Graves* v. *Ashford* (1867), L.R. 2 C.P. 410.

(*s*) *Lucas* v. *Cooke* (1880), 13 Ch.D. 872; *Tuck* v. *Canton* (1882), 51 L.J.Q.B. 363.

works by the defendant, and he continues to publish them after the arrangement has determined (*t*).

Blocks and plates.

Under the above provision the production of engravings, wood-cuts, etchings, or other similar artistic works from blocks or plates, which one has not the right to use for that purpose, would be an infringement of copyright in the blocks or plates (*u*).

Parody.

A parody, it seems, if not merely a colourable imitation under the guise of a parody, would not be an infringement (*x*).

Evidence of infringement.

It has been held not to be necessary for the plaintiff in an action for infringement of the copyright in a picture to produce the original picture ; it was enough if he gave evidence that he had seen it and produced an engraving, which was an exact copy of the original, and from which he stated that the defendants' infringing photograph was taken (*y*).

Exceptions.

There are two special exceptions to the provisions as to infringement provided by the Act. Where the

Use of models and studies by author non-owner of copyright.

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 is not an infringement of copyright, provided that he does not thereby repeat or imitate the main design of the work (*z*). This proviso prevents the author, if not the owner of the work, from

(*t*) *Bowlen Bros.* v. *Amalgamated Pictorials, Ltd.*, [1911] 1 Ch. 386.

(*u*) Discussions of this matter under the repealed law will be found in *Murray* v. *Heath* (1831), 1 B. & Ad. 804 ; *Cooper* v. *Stephens*, [1895] 1 Ch. 567 ; *W. Marshall & Co., Ltd.* v. *A. H. Bull, Ltd.* (1901), 85 L.T. 77 ; *Millar & Lang, Ltd.* v. *Polak*, [1908] 1 Ch. 433.

(*x*) See *Hanfstaengl* v. *Empire Palace*, [1894] 3 Ch. 109, at p. 130, per Lindley L.J.

(*y*) *Lucas* v. *Williams & Sons*, [1892] 2 Q.B. 113.

(*z*) Copyright Act, 1911, s. 2 (1), p. 205 *post*.

producing replicas with the aid of his studies and sketches, but enables him so to reproduce the details in other forms. This will be specially important in the case of architectural works of art.

Pictures of certain works in public places and of architectural works of art.

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, is not an infringement of copyright (*a*).

It is not clear what is meant by a work of 'artistic craftsmanship'. There is no definition of it in the Act, but 'artistic work' is described as including 'works of painting, drawing, sculpture, and artistic craftsmanship, and architectural works of art and engravings and photographs' (*b*). It would seem, then, that works of artistic craftsmanship mean artistic works other than those specially enumerated in the definition of artistic work (*c*). 'Work of sculpture' is not defined in the Act, except in so far as it is expressed to include casts or models (*d*).

It will be observed that no power is given to make or publish reproductions of copyright artistic works other than those mentioned, whether situate in a public place or building or not, and whether public or private property. Such making or publication is an infringement.

The proviso which permits fair dealing for purposes

(*a*) Copyright Act, 1911, s. 2 (1), p. 205 *post.*
(*b*) Ibid., s. 35 (1) p. 230 *post.*
(*c*) See further, p. 22 *ante.*
(*d*) See further, p. 22 *ante.*

Fair dealing for purposes of study or criticism.

of study, criticism, or newspaper summary (*e*), covers the cases, which have caused some difficulty in the minds of judges, where a reproduction of an artistic work is made by hand for the purpose of private study or amusement (*f*). The reproduction, however, when made, must not be dealt with for any other purpose than one of those specified in the proviso. Where *Architecture* reproduced illustrations from the plaintiff's book called *The Abbey Church of St. Alban's*, without reference to that book, but for the purpose of severely criticizing the restoration of the Abbey, it was held to have been an unfair use (*g*).

The Right of Translation

The sole right to produce, reproduce, perform, or publish any translation of the work or any substantial part thereof or to authorize any of such acts (*h*).

Literary and Dramatic Works.

This provision settles the question of infringement by translation, on which various opinions have existed. The Indian Courts, it appears, have held that a publication in Urdu of a copyright English book (*i*), or in Persian of a copyright Urdu book (*k*), is not an infringement (*i*). This certainly seems a remarkable application of the doctrine that a literary theft is no theft if labour is expended upon the stolen article, yet it seems to be supported in an old case (*l*) by Lord Parker L.C., who

(*e*) Copyright Act, 1911, s. 2 (1). See p. 107 *ante*.

(*f*) See *Gambart* v. *Ball* (1863), 14 C.B. (N.S.) 318; *Dicks* v. *Brooks* (1880), 15 Ch.D. 22.

(*g*) *Neale* v. *Harmer* (1897), 13 T.L.R. 209.

(*h*) Copyright Act, 1911, s. 1 (2), p. 204 *post*.

(*i*) *Macmillan* v. *Shamsul Ulama M. Zaka* (1895), Ind.L.R. 19 Bom. 557.

(*k*) *Munshi Shaik Abdurruhmán* v. *Mirzá Mahomed Shirázi* (1890), Ind.L.R. 14 Bom. 586.

(*l*) *Burnett* v. *Chetwood* (1720), 2 Mer. 440 n.

suggested that 'the translator may be said to be the author, inasmuch as some skill in language is requisite thereto, and not barely a mechanic art'. In that instance, however, he granted an injunction to restrain the publication of an English translation of a copyright Latin book, *Archaeologia Sacra*, on the ground that it 'contained strange notions, intended by the author to be concealed from the vulgar in the Latin language'. It has also been held, *obiter*, that if Baedeker had translated Murray into German and some one else had retranslated it into English, the English translation would be a breach of copyright (*m*). But the direct question as to a foreign translation of an English copyright work seems not to have been decided in England.

Now, however, under the Act, there is no doubt that a translation, or the performance or publication of a translation, of a copyright work or any substantial part of it is an infringement, whatever the language may be, living or dead, natural or artificial, even Esperanto. But of course it will not prevent translation as between the British Empire and foreign countries to which the Act is not extended, though it will prevent the importation, sale, letting, distribution, and exhibition of such translations.

Musical Works.

The same principles will, of course, apply to unauthorized translations of the words of a song, accompanied recitation, or operatic composition, whether these be regarded as a literary work or as part of a musical work.

(*m*) *Murray* v. *Bogue* (1852), 1 Drew. 353.

Right of Performance

The sole right to perform or to authorize the performance of the work or any substantial part thereof in public (*n*).

Definition of 'performance'.

A 'performance' is defined as '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' (*o*). 'Perform' is not defined, but its definition follows from that of 'performance'.

Literary Works.

This provision may have some application to literary works, so far as reading or recitation in public is concerned.

Public recitation of an extract by one person.

It is specially limited, however, in this respect by a provision that the reading or recitation in public by one person of any reasonable extract from any published work is no infringement of copyright (*p*). A piece for recitation falls within the definition of 'dramatic work' (*q*), but this provision covers literary works also. It is not very happily drafted. 'Any published work' means, of course, any published work in which copyright still subsists. 'By one person' presumably means by one person in contradistinction to a dramatic or quasi-dramatic performance by two or more persons, which is forbidden by the general provision as to performance. The present provision can scarcely be taken to refer to musical works, and therefore it would presumably be an infringement to recite with the music a reasonable extract from a recitation set

(*n*) Copyright Act, 1911, s. 1 (2), p. 204 *post*.

(*o*) Ibid., s. 35 (1), p. 230 *post*.

(*p*) Ibid., s. 2 (1), p. 205 *post*. The provision agrees with the observation made *obiter* by Stirling J. in *Hanfstaengl* v. *Empire Palace*, [1894] 3 Ch. 109, at p. 116.

(*q*) Copyright Act, 1911, s. 35 (1).

to music, such as Richard Strauss's *Das Schloss am Meer* or *Enoch Arden*, at any rate as far as the music is concerned. It is not easy to say what a 'reasonable extract' is. Is the standard of reasonableness the length of the extract as compared with the length of the work, or the capacity of the performer, or the feelings of the audience? The first of these is probably the best criterion, coupled with any special surrounding circumstances.

Dramatic Works. Meaning of 'perform in public'.

An infringing performance must be public, and this apparently means that the public must be admitted, either with or without payment (*r*). Whether a performance before one of the societies which are so often formed nowadays for the production of plays would be a public performance is doubtful. Probably it would be where the society was formed merely *ad hoc*, as in the case of the production of Maeterlinck's *Monna Vanna*; perhaps it would not be where the society was one of a permanent character, like the Incorporated Stage Society. The question must be one of fact in each case. 'Some domestic or quasi-domestic entertainments may not come within the Act; suppose that a club of persons united for the purposes of good fellowship gives a dramatic entertainment to its members; I do not say that the entertainment will necessarily fall within the prohibition of the statute' (*s*).

(*r*) See *Duck* v. *Bates* (1884), 13 Q.B.D. 843, at p. 848, a case, however, which turned on the meaning of 'place of public entertainment' in the repealed Dramatic Copyright Act, 1833 (3 & 4 Will. IV, c. 15), s. 2. See also *Glenville* v. *Selig Polyscope Co.* (1911), 27 T.L.R. 554, where it was held that a show-room for pictures was not a 'place of public entertainment'.

(*s*) *Duck* v. *Bates* (1884), *ubi supra*, at p. 850; but remember the *caveat* in note (*r*). In the same case, in a dissenting judgment, Fry L.J. gave a much wider interpretation to the words of the statute.

Meaning of 'substantial part'.

A performance, in order to infringe, must be of the whole or of a substantial part. It has been held under the old law that where there has been no infringement of the verbal substance of a dramatic work, a similarity of accessories, such as scenic effects, make-up, or 'business', is not an infringement (*t*). But this judgment proceeded on the basis that the repealed Dramatic Copyright Acts contemplated as the subject of copyright something which could be printed and published. Now the definition of 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' (*u*). It seems, therefore, that under the Act of 1911 it would be an infringement to copy scenic effects, make-up, or 'business', which are fixed in writing or otherwise, if such constituted a choreographic work or entertainment in dumb show, even though they were in combination with a 'dramatic work' in the ordinary sense of the word (*x*).

Whether there has been an infringement or not is no doubt largely a question of fact, depending on the nature of the matter taken and the manner of its taking, rather than on the mere quantity of it (*y*). It was held, for instance, that the taking of two scenes from an English adaptation of a French play, founded on

(*t*) *Tate* v. *Fullbrook*, [1908] 1 K.B. 821, which must be taken as overruling certain dicta of Brett J. and Lindley J. in *Chatterton* v. *Cave* (1875), L.R. 10 C.P. 572; but see *Nethersole* v. *Bell* (1903), *Times*, July 4, 31. The principle of the former case was applied in *Bishop* v. *Viviana & Co.* (1909), *Times*, January 15, which concerned an imitation of a 'Gollywog' dance.

(*u*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.

(*x*) See p. 14 *ante*.

(*y*) See p. 101 *ante*.

Sue's *Le Juif Errant*, was not an infringement (*z*). On the other hand, it was held that the use by a defendant of some of the plaintiff's words in an English version of Weber's *Oberon* was an infringement (*a*), and the same was held where portions of the play *Trilby* had been taken (*b*).

Accidental similarities.

Sometimes there may be considerable similarities between two pieces, which are purely accidental, and then there will be, of course, no infringement (*c*). Such similarities will usually arise when both have been drawn from a common source, which was legitimately open to the authors of both. In such cases, however there is an *onus* cast on the defendant to show his originality, as the presumption is against him (*d*).

Infringement after termination of licence.

Where a licence to perform has been given and has determined or been withdrawn, it is, of course, a breach of copyright to continue to perform it, as was held in

(*z*) *Chatterton* v. *Cave* (1878), 3 App. Cas. 483.

(*a*) *Planché* v. *Braham* (1837), 4 Bing. (N.C.) 17. It will be remembered that the plaintiff wrote in English the original libretto of the opera which was set by Weber.

(*b*) *Tree* v. *Bowkett* (1891), 74 L.T. 77.

(*c*) *Reichardt* v. *Sapte*, [1893] 2 Q.B. 308.

(*d*) There was an interesting instance of this in *Scholz* v. *Amasis Ltd.* (1909), *Times*, May 19, where both plaintiff and defendant had used a novel by Ebers, and there were similarities in their work, but it was held on appeal that there had been no infringement. Compare also *Schlesinger* v. *Bedford* (1890), 63 L.T. 762, and *Beere* v. *Ellis* (1889), 5 T.L.R. 330, both of which were cases of plays adapted from the same novel. The numerous cases on the dramatic versions of *East Lynne* will also be remembered, and the part played in them by that eminent character Police-constable Bullock (see, for instance, *Hardacre* v. *Corelli & Co.* (1911), *Times*, March 10). In *Robl* v. *Palace Theatre, Ltd.* (1911), 28 T.L.R. 69, it was held that there was no infringement because both plays were drawn from 'the common stock of dramatic ideas'.

the case of a play called *The New Lady Bantock, or Fanny and the Servant Problem* ' (*e*).

Public recitation of an extract by one person.

There is a special exception of ' reading or recitation in public by one person of any reasonable extract from any published work ', which has been already discussed (*f*). The limitation to ' one person ' is meant to exclude the dramatic element which would be introduced by a performance by two or more actors.

Liability for permitting place of entertainment to be used.

Not only the person responsible for the performance is guilty of infringement, but also any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of a work without the consent of the owner of the copyright. But this latter person is not liable, if he was not aware and had no reasonable ground for suspecting that the performance would be an infringement of copyright (*g*). There are also provisions for the summary recovery of penalties against persons who cause such performances (*h*).

Musical Works. Meaning of ' performance in public '.

The observations already made as to the performance of dramatic works (*i*) apply in the main to the performance of musical works. As to what constitutes a performance of a musical work, it has been said that it ' must be such according to the ordinary acceptation of ' that term. ' Singing for one's own gratification without intending thereby to represent anything, or

(*e*) *Jerome* v. *Lingard* (1911), *Times*, November 25.

(*f*) See p. 122 *ante*.

(*g*) Copyright Act, 1911, s. 2 (3), p. 206 *post*. The *onus* of proving innocence would seem to be now on the person using it as a defence. Under the repealed Copyright (Musical Compositions) Act, 1888 (51 & 52 Vict. c. 17), s. 3, the plaintiff had to prove the defendant's guilt (*Moul* v. *Coronet Theatre, Ltd.* (1903), *Times*, February 4. See also *Cole* v. *Gear* (1888), 4 T.L.R. 246).

(*h*) See p. 157 *post*.

(*i*) See p. 123 *ante*.

to amuse any one else, would not, it seems, be either a representation or a performance according to the ordinary meaning of those terms, nor would the fact of some other person being in the room at the time of such singing make it so ; but where to give effect to a song it is necessary that the singing should be made to represent something, or where it is performed for the amusement of other persons, then probably it would be a representation or performance. To some extent whether it is such or not must in each case be a question of fact ' (*k*). These words give a very wide interpretation to the meaning of performance, and they must now be read subject to the statutory definition of performance as ' 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 ', and to the fact that under the present Act the performance has to be in public. The musical work *Will o' the Wisp*, with regard to which the action arose in the case just cited, was in fact performed at a public concert in one case, where there was a charge for admission, and in the other at a school, where nothing was charged for admission but there was a compulsory tea which cost eightpence (*l*).

Infringement by performance in general.

The remarks already made as to infringement of a musical work by reproduction in a material form (*m*) apply, *mutatis mutandis*, to infringement by performance. It would be an infringement of a work written for one instrument or combination of instruments to perform it on another instrument or combination of instruments, or to play a vocal piece on an instrument

(*k*) *Wall* v. *Taylor* (1883), 11 Q.B.D. 102, at p. 106, per Brett M.R.
(*l*) See *Wall* v. *Taylor* (1882), 9 Q.B.D. 727.
(*m*) See p. 109 *ante*.

or instruments. It would be, *pro tanto*, as much a breach of copyright to play 'Land of Hope and Glory' on a xylophone at a music hall as to perform it with a vocalist and a first-class orchestra, though, no doubt, the damage to the composer's pocket and reputation would not be so great.

There may be infringement although only a part of a work is performed, subject to the provision that the part must be substantial, and the question of substantiality is one of fact in each case. It was held to be an infringement to use the words of a few songs out of Planché's *Oberon*, such songs including the celebrated scena, 'Ocean, thou mighty monster' (*n*). The same observation applies to part of a melody (*o*).

Liability for permitting place of entertainment to be used.

A person who for his private profit permits a theatre or other place of entertainment to be used for an unauthorized performance of a copyright work is liable for infringement, subject to proof of innocence, as in the case of dramatic works (*p*).

Right of Dramatization and Novelization

The sole right, 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; and, in the case of a dramatic work, to convert it into a novel or other non-dramatic work; or to authorize any of such acts (*q*).

Dramatization.

Literary Works.

It is now at last expressly provided that the conversion of a novel or other non-dramatic work, such, for instance, as a poem, into a dramatic work is a breach of the copyright in the work so converted; and

(*n*) *Planché* v. *Braham* (1837), 4 Bing. (N.C.) 17.
(*o*) *D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288. (*p*) See p. 126 *ante*.
(*q*) Copyright Act, 1911, s. 1 (2), p. 204 *post*.

an answer is thus provided to the complicated problems which have been presented to the Courts on this subject (*r*). It will be observed that the conversion need not necessarily be performed in order to cause a breach of copyright; the mere making of the conversion in book form or otherwise would be sufficient. 'Otherwise', however, can scarcely be interpreted as including performance in private, in view of the express mention of performance in public.

Musical Works.

A non-dramatic musical work is occasionally converted into a dramatic work, as, for instance, when Rimsky-Korsakov's symphonic poem 'Sheherazade' was turned into music accompanying a ballet, and when Berlioz's 'Damnation de Faust' was made into an opera. This is prohibited both by the present special provision and by the general provisions of the Act.

Artistic Works.

The provision also applies specifically to artistic works, and therefore meets the case of the conversion of such works into *tableaux vivants* or cinematograph productions, both of which are included in the definition of dramatic work (*s*).

Novelization.

There appears to have been no English authority hitherto on the question whether a novel made out of a play infringes the copyright in the play, and the matter is now set at rest. It has become of some importance in recent years owing to the curious taste

(*r*) See, for instance, *Reade* v. *Lacy* (1861), 1 J. & H. 524; *Reade* v. *Conquest* (1861), 9 C.B. (N.S.) 755; *Reade* v. *Conquest* (1862), 11 C.B. (N.S.) 479; *Tinsley* v. *Lacy* (1863), 1 H. & M. 747; *Schlesinger* v. *Bedford* (1870), 63 L.T. 762; *Toole* v. *Young* (1874), L.R. 9 Q.B. 523; *Warne & Co.* v. *Seebohm* (1888), 39 Ch.D. 73.

(*s*) Copyright Act, 1911, s. 35 (1), p. 230 *post*. This was previously not an infringement of copyright; see *Hanfstaengl* v. *Empire Palace*, [1894] 2 Ch. 1.

of some modern playgoers who, after seeing their *Sign of the Cross* on the stage, wish to chew it all over again in the form of a novel. The playwright will now have the exclusive benefit arising from this habit.

Conversion into other non-dramatic works.

Dramatic musical works have sometimes been converted into non-dramatic musical works, the reason generally being their non-success on the stage; for example, Rubinstein's sacred operas. This is prohibited both by the present provision and by the general provisions of the Act.

Right of making Mechanical Contrivances

The sole right, in the case of a literary, dramatic, or musical work, to make or to authorize the making of any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed (*t*).

Literary Works.

This provision may apply to a literary work in such a case, for instance, as the reproduction of copyright literary work on a cinematograph film by way of explanation of a picture. The matter of lectures is dealt with hereafter (*u*).

For the purpose of the making of mechanical contrivances, it is specially provided that words so closely associated with a musical work as to form part of it are to be deemed to be included in the term 'musical work' (*x*), and they must be taken, therefore, to be dealt with below in connexion with musical works (*y*).

Dramatic Works.

The special provisions as to the making of contrivances for reproducing sounds (*z*) do not apply to dramatic works but to musical works only, and there-

(*t*) Copyright Act, 1911, s. 1 (2), p. 204 *post*.
(*u*) p. 137 *post*.
(*x*) Copyright Act, 1911, s. 19 (2).
(*y*) p. 131 *post*.
(*z*) See p. 131 *post*.

fore the reproduction of a dramatic work by such means must be arranged with the author in the same way as any other reproduction of a copyright work. It is now specifically provided that the making or the authorization of the making of a cinematograph film of a copyright work is an infringement of copyright. This gets rid of the difficulty which arose under the repealed Dramatic Copyright Act, 1833 (*a*), s. 2, where it was held that the manufacturers of cinematograph films of a dramatic work called *The Humming Birds, or Twice Nightly*, had not infringed, on the ground that they had not ' caused ' the work ' to be represented ' (*b*).

Musical Works.

The provision remedies the state of the law which had been declared to exist, and whereby the making of a perforated roll of music or a phonographic record for performance by a mechanical instrument was held not to be an infringement of copyright in the music (*c*).

Special provisions.

As the result of the cases just cited, however, and for certain other reasons, the Legislature has thought fit to insert most elaborate special clauses with regard to the making of such mechanical contrivances (*d*). These provisions are substantially varied in their application to musical works published before the commencement of the Act (*e*).

Any person may make within the parts of the King's

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

(*b*) *Karno* v. *Pathé Frères, Ltd.* (1909), 100 L.T. 260. But see the remarks made *obiter* by Channell J. in *Glenville* v. *Selig Polyscope Co.* 1911), 27 T.L.R. 554.

(*c*) *Boosey* v. *Whight*, [1900] 1 Ch. 122; *Newmark* v. *National Phonograph Co., Ltd.* (1907), 23 T.L.R. 439; compare *Mabe* v. *Connor*, [1910] 1 K.B. 515. An attempt to prevent these results on the ground of a common law right has failed (*Monckton* v. *Gramophone Co., Ltd.*, [1912] W.N. 32).

(*d*) Copyright Act, 1911, s. 19 (2)–(8), pp. 217–221 *post.*

(*e*) See p. 61 *ante.*

Conditions for making mechanical contrivances.

dominions to which the Act extends records, perforated rolls, or other contrivances for mechanically performing a musical work, if he proves (1) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; (2) that he has given notice of his intention and paid certain royalties in manner prescribed by Board of Trade regulations (*f*). Consent is to be deemed to have been given, if inquiries so prescribed have been made and the owner of the copyright fails to reply to them within the time so prescribed (*g*).

For this purpose, a musical work is deemed to include any words so closely associated with it as to form part of the same work, but not to include a contrivance for the mechanical reproduction of sounds (*f*).

Alterations and omissions.

No alterations or omissions from the work are to be made unless contrivances with such alterations or omissions have been previously made by, or with the consent (*h*) or acquiescence of, the owner of the copyright, or unless they are reasonably necessary for the adaptation (*i*).

The opportunity which these last words gives for the alteration and curtailment of fine music for the purpose of getting it on to a mechanical contrivance will be obvious. But the subsection also seems to put some check for the future on the practice of over-decorating simple music for the purpose of pleasing the less intelligent type of auditor.

Royalties.

The rate of royalty (*k*) is to be 2½ per cent. on the

(*f*) Copyright Act, 1911, s. 19 (2), p. 217 *post*.

(*g*) Ibid., s. 19 (5), p. 219 *post*. (*h*) See *supra*.

(*i*) Copyright Act, 1911, s. 19 (2), p. 217 *post*.

(*k*) The rate of royalties differs, and there are other provisions relating to the payment of them, in the case of musical works published before the commencement of the Act; see p. 62 *ante*.

ordinary retail selling price, calculated as prescribed by Board of Trade regulations, in the case of contrivances sold within two years after the commencement of the Act, and 5 per cent. on contrivances sold thereafter, with a minimum of a halfpenny for each contrivance or for each work, where more than one are reproduced on one contrivance. Each fraction of a farthing is to be reckoned as one farthing. The Board of Trade may hold a public inquiry and decrease or increase such rate, subject to confirmation by Parliament, at any time after seven years from the commencement of the Act. No further revision may be made till fourteen years after such revision (*l*).

Where a contrivance reproduces works of different persons, the royalties are to be apportioned by arbitration, in default of agreement (*m*).

Right of Publication

The sole right, if a work is unpublished, to publish it or to authorize its publication (*n*).

Abolition of common law rights.

Common law rights similar to copyright in unpublished works are now abolished (*o*), and unpublished works have now copyright under the Act in the same way as published works.

Literary Works. Letters.

The publication of unpublished letters, either during the writer's lifetime or posthumously, has presented difficulties, most of which appear to be removed by the Act. The author of the letters, if alive, is the owner of the copyright (*p*), whoever may be the actual

(*l*) Copyright Act, 1911, s. 19 (3), p. 218 *post.*

(*m*) Ibid., s. 19 (4), p. 219 *post.*

(*n*) Copyright Act, 1911, s. 1 (2), p. 204 *post.*

(*o*) See p. 169 *post.*

(*p*) See such cases as *Pope* v. *Curl* (1741), 2 Atk. 342; *Macmillan & Co.* v. *Dent*, [1907] 1 Ch. 107; *Philip* v. *Pennell*, [1907] 2 Ch. 577.

possessor of the manuscripts, and consequently their publication without his consent is a breach of copyright. In the face of this statutory provision it is not quite clear whether certain rights of publication, which the recipient has been said to have in certain circumstances, still exist. The Court on one occasion (*r*) refused to continue an injunction against the publication of certain letters on the ground that the publication was due to the defendant's desire to vindicate himself from certain aspersions made on him by the plaintiffs. But it is to be noted that the judge seemed to have unsound views on the question whether letters were literary works and the subject of copyright, and that Lord Eldon L.C. subsequently did not apply the principle in a similar case (*s*). It has, nevertheless, been approved in more recent judgments (*t*). The Act, however, does not affect, it is apprehended, the production of unpublished letters in evidence for the purposes of public justice (*u*).

Presumption from testamentary ownership of deceased author's unpublished manuscript.

If an author be dead there is a special provision with regard to the presumption arising from the ownership of his manuscript. It is provided that the ownership of an author's manuscript after his death, where such ownership has been acquired by a testamentary disposition made by the author, and the manuscript is of a work which has not been published or performed in public or delivered in public, shall be prima facie proof of the copyright being with the owner of the manuscript (*x*).

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

(*s*) *Gee* v. *Pritchard* (1818), 2 Swan. 402.

(*t*) *Earl of Lytton* v. *Devey* (1884), 54 L.J.Ch. 293; *Labouchere* v. *Hess* (1897), 77 L.T. 559.

(*u*) *Gee* v. *Pritchard, ubi supra*, at p. 427; *Hopkinson* v. *Lord Burghley* (1867), L.R. 2 Ch. 447.

(*x*) Copyright Act, 1911, s. 17 (2), p. 216 *post*.

It will be observed that the ownership of the manuscript, to which the provision applies, is confined to ownership by testamentary disposition made by the author. It practically amounts to a provision that a bequest of a manuscript is equivalent to a bequest of the copyright in its contents, unless such presumed bequest of copyright is rebutted by evidence. It would be rebutted, no doubt, by a specific bequest to another person of the particular copyright or of all the testator's copyrights; how far it would be rebutted by other bequests, not dealing specifically with copyright, must depend on the circumstances of the case, but it is easy to see that difficulties may arise.

It is not clear why the expression 'the copyright being with the owner of the manuscript' is used. If it means, as apparently it does, 'the owner of the manuscript being the owner of the copyright,' it would have been better to say so.

It should be noted also that the provision does not apply to all works which are unpublished, in the sense in which the word is used elsewhere in the Act; if a work has been performed or delivered in public it is outside the operation of the provision.

Dramatic Works.

Public performance of a dramatic work is not publication, and therefore a dramatic work, whether it has been performed in public or not, remains unpublished till copies of it are issued to the public (*y*); but if it has been performed in public, it is not within the provision as to the presumption arising from the ownership of the manuscript under the author's will (*z*).

Musical Works.

The observations already made with regard to unpublished literary works (*a*) should be read here.

(*y*) See p. 36 *ante*.

(*z*) See p. 134 *ante*.

(*a*) See p. 133 *ante*.

As the distinction between copyright and performing right has now disappeared, the old questions as to the effect of publication in material form on performing right no longer arise (*b*). The presumption from the ownership of a deceased author's manuscript extends to a manuscript of a musical work as well as to that of a literary or dramatic work (*c*).

Artistic Works.

Copyright under the Act has taken the place of the copyright which existed in paintings, drawings, and photographs, whether published or unpublished, and the common law right protecting other unpublished artistic works (*d*). In the provision with regard to a deceased author's manuscript (*e*), 'manuscript' is not defined. In common parlance it would not cover such a thing as a hand-made drawing in any medium, even in pen and ink, but the etymological meaning of the word would probably include them. And what of a case where there was a drawing with a manuscript inscription on it ?

Lectures

Definition of 'lecture'.

This peculiar form of work requires separate treatment. A lecture is described as including address, speech, and sermon (*f*), and therefore it includes a political address, but it is not stated in the Act whether it is to be regarded as, and to have the

(*b*) See *Chappell* v. *Boosey* (1882), 21 Ch.D. 232, a case on a song called 'The Bellringer'.

(*c*) See p. 134 *ante*.

(*d*) See the repealed Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 1 ; *Prince Albert* v. *Strange* (1849), 1 Mac. & G. 25 ; *Turner* v. *Robinson* (1860), 10 Ir.Ch.R. 510 ; *Mansell* v. *Valley Printing Co.*, [1908] 2 Ch. 441 ; *Bowden Bros.* v. *Amalgamated Pictorials, Ltd.*, [1911] 1 Ch. 386.

(*e*) See p. 134 *ante*.

(*f*) Copyright Act, 1911, s. 35 (1), p. 230 *post*.

protection afforded to, a literary, dramatic, musical, or artistic work. But it seems that it must be taken to have general protection as being one or other of such works.

Where it has not been published, therefore, and in the case of a lecture delivery in public does not constitute publication (*g*), the author has the sole right of publication (*h*). Publication in breach of his rights might also be restrainable as a breach of confidence or implied contract (*i*). The author has also the sole right to produce or reproduce the lecture or any substantial part thereof in any material form whatsoever, or to produce, reproduce, perform, or publish any translation of it whatsoever, or to deliver or authorize the delivery of it or of any substantial part of it in public (*k*)—delivery including delivery by means of any mechanical instrument—or to authorize any of such acts (*l*). The other rights attaching to literary, dramatic, musical, or artistic works could hardly apply to a lecture. Copyright in lectures.

Copyright in lectures, like copyright in other works, is subject to the exemption of fair dealing with the work for the purposes of private study, research, criticism, review, or newspaper summary (*m*), and the reading or recitation in public by one person of any reasonable extract from it, if published (*n*). Exceptions to copyright in lectures.

(*g*) Copyright Act, 1911, s. 1 (3), p. 204 *post*; compare *Caird* v. *Sime* (1887), 12 App. Cas. 326.

(*h*) In substitution for the old common law right. See *Nicols* v. *Pitman* (1884), 26 Ch.D. 374; *Caird* v. *Sime*, *ubi supra*; and p. 169 *post*.

(*i*) See *Abernethy* v. *Hutchinson* (1825), 1 H. & T. 28, and p. 170 *post*.

(*k*) Copyright Act, 1911, s. 1 (2), p. 204 *post*.

(*l*) Ibid., s. 35 (1), p. 230 *post*.

(*m*) Ibid., s. 2 (1), p. 205 *post*. See p. 107 *ante*.

(*n*) Ibid. See p. 172 *ante*.

Newspaper reports.

There is also this further exception, that a newspaper is entitled to report a lecture delivered in public, a term which does not include delivery in public without the consent or acquiescence of the author or his legal personal representatives or assigns (*o*), 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 (*p*). This provision does not affect the power of fair dealing for the purpose of newspaper summary (*p*). There may be some difficulty in knowing what is the main entrance of the building in which the lecture is given, where the building forms part of a college or large collection of buildings. The provision as to public worship must presumably only apply to the actual room or hall in which the lecture is being delivered, though it is not very happily expressed. 'Public worship' is a very wide phrase which is not defined. It certainly seems not to be confined to Christian worship, but to extend to the worship of any object, however indefinite. Shinto or Positivist rites, or services conducted by Ethical Societies, would apparently fall within it (*q*).

Where the reporting of a lecture is so prohibited, it cannot be reported or reproduced in a newspaper or elsewhere without breach of copyright, and therefore clearly a person who reported it could not now acquire

(*o*) Copyright Act, 1911, s. 35 (2), p. 232 *post*.

(*p*) Ibid., s. 2 (1), p. 205 *post*.

(*q*) Reference may perhaps be made to *Rossi* v. *Edinburgh Corporation*, [1905] A.C. 21, a case on a by-law prohibiting the sale of ice-cream on 'Sunday or on any other day set apart for public worship by lawful authority'.

copyright in his report (*r*). If the reporting is not so prohibited, no one is entitled to report it except in a newspaper, and a person who reported it by any other medium would acquire no copyright. Would the newspaper acquire copyright? The delivery of a lecture is not a publication (*s*), and, though the publication by a newspaper, if not prohibited, is declared not to be an infringement of copyright, it would seem that such a publication is not a publication or 'issue of copies of the work to the public' (*t*) for all purposes, although it may be said to have taken place with the acquiescence of the author (*u*). If that be so, then the author retains his copyright. Is one newspaper entitled to copy the report from another newspaper, although it did not report the lecture directly itself? It would seem that the privilege of reporting is confined to those newspapers which send representatives to the lecture and find that no prohibition is posted up, and that publication is limited to them. But all these questions are very far from being free from doubt.

Judges' judgments.

It seems unlikely that the provisions of the Act were intended to extend to the judgments delivered orally by judges, but the word 'speech', though not, perhaps, the words 'address' or 'sermon', except in peculiar cases, would seem to cover them. In the House of Lords, it is well known, the judgments of the learned Lords are, technically, speeches advising the House, and not judgments. If they are 'lectures', the copyright would seem to be in the judge, unless it is in

(*r*) It was not so under the earlier law; see *Walter* v. *Lane*, [1900] A.C. 539.

(*s*) Copyright Act, 1911, s. 1 (3).

(*t*) Ibid.

(*u*) Ibid. s. 35 (2).

the Crown (*x*), and we have the extraordinary result that they could not be reported elsewhere than in a newspaper without breach of copyright, and that the judge by posting up prohibitions could prevent their being reported at all.

Where a judge's judgment is a written judgment, it seems clear that it is a literary work, at any rate for the purposes of copyright, and the copyright is either in the judge or in the Crown (*y*).

Counsel's speeches and witnesses' evidence.

The observations made as to oral judgments seem to apply, *a fortiori*, to the speeches of counsel. The evidence of witnesses cannot be regarded in the same way, though sometimes both questions and answers degenerate into speeches.

Newspaper reports of political speeches.

Copyright in political speeches is further limited, apparently by an afterthought, by the provision that it should 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 (*z*). A person delivering such a speech, therefore, cannot, by notice, prevent its being reported by a newspaper as in the case of other species of lectures. There is no definition of 'an address of a political nature'. The term can scarcely be confined to party politics (though one cannot help fancying that the Legislature had party politics mainly, if not solely, in its mind), or even home politics. It would cover anarchistic and seditious (*a*)

(*x*) See p. 66 *ante*.

(*y*) p. 66 *ante*. It has been held by the Supreme Court of the United States that, under their law, neither the judge nor the State has copyright in judgments (*Wheaton* v. *Peters* (1834), 8 Peters, 591; *Banks* v. *Manchester* (1888), 21 Davis, 244).

(*z*) Copyright Act, 1911, s. 20.

(*a*) These, however, would not be protected in any case, on general principles; see p. 30 *ante*.

speeches, and even, it is to be feared, some sermons. It would also cover a speech made, say, by a German about German politics, or a lecture on the political views of Plato, Aristotle, or Hobbes. 'Political', indeed, must be taken to mean everything concerning the government or legislation of this country or any other, or any part of either, whether national or municipal (*b*), but it would presumably not include speeches made in the course of judicial or other legal proceedings.

It will be observed that nothing in this provision or in the Act appears to touch the question of the reporting of proceedings in either House of Parliament.

With regard to the limitation that the speech must be delivered at a public meeting in order to fall within the exception, what has been said already (*c*) as to the meaning of 'public' with regard to performances should be considered here. In the Public Meeting Act, 1908 (*d*), which deals with disorderly conduct at 'lawful public meetings', no definition of 'public meeting' is attempted. It would naturally mean a meeting to which the public is admitted without discrimination either with or without payment. *Quaere* how far a political meeting to which persons are only admitted by tickets distributed as far as possible to the political partisans of the speaker or speakers would be a public meeting. If the representatives of the news-

(*b*) Politics was defined by Lord Hardwicke, L.C., in *Earl of Chesterfield* v. *Janssen* (1750), 2 Ves. Sen. 125, at p. 156, as 'Everything that concerns the government of the country'. The word 'political' cannot be limited in the way in which 'political' has been limited with reference to offences under the Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 3 (1); see *In re Castioni*, [1891] 1 Q.B. 149; *In re Meunier*, [1894] 2 Q.B. 415; *In re Arton*, [1896 1 Q.B. 108.

(*c*) p. 123 *ante*.

(*d*) 8 Edw. VII, c. 66.

paper press were freely admitted to it, it would probably be a public meeting for the purpose of the present provision.

It may be noted that in the Law of Libel Amendment Act, 1888 (*e*), 'public meeting' is defined as 'any meeting bona fide and lawfully held for a lawful purpose, and for the furtherance and discussion of any matter of public concern, whether the admission thereto be general or restricted'. It has been held that a service at a Congregational chapel was not within this definition, although the sermon delivered at it, in respect of which the proceedings were taken, had been advertised beforehand (*f*).

(*e*) 51 & 52 Vict. c. 64, s. 4.

(*f*) *Chaloner* v. *Lansdown & Sons* (1894), 10 T.L.R. 290.

CHAPTER XIII

REMEDIES

Civil Remedies

Literary, Dramatic, Musical, and Artistic Works

Where copyright in any work has been infringed, the owner of the copyright is entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise as may be conferred by law for the infringement of a right, subject to the exceptions hereinafter mentioned (*a*). Proceedings for infringement.

Thus he may have an action for damages as an alternative, or in addition, to an account and payment of the profits derived from the infringement, in respect of any species of infringement, whether by production or reproduction, sale, hire, importation for sale or hire, or otherwise (*b*). The damages will be estimated as in any other case of infringement of a right, or they may be merely the amount of the net proceeds of the copies sold or otherwise obtained from the infringement (*c*).

He is also entitled to an injunction (in Scotland an interdict) to restrain any species of infringement, and the fact that the infringement is minute is no Injunction.

(*a*) Copyright Act, 1911, s. 6 (1), p. 209 *post*. For the exceptions, see pp. 144, 148 *post*.

(*b*) See p. 99 *ante*.

(*c*) Compare *Delfe* v. *Delamotte* (1857), 3 K. & J. 581; *Muddock* v. *Blackwood*, [1898] 1 Ch. 58.

reason why an injunction should be refused (*d*). This, however, is limited in cases 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. In such a case the owner of the copyright is not entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition, but is left to his other remedies (*e*). The limitation presumably applies also where the building or structure has been in fact completed, though the subsection is unskilfully drawn and does not say so.

Remedy for and against the Crown.

The Crown's remedy for infringement would be a Latin information (*ee*). If a copyright were infringed by the Crown or a Government department, a petition of right would not lie in respect thereof, but an action would have to be brought against the officer who was in fact responsible for the infringement (*f*).

Proceedings for recovery and damages for conversion of infringing copies.

The owner of the copyright may also take proceedings, either in the same action, it seems, or independently, for the recovery of possession, or for damages for the conversion, of any infringing copies of any work in which copyright subsists or of any substantial part thereof, and of all plates used or intended to be used for the production of such infringing copies, such copies and plates being deemed to be the property of the owner of the copyright (*g*).

(*d*) See *Cooper* v. *Whittingham* (1880), 15 Ch.D. 501; *Butterworth* v. *Kelly* (1888), 4 T.L.R. 430.

(*e*) Copyright Act, 1911, s. 9 (1), p. 210 *post*.

(*ee*) See Robertson, *Civil Proceedings by and against the Crown*, 170 *et seq.*

(*f*) See *Feather* v. *R.* (1865), 6 B. & S. 257, a case of infringement of a patent, Robertson, *op. cit.*, 352, and other cases there cited.

(*g*) Copyright Act, 1911, s. 7, p. 210 *post*. Compare *Hole* v.

'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 (*h*).

The provision, however, that the infringing copy is deemed to be the property of the owner of the copyright does not apply to the case of a building or structure as described above (*i*).

Where a copy only in part infringes, an order will be made for the delivery up of the infringing part, if separable; otherwise, it seems, an order will be made for the delivery up of the whole (*j*).

If the Crown or a Government department has infringed, probably a petition of right would lie for the recovery of the copy or plate, as being a specific chattel, but perhaps not for damages for their conversion (*k*). The Crown's remedy would be an information of *devenerunt* (*l*).

Parties to proceedings. Joint authors.

In the case of joint authorship, the proceedings must, it would seem, be taken by the authors jointly or by the survivor or survivors and the legal personal representatives of any deceased author (*m*).

Bradbury (1879), 12 Ch.D. 886; *Warne & Co.* v. *Seebohm* (1888), 39 Ch.D. 73, at p. 83; *Muddock* v. *Blackwood*, [1898] 1 Ch. 58.

(*h*) Copyright Act, 1911, s. 35 (1).

(*i*) p. 144 *ante*. Copyright Act, 1911, s. 9 (2), p. 211 *post*.

(*j*) *Boosey & Co.* v. *Whight & Co.* (No. 2) (1899), 81 L.T. 265.

(*k*) See Robertson, *Civil Proceedings by and against the Crown*, 335.

(*l*) See ibid., 175.

(*m*) See p. 74 *ante*, and compare *Stevens* v. *Wildy* (1850), 19 L.J. Ch. 190; *Trade Auxiliary Co.* v. *Middlesborough and District Tradesmen's Protection Association* (1888), 40 Ch.D. 425; *Cate* v. *Devon and Exeter Constitutional Newspaper Co.*, (1889), ibid.,

Agent. Where a copyright is acquired by some one merely as an agent for some one else, the principal can sue for its infringement (*n*).

Assignee. Whether an assignee can sue in respect of an infringement of copyright will depend on the general law regarding actions by assignees. Where the infringement has occurred before assignment, the assignee could not, it seems, sue without joining the assignor, even though he had taken a specific assignment of the right of action in respect of the infringement (*o*). If there is not a complete and bona fide assignment, the assignor must be joined (*p*).

Legal personal representatives. A right of action for an infringement which occurred before an owner's death would, it seems, pass to his legal personal representatives along with the copyright, as being an action in respect of a substantial damage to his property (*q*); and if the estate of a deceased person had benefited by his infringement of a copyright, an action, it seems, would lie against his legal personal representatives (*r*), at any rate in so far as profits could be shown to have been obtained by the deceased through his infringement and to form part of his estate (*s*).

Trustee in bankruptcy. So the right of action in respect of an infringement of a copyright before the owner's bankruptcy would, it seems, pass to his trustee in bankruptcy (*t*).

500. *Quaere* whether *Lauri* v. *Renad*, [1892] 3 Ch. 402, can be good law.

(*n*) See *Stedall* v. *Houghton* (1901), 18 T.L.R. 126.

(*o*) See *May* v. *Lane* (1894), 64 L.J.Ch.B. 236; *Dawson* v. *Great Northern & City Railway Co.*, [1905] 1 K.B. 260.

(*p*) *Landeker* v. *Louis Wolff & Co., Ltd.* (1907), 52 Sol.J. 45.

(*q*) *Rose* v. *Buckett*, [1901] 2 K.B. 449.

(*r*) *Phillips* v. *Homfray* (1883), 24 Ch.D. 439.

(*s*) *In re Duncan, Terry* v. *Sweeting*, [1899] 1 Ch. 387.

(*t*) *Rose* v. *Buckett, ubi supra.*

Where two or more persons join in infringing a copyright, they will be liable as joint *tort feasors*. Printers who knew that they were printing an infringement, and knew the purpose for which it was intended, were held to be jointly liable in damages to the persons whose copyright was infringed (*u*). Joint infringers.

In any action for infringement of copyright in any work, the work is presumed to be a work in which copyright subsists and the plaintiff is presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright or the title of the plaintiff, as the case may be. Where any such question is in issue then (i) if a name purporting to be that of the author of the work is printed or otherwise indicated on the work in the usual manner, the person whose name is so printed or indicated is presumed to be the author of the work, but such presumption may be rebutted by proof to the contrary ; (ii) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or that 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 is presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein (*x*). Presumptions as to copyright.

The presumption under the second head is specifically limited to proceedings for infringement, but inas-

(*u*) *Lamb* v. *Evans*, [1895] W.N. 156. Contrast *Kelly's Directories, Ltd.* v. *Gavin*, [1902] 1 Ch. 631, where, on the facts, printers were held not liable. In *Duck* v. *Mayeu*, [1892] 2 Q.B. 511, a covenant not to sue one of two joint infringers of the performing right in a play was held not to release the other from liability.

(*x*) Copyright Act, 1911, s. 6 (3), p. 209 *post*.

much as the whole subsection only applies to actions for infringement, the object of this specific limitation is not apparent, unless some distinction is supposed to be drawn between 'action' and 'proceedings'.

'The usual manner' is a vague expression which must be interpreted reasonably. 'The name by which he is commonly known' presumably means the name by which he is commonly known as an author, not that by which he is commonly known by his family or friends. 'Proprietor' is not defined anywhere in the text, as it should have been. It is discussed elsewhere (*y*).

Defence of innocent infringement.

Where proceedings are taken in respect of the infringement of copyright in any work, if the defendant alleges in his defence that he was not aware of the existence of the copyright in the work, which he is alleged to have infringed, and 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, the plaintiff is only entitled to an injunction or interdict in respect of the infringement and to no other remedy (*z*).

By this provision a defendant's allegation and successful proof of the fact that he did not know and had no reasonable ground for suspecting that a work was subject to copyright relieves him from the payment of damages and the repayment of profits, but leaves him still liable to an injunction or interdict. He is also perhaps exempt from an order for the delivery up of the infringing copies and plates, if 'proceedings . . . in respect of the infringement of copyright' under this

(*y*) p. 58 *ante*.

(*z*) Copyright Act, 1911, s. 8, p. 210 *post*. Compare *Scott* v. *Stanford* (1867), L.R. 3 Eq. 718.

section are taken, as seems natural, to include 'proceedings for the recovery of the possession' of infringing copies and plates 'or in respect of the conversion thereof' under s. 7 of the Act. The words certainly seem wide enough to include them.

This new provision confers an increased protection on the innocent infringer, as will appear from a comparison of the law as interpreted in the cases before the passing of the present Act (*a*).

The provision must also be read subject to the earlier provision that in cases of what has been called indirect infringement, namely by sale, letting, importation (*b*), distribution, or exhibition, the absence of knowledge that there is infringement appears, from the words of that provision, to be a defence to all remedies against the infringer. It seems doubtful whether the Legislature can have intended to deprive the owner of the copyright of his remedy by injunction or interdict in such a case, but that seems to be the result of the two sections when read together.

Limitation of actions.

An action in respect of infringement of copyright cannot be commenced after the expiration of three years after the infringement (*c*). The commencement of an action is the issue of the writ or other process.

In the case of infringement by production or reproduction, the three years would run from the act of production or reproduction of any particular copy,

(*a*) See *Lee* v. *Simpson* (1847), 3 C.B. 871 (dramatic work); *Novello* v. *Sudlow* (1852), 12 C.B. 177 (musical work); *West* v. *Francis* (1822), 5 B. & A. 737; *Gambart* v. *Sumner* (1859), 5 H. & N. 5; *Hanfstaengl* v. *H. R. Baines & Co.*, [1895] A.C. 20, at p. 29, per Lord Ashbourne; *Green* v. *Irish Independent Co., Ltd.*, [1899] 1 I.R. 386; *Mansell* v. *Valley Printing Co.*, [1908] 2 Ch. 441 (artistic works).

(*b*) See p. 99 *ante*.

(*c*) Copyright Act, 1911, s. 10, p. 211 *post*.

but after the expiration of such three years there seems to be no reason why an action should not be brought in respect of some subsequent infringement by sale, letting, distribution, exhibition, or importation of such copy, whether by the original infringer or by some other person. As explained above (*d*), presumably the words 'action in respect of infringement of copyright' include proceedings for the recovery of the possession of infringing copies or plates or in respect of the conversion thereof.

The Public Authorities Protection Act, 1893 (*e*), s. 1, would apply to proceedings in respect of infringement of copyright, if the person sued had committed the infringement in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority, and, so, amongst other things, cut down the period of three years under the Act to one of six months (*f*).

Costs.

The costs of all parties in any proceedings in respect of the infringement of copyright (including, apparently, proceedings for the recovery or in respect of the conversion of infringing copies and plates (*g*)) are in the absolute discretion of the Court (*h*).

This provision gives the Court full discretion in all cases (*i*). The discretion must, of course, be exercised judicially, and generally in accordance with the ordinary

(*d*) p. 148 *ante*. (*e*) 56 & 57 Vict. c. 61.

(*f*) See *Kent County Council* v. *Folkestone Corporation*, [1905] 1 K.B. 620. (*g*) See p. 148 *ante*.

(*h*) Copyright Act, 1911, s. 6 (2), p. 209 *post*.

(*i*) In *Cooper* v. *Whittingham* (1880), 15 Ch.D. 501, it was held that the Court had no discretion to refuse a plaintiff costs, where he had brought an action to enforce his legal right of copyright and there had been no misconduct on his part; and this is in accordance with the ordinary principle.

authorities as to costs (*j*). It has been held that where an action for infringement fails on the ground of the indecency of the work, and the indecency has been repeated in the infringing copies, it ought to be dismissed without costs (*k*).

Paintings, Drawings, and Photographs

Penalties for fraud.

Penalties are specially provided against any person who does any of the following acts :

(1) Fraudulently signs or otherwise affixes, or causes to be signed or affixed, to or upon any painting, drawing, photograph, or negative, any name, initials, or monogram ;

(2) Fraudulently sells, publishes, exhibits, or disposes of, or offers for sale, exhibition, or distribution, any such work having thereon the name, initials, or monogram of a person who did not execute or make the work ;

(3) Fraudulently utters, disposes of or puts off, or causes to be uttered or disposed of, any copy or colourable imitation of any such work, whether subject to copyright or not, as having been made or executed by the author of the original work from which the copy or imitation has been taken ;

(4) During the life of the author of any such work, without his consent, makes or knowingly sells or publishes or offers for sale any such work or any copies of such work or of any part thereof as and for the unaltered work of the author, where the author has sold or otherwise parted with the possession of the

(*j*) See R.S.C., Ord. 65, r. 1, and authorities thereon in the *Annual Practice*, 1912, vol. i, pp. 1117 *et seq.*

(*k*) *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73.

work and some other person has afterwards made an alteration therein (*l*).

The above provisions only apply where the person whose name, initials, or monogram is so fraudulently signed or affixed, or to whom such spurious or altered work is so fraudulently or falsely ascribed, has been living at or within twenty years next before the date of the offence (*l*).

The offender, on conviction, forfeits to the person aggrieved a sum not exceeding £10, or not exceeding double the full price, if any, at which all such copies, imitations, or altered works have been sold or offered for sale, and in addition all such copies, imitations, or altered works are to be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram has been so fraudulently signed or affixed, or to whom such spurious or altered work has been so fraudulently or falsely ascribed (*m*). Such penalties and forfeitures may be recovered by the person entitled, in England or Ireland, by action against the offender, and, in Scotland, by action in the Court of Session (*n*).

These provisions have recently been discussed in Court in the first reported case upon them (*o*). It was held that an offence under the fourth head need not be fraudulent, since the word fraudulently is omitted there, but that it must be committed with knowledge. The Court's attention, however, does not appear to have been called to the fact that the words 'fraudu-

(*l*) Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 7, p. 193 *post*.

(*m*) Ibid.

(*n*) Ibid., s. 8, p. 195 *post*, as amended by the Copyright Act, 1911, s. 36, Sched. II, pp. 232, 235 *post*.

(*o*) *Carlton Illustrators* v. *Coleman & Co., Ltd.*, [1911] 1 K.B. 771.

lently or falsely ' are used twice in the latter part of the section as applying to this offence. It was further held that the alteration must be material, and that it would be so, if it affected the reputation of the author as an artist. Consequently the £10 penalty was awarded to one Garth Jones, who had made a drawing for the defendants as an advertisement for ' Wincarnis ' meat wine. The drawing represented a woman and was entitled ' Caution '. The defendants had had it altered without the plaintiff's consent, and had published it as a poster in its altered form with the plaintiff's signature. The action was originally brought by the firm of which the plaintiff was a member, but this was clearly wrong, as the author alone could sue, and therefore he was subsequently joined as plaintiff. In addition to the penalty an injunction would have been granted, had not the defendants given an undertaking in lieu of it.

Apart from these provisions, it appears that to put a spurious name of a painter on a picture, and to obtain money thereby, would be a cheat at common law, though it would not be forgery (*p*).

Customs Proceedings

Prohibition of importation.

If the owner of the copyright desires that copies made out of the United Kingdom of any work in which copyright subsists, which, if made in the United Kingdom, would infringe copyright, should not be imported into the United Kingdom, he must give notice in writing by himself or his agent to the Commissioners of Customs and Excise, and thereupon such copies shall not be so imported, and, if so imported, they shall be forfeited and

(*p*) *R.* v. *Closs* (1858), D. & B. 460 (a case where a dealer falsely put the name of J. Linnell on a copy of a picture by that artist, and sold it as an original).

may be destroyed or otherwise disposed of as the Commissioners may direct (*q*). Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof, the Commissioners may require the regulations hereinafter mentioned to be complied with, and may satisfy themselves in accordance with such regulations that the copies are such as are prohibited from importation by the above provision (*r*).

Customs regulations.

The Commissioners of Customs and Excise may make regulations, either general or special, and referring to all works, or to different classes of works, respecting the detention and forfeiture of such copies 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 the above provision, and the mode of verification of such evidence.

Such regulations may provide for the informant reimbursing the Commissioners 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 given under ss. 42 and 44 of the Customs Consolidation Act, 1876 (*s*), and s. 1 of the Revenue Act, 1889 (*t*), being

(*q*) Copyright Act, 1911, s. 14 (1), p. 212 *post*, applying the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 42, as amended by s. 36, Sched. II of the Copyright Act, 1911, and by Order in Council under the Finance Act, 1908 (8 Edw. VII, c. 16), s. 4.

(*r*) Copyright Act, 1911, s. 14 (2), p. 213 *post*.

(*s*) 39 & 40 Vict. c. 36. Section 42, so far as it related to books, and s. 44 are repealed by the Copyright Act, 1911, s. 36, Sched. II. See a discussion of the former section in *Imperial Book Co., Ltd.* v. *Adam & Charles Black* (1905), 21 T.L.R. 540.

(*t*) 52 & 53 Vict. c. 42. Section 1, so far as it related to books, is repealed by the Copyright Act, 1911, s. 36, Sched. II.

treated as notices given under the Copyright Act, 1911, s. 14 (*u*).

Extent of above provisions.

The above provisions have effect as if they were part of the Customs Consolidation Act, 1876 (*x*), but the Isle of Man is not to be treated as part of the United Kingdom for this purpose (*y*). They also, with the necessary modifications, apply to the importation into a British possession to which the Act extends of copies of works made out of that possession (*z*).

Summary Remedies

Literary, Dramatic, Musical, and Artistic Works

Extent of provisions.

The following provisions only extend to the United Kingdom (*a*):

Convictions for dealing with infringing copies.

If any person knowingly—

(1) makes for sale or hire any infringing copy of a work in which copyright subsists;

(2) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work;

(3) 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;

(4) by way of trade exhibits in public any infringing copy of any such work;

(5) imports for sale or hire into the United Kingdom any infringing copy of any such work;

(*u*) Copyright Act, 1911, s. 14 (3), (4), (5), p. 213 *post*.

(*x*) As to proceedings taken by the Commissioners under that Act, see Robertson, *Civil Proceedings by and against the Crown*, 70.

(*y*) It is so treated for other Customs purposes (Customs Consolidation Act, 1876, s. 277).

(*z*) Copyright Act, 1911, s. 14 (6), (7), pp. 213, 214 *post*. See also the Canada Copyright Act, 1875, s. 4, p. 197 *post*.

(*a*) Copyright Act, 1911, s. 13, p. 212 *post*.

he is guilty of an offence under the Act and liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of the above provisions, 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 (*b*). Knowledge is essential to the offence.

Proceedings under these provisions are additional to any civil proceedings which may be taken in respect of infringement of copyright with regard to the same transactions (*c*).

The meaning of the words 'exposes or offers for sale' has already been discussed (*d*).

It will be observed that the provisions include making for sale or hire, but do not include any other production or reproduction or any performance or delivery or publication of a work. There is a special provision as to causing a performance for private profit (*e*).

The penalty is payable in respect of each copy dealt with, and it does not matter that it is not dealt with singly, but in batches with others (*f*). As the penalty is now fixed at 40*s.* per copy, with a maximum of £50, the difficulty which used to be felt as to awarding a fraction of a farthing in the case of a large number of infringing copies no longer arises (*g*).

(*b*) Copyright Act, 1911, s. 11 (1), p. 211 *post.*

(*c*) See p. 142 *ante.* (*d*) p. 100 *ante.*

(*e*) See p. 157 *post.*

(*f*) Compare, under the old law, *Ex parte Beal* (1868), L.R. 3 Q.B. 387; *Ellis* v. *Horace Marshall & Son* (1895), 64 L.J.Q.B. 757; *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73.

(*g*) See *Green* v. *Irish Independent Co.*, [1899] 1 I.R. 392; *Hildesheimer* v. *W. & F. Faulkner, Ltd.*, [1901] 2 Ch. 552; *Nicholls* v. *Parker* (1902), 18 T.L.R. 459.

Any person who knowingly does any of the prohibited acts will be liable, whether he be principal, agent, or servant (*h*).

The above provisions do not apply to a case of infringement 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 (*i*).

Offences with respect to plates and performances.

If any person (1) knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or (2) 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 is guilty of an offence under the Act, and is 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 (*k*).

'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 (*l*).

In the case of both classes of offences specified in this provision knowledge is essential, and in the second the offence must be, in addition, committed for the private profit of the offender. To cause a work to be

(*h*) Compare *Parsons* v. *Chapman* (1831), 5 C. & P. 33; *Lamb* v. *Evans*, [1895] W.N. 156; *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73. (*i*) Copyright Act, 1911, s. 9 (2), p. 211 *post*.
(*k*) Ibid., s. 11 (2), p. 211 *post*. (*l*) Ibid., s. 35 (1).

performed in public, therefore, for charitable or public purposes would not be an offence, but it would seem that, if private profit was aimed at, the fact that loss and not profit resulted would be no defence, though it would probably mitigate the penalty (*m*).

The consent of the owner may, apparently, be given and proved in any way. There is no need for a consent in writing or in any particular form.

The subsection refers only to the causing of a performance, and not to the performance, of a work. The performance in public by a person himself can hardly be said to be a causing of the performance of it. It would seem, however, that if a singer obtained one or more instrumentalists to accompany him when performing in public, he would cause the performance of the instrumental portion of the work, and therefore be liable in respect of it, though he could not be said to have caused his own performance; but, perhaps, if a singer took a hall or theatre and made arrangements for his own performance there, it would be a causing of the performance.

There have been several decisions on the words 'cause to be represented' and 'cause to be printed' in the repealed Acts, which have still some value. It has been held that a person who let a room to an offender, supplied benches and lights, and sold or caused to be sold tickets of admission, whereby the infringer was enabled to give performances of dramatic pieces called *The Ship on Fire* and *The Gambler's Wife*, was not guilty. The Court said that no one could be considered an offender who did not actually take part in the representation, by himself or his agent (*n*). Previously

(*m*) Compare *Novello* v. *Sudlow* (1852), 12 C.B. 177.
(*n*) *Russell* v. *Briant* (1849), 8 C.B. 836.

it had been held that a person, who was seen once or twice at rehearsals of *Richard the Third*, engaged one of the actors to perform, and gave him a cheque in payment, was rightly convicted (*o*); and, similarly, that an acting manager who paid and dismissed one of the performers had committed the offence, and that it was immaterial whether he did it as an agent for others or not (*p*).

On the contrary, by a decision which seems scarcely consistent with those which have been cited, the proprietor of a theatre was held to be not guilty, where he had arranged with another person to provide the company, select the pieces, manage the representation, and control exclusively the persons employed in the theatre, he himself providing the printing and advertising, the *personnel* in front of the stage, the band, and the persons to take the money at the doors, and taking half the gross receipts for the use of the theatre (*q*). The case was distinguished subsequently on the ground that the defendant had had no control over the performance, and it was held that the proprietor of a theatre who let his theatre to a performer for £30 for one night, the fee including company, which comprised his own son, band, lights, and accessories, was guilty of causing the representation of *Spring-heel'd Jack, the Flying Highwayman, or The Mysteries of the Old Red Grange* (*r*). It is submitted that the control of the performance is not the real criterion, and that a person might very well 'cause' a performance if he took

(*o*) *R.* v. *Glossop* (1821), 4 B. & A. 616.

(*p*) *Parsons* v. *Chapman* (1831), 5 C. & P. 33.

(*q*) *Lyon* v. *Knowles* (1863), 3 B. & S. 556; affirmed (1864), 5 B. & S. 751.

(*r*) *Marsh* v. *Conquest* (1864), 17 C.B. (N.S.) 418.

measures to bring it about, even though he never had any more to do with it, except taking his private profit, after he had arranged for it. This view appears to have been taken by the Court, which held that a proprietor of a music hall, who engaged a singer to sing what songs he liked without control, and who in fact sang a copyright song called ' We are Going to Reform Some Day ', was liable to a penalty, the singer being regarded as his agent with authority to sing the song (*s*). But, on the other hand, where a proprietor of a music hall, his general manager, and the performers concerned were all sued for penalties, it was held that, while the other defendants were liable for penalties, the general manager was not liable, on the ground that he was merely the mouthpiece of the proprietor (*t*). It could scarcely be said, in most cases, that a manager caused a work to be performed ' for his private profit ' under the present provision.

With regard to all these authorities, moreover, it must be remembered that they arose from quasi-criminal (*u*) proceedings by the owner of copyright for penalties, and that the Court would probably require stricter proof of liability under the purely criminal provisions with which we now have to deal.

On the words ' cause to be printed ', it has been held that printers who innocently printed a portion of a book, the remainder of which, containing infringing matter, was printed by some one else, but whose name appeared as printers of the whole, were not liable (*x*).

(*s*) *Monaghan* v. *Taylor* (1886), 2 T.L.R. 685.

(*t*) *French* v. *Day* (1893), 9 T.L.R. 548. In *Roberts* v. *Bignell* (1887), 3 T.L.R. 552, the proprietor, the accompanying pianist, and the singer were all sued for penalties.

(*u*) See *Ex parte Graves, In re Prince* (1868), L.R. 3 Ch. 642.

(*x*) *Kelly's Directories, Ltd.* v. *Gavin*, [1902] 1 Ch. 631.

They would now have been protected, apart from any other reason, by the word 'knowingly' in the present subsection.

Destruction or delivery up of plates and copies.

The Court before which any of the above 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, be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit (*y*). Note that this provision applies whether the offender be convicted or not. He may be protected by lack of knowledge or otherwise, but there may nevertheless be infringing copies in his possession.

Appeal.

Any person aggrieved (*z*) by a summary conviction of an offence under the above provisions may in England and Ireland appeal to quarter sessions, and in Scotland in manner provided by the Summary Jurisdiction (Scotland) Acts (*a*).

Musical Works

Additional summary remedies.

In addition to the summary remedies already described (*b*), there are certain other summary remedies with regard to musical works which have been left in existence by the Copyright Act, 1911, under the

(*y*) Copyright Act, 1911, s. 11 (3), p. 212 *post*.

(*z*) As to the meaning of 'aggrieved', see Archbold, *Quarter Sessions*, ed. 6, 236; Paley, *Summary Convictions*, ed. 8, 383.

(*a*) Copyright Act, 1911, s. 12, p. 212 *post*. The expression 'Summary Jurisdiction (Scotland) Acts' comes from the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13 (8), but the only Act at present in force is the Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII, c. 65) (see s. 4 of that Act), and it would have been better if the present Act had referred to that Act specifically.

(*b*) Copyright Act, 1911, s. 11 (4), p. 212 *post*.

absurdly named Musical (Summary Proceedings) Copyright Act, 1902 (*c*), and the Musical Copyright Act, 1906 (*d*).

The position is complicated by the fact that the former Act contains definitions one of which is not the same as that contained in, and the other is not contained in, the Act of 1911.

Thus ' musical copyright ' is defined as the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being (now the Copyright Act, 1911, only) to do or authorize 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 work ;

(2) to abridge such work ;

(3) to make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system (*e*).

' Musical work ' means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced (*e*).

The former of these definitions is illustrated by what has already been said as to the infringement of copyright in musical works under the Act of 1911 (*f*).

The latter is a temerarious definition, upon which the framers of the Act of 1911 have not ventured. It is not very lucid, inasmuch as ' melody ' is even more difficult to define than ' musical work ', and no definition of it is attempted. Any succession of two notes would seem

(*c*) 2 Edw. VII, c. 15. (*d*) 6 Edw. VII, c. 36.

(*e*) Musical (Summary Proceedings) Copyright Act, 1902, s. 3, p. 199 *post*.

(*f*) See p. 109 *ante*.

to be a melody, in the modern sense of the word ; some people would say one note could be a melody (*g*). Probably, however, little difficulty will arise in connexion with the brand of music, or what is called music, in connexion with which these summary remedies are usually put into operation.

Seizure of pirated copies by order of Court.

A court of summary jurisdiction, on the application of the owner of the copyright, if satisfied by evidence that there is reasonable ground for believing that pirated copies of a musical work are being hawked, carried about, sold, or offered for sale (*h*), may, by order, authorize a constable to seize such copies without warrant and to bring them before the Court, and the Court, on proof that the copies are infringing copies, may order them to be destroyed or to be delivered up to the owner of the copyright, if he makes application for such delivery (*i*).

There is no definition in the Act of pirated copy, but there is a definition of ' pirated musical work ', a term which occurs nowhere in the Act, and which is defined as any musical work, written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copyright in such musical work (*k*). Pirated copy must be interpreted, one would think, as a result of this queer drafting, as a copy which is equivalent to a pirated musical work as so defined. The Court, however, has refused, it seems, so to apply the definition, and has held that a perforated music roll adapted for the mechanical reproduction of a song called *Bandolero* was not within the present pro-

(*g*) See p. 17 *ante*.
(*h*) As to the meaning of offering for sale, see p. 100 *ante*.
(*i*) Musical (Summary Proceedings) Copyright Act, 1902, s. 1.
(*k*) Ibid., s. 3.

vision (*l*). It has also been held that no order for forfeiture or other dealing with the infringing copies can be made unless the person from whom they were seized has been notified by means of a summons of the intention to apply for such order (*m*). This appears to be still the case, so far as this section is concerned ; the Musical Copyright Act, 1906, has made no alteration in this respect.

Search-warrant.

If a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that on any premises any person is printing, reproducing, or selling, or is exposing, or offering, or has in his possession for sale, any pirated copies of a musical work in which copyright subsists, or has in his possession any plates for the purpose of printing or reproducing pirated copies of such a musical work, the Court may grant a search-warrant authorizing the constable named therein to enter the premises between 6 a.m. and 9 p.m., if necessary by force, and to seize any copies of any such musical work or any plates in respect of which he has reasonable ground for suspecting that an offence as described above is being committed (*n*).

All copies and plates so seized are to 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, are to be forfeited and destroyed or otherwise dealt with as the Court thinks fit (*o*).

(*l*) *Mabe* v. *Connor*, [1909] 1 K.B. 515.

(*m*) *Ex parte Francis*, [1903] 1 K.B. 275.

(*n*) Musical Copyright Act, 1906, s. 2 (1), p. 201 *post*. This provision was enacted as a consequence of the decision in *Ex parte Francis, Day & Hunter* (No. 2) (1903), 88 L.T. 806.

(*o*) Ibid., s. 2 (2), p. 201 *post*.

'Pirated copies' for the purpose of the Act of 1906 means any copies of any such musical work written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copyright in such musical work (*p*). '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; but 'pirated copies' and 'plates', for the purposes of the Act of 1906, do not 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 (*q*).

It is an anomaly that, now that such rolls and records are infringements subject to certain conditions (*r*), they should not be seizable under the present provision, but a summary provision in the Copyright Act, 1911, applies to plates (*s*). 'Court of summary jurisdiction' in Scotland includes sheriff court, justice of peace court, burgh court, and police court (*t*).

Seizure of pirated copies on request of owner of copyright.

If any person hawks, carries about, sells, or offers 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 authorized in writing, and at the risk of such owner. On seizure they are to be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of copyright,

(*p*) Musical Copyright Act, 1906, s. 3, p. 202 *post*. (*q*) Ibid.
(*r*) See p. 130 *ante*. (*s*) See p. 157 *ante*.
(*t*) This definition is taken from that in the Musical Copyright Act, 1906, s. 3, combined with that in the Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII, c. 65), s. 2.

are to be forfeited, or destroyed, or otherwise dealt with as the Court thinks fit (*u*).

Penalties for dealing with pirated music.

Any person who prints, reproduces, or sells, or exposes (*x*), offers (*x*), or has in his possession for sale, any pirated copies (*y*) of any musical work in which copyright subsists, or has in his possession any plates (*y*) for the purpose of printing or reproducing pirated copies (*y*) of any musical work, is, unless he proves that he acted innocently, guilty of an offence punishable on summary conviction, and is liable to a fine not exceeding £5, 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 £10. But a person so convicted, who has not been previously convicted of such an offence, and who proves that such copies had printed on their title-page a name and address purporting to be that of the printer or publisher, is not liable to any penalty under this provision, unless it is found that the copies were to his knowledge pirated copies (*z*).

Arrest of offenders.

Any constable may take into custody without warrant any person who in any street or public place sells or exposes (*x*), offers (*x*), 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 authorized in writing, requesting the arrest, at the risk of such owner, of all persons found committing such offences in respect to such

(*u*) Musical (Summary Proceedings) Copyright Act, 1902, s. 2, p. 199 *post*.

(*x*) See p. 100 *ante*. (*y*) Defined p. 165 *ante*.

(*z*) Musical Copyright Act, 1906, s. 1 (1), p. 200 *post*.

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 (*a*).

'Chief officer of police' for this purpose means (1) in the City of London, the Commissioner of City Police; (2) in the Metropolitan Police District, the Commissioner of Police of the Metropolis (*b*); (3) in other parts of England, the chief or head constable or superintendent or other officer having the chief command of the police (*b*); (4) in Scotland, the chief constable or superintendent (*c*); (5) in the police district of Dublin Metropolis, either of the Commissioners of Police for the district; (6) elsewhere in Ireland, the District Inspector of the Royal Irish Constabulary (*d*).

A copy of every such written authority is to be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of it or make extracts from it (*e*).

Any person aggrieved (*f*) by any such summary conviction may in England or Ireland appeal to quarter sessions, and in Scotland in manner provided by the Summary Jurisdiction (Scotland) Act, 1908 (*g*). Appeal.

(*a*) Musical Copyright Act, 1906, s. 1 (2), p. 200 *post*.
(*b*) Police Act, 1890 (53 & 54 Vict. c. 45), s. 33, Sched. III.
(*c*) Police (Scotland) Act, 1890 (53 & 54 Vict. c. 67), s. 30, Sched. III.
(*d*) Musical Copyright Act, 1906, s. 3, p. 202 *post*.
(*e*) Ibid., s. 1 (3), p. 201 *post*.
(*f*) As to the meaning of 'aggrieved', see p. 161 *ante*.
(*g*) Musical Copyright Act, 1906, s. 1 (4), p. 201 *post*. The Act mentioned (8 Edw. VII, c. 65) repeals and replaces the Act mentioned in the section here cited; see s. 4 of the Summary Jurisdiction (Scotland) Act, 1908.

Paintings, Drawings, and Photographs

Penalties for fraud.

Penalties and forfeitures under the Fine Arts Copyright Act, 1862 (*h*), may be recovered either by action or summarily, in England or Ireland before a court of summary jurisdiction having jurisdiction where the offender resides, and in Scotland before the sheriff court of the county where the offence is committed or the offender resides (*i*).

(*h*) See further, p. 151 *ante*.

(*i*) Fine Arts Copyright Act, 1862, s. 8, as amended by the Statute Law Revision Act, 1893 (56 Vict. c. 14) and the Copyright Act, 1911), s. 36, Sched. II. The section provides that the sheriff's judgment shall not be subject to review, but now all judgments of a sheriff are subject to review by case stated, notwithstanding any statutory provision to the contrary, by s. 60 of the Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII, c. 65).

CHAPTER XIV

COMMON LAW RIGHTS

Abrogation of common law rights.

No person is now 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 the Copyright Act, 1911, or of any other statutory enactment for the time being in force (*a*). Such right and jurisdiction as there may be to restrain a breach of trust or confidence is not abrogated by the above provision (*a*).

There is at the present moment no other statute in force besides the Copyright Act, 1911, by which copyright or any similar right is conferred, and this provision puts an end finally to the long-standing questions with regard to common law rights in connexion with copyright by abolishing such rights. The proprietary right in most species of unpublished works, which has hitherto subsisted, was a common law right, and is now replaced by the rights given by s. 1 of the Act (*b*).

The words 'any similar right' must be taken to refer to common law rights, which are not 'copyright' in the strict sense of the word. It would have been more artistic, perhaps, if the section had referred specifically

(*a*) Copyright Act, 1911, s. 31, p. 229 *post*.

(*b*) See pp. 100 *et seq. ante*. As a matter of history, reference may be made to *Millar* v. *Taylor* (1769), 4 Burr. 2303; *Donaldson* v. *Beckett* (1774), 2 Bro. P.C. 129; *Jefferys* v. *Boosey* (1854), 4 H.L.C. 815. See also *Monckton* v. *Gramophone Co., Ltd.*, [1912] W.N. 32.

to common law rights, as the marginal note to the section in fact does, at the same time defining what common law rights it was intended to abrogate.

Restraint of breaches of trust and confidence.

There is, however, a collateral right, which has, in particular cases, the effect of protecting property in a way not very dissimilar from that in which copyright protects it, namely, the right to apply to the Court to restrain a breach of trust or confidence, and this is specifically preserved by the concluding words of the section.

The right has nothing to do with the question of copyright as between employer and employed, which is dealt with elsewhere (*c*). In the words of Lindley L.J., 'That suggests this question—which has nothing to do with copyright—what right has any agent to use materials obtained by him in the course of his employment and from his employer against the interest of that employer? I am not aware that he has any such right. Such a use is contrary to the relation which exists between principal and agent. It is contrary to the good faith of the employment, and good faith underlies the whole of an agent's obligations to his principal. . . . The principal has, in my judgment, such an interest in them as entitles him to restrain the agent from the use of them except for the purpose for which they were got' (*d*). Consequently in that case canvassers, who had been employed to procure advertisements for a directory and to supply the blocks and materials necessary for producing them, were restrained from using such materials, after the termination of their employment, for the benefit of a rival publication. A similar principle was applied in the case of the user

(*c*) See p. 80 *ante*.

(*d*) *Lamb* v. *Evans*, [1893] 1 Ch. 218, at p. 226.

by an ex-clerk of a table of dimensions of various types of engines made by his former employers, which he had compiled during his term of service with them (*e*), and to the user of a list of customers in similar circumstances (*f*). The fact that the common law right in these cases has nothing to do with copyright was further emphasized in a case where a German printer, from whom the plaintiffs had ordered copies of a copyright drawing of their own, was restrained and had to pay damages, where he had made and imported into England other copies beyond those which he was commissioned by them to make (*g*). The Court in Scotland, however, refused to restrain a searcher for pedigrees from using his notes, made in one employment, for the benefit of another employer (*h*).

The breaches dealt with above sometimes merge into something resembling an ordinary breach of contract. Thus where something is supplied *sub modo*, subject to the terms of a contract express or implied, an injunction will be granted to restrain user contrary to the contract of what is so supplied. This is illustrated by cases with regard to the unauthorized publication of the subject-matter of lectures (*i*) and the unauthorized user of news supplied on certain conditions (*j*). An in-

(*e*) *Merryweather* v. *Moore*, [1892] 2 Ch. 518.

(*f*) *Robb* v. *Green*, [1895] 2 Q.B. 315. See also *Louis* v. *Smellie* (1895), 11 T.L.R. 515, where an ex-employee of a process-server was restrained from using extracts from his former employer's books.

(*g*) *Tuck & Sons* v. *Priester* (1887), 19 Q.B.D. 629, approved on another point in *Henry Graves & Co., Ltd.* v. *Gowrie*, [1903] A.C. 496. The curious case of *Prince Albert* v. *Strange* (1849), 1 Mac. & G. 25, was somewhat similar. See also *Murray* v. *Heath* (1831), 1 B. & Ad. 804.

(*h*) *Earl of Crawford* v. *Paton*, 1911, S.C. 1017.

(*i*) See p. 137 *ante*.

(*j*) *Exchange Telegraph Co., Ltd.* v. *Gregory & Co.*, [1896] 1 Q.B.

junction was also granted against a photographer, who had taken a negative of the plaintiff for a pecuniary consideration and subsequently sold decorative copies of her photograph as Christmas cards (*k*).

Passing-off.

The right to have the passing-off of a work which is calculated to deceive restrained is entirely distinct from the law of copyright, and the fact that it is not specifically preserved in the above-cited section of the Act throws no doubt on its continued existence.

'Where a man sells a work under the name or title of another man or another man's work, that is not an invasion of copyright; it is Common Law fraud, and can be redressed by ordinary Common Law remedies, wholly irrespective of any of the conditions or restrictions imposed by the Copyright Acts' (*l*). It is not, however, necessary that the defendant's act should amount to a common law fraud in order to entitle the person, whose property has been injured, to an injunction. The plaintiff, in order to succeed, must show that his title has a public reputation; otherwise, the defendant cannot possibly have deceived the public (*m*); and he must also show that the defendant, with or without fraudulent intent (*n*), has in fact acted so as to lead the public to suppose that his publication

147; *Exchange Telegraph Co., Ltd.* v. *Central News, Ltd.*, [1897] 2 Ch. 48; *Exchange Telegraph Co., Ltd.* v. *Howard* (1906), 22 T.L.R. 374.

(*k*) *Pollard* v. *Photographic Co.* (1888), 40 Ch.D. 345. So *M'Cosh* v. *George Crow & Co.* (1903), 5 F. 670; *Holmes* v. *Langfier* (1903), *Times*, November 9.

(*l*) *Dicks* v. *Yates* (1881), 18 Ch.D. 76, at p. 90, per James, L.J.

(*m*) *Licensed Victuallers' Newspaper Co.* v. *Bingham* (1888), 38 Ch.D. 139.

(*n*) *Clement* v. *Maddick* (1859), 1 Giff. 98.

is the same as the plaintiff's, in such a way as to damage the plaintiff (*o*). It is clear that, in ordinary cases, there is no copyright in the title of a publication (*p*), and therefore proceedings in such cases as are now under discussion are not based on any question of copyright; whether they succeed or fail depends on the establishment of the requisites enumerated above (*q*). Cases are reported in connexion with newspapers (*q*), books (*r*), musical works (*s*), musical instruction books (*t*), and concerts (*u*). A bicycle maker has also been restrained from applying the name of a famous newspaper to his wares (*x*). On a similar principle, the adoption of

(*o*) *Borthwick* v. *Evening Post* (1888), 37 Ch.D. 449.

(*p*) See p. 11 *ante*.

(*q*) The following newspaper proceedings succeeded: *Hogg* v. *Kirby* (1803), 8 Ves. 215; *Ingram* v. *Stiff* (1859), 5 Jur. (N.S.) 947; *Walter* v. *Head* (1881), 25 Sol.J. 757; *Reed* v. *O'Meara* (1888), 21 L.R.Ir. 216. The following failed: *Bradbury* v. *Beeton* (1869), 39 L.J. Ch. 57; *Cowen* v. *Hulton* (1882), 46 L.T. 897; *Walter* v. *Emmott* (1885), 54 L.J.Ch. 1059; *Borthwick* v. *Evening Post* (1888), 37 Ch.D. 449; *Licensed Victuallers' Newspaper Co.* v. *Bingham* (1888), 38 Ch.D. 139; '*Small Owners,*' *Ltd.* v. *C. Arthur Pearson, Ltd.* (1911), *Times*, December 2.

(*r*) Successful: *Lord Byron* v. *Johnston* (1816), 2 Mer. 29; *Mack* v. *Petter* (1872), L.R. 14 Eq. 431; *Weldon* v. *Dicks* (1878), 10 Ch.D. 247. Unsuccessful: *Kelly* v. *Byles* (1879), 13 Ch.D. 682; *Schove* v. *Schmincké* (1886), 33 Ch.D. 546; *Talbot* v. *Judges* (1887), 3 T.L.R. 398; *Crotch* v. *Arnold* (1909), 54 Sol.J. 49.

(*s*) *Chappell* v. *Sheard* (1855), 2 K. & J. 117; *Chappell* v. *Davidson* (1855), 2 K. & J. 122; (1856), 8 D. M. & G. 1; *Gounod* v. *Wood*, *Gounod* v. *Hutchings* (1872), *Times*, November 22; *Elkin & Co.* v. *Francis, Day & Hunter* (1910), *Times*, October 21, 27, all successful. *Barnard* v. *Pillow*, [1868] W.N. 94, unsuccessful.

(*t*) *Metzler* v. *Wood* (1878), 8 Ch.D. 606; *Hutchings* v. *Sheard*, [1881] W.N. 20, both successful.

(*u*) *Primrose Press Agency Co.* v. *Knowles* (1886), 2 T.L.R. 404, successful; *Franke* v. *Chappell* (1887), 57 L.T. 141, unsuccessful.

(*x*) *Walter* v. *Ashton*, [1902] 2 Ch. 282.

another person's *nom de plume* may be restrained (*y*), and the publication of an advertisement inducing the public to believe, contrary to the fact, that a work is identical with a rival work (*z*).

(*y*) *Landa* v. *Greenberg* (1908), 24 T.L.R. 441.

(*z*) *Seeley* v. *Fisher* (1841), 11 Sim. 581. Compare also the cases as to publication in altered form by an assignee, p. 90 *ante*.

CHAPTER XV

DELIVERY OF COPIES TO LIBRARIES

Copies to be delivered.

PUBLISHERS must deliver to certain libraries copies of the following works, if published in the United Kingdom: Every book, including every part or division of a book, and every pamphlet, sheet of letterpress, sheet of music, map, plan, chart, and table separately published, but not any second or subsequent edition of any of such works, unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto (*a*).

British Museum.

The publisher of every such work published in the United Kingdom, whether the subject of copyright or not (*b*), must, within one month after its publication, deliver, at his own expense, a copy of it to the Trustees of the British Museum, who must give a written receipt for it (*c*).

Such copy must be a copy of the whole work with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and must be bound, sewn, or stitched together, and be on the best paper on which the work is printed (*d*). This provision seems not to compel a publisher to provide the Museum with a copy

(*a*) Copyright Act, 1911, s. 15 (7), p. 215 *post*.

(*b*) *Routledge* v. *Low* (1868), L.R. 3 H. L. 100, at pp. 109, 110, per Lord Cairns L.C.

(*c*) Copyright Act, 1911, s. 15 (1), p. 214 *post*.

(*d*) Ibid., s. 15 (3), p. 214 *post*.

of the work bound in the best manner in which the work is published; and if he publishes it bound, he may even, it would seem, deliver it to the Museum merely sewed or stitched, since 'finished' does not appear to refer to the binding, which is dealt with separately later in the subsection. Such at least appears to be the effect of the subsection as drawn. Contrast the similar provision as to the other libraries.

If the work contains hand-coloured plates, they must also be hand-coloured in the copy for the Museum.

Oxford, Cambridge, Edinburgh, and Dublin Libraries.

Such publisher must also, if written demand is made before the expiration of twelve months after publication, deliver within one month of receipt of the demand or, if the demand was made before publication, within one month of publication, to some dépôt in London named in the demand a copy of the work for, or in accordance with the directions of, the authority controlling the Bodleian Library at Oxford, the University Library at Cambridge, the Advocates' Library at Edinburgh, and the Library of Trinity College, Dublin. In the case of an encyclopaedia, newspaper, review, magazine, or work published in a series of numbers or parts, the demand may include all numbers or parts of the work which may be subsequently published (*e*).

The copy must be on the paper on which the largest number of copies of the work is printed for sale, and in the like condition as the works prepared for sale (*f*).

National Library of Wales.

The last-mentioned provisions apply in the case of a newly-introduced institution, the National Library of Wales, with the exception that the works of which copies are to be delivered are not to include works of

(*e*) Copyright Act, 1911, s. 15 (2), p. 214 *post*.
(*f*) Ibid., s. 15 (4), p. 214 *post*.

such classes as may be specified in Board of Trade regulations (*g*).

Penalty for default.

If a publisher fails to comply with these provisions, he is liable on summary conviction to a fine not exceeding £5 and the value of the work, and such fine is to be paid to the trustees or authority to whom the work ought to have been delivered (*h*).

'Value' presumably means the value at which the work could be acquired, and not merely its published price; otherwise, in the case of a work of limited circulation, the market value of which has increased after publication, it might be well worth a publisher's while to incur the fine instead of delivering copies.

The publisher is presumably liable to a separate fine for each default, whether committed in the case of the same work or in the case of different works.

Foreign works.

The above provisions may apply to works first published in a foreign country, if and so far as the Order made with respect to that country under the provisions of the Act relating to international copyright (*i*) so provides (*j*).

Compensation to certain libraries.

Such annual compensation as was payable immediately before the commencement of the Act in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books continues to be charged on and paid out of the Consolidated Fund of the United Kingdom; but this compensation is not to be paid to a library in any year, unless the Treasury is satisfied that the compensation for the previous year has been applied in

(*g*) Copyright Act, 1911, s. 15 (2), (5), pp. 214, 215 *post*.
(*h*) Ibid., s. 15 (6), p. 215 *post*.
(*i*) See p. 186 *post*.
(*j*) Ibid., s. 29 (1), p. 227 *post*.

the purchase of books for the use of and to be preserved in the library (*k*).

This provision refers to the Copyright Act, 1836 (*l*), which abolished the compulsory delivery of copies to the libraries of Sion College, the Universities of St. Andrews, Glasgow, Aberdeen, and Edinburgh, and King's Inns, Dublin, and provided compensation for them according to the average yearly value of the books received by them during the three years ending June 30, 1836.

The present provisions are in substitution for those of the Act of 1836, which is now repealed (*m*).

(*k*) Copyright Act, 1911, s. 34, p. 230 *post*.

(*l*) 6 & 7 Will. IV. c. 110; short title given by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

(*m*) By the Copyright Act, 1911, s. 36, Sched. II.

CHAPTER XVI

IMPERIAL COPYRIGHT

The Empire.

THE Copyright Act, 1911, except such of its provisions as are expressly restricted to the United Kingdom (*a*), extends throughout the King's dominions, subject as hereinafter mentioned (*b*).

Self-governing Dominions. Adoption of Act by Legislature.

The Act does not extend to a self-governing dominion, that is to say the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland (*c*), unless it is declared by the Legislature of that dominion to be in force therein, either without any modifications or additions, or with such modifications and additions as may be enacted by such Legislature, but these must relate exclusively to procedure and remedies, or be necessary to adapt the Act to the circumstances of the dominion (*b*). Till then the enactments repealed by the Act remain in force in such dominion (*d*).

Certificate of Secretary of State.

If the Secretary of State (*e*) certifies by notice in the *London Gazette* that any self-governing dominion has passed legislation under which works, the authors

(*a*) See p. 1 *ante*.

(*b*) Copyright Act, 1911, s. 25 (1), p. 224 *post*.

(*c*) Ibid., s. 35 (1), p. 230 *post*.

(*d*) Ibid., s. 36, p. 232 *post*. See *Henry Graves & Co., Ltd.* v. *Gorrie*, [1903] A.C. 496 (Canadian law).

(*e*) That is to say, any of the Secretaries of State, but primarily the Secretary of State for the Colonies (see the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 12 (3)).

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 the King's dominions to which the Act extends (*f*), enjoy within the dominion rights substantially identical with those conferred by the Act, then, while such legislation continues in force, the dominion shall, for the purposes of the rights conferred by the Act, be treated as if it were a dominion to which the Act extends (*g*).

The Secretary of State may give such a certificate 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 the Act (*g*).

Repeal of copyright enactments by Legislature.

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 the Copyright Act, 1911), so far as they are operative within the dominion, but no such repeal is to affect prejudicially any legal rights existing at the time of the repeal, and on the Copyright Act, 1911, or any part thereof being so repealed, the dominion is to cease to be a dominion to which the Act extends (*h*).

The last part of this provision must presumably be read subject to the provision set forth above (*i*), whereby the Legislature of a self-governing dominion is permitted to modify the Copyright Act, 1911, in certain specified ways and still remain a dominion to which the Act extends.

(*f*) As to these words, see further, p. 41 *ante*.
(*g*) Copyright Act, 1911, s. 25 (2), p. 224 *post*.
(*h*) Ibid., s. 26 (1), p. 225 *post*.
(*i*) p. 179 *ante*.

In any self-governing dominion to which the Act does not extend, the enactments repealed by the Copyright Act, 1911, continue in force, so far as they are operative in that dominion, until repealed by the Legislature of that dominion (*k*).

Orders in Council for reciprocal protection.

Where the King in Council is satisfied that the law of a self-governing dominion to which the Copyright Act, 1911, 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 works were British subjects resident elsewhere than in that dominion, he may by Order in Council (*l*), for the purpose of giving reciprocal protection, direct that the Act, except such parts (if any) as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of his dominions to which the Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within such dominion, and to works first published in such dominion (*n*).

Save as provided in such an Order, works the authors whereof were resident in a dominion to which the Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under the Act, except such protection as is conferred by the Act on works first published within the parts of the King's dominions to which the Act extends (*o*).

Orders by Governor in Council.

No such Order confers any rights within a self-governing dominion, but the Governor in Council of any

(*k*) Copyright Act, 1911, s. 26 (2), p. 225 *post*.

(*l*) In the manner and subject to the conditions provided ibid. s. 32, p. 229 *post*.

(*n*) Copyright Act, 1911, s. 26 (3), p. 225 *post*.

(*o*) Ibid. See further, p. 39 *ante*.

self-governing dominion to which the Act extends or which is for the purposes of the Act to be treated as if it were a dominion to which the Act extends (*p*) may, by Order in Council, confer within that dominion the like rights as the King in Council is, under the foregoing provision, authorized to confer within other parts of his dominions (*q*).

The Governor in Council of a self-governing dominion may make, as regards that dominion, Orders in Council for the purposes of international copyright similar to those which the King in Council may make with respect to his dominions other than self-governing dominions (*r*). These latter do not apply to self-governing dominions (*s*).

Other possessions.

The Legislature of any British possession to which the Copyright Act, 1911, extends may modify or add to any of the provisions of the Act in its application to the possession, but, except so far as the said modifications and additions relate to procedure and remedies, they are to 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 (*t*).

The Governor of the possession is to proclaim the date on which the Act is to come into operation, except in the Channel Islands, where the date is to be fixed by the States, and until then the repeal of the enactments repealed by the Act is not to take effect in such possession (*u*).

(*p*) See p. 179 *ante*.
(*q*) Copyright Act, 1911, s. 26 (3), p. 225 *post*.
(*r*) Ibid., s. 30 (2), p. 228 *post*. See further, p. 186 *post*.
(*s*) Ibid., s. 30 (1), p. 228 *post*.
(*t*) Ibid., s. 27, p. 226 *post*.
(*u*) Ibid., ss. 36, 37 (2), pp. 232, 233 *post*.

Orders in Council for the purpose of international copyright may except any such possession, and in such case the Order and the corresponding provisions of the Act do not apply except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of the Order (*x*).

Protectorates.

The King may, by Order in Council (*y*), extend the Copyright Act, 1911, to any territories under his protection and to Cyprus, and thereupon the Act shall, subject to the provisions of the Order, have effect as if any such territory or Cyprus were part of the King's dominions to which the Act extends (*z*).

(*x*) Copyright Act, 1911, s. 30 (1), (3), pp. 228, 229 *post*. See further, p. 190 *post*.

(*y*) In the manner and subject to the conditions provided ibid., s. 32, p. 229 *post*.

(*z*) Ibid., s. 28, p. 226 *post*.

CHAPTER XVII

INTERNATIONAL COPYRIGHT

International conventions.

A CONVENTION concerning the Creation of an International Union for the Protection of Literary and Artistic Works, with an Additional Article and Final Protocol (*a*), was signed at Berne on September 9, 1886, and ratifications were exchanged there on September 5, 1887. The countries ratifying the Convention were Great Britain, Germany, Belgium, Spain, France, Hayti, Italy, Switzerland, and Tunis. There subsequently adhered to it Denmark, Japan, Liberia, Luxemburg, Monaco, and Norway and Sweden. Montenegro also adhered, but subsequently withdrew.

An Additional Act modifying this Convention and an Interpretative Declaration (*a*) were signed at Paris on May 4, 1896, and ratifications were deposited there on September 9, 1897. These were ratified or adhered to, then or subsequently, by all the above countries, except Montenegro, but Great Britain only ratified the Additional Act and Norway and Sweden only ratified the Interpretative Declaration.

The Convention and the Additional Act were brought into force by various Orders in Council, particularly those of November 28, 1887, and March 7, 1898. A revised Convention of Berne, called the Berlin Convention (*aa*), was signed at Berlin on November 13, 1908, on behalf of Great Britain, Germany, Belgium, Spain,

(*a*) Printed p. 256 *post*.

(*aa*) Printed p. 237 *post*.

France, Italy, Switzerland, Tunis, Denmark, Japan, Liberia, Luxemburg, Monaco, Norway, and Sweden. Hayti was not there to sign, but expressed proleptically its concurrence with whatever was agreed. Thus the revised Convention was accepted by all the countries which were then members of the Copyright Union under the old Convention.

The Berlin Convention provides that it shall replace, as regards those countries, the Berne Convention, with its Additional Article and Final Protocol, and the Additional Act and Interpretative Declaration of Paris, but that these shall remain in force with regard to countries (i.e. countries which have adhered to them) which do not ratify the Berlin Convention. Countries which have signed the Berlin Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the old Conventions (*b*).

The former Acts which gave Great Britain power to make Orders in Council for the purposes of international copyright have been repealed by the Copyright Act, 1911, and all future Orders in Council must be made under the provisions of that Act. Existing Orders in Council will remain in force till new Orders are made. The main object for which the Act of 1911 was passed was to enable Great Britain to fulfil her obligations as a signatory of the Berlin Convention. She could not do so until her domestic law was amended so as to permit her to give foreign works, together with domestic works, the fuller protection which the Convention required.

Great Britain has a special Convention with Austria-

(*b*) Art. 27, p. 254 *post*. The present position with regard to ratification is shown in the Table, p. 284 *post*.

Special international arrangements. Austria-Hungary.

Hungary, which has taken no part in any of the International Conventions. This was signed at Vienna on April 24, 1893, ratified there on April 14, 1894 (*c*), and brought into force by Orders in Council dated April 30, 1894, and February 2, 1895. It confers rights similar to those provided by the Berne Convention, but was expressed not to extend to Canada, Cape Colony, New South Wales, or Tasmania.

United States of America.

The United States have not signed any of the International Conventions, though they attended the meeting in Berlin, but the President may by proclamation confer on subjects or citizens of a foreign nation the power of acquiring copyright in the United States in the same way as an American citizen (*d*). This power was conferred on subjects of Great Britain by a proclamation of April 9, 1910 (*dd*).

Orders in Council applying the Act.

The King may by Order in Council (*e*) direct that the Copyright Act, 1911 (except such parts, if any, as are specified in the Order), shall apply

(1) to works first published in the foreign country to which the Order relates, in like manner as if they were first published within the parts of the King's dominions to which the Act extends (*f*);

(*c*) See *Parl. Papers*, 1896, vol. 95, p. 1 (Cd. 8016).

(*d*) Under s. 8 of the United States Copyright Act, 1909 (the Act is printed p. 285 *post*). In addition to aliens brought under the Act by this means, the section also includes, as being within the law of copyright, aliens domiciled in the United States at the time of the first publication of the work.

(*dd*) Printed p. 324 *post*. The rules for the registration of claims to copyright in the United States are printed p. 309 *post*.

(*e*) Made in the manner and on the conditions provided in the Copyright Act, 1911, s. 32, p. 229 *post*.

(*f*) See p. 39 *ante*. For cases under the old law see *Boucicault* v. *Delafield* (1863), 1 H. & M. 597; *Boucicault* v *Chatterton* (1876), 5 Ch.D. 267.

(2) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work (*g*) subjects or citizens of such foreign country in like manner as if the authors were British subjects ;

(3) in respect of residence in such foreign country, in like manner as if such residence were residence in the parts of the King's dominions to which the Act extends (*h*).

Thereupon, subject to the provisions of the Act set out in this chapter and of the Order, the Act shall apply accordingly (*i*). Such an Order may extend to all the several countries named or described therein (*k*).

When rights are acquired in a foreign country by the owner of a British copyright in pursuance of such international arrangements, the English Courts have no jurisdiction to deal with an infringement or threatened infringement in the foreign country ; if they did, they would thereby be seeking to enforce foreign law in a foreign country (*l*).

It has been held that where a foreign author sues in England in respect of the infringement in this country of a foreign copyright, he must prove that he is entitled to protection in the country of origin of the work, and that, that right once established, his remedy depends entirely on English law (*m*). Under the Berlin Convention, however, the enjoyment and exercise of the rights of an author in a country of the Union other

(*g*) See pp. 41, 43 *ante*. (*h*) See p. 41 *ante*.

(*i*) Copyright Act, 1911, s. 29 (1), p. 227 *post*.

(*k*) Ibid., s. 29 (2), p. 228 *post*.

(*l*) '*Morocco Bound*' *Syndicate, Ltd.* v. *Harris*, [1895] 1 Ch. 534 (dramatic performing rights under the Berne Convention).

(*m*) *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73 (artistic works under the Berne Convention).

than the country of origin of the work are independent of the existence of protection in the country of origin (*n*).

Limitation as to mechanical musical contrivances.

Where a musical work is one on which copyright is conferred by Order in Council as above provided, 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 (*o*).

Condition precedent to making Order.

Before making such an Order in respect of any foreign country other than a country with which the King has entered into a convention relating to copyright (*p*), the King shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to him expedient to require for the protection of works entitled to copyright under the Act (*q*).

Special provisions of Order.

Duration of copyright.

The Order may provide that the term of copyright within the parts of the King's dominions to which the Act extends shall not exceed that conferred by the law of the country to which the Order relates (*r*). This is in accordance with the Berlin Convention, which provides that, if the term of life and fifty years is not uniformly adopted, the term shall be regulated by the law of the country where protection is claimed, and must not (*ne pourra*) exceed the term fixed in the country of origin of the work (*s*).

Ownership of copyright.

In applying the provisions of the Act as to ownership of copyright (*t*), the Order may make such modifi-

(*n*) Art. 4, p. 240 *post.*

(*o*) Copyright Act, 1911, s. 19 (7), p. 219 *post.* See the Berlin Convention, Art. 13, p. 245 *post.*

(*p*) See pp. 184 *et seq. ante.*

(*q*) Ibid., s. 29 (1), p. 227 *post.*

(*r*) Ibid.

(*s*) Art. 7, p. 242 *post.*

(*s*) See p. 71 *ante.*

cations as appear necessary, regard being had to the law of the country to which the Order relates (*u*).

In applying the provisions of the Act as to existing works (*v*), the Order may make such modifications as appear necessary (*x*), 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 s. 5 of the International Copyright Act, 1886 (*y*). Existing works.

The provisions of the Act as to the delivery of

(*u*) Copyright Act, 1911, s. 29 (1), p. 227 *post*.

(*v*) See p. 51 *ante*.

(*x*) Section 6 of the repealed International Copyright Act, 1886 (49 & 50 Vict. c. 33), made an Order in Council date back to the date of production of a work, but provided that where any person had before the date of the Order lawfully produced any work in the United Kingdom, nothing in the section should diminish or prejudice any rights or interests arising from or in connexion with such production which were subsisting and valuable at such date, and this provision was given a somewhat wide interpretation in *Moul* v. *Groenings*, [1891] 2 Q.B. 443; *Schauer* v. *J. C. & J. Field, Ltd.*, [1893] 1 Ch. 35, and *Hanfstaengl Art Publishing Co.* v. *Holloway*, [1893], 2 Q.B. 1. It is now provided (s. 32 (1), p. 229 *post*) that an Order shall not affect prejudicially any rights or interests acquired or accrued at the date when it comes into operation, and shall provide for the protection of such rights and interests.

(*y*) Copyright Act, 1911, s. 29 (1), p. 227 *post*. The Act of 1886 (49 & 50 Vict. c. 33), s. 5, now repealed, provided that if after the expiration of ten years, or any other term prescribed by an Order in Council under the International Copyright Acts, 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 authorized translation (that is to say, a complete and substantially accurate translation (*Wood* v. *Chart* (1870), L.R. 10 Eq. 193)) in the English language of such work or number had not been produced, the right given by the Act of preventing the production in and importation into the United Kingdom of an unauthorized translation of the work should cease.

Delivery of copies to libraries.

copies of works (*z*) shall not apply to works first published in the country to which the Order relates, except so far as is provided by the Order (*a*).

Conditions and formalities.

The Order may provide that the enjoyment of the rights conferred by the Act shall be subject to the accomplishment of such conditions and formalities, if any, as may be prescribed by the Order (*b*).

Registration is now abolished for the purposes of copyright, and the only formality of a similar kind which now appears to remain under the Act is that of giving notice in writing for the purpose of putting the Commissioners of Customs and Excise in motion to prevent the importation of infringing copies. The above provision, however, enables the British Government to require the fulfilment of such conditions and formalities as it may think fit in the case of foreign works (*c*).

Extent of Order.

An Order applies to all the King's dominions to which the Act extends except self-governing dominions (*d*) and any other possession specified in the Order to which it appears to the King expedient that it should not apply (*e*).

Where it appears to the King expedient to except from the provisions of any Order any part of his dominions not being a self-governing dominion, he may

(*z*) See p. 175 *ante*.

(*a*) Copyright Act, 1911, s. 29 (1), p. 227 *post*. (*b*) Ibid.

(*c*) Reference may perhaps be made to the cases as to registration under the Berne Convention, *Fishburn* v. *Hollingshead*, [1891] 2 Ch. 371; *Hanfstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q.B. 1; *Hanfstaengl* v. *Empire Palace*, [1894] 3 Ch. 109; *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q.B. 347 (all cases of artistic works) *Sarpy* v. *Holland*, [1908] 2 Ch. 198 (musical works). See also *Avanzo* v. *Mudie* (1854), 10 Ex. 203 (formalities as to a print).

(*d*) See p. 178 *ante*.

(*e*) Copyright Act, 1911, s. 30 (1), p. 228 *post*.

by the same or any other Order in Council declare that the Order and the provisions of the Act as to international copyright shall not apply to such part, and thereupon they shall not so apply, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order (*f*).

Self-governing dominions.

In self-governing dominions to which the Act extends (*g*), the Governor in Council may, as respects that dominion, make the like Orders with regard to international copyright as the King in Council is authorized to make with respect to his dominions other than self-governing dominions, and the provisions of the Act in that behalf, with the necessary modifications, shall apply accordingly (*h*).

Exclusion from the Act of works of foreigners in certain cases.

If it appears to the King 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 the King by Order in Council to direct that the provisions of the Act conferring copyright on works first published within the parts of his dominions to which the 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 dominions, and thereupon such provisions shall not apply to such works (*i*).

This provision must be read subject to the proviso that an Order shall not affect prejudicially any rights or interests acquired or accrued at the date when it comes into operation, and shall provide for the protection of such rights and interests (*k*).

(*f*) Copyright Act, 1911, s. 30 (3), p. 229 *post*.
(*g*) See p. 178 *ante*. (*h*) Ibid., s. 30 (2), p. 228 *post*.
(*i*) Copyright Act, 1911, s. 23, p. 222 *post*.
(*k*) Ibid., s. 32 (1), p. 229 *post*.

APPENDIX I

THE FINE ARTS COPYRIGHT ACT, 1862

(25 & 26 Vict. c. 68)

[Short title given by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).]

An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works. [29th July 1862.]

WHEREAS by Law, as now established, the Authors of Paintings, Drawings, and Photographs have no Copyright in such their Works, *and it is expedient that the Law should in that respect be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:*

Words in italics repealed by the Statute Law Revision Act, 1893 (56 Vict. c. 14). The incongruous remainder of the recital is still unrepealed.

Penalties on fraudulent Productions and Sales.

7. No Person shall do or cause to be done any or either of the following Acts; that is to say,

First, no Person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any Painting, Drawing, or Photograph, or the Negative thereof, any Name, Initials, or Monogram:

Secondly, no Person shall fraudulently sell, publish, exhibit, or dispose of, or offer for Sale, Exhibition, or Distribution, any Painting, Drawing, or Photograph, or Negative of a Photograph, having thereon the Name, Initials, or Monogram of a Person who did not execute or make such Work:

Thirdly, no Person shall fraudulently utter, dispose of or put off, or cause to be uttered or disposed of, any Copy or colourable Imitation of any Painting, Drawing, or Photograph, or Negative of a Photograph, whether there shall be subsisting Copyright therein or not, as having been made or executed by the Author or Maker of the original Work from which such Copy or Imitation shall have been taken :

Fourthly, where the Author or Maker of any Painting, Drawing, or Photograph, or Negative of a Photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the Possession of such Work, if any Alteration shall afterwards be made therein by any other Person, by Addition or otherwise, no Person shall be at liberty, during the Life of the Author or Maker of such Work, without his Consent, to make or knowingly to sell or publish, or offer for sale, such Work or any Copies of such Works so altered as aforesaid, or of any Part thereof, as or for the unaltered Work of such Author or Maker :

Penalties. Every Offender under this Section shall, upon Conviction, forfeit to the Person aggrieved a Sum not exceeding Ten Pounds, or not exceeding double the full Price, if any, at which all such Copies, Engravings, Imitations, or altered Works shall have been sold or offered for Sale ; and all such Copies, Engravings, Imitations, or altered Works shall be forfeited to the Person, or the Assigns or legal Representatives of the Person, whose Name, Initials, or Monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered Work shall be so fraudulently or falsely ascribed as aforesaid : Provided always, that the Penalties imposed by this Section shall not be incurred unless the Person whose Name, Initials, or Monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered Work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within Twenty Years next before the Time when the Offence may have been committed.

As to this section, see p. 151 *ante*.

Recovery of pecuniary Penalties.

8. All pecuniary Penalties which shall be incurred, and all such unlawful Copies, Imitations, and all other Effects and Things as shall have been forfeited by Offenders, pursuant to this Act, *and pursuant to any Act for the Protection of Copyright Engravings* (*a*), may be recovered by the Person hereinbefore *and in any such Act as aforesaid* (*a*) empowered to recover the same respectively, and hereinafter called the Complainant or the Complainer, as follows :

In England and Ireland.

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.

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 credible Witnesses, shall convict the Offender, and find him liable to 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* (*b*), 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* (*b*), Suspension, Reduction, or otherwise.

(*a*) Repealed by the Copyright Act, 1911, s. 36, Sched. II.

(*b*) Repealed by the Statute Law Revision Act, 1893 (56 Vict. c. 14). As to this section, see pp. 152, 168 *ante*. The provisions as to finality of judgment are impliedly repealed by the Summary Jurisdiction (Scotland) Act, 1908 (8 Edw. VII, c. 65), s. 60. The remainder of the Act was repealed by the Copyright Act, 1911, s. 36, Sched. II.

THE CANADA COPYRIGHT ACT, 1875

(38 & 39 Vict. c. 53)

AN Act to give effect to an Act of the Parliament of the Dominion of Canada respecting Copyright.

[2nd August 1875.]

Whereas by an Order of Her Majesty in Council, dated the 7th day of July 1868, *it was ordered that all prohibitions contained in Acts of the Imperial Parliament against the importing into the Province of Canada, or against the selling, letting out to hire, exposing for sale or hire, or possessing therein foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, should be suspended so far as regarded Canada:*

And whereas the Senate and House of Commons of Canada did, in the second session of the third Parliament of the Dominion of Canada, held in the thirty-eighth year of Her Majesty's reign, pass a Bill intituled 'An Act respecting Copyrights', which Bill has been reserved by the Governor-General for the signification of Her Majesty's pleasure thereon:

And whereas by the said reserved Bill provision is made, subject to such conditions as in the said Bill are mentioned, for securing in Canada the rights of authors in respect of matters of copyright, and for prohibiting the importation into Canada of any work for which copyright under the said reserved Bill has been secured; and whereas doubts have arisen whether the said reserved Bill may not be repugnant to the said Order in Council, and it is expedient to remove such doubts and to confirm the said Bill:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54).

1. This Act may be cited for all purposes as the Canada Copyright Act, 1875. Short title of Act.

2. In the construction of this Act the words 'book' and 'copyright' shall have respectively the same meaning as in the Act of the fifth and sixth years of Her Majesty's reign, chapter forty-five, intituled 'An Act to amend the Law of Copyright'. Definition of terms.

See s. 1 of the Copyright Act, 1842 (5 & 6 Vict. c. 45). Probably the definition of 'copyright' must now be replaced by that contained in the repealing Act, the Copyright Act, 1911, s. 1 (2), p. 204 *post*. There is, however, no definition of 'book' in the latter Act, and therefore presumably the definition of 'book' referred to in the section must still be applied. See the discussion of this matter, p. 26 *ante*.

3. It shall be lawful for Her Majesty in Council to assent to the said reserved Bill, as contained in the schedule to this Act annexed, and if Her Majesty shall be pleased to signify Her assent thereto, the said Bill shall come into operation at such time and in such manner as Her Majesty may by Order in Council direct; anything *in the Act of the twenty-eighth and twenty-ninth years of the reign of Her Majesty, chapter ninety-three, or* in any *other* Act to the contrary notwithstanding. Her Majesty may assent to the Bill in schedule.

The words in italics were repealed by the Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

4. Where any book in which, at the time when the said reserved Bill comes into operation, there is copyright in the United Kingdom, or any book in which thereafter there shall be such copyright, becomes entitled to copyright in Canada in pursuance of the provisions of the said reserved Bill, it shall be unlawful for any person, not being the owner, in the United Kingdom, of the copyright in such book, or some person authorized by him, to import into the United Kingdom any copies of such book reprinted or republished in Canada; and for the purposes of such importation the seventeenth section of the said Act of the fifth and sixth years of the reign of Her Majesty, chapter forty-five, shall apply to all such books in the same manner as if they had been reprinted out of the British dominions. Colonial reprints not to be imported into United Kingdom.

S. 17 of the Copyright Act, 1842 (5 & 6 Vict. c. 45), referred to above, and repealed by the Copyright Act, 1911, inflicts penalties for importing or knowingly selling, publishing, or exposing for sale, or letting to hire, or having in one's possession for sale or hire, such books, and empowers Customs officers to seize them. Probably this must now be regarded as replaced by the similar provisions in s. 14 of the repealing Act (p. 212 *post*); see the discussion of this matter, p. 26 *ante*.

Order in Council of 7th July 1868 to continue in force subject to this Act.

5. The said Order in Council, dated the seventh day of July one thousand eight hundred and sixty-eight, shall continue in force so far as relates to books which are not entitled to copyright for the time being, in pursuance of the said reserved Bill.

SCHEDULE.

[This sets out the terms of the Canadian Bill, which, on receiving the Royal assent, became the Act 38 Vict. c. 88. It is now replaced by the Copyright Act, Revised Statutes of Canada, 1906, c. 70.]

THE MUSICAL (SUMMARY PROCEEDINGS) COPYRIGHT ACT, 1902

(2 Edw. VII, c. 15)

An Act to amend the Law relating to Musical Copyright. [22nd July 1902.]

Seizure, &c. of pirated copies.

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 :

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 (*a*).

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 (*a*).

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.

4. This Act may be cited as the Musical (Summary Pro-

1 (*a*) p. 163. 2 (*a*) p. 166.

Short title and commencement.

ceedings) 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 MUSICAL COPYRIGHT ACT, 1906

(6 Edw. VII, c. 36)

An Act to amend the law relating to Musical Copyright. [4th August 1906.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Penalty for being in possession of pirated music.

1.—(1) Every person who prints, reproduces, or sells, or exposes, offers, or has in his possession for sale, any pirated copies of any musical work, or has in his possession any plates for the purpose of printing or reproducing pirated copies of any musical work, shall (unless he 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 (*a*).

(2) Any constable may take into custody without warrant any person who in any street or public place sells or exposes,

1 (*a*) p. 166.

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 (*b*).

(3) A copy of every written authority addressed to a chief officer of police under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority.

(4) Any person aggrieved by a summary conviction under this section may in England or Ireland appeal to a court of quarter sessions, and in Scotland under and in terms of the Summary Prosecutions Appeals (Scotland) Act, 1875. 38 & 39 Vict. c. 62.

Right of entry by police for execution of Act.

2.—(1) If a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act is being committed on any premises, the court may grant a search-warrant authorising the constable named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Act is being committed (*a*).

(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

1 (*b*) p. 167. 2 (*a*) p. 164.

of pirated copies shall be forfeited and destroyed or otherwise dealt with as the court think fit (*b*).

Definitions.

3. In this Act—

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, *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 : (*a*)

5 & 6 Vict. c. 45. 7 & 8 Vict. c. 12. 49 & 50 Vict. c. 33.

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 ;

53 & 54 Vict. c. 45.

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

53 & 54 Vict. c. 67.

(*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 :

2 (*b*) p. 164.

3 (*a*) Repealed by the Copyright Act, 1911, s. 36, Sched. II.

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.

THE COPYRIGHT ACT, 1911

(1 & 2 Geo. V, c. 46)

An Act to amend and consolidate the Law relating to Copyright. [16th December 1911.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

IMPERIAL COPYRIGHT.

Rights.

1.—(1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original (*a*) literary (*b*) dramatic (*c*) musical (*d*) and artistic (*e*) work, if— Copyright.

(*a*) in the case of a published (*f*) work, the work was first published within such parts of His Majesty's dominions as aforesaid (*g*) ; and

(*b*) in the case of an unpublished (*f*) work, the author was at the date of the making of the work a British

1 (*a*) p. 29. (*b*) p. 3.
(*c*) p. 14. (*d*) p. 17.
(*e*) p. 21. (*f*) p. 35.
(*g*) p. 39.

subject or resident within such parts of His Majesty's dominions as aforesaid (*h*) ;

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 (*i*) and to foreign countries (*k*).

(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 (*l*), to perform (*m*), or in the case of a lecture to deliver (*n*), the work or any substantial part thereof in public ; if the work is unpublished, to publish the work or any substantial part thereof (*o*) ; and shall include the sole right,—

(*a*) to produce, reproduce, perform, or publish any translation of the work (*p*) ;

(*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work (*q*) ;

(*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 (*r*) ;

(*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 (*s*),

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

1 (*h*) p. 41.
(*i*) p. 179.
(*k*) p. 186.
(*l*) p. 101.
(*m*) p. 122.
(*n*) p. 136.
(*o*) p. 133.
(*p*) p. 120.
(*q*) p. 128.
(*r*) p. 129.
(*s*) p. 130.

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 (*t*).

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 (*a*): 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 (*b*):

(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 (*c*):

(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 (*d*):

(iv) The publication in a collection, mainly composed of non-copyright matter, bona 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

1 (*t*) p. 36. 2 (*a*) p. 71. (*b*) pp. 107, 109, 113, 119, 137. (*c*) p. 118. (*d*) p. 119.

years, and that the source from which such passages are taken is acknowledged (*e*) :

(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 (*f*) :

(vi) The reading or recitation in public by one person of any reasonable extract from any published work (*g*).

(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 (*h*).

(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 (*i*).

2 (*e*) p. 108. (*f*) p. 138. (*g*) pp. 122, 126.
(*h*) p. 99. (*i*) p. 126.

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 (*a*) :

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

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 (*a*).

3 (*a*) p. 44. (*b*) p. 46.

4 (*a*) p. 49.

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 (*a*): 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 (*b*); 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 (*c*), 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 (*d*).

(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 (*e*):

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copy-

5 (*a*) p. 71. (*b*) p. 77. (*c*) p. 80. (*d*) p. 86. (*e*) p. 89.

right, 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 (*f*).

(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 (*g*).

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 (*a*).

(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 (*b*).

(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

5 (*f*) p. 95. (*g*) pp. 72, 93.
6 (*a*) p. 142. (*b*) p. 150.

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 (*c*).

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 (*a*).

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

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work (*a*).

Restriction on remedies

9.—(1) Where the construction of a building or other structure which infringes or which, if completed, would

6 (*c*) p. 147. 7 (*a*) p. 144. 8 (*a*) p. 148.

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 (*a*). 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 (*b*).

10. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement (*a*). 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 (*a*).

(2) If any person knowingly makes or has in his posses-

9 (*a*) p. 144. (*b*) pp. 145, 157.
10 (*a*) p. 149. 11 (*a*) p. 155.

sion 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 (*b*).

(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 (*c*).

2 Edw. VII, c. 15. 6 Edw. VII, 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.

Appeals to quarter sessions.

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 (*a*).

Extent of provisions as to summary remedies.

13. The provisions of this Act with respect to summary remedies shall extend only to the United Kingdom.

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

11 (*b*) p. 157. (*c*) p. 161. **12** (*a*) p. 161.

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.

(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. 39 & 40 Vict. c. 36.

(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 (*a*).

Delivery of Books to Libraries.

Delivery of copies to British Museum and other libraries.

15.—(1) The publisher of every book published in the United Kingdom shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depôt in London named in the demand a copy of the book for, or in 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.

14 (*a*) p. 153.

(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 letter-press, 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 (*a*).

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 (*a*), 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 (*b*).

(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

15 (*a*) p. 175. 16 (*a*) p. 47. (*b*) p. 49.

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 (*c*) :

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid (*d*).

(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 (*e*).

(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 (*f*).

Post-humous 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 (*a*).

(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 (*b*).

16 (*c*) p. 73. (*d*) p. 44.
(*e*) p. 73. (*f*) p. 73.
17 (*a*) pp. 45, 48. (*b*) pp. 76, 134.

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 (*a*).

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 (*a*), 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 (*b*), 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 (*c*), 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 (*d*).

(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

18 (*a*) p. 65. **19** (*a*) p. 17. (*b*) p. 45. (*c*) p. 75. (*d*) p. 41.

all such contrivances sold by him, calculated at the rate hereinafter mentioned :

Provided that—

(i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question ; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(*a*) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent. ; and

(*b*) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent.

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a halfpenny for each separate musical work in which copyright subsists reproduced thereon, 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 (*e*).

(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 :

19 (*e*) p. 130.

(*b*) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten :

(*c*) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives :

(*d*) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section :

(*e*) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed (*f*).

19 (*f*) p. 61.

(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 (*g*).

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 (*a*).

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 (*a*), 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 (*b*).

Provisions as to designs

22.—(1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907,

19 (*g*) p. 63.
21 (*a*) p. 46.
20 (*a*) p. 140.
(*b*) p. 41.

registrable under 7 Edw. VII, c. 29.

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 (*a*).

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 (*a*).

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 (*a*) :

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

22 (*a*) p. 25. 23 (*a*) pp. 40, 191. 24 (*a*) p. 51.

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 (*b*) ;

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 (*c*) :

(*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

24 (*b*) p. 53. (*c*) p. 57.

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 (*d*).

(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 subsections (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 (*a*).

(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

24 (*d*) p. 60. **25** (*a*) p. 179.

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 (*b*).

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 (*a*).

(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

25 (*b*) p. 179. 26 (*a*) p. 180.

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 (*c*) :

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 (*d*).

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 (*a*).

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 (*a*).

26 (*c*) p. 181. (*d*) p. 182.
27 (*a*) p. 182. **28** (*a*) p. 183.

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 (*a*) :

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 (*b*) ;

(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 ;

29 (*a*) p. 186. (*b*) p. 188.

(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 (*c*).

49 & 50 Vict. c. 33

(2) An Order in Council under this section may extend to all the several countries named or described therein.

Application of Part II to British possessions.

30. —(1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the order with respect to which it appears to His Majesty expedient that the Order should not apply (*a*).

(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 (*b*).

29 (*c*) p. 188. 30 (*a*) p. 190. (*b*) p. 191.

(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 (*c*).

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 (*a*).

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. III, 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 (*a*).

30 (*c*) p. 191. 31 (*a*) p. 169. 33 (*a*) p. 69.

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 (*a*).

Interpretation.

35.—(1) In this Act, unless the context otherwise requires,—

'Literary work' includes maps, charts, plans, tables, and compilations (*a*) ;

'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 (*b*) ;

'Artistic work' includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs (*c*) ;

'Work of sculpture' includes casts and models (*d*) ;

'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 ;

34 (*a*) p. 177.

35 (*a*) p. 3. (*b*) p. 14. (*c*) p. 21. (*d*) pp. 21, 22.

'Engravings' include etchings, lithographs, woodcuts, prints, and other similar works not being photographs;

'Photograph' includes photo-lithograph and any work produced by any process analogous to photography;

'Cinematograph' includes any work produced by any process analogous to cinematography;

'Collective work' means—

(*a*) an encyclopaedia, 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 (*e*);

'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 (*f*);

'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 (*g*);

'Self-governing dominion' means the Dominion of Canada, the Commonwealth of Australia, the

35 (*e*) p. 58. (*f*) p. 122. (*g*) pp. 28, 136.

Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors administrators or assigns (*h*).

(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 (*i*).

(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 (*j*).

(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 (*k*).

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 :

35 (*h*) p. 35. (*i*) p. 39.
(*j*) pp. 41, 43. (*k*) pp. 41, 42.

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 Right.	Substituted Right.
(*a*) *In the case of Works other than Dramatic and Musical Works.*	
Copyright.	Copyright as defined by this Act.[1]
(*b*) *In the case of Musical and Dramatic Works.*	
Both copyright and performing right.	Copyright as defined by this Act.[1]
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.

[1] 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. II, c. 13.	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. III, c. 38.	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. III, c. 53.	The Copyright Act, 1775 .	The whole Act.
17 Geo. III, c. 57.	The Prints Copyright Act, 1777.	The whole Act.
54 Geo. III, c. 56.	The Sculpture Copyright Act, 1814.	The whole Act.
3 & 4 Will. IV, c. 15.	The Dramatic Copyright Act, 1833	The whole Act.
5 & 6 Will. IV, c. 65.	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. IV, c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. IV, c. 110.	The Copyright Act, 1836 .	The whole Act.
5 & 6 Vict. c. 45.	The Copyright Act, 1842 .	The whole Act.
7 & 8 Vict. c. 12.	The International Copyright Act, 1844.	The whole Act.
10 & 11 Vict. c. 95.	The Colonial Copyright Act, 1847.	The whole Act.
15 & 16 Vict. c. 12.	The International Copyright Act, 1852.	The whole Act.
25 & 26 Vict. c. 68.	The Fine Arts Copyright Act, 1862.	Sections one to six. In section eight the words 'and pursuant to any Act for the protection of copyright engravings', and 'and in any such Act as aforesaid'. Sections nine to twelve.
38 & 39 Vict. c. 12.	The International Copyright Act, 1875.	The whole Act.

SECOND SCHEDULE—*continued.*

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
39 & 40 Vict. c. 36.	The Customs Consolidation Act, 1876.	Section forty-two, from 'Books wherein' to 'such copyright will expire'. Sections forty-four, forty-five, and one hundred and fifty-two.
45 & 46 Vict. c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 & 50 Vict. c. 33.	The International Copyright Act, 1886.	The whole Act.
51 & 52 Vict. c. 17.	The Copyright (Musical Compositions) Act, 1888.	The whole Act.
52 & 53 Vict. c. 42.	The Revenue Act, 1889 .	Section one, from 'Books first published' to 'as provided in that section'.
6 Edw. VII, 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 II

THE BERLIN CONVENTION, 1908.

Convention de Berne revisée pour la Protection des Œuvres littéraires et artistiques.

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand ; Sa Majesté le Roi des Belges ; Sa Majesté le Roi de Danemark ; Sa Majesté le Roi d'Espagne ; le Président de la République Française ; Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande, Empereur des Indes ; Sa Majesté le Roi d'Italie ; Sa Majesté l'Empereur du Japon ; le Président de la République de Libéria ; Son Altesse Royale le Grand-Duc de Luxembourg, Duc de Nassau ; Son Altesse Sérénissime le Prince de Monaco ; Sa Majesté le Roi de Norvège ; Sa Majesté le Roi de Suède ; le Conseil Fédéral de la Confédération Suisse ; Son Altesse le Bey de Tunis.

Également animés du désir de protéger d'une manière aussi efficace et aussi uniforme que possible les droits des auteurs sur leurs œuvres littéraires et artistiques,

(Translation.)

Revised Convention of Berne for the Protection of Literary and Artistic Works.

His Majesty the German Emperor, King of Prussia, in the name of the German Empire ; His Majesty the King of the Belgians ; His Majesty the King of Denmark ; His Majesty the King of Spain ; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India ; His Majesty the King of Italy ; His Majesty the Emperor of Japan ; the President of the Republic of Liberia ; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau ; His Serene Highness the Prince of Monaco ; His Majesty the King of Norway ; His Majesty the King of Sweden ; the Federal Council of the Swiss Confederation ; His Highness the Bey of Tunis.

Being equally animated by the desire to protect in as effective and uniform a manner as possible the rights of authors over their literary and artistic works,

Ont résolu de conclure une Convention à l'effet de reviser la Convention de Berne du 9 Septembre 1886, l'Article additionnel et le Protocole de clôture joints à la même Convention, ainsi que l'Acte additionnel et la Déclaration interprétative de Paris, du 4 Mai, 1896.

Ils ont, en conséquence, nommé pour leurs Plénipotentiaires, savoir :

[*Ici suivent les noms des Plénipotentiaires.*]

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des articles suivants :—

ARTICLE 1er.

Les pays contractants sont constitués à l'état d'Union pour la protection des droits des auteurs sur leurs œuvres littéraires et artistiques.

ARTICLE 2.

L'expression 'œuvres littéraires et artistiques' comprend toute production du domaine littéraire, scientifique ou artistique, quel qu'en soit le mode ou la forme de reproduction, telle que : les livres, brochures, et autres écrits ; les œuvres dramatiques ou dramatico-

Have resolved to conclude a Convention for the purpose of revising the Convention of Berne of the 9th September, 1886, the Additional Article and the Final Protocol attached to the same Convention, as well as the Additional Act and the Interpretative Declaration of Paris of the 4th May, 1896.

They have consequently appointed as their Plenipotentiaries, that is to say :

[*Here follow the Plenipotentiaries' names.*]

Who, having communicated to each other their respective full powers, found to be in good and due form, have agreed upon the following Articles :—

ARTICLE 1.

The Contracting States are constituted into an Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE 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

musicales, les œuvres chorégraphiques et les pantomimes, dont la mise en scène est fixée par écrit ou autrement ; les compositions musicales avec ou sans paroles ; les œuvres de dessin, de peinture, d'architecture, de sculpture, de gravure et de lithographie ; les illustrations, les cartes géographiques ; les plans, croquis et ouvrages plastiques, relatifs à la géographie, à la topographie, à l'architecture ou aux sciences.

works and pantomimes (*a*), the acting form of which is fixed in writing or otherwise ; musical compositions with or without words ; works of design (*b*), painting, architecture, sculpture, engraving and lithography ; illustrations, geographical charts ; plans, sketches, and plastic works relative to geography, topography, architecture or science.

Sont protégés comme des ouvrages originaux, sans préjudice des droits de l'auteur de l'œuvre originale, les traductions, adaptations, arrangements de musique et autres reproductions transformées d'une œuvre littéraire ou artistique, ainsi que les recueils de différentes œuvres.

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.

Les pays contractants sont tenus d'assurer la protection des œuvres mentionnées ci-dessus.

The contracting countries shall be bound to make provision for the protection of the above-mentioned works.

Les œuvres d'art appliqué à l'industrie sont protégées autant que permet de le faire la législation intérieure de chaque pays.

Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows.

ARTICLE 3.

La présente Convention s'applique aux œuvres photographiques et aux

ARTICLE 3.

The present Convention shall apply to photographic works and to works pro-

(*a*) 'Entertainments in dumb show' would be a better translation, since 'pantomime' in English has a very special meaning.

(*b*) This translation seems to be a mistake for 'works of drawing'.

œuvres obtenues par un procédé analogue à la photographie. Les pays contractants sont tenus d'en assurer la protection.

ARTICLE 4.

Les auteurs ressortissant à l'un des pays de l'Union jouissent, dans les pays autres que le pays d'origine de l'œuvre, pour leurs œuvres, soit non publiées, soit publiées pour la première fois dans un pays de l'Union, des droits que les lois respectives accordent actuellement ou accorderont par la suite aux nationaux, ainsi que des droits spécialement accordés par la présente Convention.

La jouissance et l'exercice de ces droits ne sont subordonnés à aucune formalité ; cette jouissance et cet exercice sont indépendants de l'existence de la protection dans le pays d'origine de l'œuvre. Par suite, en dehors des stipulations de la présente Convention, l'étendue de la protection ainsi que les moyens de recours garantis à l'auteur pour sauvegarder ses droits se règlent exclusivement d'après la législation du pays où la protection est réclamée.

duced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection.

ARTICLE 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 (*c*).

(*c*) Compare '*Morocco Bound*' *Syndicate, Ltd.* v. *Harris*, [1895] 1 Ch. 534 ; *Baschet* v. *London Illustrated Standard Co.*, [1900] 1 Ch. 73; and p. 187 *ante*.

Est considéré comme pays d'origine de l'œuvre : pour les œuvres non publiées, celui auquel appartient l'auteur ; pour les œuvres publiées, celui de la première publication ; et pour les œuvres publiées simultanément dans plusieurs pays de l'Union, celui d'entre eux dont la législation accorde la durée de protection la plus courte. Pour les œuvres publiées simultanément dans un pays étranger à l'Union et dans un pays de l'Union, c'est ce dernier pays qui est exclusivement considéré comme pays d'origine.

Par œuvres publiées, il faut, dans le sens de la présente Convention, entendre les œuvres éditées. La représentation d'une œuvre dramatique ou dramatico-musicale, l'exécution d'une œuvre musicale, l'exposition d'une œuvre d'art et la construction d'une œuvre d'architecture ne constituent pas une publication.

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 (*b*). 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.

ARTICLE 5.

Les ressortissants de l'un des pays de l'Union, qui publient pour la première fois leurs œuvres dans un autre pays de l'Union, ont, dans ce dernier pays, les mêmes droits que les auteurs nationaux.

ARTICLE 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.

(*d*) The phrase should be translated ' issued to the public '. There is no question whatever of a ' publisher '.

ARTICLE 6.

Les auteurs ne ressortissant pas à l'un des pays de l'Union, qui publient pour la première fois leurs œuvres dans l'un de ces pays, jouissent, dans ce pays, des mêmes droits que les auteurs nationaux, et dans les autres pays de l'Union des droits accordés par la présente Convention.

ARTICLE 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.

ARTICLE 7.

La durée de la protection accordée par la présente Convention comprend la vie de l'auteur et cinquante ans après sa mort.

Toutefois, dans le cas où cette durée ne serait pas uniformément adoptée par tous les pays de l'Union, la durée sera réglée par la loi du pays où la protection sera réclamée et elle ne pourra excéder la durée fixée dans le pays d'origine de l'œuvre. Les pays contractants ne seront, en conséquence, tenus d'appliquer la disposition de l'alinéa précédent que dans la mesure où elle se concilie avec leur droit interne.

Pour les œuvres photographiques et les œuvres obtenues par un procédé analogue à la photographie, pour les œuvres posthumes, pour les œuvres anonymes ou pseudonymes, la durée de la protection est réglée par

ARTICLE 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 (*e*).

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

(*e*) Compare the Copyright Act, s. 29 (1), p. 227 *ante*.

la loi du pays où la protection est réclamée, sans que cette durée puisse excéder la durée fixée dans le pays d'origine de l'œuvre.

ARTICLE 8.

Les auteurs d'œuvres non publiées, ressortissant à l'un des pays de l'Union, et les auteurs d'œuvres publiées pour la première fois dans un de ces pays jouissent, dans les autres pays de l'Union, pendant toute la durée du droit sur l'œuvre originale, du droit exclusif de faire ou d'autoriser la traduction de leurs œuvres.

ARTICLE 9.

Les romans-feuilletons, les nouvelles et toutes autres œuvres, soit littéraires, soit scientifiques, soit artistiques, quel qu'en soit l'objet, publiés dans les journaux ou recueils périodiques d'un des pays de l'Union, ne peuvent être reproduits dans les autres pays sans le consentement des auteurs.

A l'exclusion des romans-feuilletons et des nouvelles, tout article de journal peut être reproduit par un autre journal, si la reproduction n'en est pas expressément interdite. Toutefois, la source doit être indiquée ; la sanction de cette obligation est déterminée par la législation du pays où la protection est réclamée.

country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work.

ARTICLE 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.

ARTICLE 9.

Serial stories, tales (*f*), 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 (*f*), 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.

(*f*) 'Short stories' would be a better translation.

La protection de la présente Convention ne s'applique pas aux nouvelles du jour ou aux faits divers qui ont le caractère de simples informations de presse.

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.

ARTICLE 10.

En ce qui concerne la faculté de faire licitement des emprunts à des œuvres littéraires ou artistiques pour des publications destinées à l'enseignement ou ayant un caractère scientifique, ou pour des chrestomathies, est réservé l'effet de la législation des pays de l'Union et des arrangements particuliers existants ou à conclure entre eux.

ARTICLE 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.

ARTICLE 11.

Les stipulations de la présente Convention s'appliquent à la représentation publique des œuvres dramatiques ou dramatico-musicales, et à l'exécution publique des œuvres musicales, que ces œuvres soient publiées ou non.

Les auteurs d'œuvres dramatiques ou dramatico-musicales sont, pendant la durée de leur droit sur l'œuvre originale, protégés contre la représentation publique non autorisée de la traduction de leurs ouvrages.

Pour jouir de la protection du présent article, les auteurs, en publiant leurs

ARTICLE 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

œuvres, ne sont pas tenus d'en interdire la représentation ou l'exécution publique.

bound in publishing their works to forbid the public representation or performance thereof.

ARTICLE 12.

Sont spécialement comprises parmi les reproductions illicites auxquelles s'applique la présente Convention les appropriations indirectes non autorisées d'un ouvrage littéraire ou artistique, telles que : adaptations, arrangements de musique, transformations d'un roman, d'une nouvelle ou d'une poésie en pièce de théâtre et réciproquement, etc., lorsqu'elles ne sont que la reproduction de cet ouvrage, dans la même forme ou sous une autre forme, avec des changements, additions ou retranchements, non essentiels, et sans présenter le caractère d'une nouvelle œuvre originale.

ARTICLE 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 (*g*), 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.

ARTICLE 13.

Les auteurs d'œuvres musicales ont le droit exclusif d'autoriser : (1) l'adaptation de ces œuvres à des instruments servant à les reproduire mécaniquement ; (2) l'exécution publique des mêmes œuvres au moyen de ces instruments.

Des réserves et conditions relatives à l'application de cet article pourront être

ARTICLE 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

(*g*) Rather ' short story '.

déterminées par la législation intérieure de chaque pays, en ce qui le concerne ; mais toutes réserves et conditions de cette nature n'auront qu'un effet strictement limité au pays qui les aurait établies.

La disposition de l'alinéa 1er n'a pas d'effet rétroactif et, par suite, n'est pas applicable, dans un pays de l'Union, aux œuvres qui, dans ce pays, auront été adaptées licitement aux instruments mécaniques avant la mise en vigueur de la présente Convention.

Les adaptations faites en vertu des alinéas 2 et 3 du présent Article et importées, sans autorisation des parties intéressées, dans un pays où elles ne seraient pas licites, pourront y être saisies.

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.

ARTICLE 14.

Les auteurs d'œuvres littéraires, scientifiques ou artistiques ont le droit exclusif d'autoriser la reproduction et la représentation publique de leurs œuvres par la cinématographie.

Sont protégées comme œuvres littéraires ou artistiques les productions cinématographiques lorsque, par les dispositifs de la mise en scène ou les combinaisons des incidents représentés, l'auteur aura donné à l'œuvre un caractère personnel et original.

ARTICLE 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.

Sans préjudice des droits de l'auteur de l'œuvre originale, la reproduction par la cinématographie d'une œuvre littéraire, scientifique ou artistique est protégée comme une œuvre originale.

Les dispositions qui précèdent s'appliquent à la reproduction ou production obtenue par tout autre procédé analogue à la cinématographie.

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.

ARTICLE 15.

Pour que les auteurs des ouvrages protégés par la présente Convention soient, jusqu'à preuve contraire, considérés comme tels et admis, en conséquence, devant les tribunaux des divers pays de l'Union, à exercer des poursuites contre les contrefacteurs, il suffit que leur nom soit indiqué sur l'ouvrage en la manière usitée.

Pour les œuvres anonymes ou pseudonymes, l'éditeur dont le nom est indiqué sur l'ouvrage est fondé à sauvegarder les droits appartenant à l'auteur. Il est, sans autres preuves, réputé ayant cause de l'auteur anonyme ou pseudonyme.

ARTICLE 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.

ARTICLE 16.

Toute œuvre contrefaite peut être saisie par les autorités compétentes des pays de l'Union où l'œuvre

ARTICLE 16.

Pirated works may be seized by the competent authorities of any country of the Union where the

originale a droit à la protection légale.

Dans ces pays, la saisie peut aussi s'appliquer aux reproductions provenant d'un pays où l'œuvre n'est pas protégée ou a cessé de l'être.

La saisie a lieu conformément à la législation intérieure de chaque pays.

ARTICLE 17.

Les dispositions de la présente Convention ne peuvent porter préjudice, en quoi que ce soit, au droit qui appartient au Gouvernement de chacun des pays de l'Union de permettre, de surveiller, d'interdire, par des mesures de législation ou de police intérieure, la circulation, la représentation, l'exposition de tout ouvrage ou production à l'égard desquels l'autorité compétente aurait à exercer ce droit.

ARTICLE 18.

La présente Convention s'applique à toutes les œuvres qui, au moment de son entrée en vigueur, ne sont pas encore tombées dans le domaine public de leur pays d'origine par l'expiration de la durée de la protection.

Cependant, si une œuvre, par l'expiration de la durée de protection qui lui était antérieurement reconnue, est tombée dans le domaine

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.

ARTICLE 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.

ARTICLE 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 do-

public du pays où la protection est réclamée, cette œuvre n'y sera pas protégée à nouveau.

L'application de ce principe aura lieu suivant les stipulations contenues dans les Conventions spéciales existantes ou à conclure à cet effet entre pays de l'Union. A défaut de semblables stipulations, les pays respectifs régleront, chacun pour ce qui le concerne, les modalités relatives à cette application.

Les dispositions qui précèdent s'appliquent également en cas de nouvelles accessions à l'Union et dans le cas où la durée de la protection serait étendue par application de l'Article 7.

ARTICLE 19.

Les dispositions de la présente Convention n'empêchent pas de revendiquer l'application de dispositions plus larges qui seraient édictées par la législation d'un pays de l'Union en faveur des étrangers en général.

ARTICLE 20.

Les Gouvernements des pays de l'Union se réservent le droit de prendre entre eux des arrangements particuliers, en tant que ces arrangements conféreraient aux auteurs des droits plus étendus que ceux accordés par

main 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.

ARTICLE 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.

ARTICLE 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

l'Union, ou qu'ils renfermeraient d'autres stipulations non contraires à la présente Convention. Les dispositions des arrangements existants qui répondent aux conditions précitées restent applicables.

ARTICLE 21.

Est maintenu l'office international institué sous le nom de ' Bureau de l'Union internationale pour la protection des œuvres littéraires et artistiques.'

Ce Bureau est placé sous la haute autorité du Gouvernement de la Confédération Suisse, qui en règle l'organisation et en surveille le fonctionnement.

La langue officielle du Bureau est la langue française.

ARTICLE 22.

Le Bureau international centralise les renseignements de toute nature relatifs à la protection des droits des auteurs sur leurs œuvres littéraires et artistiques. Il les coordonne et les publie. Il procède aux études d'utilité commune intéressant l'Union et rédige, à l'aide des documents qui sont mis à sa disposition par les diverses Administrations, une feuille périodique, en langue française, sur les questions concernant l'objet de l'Union. Les Gouvernements des pays

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.

ARTICLE 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.

ARTICLE 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

de l'Union se réservent d'autoriser, d'un commun accord, le Bureau à publier une édition dans une ou plusieurs autres langues, pour le cas où l'expérience en aurait démontré le besoin.

Le Bureau international doit se tenir en tout temps à la disposition des membres de l'Union pour leur fournir, sur les questions relatives à la protection des œuvres littéraires et artistiques, les renseignements spéciaux dont ils pourraient avoir besoin.

Le Directeur du Bureau international fait sur sa gestion un rapport annuel qui est communiqué à tous les membres de l'Union.

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.

ARTICLE 23.

Les dépenses du Bureau de l'Union internationale sont supportées en commun par les pays contractants. Jusqu'à nouvelle décision, elles ne pourront pas dépasser la somme de soixante mille francs par année. Cette somme pourra être augmentée au besoin par simple décision d'une des Conférences prévues à l'Article 24.

Pour déterminer la part contributive de chacun des pays dans cette somme totale des frais, les pays contractants et ceux qui adhéreront ultérieurement à l'Union sont divisés en six classes

ARTICLE 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

contribuant chacune dans la proportion d'un certain nombre d'unités, savoir :

1re	classe . . .	25 unités.
2me	„ . . .	20 „
3me	„ . . .	15 „
4me	„ . . .	10 „
5me	„ . . .	5 „
6me	„ . . .	3 „

Ces coefficients sont multipliés par le nombre des pays de chaque classe, et la somme des produits ainsi obtenus fournit le nombre d'unités par lequel la dépense totale doit être divisée. Le quotient donne le montant de l'unité de dépense.

Chaque pays déclarera, au moment de son accession, dans laquelle des susdites classes il demande à être rangé.

L'Administration Suisse prépare le budget du Bureau et en surveille les dépenses, fait les avances nécessaires et établit le compte annuel qui sera communiqué à toutes les autres Administrations.

ARTICLE 24.

La présente Convention peut être soumise à des revisions en vue d'y introduire les améliorations de nature à perfectionner le système de l'Union.

Les questions de cette nature, ainsi que celles qui intéressent à d'autres points de vue le développement de l'Union, sont traitées dans des Conférences qui auront

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.

ARTICLE 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 (*h*) in other respects, shall be considered in Conferences to be held successively in the coun-

(*h*) Translate rather 'which are concerned with the development of the Union'.

lieu successivement dans les pays de l'Union entre les délégués des dits pays. L'Administration du pays où doit siéger une Conférence prépare, avec le concours du Bureau international, les travaux de celle-ci. Le Directeur du Bureau assiste aux séances des Conférences et prend part aux discussions sans voix délibérative.

Aucun changement à la présente Convention n'est valable pour l'Union que moyennant l'assentiment unanime des pays qui la composent.

tries 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.

ARTICLE 25.

Les États étrangers à l'Union et qui assurent la protection légale des droits faisant l'objet de la présente Convention peuvent y accéder sur leur demande.

Cette accession sera notifiée par écrit au Gouvernement de la Confédération Suisse, et par celui-ci à tous les autres.

Elle emportera, de plein droit, adhésion à toutes les clauses et admission à tous les avantages stipulés dans la présente Convention. Toutefois, elle pourra contenir l'indication des dispositions de la Convention du 9 Septembre 1886 ou de l'Acte additionnel du 4 Mai 1896 qu'ils jugeraient nécessaire de substituer, pro-

ARTICLE 25.

States outside the Union which make provision for the legal protection of rights forming the object of the present Convention may accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. It may, nevertheless, contain an indication of the provisions of the Convention of the 9th September, 1886, or of the Additional Act of the 4th May, 1896, which they may judge necessary to sub-

visoirement au moins, aux dispositions correspondantes de la présente Convention.

ARTICLE 26.

Les pays contractants ont le droit d'accéder en tout temps à la présente Convention pour leurs colonies ou possessions étrangères.

Ils peuvent, à cet effet, soit faire une déclaration générale par laquelle toutes leurs colonies ou possessions sont comprises dans l'accession, soit nommer expressément celles qui y sont comprises, soit se borner à indiquer celles qui en sont exclues.

Cette déclaration sera notifiée par écrit au Gouvernement de la Confédération Suisse, et par celui-ci à tous les autres.

ARTICLE 27.

La présente Convention remplacera, dans les rapports entre les États contractants, la Convention de Berne du 9 Septembre 1886, y compris l'Article additionnel et le Protocole de clôture de même jour, ainsi que l'Acte additionnel et la Déclaration interprétative du 4 Mai 1896. Les actes conventionnels précités resteront en vigueur dans les rapports avec les États qui ne ratifieraient pas la présente Convention.

stitute, provisionally at least, for the corresponding provisions of the present Convention.

ARTICLE 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.

ARTICLE 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.

Les États signataires de la présente Convention pourront, lors de l'échange des ratifications, déclarer qu'ils entendent, sur tel ou tel point, rester encore liés par les dispositions des Conventions auxquelles ils ont souscrit antérieurement.

ARTICLE 28.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Berlin au plus tard le 1er Juillet 1910.

Chaque Partie contractante remettra, pour l'échange des ratifications, un seul instrument, qui sera déposé, avec ceux des autres pays, aux archives du Gouvernement de la Confédération Suisse. Chaque Partie recevra en retour un exemplaire du procès-verbal d'échange des ratifications, signé par les Plénipotentiaires qui y auront pris part.

ARTICLE 29.

La présente Convention sera mise à exécution trois mois après l'échange des ratifications et demeurera en vigueur pendant un temps indéterminé, jusqu'à l'expiration d'une année à partir du jour où la dénonciation en aura été faite.

Cette dénonciation sera adressée au Gouvernement de la Confédération Suisse. Elle ne produira son effet qu'à l'égard du pays qui l'aura faite, la 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 (*i*).

ARTICLE 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.

ARTICLE 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

(*i*) See p. 284 *post*.

restant exécutoire pour les autres pays de l'Union.

ARTICLE 30.

Les États qui introduiront dans leur législation la durée de protection de cinquante ans prévue par l'Article 7, alinéa 1er, de la présente Convention, le feront connaître au Gouvernement de la Confédération Suisse par une notification écrite qui sera communiquée aussitôt par ce Gouvernement à tous les autres États de l'Union.

Il en sera de même pour les États qui renonceront aux réserves faites par eux en vertu des Articles 25, 26, et 27.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention et y ont apposé leurs cachets.

Fait à Berlin, le 13 Novembre mil neuf cent huit, en un seul exemplaire, qui sera déposé dans les archives du Gouvernement de la Confédération Suisse et dont des copies, certifiées conformes, seront remises par la voie diplomatique aux pays contractants.

[*Signé et scellé par les Plénipotentiaires de la part de l'Allemagne, la Belgique, le Danemark, l'Espagne, la France, la Grande-Bretagne, l'Italie, le Japon, la République de Libéria, le Luxembourg, Monaco, la Norvège, la Suède, la Suisse, la Tunisie.*]

remaining in full force and effect for the other countries of the Union.

ARTICLE 30.

The States which shall introduce in their legislation the duration of protection for fifty years contemplated by Article 7, first paragraph, of the present Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, who will communicate it at once to all the other States of the Union.

The same procedure shall be followed in the case of the States renouncing the reservations made by them in virtue of Articles 25, 26, and 27.

In faith whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto their seals.

Done at Berlin, the 13th day of November, 1908, in a single copy, which shall be deposited in the archives of the Government of the Swiss Confederation, and of which duly certified copies shall be transmitted by the diplomatic channel to the contracting countries.

[*Signed and sealed by the Plenipotentiaries of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Sweden, Switzerland, Tunis.*]

THE BERNE CONVENTION, 1886

AND THE

ACT OF PARIS AND INTERPRETATIVE DECLARATION, 1896

COLLATED WITH

THE BERLIN CONVENTION, 1908

NOTE.—The alterations (other than drafting amendments) embodied in the Berlin Convention, as compared with the Berne Convention and the Additional Act of Paris, are shown in thick type.

The provisions of the latter which are entirely omitted from the Berlin Convention are shown in *italics*.

Berlin Convention, 1908.	Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Berne Convention.
Article 1.—The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.	*Article* 1.—The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.
Article 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	*Article* 4.—The expression 'literary and artistic works' shall include books, pamphlets, and all other writings; dramatic or dramatico-musical works and musical compositions, with or without words; works of design (*a*), painting, sculpture, and engraving; lithographs,

(*a*) A mistranslation for 'drawing'.

Berlin Convention, 1908.

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.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

illustrations, geographical charts ; plans, sketches, and plastic works relating to geography, topography, architecture, or to the sciences in general ; finally, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction whatever.

Closing Protocol.—2. With reference to Article 9, it is agreed that those countries of the Union the law of which implicitly includes choreographic works amongst dramatico-musical works, expressly admit the said works to the benefit of the provisions of the Convention concluded this day.

It is, however, understood that disputes which may arise upon the application of this clause shall be reserved for the decision of the respective courts.

Additional Act.

Revised Closing Protocol.—1. With reference to Article 4, it is agreed as follows :

A. In the countries of the Union in which protection is accorded not only to architectural plans, but also to works of architecture themselves, those works are

Berlin Convention, 1908.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

admitted to the benefit of the provisions of the Berne Convention and of the present additional Act.

Berne Convention.

Article 6.—Lawful translations shall be protected as original works. Hence they shall enjoy the protection stipulated for in Articles 2 and 3 as regards their unauthorized reproduction in the countries of the Union.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

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.

Article 3. — The present Convention shall apply to photographic works and to works produced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection.

Closing Protocol.—1. As regards Article 4, it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded today from the date of its coming into effect. They shall, however, not be bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements

Berlin Convention, 1908.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

already existing, or which may hereafter be entered into by them.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, within the meaning of the said Convention, so long as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between the parties entitled.

Additional Act.

Revised Closing Protocol.—1. With reference to Article 4, it is agreed as follows :

. . . . .

B. Photographic works, and works obtained by analogous processes, shall be admitted to the benefit of the provisions of those Acts, in so far as the domestic law of each country allows this to be done, and in the measure of the protection that it accords to similar national works.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection, in all the countries of the Union, within the meaning of the Berne Convention, and of the present additional Act, so long as the principal right of reproduction of the work

Berlin Convention, 1908.

Berne Convention, 1886.
Additional Act of Paris and
Interpretative Declaration, 1896.

itself subsists, and within the limits of private agreements between the parties entitled.

Berne Convention.

Article 2.—Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

Article 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.**

Additional Act.

Article 2.—Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished or published for the first time in one of those countries, the rights which the respective laws do now or may hereafter grant to natives.

Berne Convention.

Article 2, § 2.—The enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by the law of the country of origin of the work. . . .

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**

Berlin Convention, 1908.

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 pur-

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

Interpretative Declaration.

§ 1.—With reference to the terms of Article 2, § 2, of the Convention, the protection assured by the aforesaid Acts shall depend solely upon the accomplishment, in the country of origin of the work, of the conditions and formalities which are prescribed by the law of that country. The same shall hold good for the protection of the photographic works mentioned in § 1 B. of the revised closing Protocol.

Berne Convention.

Article 2, § 3.—The country of first publication, or, if that publication takes place simultaneously in several countries of the Union, that one of them in which the shortest period of protection is granted by law, shall be considered to be the country of origin of the work.

§ 4. — For unpublished works, the country to which the author belongs shall be considered to be the country of origin of the work.

Interpretative Declaration.

§ 2.—By 'works published' must be understood works

Berlin Convention, 1908.

poses of the present Convention, works copies of which are issued by a publisher (*b*). 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.

Article 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.**

Article 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.**

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

copies of which are issued by a publisher (*b*) in one of the countries of the Union. Consequently the representation of a dramatic or dramatico-musical work, the performance of a musical work, and the exhibition of a work of art shall not constitute a publication in the sense of the aforesaid Acts.

Berne Convention.

Article 3.—The stipulations of the present Convention shall apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

Additional Act.

Article 3.—Authors not belonging to any country of the Union, if they have first published their literary or artistic works, or caused them to be first published, in one of those countries,

(*b*) Translate rather 'issued to the public'

Berlin Convention, 1908.

Article 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.**

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

shall enjoy for such works the protection granted by the Berne Convention and by the present Additional Act.

Berne Convention.

Article 2, § 2.— . . . . it (the enjoyment of these rights) must not exceed, in the other countries, the duration of the protection granted in the said country of origin.

Additional Act.

Article 2. — Posthumous works shall be included among the works protected.

Berlin Convention, 1908.

Article 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.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

Berne Convention.

Article 5.—Authors being subjects or citizens of one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.

For works published by instalments, the period of ten years shall not begin to run until the publication of the last instalment of the original work.

For works composed of several volumes published at intervals as well as for reports or papers published by literary or learned societies or by individuals, each volume, report, or paper shall be, with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present Article, the 31*st December of the year in which the work was published shall be considered as the date of publication for the purpose of calculating the period of protection.*

Additional Act.

Article 5.—Authors being subjects or citizens of one

Berlin Convention, 1908.

Berne Convention, 1886.
Additional Act of Paris and
Interpretative Declaration, 1896.

of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing translations of their works during the whole term of the right in the original work. *Nevertheless, the exclusive right of translation shall cease to exist when the author shall not have made use of it within a period of ten years from the time of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is claimed.*

Berne Convention.

Article 7.—Articles in newspapers or magazines published in any country of the Union may be reproduced, in original or in translation, in the other countries of the Union, unless the authors or publishers have expressly forbidden it. *For magazines it is sufficient if the prohibition is made in a general manner at the beginning of each number of the magazine.*

No prohibition can in any case apply to articles of political discussion or to the reproduction of news of the day or miscellaneous items [*faits divers*].

Article 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 conse-**

Berlin Convention, 1908.

quences 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.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

Additional Act.

Article 7.—Serial novels, including short stories, published in the newspapers or magazines of any country of the Union, may not be reproduced, in original or in translation, in the other countries, without the authorization of the authors or their lawful representatives.

This applies equally to other articles in newspapers or magazines, whenever the authors or publishers shall have expressly declared in the newspaper or magazine in which they have published such articles that they forbid the reproduction of these. *For magazines it is sufficient if the prohibition is made in a general manner at the beginning of each number.*

In the absence of prohibition, reproduction shall be permitted on condition of indicating the source.

No prohibition can in any case apply to articles of political discussion, news of the day, or miscellaneous items [*faits divers*].

Article 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

Berne Convention.

Article 8.—As regards the liberty of extracting portions from literary or artistic works for use in publications destined for education, or having a scientific character, or for chrestomathies, the

Berlin Convention, 1908.	Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896.
for chrestomathies, the effect of the legislation of each country of the Union and of special Arrangements existing, or to be concluded, between them is not affected by the present Convention.	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.
Article 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.	*Article* 9.—The stipulations of Article 2 shall apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.
Authors of dramatic or dramatico-musical works shall be protected during the existence of their right **over the original work** against the unauthorized public representation of translations of their works.	Authors of dramatic or dramatico-musical works, or their lawful representatives, shall be protected in like manner during the existence of their exclusive right of translation against the 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.	The stipulations of Article 2 shall apply equally to the public performance of unpublished musical works, and of published works as to which the author has expressly declared upon the title-page or at the commencement of the work that he forbids their public performance.
Article 12.—The following shall be specially included	*Article* 10.—The following shall be specially included

Berlin Convention, 1908.

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, or vice versa,** &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.

Article 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**

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

among the unlawful reproductions to which the present Convention applies: Unauthorized indirect appropriations of a literary or artistic work, known by various names, such as adaptations, arrangements of music, &c., when they are only the reproduction of such a work in the same form or in another form, without essential alterations, additions, or abridgments, and do not in other respects present the character of a new original work.

It is understood that, in the application of the present Article, the courts of the various countries of the Union shall, if occasion arises, take into account the reservation of their respective laws.

Interpretative Declaration.

§ 3. The transformation of a novel into a play, or of a play into a novel, shall come within the stipulations of Article 10.

Berne Convention.

Closing Protocol.—§ 3. It is understood that the manufacture and sale of instruments serving to reproduce mechanically musical airs in which copyright subsists shall not be considered as constituting infringement of musical copyright.

Berlin Convention, 1908.

Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896.

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.

Article 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

Berlin Convention, 1908.

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.

Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896.

Article 15.—In order that the authors of works protected by the present Convention may, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

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 anony-

Article 11.—In order that the authors of works protected by the present Convention may, in the absence of proof to the contrary, be considered as such, and consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

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

Berlin Convention, 1908.

mous or pseudonymous author.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

anonymous or pseudonymous author.

It is understood, nevertheless, that the courts may, if necessary, require the production of a certificate from the competent authority, stating that the formalities prescribed, according to Article 2, by the law of the country of origin have been fulfilled.

Article 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.

Article 12.—Pirated works may be seized upon importation into those countries of the Union in which the original work has a right to legal protection.

The seizure shall take place in accordance with the domestic legislation of each country.

Additional Act.

Article 12.—Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

The seizure shall take place in accordance with the domestic legislation of each country.

Article 17.—The provisions of the present Convention cannot in any way derogate from the right belonging to the Government

Berne Convention.

Article 13.—It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to

Berlin Convention, 1908.

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.

Article 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 con-

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

the Government of each country of the Union to permit, to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, and exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

Article 14.—The present Convention, under the reservations and conditions to be determined by a common agreement, shall apply to all works which, at the time of its coming into force, have not yet fallen into the public domain in their country of origin.

Closing Protocol. — § 4. The common agreement provided for in Article 14 of the Convention is concluded as follows :

The application of the Convention to works not fallen into the public domain at the time of its coming into force shall take effect according to the stipulations

Berlin Convention, 1908.

cerned, the manner in which the said principle is to be applied.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

relative thereto, contained in special treaties existing, or to be concluded for the purpose.

In the absence of such stipulations between countries of the Union, the respective countries shall regulate, each for itself, by domestic law, the manner in which the principle contained in Article 14 is to be applied.

Additional Act.

Closing Protocol. — § 4. The common agreement provided for in Article 14 of the Convention is concluded as follows :

The application of the Berne Convention and of the present additional Act to works not fallen into the public domain in their country of origin at the time of the coming into force of those Acts, shall take effect according to the stipulations relative thereto contained in special Conventions existing or to be concluded for the purpose.

In the absence of such stipulations between countries of the Union, the respective countries shall regulate, each for itself, by domestic law, the manner in which the principle contained in Article 14 is to be applied.

Berlin Convention, 1908.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

The Stipulations of Article 14 *of the Berne Convention and of this paragraph of the Closing Protocol shall apply equally to the exclusive right of translation as granted by the present Additional Act.*

The above provisions shall apply equally in case of new accessions to the Union, **and also in the event of the term of protection being extended by the application of Article 7.**

The above-mentioned temporary provisions shall be applicable in case of new accessions to the Union.

Article 19.—**The provisions of the present Convention shall not prevent a claim being made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general.**

Berne Convention.

Article 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 ar-

Article 15.—It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to make separately particular arrangements between themselves, provided always that such arrangements confer upon authors or their representatives more extended rights than those granted by the Union, or embody other

Berlin Convention, 1908.

rangements which answer to the above-mentioned conditions shall remain applicable.

Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896.

stipulations not contrary to the present Convention.

Additional Article.

The Convention concluded this day shall not in any way affect the maintenance of the treaties already existing between the contracting countries, so far as those treaties confer upon authors or their representatives rights more extended than those accorded by the Union, or embody other stipulations which are not contrary to this Convention.

Article 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.

Article 16. — An International Office shall be established under the name of the 'Office of the International Union for the Protection of Literary and Artistic Works'.

That Office, the expenses of which shall be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confederation, and works under its supervision. Its functions shall be determined by common agreement between the countries of the Union.

Closing Protocol. — § 5. The organization of the International Office provided for by Article 16 of the

Berlin Convention, 1908.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

Convention shall be settled by a regulation which shall be drawn up by the Government of the Swiss Confederation.

The official language of the Office shall be French.

The official language of the International Office shall be French.

Article 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

Closing Protocol. — § 5 (*continued*). The International Office shall collect every kind of information relative to the protection of the rights of authors over their literary and artistic works. It shall arrange and publish such information. It shall undertake the study of questions of the general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations shall edit a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to 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 shall always hold itself at the disposal of members of the Union with the view to

Berlin Convention, 1908.

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.

Article 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

Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896.

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.

Closing Protocol. — § 5 (*continued*). The expenses of the Office of the International Union shall be shared by the contracting countries. Until a fresh decision is arrived at, they cannot exceed the sum of 60,000 fr. a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 17.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:

1st class	. . .	25 units.
2nd „	. . .	20 „
3rd „	. . .	15 „
4th „	. . .	10 „
5th „	. . .	5 „
6th „	. . .	3 „

These coefficients shall be multiplied by the number of countries of each class, and

Berlin Convention, 1908.	Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896.
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.	the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.
Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.	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.	The Swiss Administration shall prepare the Budget of the Office, and superintend its expenditure, make the necessary advances, and draw up the annual account, which will be communicated to all the other Administrations.
Article 24.—The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.	*Article* 17.—The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.
Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries.	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	*Closing Protocol.*—§ 5. The Administration of the country where a Conference is to meet shall prepare, with the assistance of the Inter-

Berlin Convention, 1908.

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.

Article 25.—States outside the Union which make provision for the legal protection of rights forming the object of the present Convention may accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

national Office, the work of the said Conference.

The Director of the International Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote.

It is understood that no alteration in the present Convention shall be binding on the Union, except by the unanimous consent of the countries composing it.

Closing Protocol. — § 6. *The next Conference shall take place at Paris within a period of from four to six years from the date of the coming into force of the Convention.*

The French Government shall fix the date of this Conference within these limits, after having consulted the International Office.

Article 18. — Countries which have not been parties to the present Convention and make provision in their own territory for the legal protection of the rights forming the objects of this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall im-

Berlin Convention, 1908.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

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.**

ply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

Article 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.

Article 19. — Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Article 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 In-**

Berlin Convention, 1908.

terpretative 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.

Article 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.

Article 29.—The present Convention shall be put in force three months after the exchange of ratifications,

Berne Convention, 1886. Additional Act of Paris and Interpretative Declaration, 1896.

Article 21.—The present Convention shall be ratified, and the ratifications exchanged at Berne, within a period of one year at the latest.

Closing Protocol.—§ 7. It is agreed that, as regard the exchange of ratifications provided for by Article 21, each Contracting Party shall deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.

Article 20.—The present Convention shall be put in force three months after the exchange of ratifications,

Berlin Convention, 1908.

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.

Article 30.—**The States which shall introduce in their legislation the duration of protection for fifty years contemplated by Article 7, first paragraph, of the present Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, who will communicate it at once to all the other States of the Union.**

The same procedure shall be followed in the case of the States renouncing the reservations made by them in virtue of Articles 25, 26, and 27.

Berne Convention, 1886.
Additional Act of Paris and Interpretative Declaration, 1896.

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 appointed to receive accessions. 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.

Additional Act.

Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country which made it, the Convention remaining in full force and effect for the other countries of the Union.

COUNTRIES WHICH HAVE RATIFIED THE BERLIN CONVENTION, 1908.

I. Belgium, Germany, Hayti, Liberia, Luxemburg, Monaco, Portugal, Spain, and Switzerland have ratified without reservation.

II. France, Japan, Norway, and Tunis have ratified with certain reservations.

(i) France and Tunis, as regards works of applied art, preserve the provisions of the Berne Convention, 1886, and the Additional Act of Paris and Interpretative Declaration, 1896.

(ii) Japan, as regards the exclusive right of translation, preserves Article 5 of the Berne Convention, 1886, as amended by the Additional Act of Paris, 1896, and, as regards the public performance of musical works, preserves Article 9, paragraph 3, of the Berne Convention, 1886.

(iii) Norway, as regards architectural works of art, articles in newspapers and periodicals, and retroactivity, preserves Articles 4, 7, and 14 respectively of the Berne Convention, 1886.

NOTE :—Until ratification of the Berlin Convention, 1908, Denmark and Italy continue subject to the Berne Convention, 1886, and the Additional Act of Paris and Interpretative Declaration, 1896, Great Britain to the Berne Convention, 1886, and the Additional Act of Paris, 1896, and Sweden to the Berne Convention, 1886, and the Interpretative Declaration, 1896.

APPENDIX III

UNITED STATES LAW

THE COPYRIGHT ACT OF MARCH 4, 1909

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work; Exclusive right to print, publish, and vend.

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a nondramatic work; to convert it into a novel or other nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art; Exclusive right to translate, dramatize, arrange and adapt, &c.

(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production; Exclusive right to deliver lectures, sermons, &c.

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever; To represent dramatic works, or make record, or exhibit or perform, &c.

(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or To perform music and make arrangement, setting, or record.

any form of record in which the thought of an author may be recorded and from which it may be read or reproduced:

Act not retroactive.

Provided, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights:

Music by foreign author.

And provided further, and as a condition of extending the copyright control to such mechanical reproductions, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit:

Control of mechanical musical reproduction.

Royalty for use of music on records, &c.

And provided further, That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defence to any suit, action, or proceeding for any infringement of such copyright.

Notice of use of music on records.

Licence to use music on records.

In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand the court may award taxable costs to the plaintiff and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this Act, not exceeding three times such amount. Failure to pay royalties.

The reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs. Reproduction of music on coin-operated machines.

SEC. 2. That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor. Right at common law or in equity.

SEC. 3. That the copyright provided by this Act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act. Component parts of copyrightable work. Composite works or periodicals.

SEC. 4. That the works for which copyright may be secured under this Act shall include all the writings of an author. Works protected.

SEC. 5. That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs : Classification of copyright works.

(a) Books, including composite and cyclopaedic works, directories, gazetteers, and other compilations ; *Books*, composite, cyclopaedic works; directories, gazetteers, &c.

(b) Periodicals, including newspapers ;

(c) Lectures, sermons, addresses, prepared for oral delivery ;

(d) Dramatic or dramatico-musical compositions ;

(e) Musical compositions;

(f) Maps;

(g) Works of art; models or designs for works of art;

(h) Reproductions of a work of art;

(i) Drawings or plastic works of a scientific or technical character;

(j) Photographs;

(k) Prints and pictorial illustrations:

Classification does not limit copyright.

Provided, nevertheless, That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act.

Compilations, abridgments, dramatizations, translations, new editions.

SEC. 6. That compilations or abridgments, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such work, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

Subsisting copyright not affected.

Not subject-matter of copyright: works in public domain; Government publications.

SEC. 7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however,* That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor.

SEC. 8. That the author or proprietor of any work made

the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this Act: *Provided, however*, That the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only:

Copyright to author or proprietor for terms specified in Act.

Foreign authors who may secure copyright protection.

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

Alien authors domiciled in U.S.

(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

Authors, when citizens of countries granting reciprocal rights.

International agreement.

The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time, as the purposes of this Act may require (*a*).

Presidential proclamation.

SEC. 9. That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking ad interim protection under section twenty-one of this Act.

Publication with notice initiates copyright.

SEC. 10. That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section fifty-five of this Act.

Registration of copyright.

Copyright certificate.

(*a*) See the proclamation printed p. 324 *post*.

Copyright protection of unpublished works: lectures, dramas, music, &c.

SEC. 11. That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic or musical composition; of a photographic print if the work be a photograph; or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies under sections twelve and thirteen of this Act where the work is later reproduced in copies for sale.

Deposit of copies after publication.

Two complete copies of best edition.

SEC. 12. That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with.

Periodical contributions.

Work not reproduced in copies for sale.

No action for infringement until deposit of copies.

Failure to deposit copies.

Register of copyrights may demand copies.

SEC. 13. That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the

deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void.

Failure to deposit on demand. Fine $100 and retail price of 2 copies, best edition. Forfeiture of copyright.

SEC. 14. That the postmaster to whom are delivered the articles deposited as provided in sections eleven and twelve of this Act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant.

Postmaster's receipt.

SEC. 15. That of the printed book or periodical specified in section five, subsections (a) and (b) of this Act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this Act.

Printed from type set within the United States. Book in foreign language excepted. Lithographic or photo-engraving process. Printing and binding of the book. Illustrations in a book. Separate lithographs and photo-engravings. Books for blind excepted. Books in foreign languages excepted.

Affidavit of American manufacture.

SEC. 16. That in the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein; or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving process, or printing and binding were performed and the date of the completion of the printing of the book or the date of publication.

Printing and binding of the book.

Establishment where printing was done.

Date of publication.

False affidavit, a misdemeanor; fine, $1,000 and forfeiture of copyright.

SEC. 17. That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited.

Notice of copyright.

SEC. 18. That the notice of copyright required by section nine of this Act shall consist either of the word 'Copyright' or the abbreviation 'Copr.', accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: Ⓒ, accompanied by the initials, monogram,

Notice on maps,

mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four.

copies of works of art, photographs, and prints. Notice on accessible portion. Notice on existing copyright works.

SEC. 19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: *Provided*, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice.

Notice of copyright on book. On periodical. One notice in each volume or periodical.

SEC. 20. That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct.

Omission of notice by accident or mistake. Innocent infringement.

SEC. 21. That in the case of a book published abroad in the English language before publication in this country, the deposit in the copyright office, not later than thirty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the

Book published abroad in the English language.

Ad interim copyright for 30 days.

author or proprietor an ad interim copyright, which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of thirty days after such deposit in the copyright office.

Extension to full term.

SEC. 22. That whenever within the period of such ad interim protection an authorized edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in section fifteen of this Act, and whenever the provisions of this Act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the full term elsewhere provided in this Act.

Deposit of copies, filing of affidavit.

Duration of copyright: 1st term, 28 years.

SEC. 23. That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopaedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopaedic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term

Post-humous works, periodicals, cyclopaedic or composite works.

Renewal term 28 years.

Other copyrighted works, first term 28 years.

Renewal term 28 years; to author, widow, children, heirs or next of kin.

of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

Notice that renewal term is desired.

Copyright ends in 28 years unless renewed.

SEC. 24. That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: *Provided, however*, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided*, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term.

Extension of subsisting copyrights.

Proprietor entitled to renewal for composite work.

Renewal application.

SEC. 25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

Infringement of copyright.

(a) To an injunction restraining such infringement;

Injunction.

(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in the case of

Damages.

Proving sales.

Newspaper reproduction of photograph; recovery, $50–$200. Maximum recovery, $5,000. Minimum recovery, $250.

a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty :

Painting, statue, or sculpture, $10 for every infringing copy.

First. In the case of a painting, statue, or sculpture, ten dollars for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees ;

Other works, $1 for every infringing copy.

Second. In the case of any work enumerated in section five of this Act, except a painting, statue, or sculpture, one dollar for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees ;

Lectures, $50 for every infringing delivery.

Third. In the case of a lecture, sermon, or address, fifty dollars for every infringing delivery ;

Dramatic or musical works, $100 for first and $50 for every subsequent infringing performance. Other musical compositions, $10 for every infringing performance.

Fourth. In the case of dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance ; in the case of other musical compositions, ten dollars for every infringing performance ;

Delivering up infringing articles.

(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright ;

Destruction of infringing copies, &c.

(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order ;

Infringement by mechanical musical instruments.

(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines

adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section one, subsection (e), of this Act: *Provided also*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this Act, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section one, subsection (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

Injunction may be granted.

Recovery of royalty.

Notice to proprietor of intention to use.

Damages, three times amount provided.

Temporary injunction.

Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States.

Rules for practice and procedure.

SEC. 26. That any court given jurisdiction under section thirty-four of this Act may proceed in any action, suit, or proceeding instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided.

Judgment enforcing remedies.

SEC. 27. That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action.

Proceedings, injunction, &c., may be united in one action.

SEC. 28. That any person who wilfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and wilfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the

Penalty for wilful infringement.

Oratorios, cantatas, &c., may be performed.

discretion of the court: *Provided, however*, That nothing in this Act shall be so construed as to prevent the performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit.

False notice of copyright (penalty for).

Fraudulent removal of notice; fine $100–$1,000.

Issuing, selling, or importing article bearing false notice; fine $100.

SEC. 29. That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars.

Importation prohibited of articles bearing false notice and *piratical* copies.

SEC. 30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

Prohibition of importation of books.

SEC. 31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this Act, shall be, and is

hereby, prohibited: *Provided, however*, That, except as regards piratical copies, such prohibition shall not apply: Exceptions to prohibition of importation:

(a) To works in raised characters for the use of the blind; Works for the blind.

(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization; Foreign newspapers or magazines.

(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country; Books in foreign languages of which only translations are copyrighted.

(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say: Importation of authorized foreign books permitted.

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States; For individual use and not for sale.

Second. When imported by the authority or for the use of the United States; For the use of the United States.

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States; For the use of societies, libraries, &c.

Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of Libraries purchased en bloc. Books brought personally into the United States.

Imported copies not to be used to violate copyright.

the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

Seizure of unlawfully imported copies.

SEC. 32. That any and all articles prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve wilful negligence or fraud.

Copies of authorized books imported may be returned.

Secretary of Treasury and Postmaster-General to make rules to prevent unlawful importation.

SEC. 33. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.

Jurisdiction of courts in copyright cases.

SEC. 34. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the circuit courts of the United States, the district court of any Territory, the supreme court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands (*b*).

(*b*) By s. 256 of the Judiciary Act, 1911, the jurisdiction vested

District in which suit may be brought.

SEC. 35. That civil actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

Injunctions may be granted.

SEC. 36. That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this Act may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

Certified copy of papers filed.

SEC. 37. That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

Judgments, &c., may be reviewed on appeal or writ of error.

SEC. 38. That the orders, judgments, or decrees of any court mentioned in section thirty-four of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

No criminal proceedings shall be maintained after *three* years.

SEC. 39. That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

Full costs shall be allowed.

SEC. 40. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

in the Courts of the United States is exclusive of the Courts of the several States in all cases arising under the copyright laws of the United States.

Copyright distinct from property in material object.

SEC. 41. That the copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.

Transfer of any copy of copyrighted work permitted.

Copyright may be assigned, mortgaged, or bequeathed by will.

SEC. 42. That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

Assignment executed in foreign country to be acknowledged.

SEC. 43. That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgement under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument.

Assignments to be recorded.

SEC. 44. That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

Register of copyrights to record assignments.

SEC. 45. That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

Assignee's name may

SEC. 46. That when an assignment of the copyright in a specified book or other work has been recorded the

assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act. be substituted in copyright notice.

SEC. 47. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights. Copyright records.

SEC. 48. That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law. Register of copyrights and assistant register of copyrights.

SEC. 49. That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees or to return to the remitters, and shall also make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances. Register of copyrights to deposit and account for fees. Shall make monthly report of fees.

SEC. 50. That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties. Bond of register of copyrights.

Annual report of register of copyrights.

SEC. 51. That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act.

Seal of copyright office.

SEC. 52. That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

Rules for the registration of copyrights.

SEC. 53. That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act (*c*).

Record books.

SEC. 54. That the register of copyrights shall provide and keep such record books in the copyright office as are required

Entry of copyright.

to carry out the provisions of this Act, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof.

Certificate of registration.

SEC. 55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain his name and address, the title of the work upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify the

Certificate for book to state receipt of affidavit.

entry. In the case of a book the certificate shall also state the receipt of the affidavit as provided by section sixteen of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to

Certificate may be given to any person.

be filled out in each case as above provided for, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate

(*c*) See the rules and regulations printed p. 309 *post*.

shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration. Receipt for copies deposited.

SEC. 56. That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as prima facie evidence of the facts stated therein as regards any copyright registration. Index to copyright registrations. Catalogue of copyright entries. Catalogue cards. Catalogues and indexes prima facie evidence.

SEC. 57. That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished to all parties desiring them at a price to be determined by the register of copyrights, not exceeding five dollars per annum for the complete catalogue of copyright entries and not exceeding one dollar per annum for the catalogues issued during the year for any one class of subjects. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under Distribution of catalogue of copyright entries. Subscription price. Superintendent of documents to receive subscriptions.

such laws and Treasury regulations as shall be in force at the time.

Record books, &c., open to inspection. Copies may be taken of entries in record books.

SEC. 58. That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress.

Disposition of copyright deposits.

SEC. 59. That of the articles deposited in the copyright office under the provisions of the copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

Preservation of copyright deposits.

Disposal of copyright deposits.

SEC. 60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work shall

be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it. Manuscript copies to be preserved.

SEC. 61. That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright, deposited under the provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. For every additional certificate of registration made, fifty cents. For recording and certifying any instrument of writing for the assignment of copyright, or any such licence specified in section one, subsection (e), or for any copy of such assignment or licence, duly certified, if not over three hundred words in length, one dollar; if more than three hundred and less than one thousand words in length, two dollars; if more than one thousand words in length, one dollar additional for each one thousand words or fraction thereof over three hundred words. For recording the notice of user or acquiescence specified in section one, subsection (e), twenty-five cents for each notice if not over fifty words, and an additional twenty-five cents for each additional one hundred words. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, one dollar. For recording the extension or renewal of copyright provided for in sections twenty-three and twenty-four of this Act, fifty cents. For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, fifty cents for each full hour of time consumed in making such search: *Provided*, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time.

Fees.

Fee for registration.

Fee for certificate.

Fee for recording assignment.

Fee for copy of assignment.

Fee for recording notice of user upon mechanical musical instruments.

Fee for comparing copy of assignment.

Fee for recording renewal of copyright.

Fee for recording transfer of proprietorship.

Fee for search.

Only one registration required for work in several volumes.

Definitions: 'Date of publication.'

SEC. 62. That in the interpretation and construction of this Act 'the date of publication' shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word 'author' shall include an employer in the case of works made for hire.

'Author.'

Repealing clause.

SEC. 63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Date of enforcement.

SEC. 64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

Approved, March 4, 1909.

RULES AND REGULATIONS FOR THE REGISTRATION OF CLAIMS TO COPYRIGHT

[*Bulletin No.* 15 *issued by the Copyright Office, Washington,* 1910.]

1. Copyright under the act of Congress entitled: 'An act to amend and consolidate the acts respecting copyright,' approved March 4, 1909, is ordinarily secured by printing and publishing a copyrightable work with a notice of claim in the form prescribed by the statute. Registration can only be made *after* such publication, but the statute expressly provides, in certain cases, for registration of manuscript works. Copyright under act.

WHO MAY SECURE COPYRIGHT.

2. The persons entitled by the act to copyright protection for their works are: Persons entitled to copyright.

(1) The *author* of the work, if he is:

(*a*) A citizen of the United States, or

(*b*) A resident alien domiciled in the United States at the time of the first publication of his work, or

(*c*) A citizen or subject of any country which grants either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens. The existence of reciprocal copyright conditions is determined by presidential proclamation (*a*).

(*a*) Presidential copyright proclamations have been issued securing to the citizens or subjects of the following countries copyright privileges in the United States: Austria, Belgium, Chile, China, Costa Rica, Cuba, Denmark, France, Germany (including mechanical contrivances), Great Britain and her possessions, Guatemala, Honduras, Italy, Japan, Luxemburg, Mexico, Netherlands (Holland) and possessions, Norway, Portugal, Salvador, Spain, and Switzerland.

In the case of Nicaragua, diplomatic relations having been

(2) The *proprietor* of a work. The word 'proprietor' is here used to indicate a person who derives his title to the work from the author. If the author of the work should be a person who could not himself claim the benefit of the copyright act, the proprietor can not claim it.

(3) The *executors*, *administrators*, or *assigns* of the above-mentioned author or proprietor.

REGISTRATION.

Copyright registration.

3. After the publication of any work entitled to copyright, the claimant of copyright should register this claim in the Copyright Office. An action for infringement of copyright can not be maintained in court until the provisions with respect to the deposit of copies and registration of such work shall have been complied with.

A certificate of registration is issued to the applicant and duplicates thereof may be obtained on payment of the statutory fee of 50 cents.

SUBJECT-MATTER OF COPYRIGHT.

Works subject to copyright.

4. The act provides that no copyright shall subsist in the original text of any work published prior to July 1, 1909, which has not been already copyrighted in the United States (sec. 7).

Section 5 of the act divides the works for which copyright may be secured into eleven classes, as follows:

(*a*) *Books.*—This term includes all printed literary works (except dramatic compositions) whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term 'book' as used in the law includes tabulated forms of information, frequently called charts; tables of figures showing the results of mathematical computations, such as logarithmic tables; interest, cost, and wage tables, etc., single poems, and the words of a song

temporarily severed, copyright protection for works of Nicaraguan authors can not be secured in the United States until diplomatic relations with that country have been re-established. [*They have now been re-established.*]

when printed and published without music; librettos; descriptions of moving pictures or spectacles; encyclopaedias; catalogues; directories; gazetteers and similar compilations; circulars or folders containing information in the form of reading matter other than mere lists of articles, names and addresses, and literary contributions to periodicals or newspapers.

5. The term 'book' can not be applied to— Blank books, etc., not copyrightable.

Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, diaries or journals, bank deposit and check books; forms of contracts or leases which do not contain original copyrightable matter; coupons; forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness and not in their merit as literary compositions.

Directions on scales, or dials, or mathematical or other instruments; puzzles; games; rebuses; labels; wrappers; formulae on boxes, bottles, and other receptacles of articles for sale or meant to accompany such articles.

Advertisements or catalogues which merely set forth the names, prices, and places where articles are for sale.

Prefaces or other introductory matter to works not themselves entitled to copyright protection, such as blank books.

Calendars are not capable of registration as such, but if they contain copyrightable reading matter or pictures they may be registered either as 'books' or as 'prints' according to the nature of the copyrightable matter.

6. (*b*) *Periodicals.*—This term includes newspapers, magazines, reviews, and serial publications appearing oftener than once a year; bulletins or proceedings of societies, etc., which appear regularly at intervals of less than a year; and, generally, periodical publications which would be registered as second-class matter at the post office. Periodicals.

7. (*c*) *Lectures, sermons, addresses,* or similar productions, prepared for oral delivery. Lectures, etc.

8. (*d*) *Dramatic and dramatico-musical compositions,* such as dramas, comedies, operas, operettas and similar works. Dramatic compositions, etc.

The designation ' dramatic composition ' does not include the following: Dances, ballets, or other choreographic works; tableaux and moving picture shows; stage settings or mechanical devices by which dramatic effects are produced, or ' stage business '; animal shows, sleight-of-hand performances, acrobatic or circus tricks of any kind; descriptions of moving pictures or of settings for the production of moving pictures. (These, however, when printed and published, are registrable as ' books.')

Dramatico-musical compositions, etc.

9. *Dramatico-musical compositions* include principally operas, operettas, and musical comedies, or similar productions which are to be acted as well as sung.

Songs separately published.

Ordinary songs, even when intended to be sung from the stage in a dramatic manner, or separately published songs from operas and operettas, should be registered as musical compositions, not dramatico-musical compositions.

Musical compositions.

10. (*e*) *Musical compositions*, including other vocal and all instrumental compositions, with or without words.

But when the text is printed alone it should be registered as a ' book ', not as a ' musical composition '.

' Adaptations ' and ' arrangements ' may be registered as ' new works ' under the provisions of section 6. Mere transpositions into different keys are not expressly provided for in the copyright act; but if published with copyright notice and copies are deposited with application, registration will be made.

Maps.

11. (*f*) *Maps.*—This term includes all cartographical works, such as terrestrial maps, plats [*sic*], marine charts, star maps, but not diagrams, astrological charts, landscapes, or drawings of imaginary regions which do not have a real existence.

Works of art.

12. (*g*) *Works of art.*—This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

Productions of the industrial arts utilitarian in purpose and character are not subject to copyright registration, even if artistically made or ornamented.

Toys, games, etc.

No copyright exists in toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware,

embroideries, garments, laces, woven fabrics, or any similar articles.

13. (*h*) *Reproductions of works of art.*—This term refers to such reproductions (engravings, woodcuts, etchings, casts, etc.) as contain in themselves an artistic element distinct from that of the original work of art which has been reproduced. Reproductions of works of art.

14. (*i*) *Drawings or plastic works of a scientific or technical character.*—This term includes diagrams or models illustrating scientific or technical works, architects' plans, designs for engineering work, etc. Drawings or plastic works.

15. (*j*) *Photographs.*—This term covers all positive prints from photographic negatives, including those from moving-picture films (the entire series being counted as a single photograph), but not photogravures, half tones, and other photo-engravings. Photographs.

16. (*k*) *Prints and pictorial illustrations.*—This term comprises all printed pictures not included in the various other classes enumerated above. Prints and pictorial illustrations.

Articles of utilitarian purpose do not become capable of copyright registration because they consist in part of pictures which in themselves are copyrightable, e.g. puzzles, games, rebuses, badges, buttons, buckles, pins, novelties of every description, or similar articles. Articles for use not copyrightable.

Postal cards cannot be copyrighted as such. The pictures thereon may be registered as 'prints or pictorial illustrations' or as 'photographs'. Text matter on a postal card may be of such a character that it may be registered as a 'book'.

Mere ornamental scrolls, combinations of lines and colors, decorative borders, and similar designs, or ornamental letters or forms of type are not included in the designation 'prints and pictorial illustrations'. Trade-marks can not be copyrighted nor registered in the Copyright Office.

HOW TO SECURE REGISTRATION.

17. Copyright registration may be secured for: Registerable works.

(1) Unpublished works.

(2) Published works.

UNPUBLISHED WORKS.

Unpublished works are such as have not at the time of registration been printed or reproduced in copies for sale, or been publicly distributed. They include: (*a*) Lectures, sermons, addresses, or similar productions for oral delivery; (*b*) dramatic and musical compositions; (*c*) photographic prints; (*d*) works of art (paintings, drawings, and sculpture), and (*e*) plastic works.

In order to secure copyright in such unpublished works, the following steps are necessary:

Registration of unpublished works.

18. (1) In the case of lectures, sermons, addresses, and dramatic and musical compositions, deposit one type-written or manuscript copy of the work.

This copy should be in convenient form, clean and legible, the leaves securely fastened together, and should bear the title of the work corresponding to that given in the application.

The entire work in each case should be deposited. It is not sufficient to deposit a mere outline or epitome, or, in the case of a play, a mere scenario, or a scenario with the synopsis of the dialogue.

Unpublished photographs.

19. (2) In the case of photographs, deposit one copy of a positive print of the work. (Photo-engravings or photogravures are not photographs within the meaning of this provision.)

Photograph of work of art.

20. (3) In the case of works of art, models or designs for works of art, or drawings or plastic works of a scientific or technical character, deposit a photographic reproduction.

In each case the deposited article should be accompanied by an application for registration and a money order for the amount of the statutory fee.

Reproduction of unpublished work.

21. Any work which has been registered as an unpublished work, if reproduced in copies for sale or distribution, must be deposited a second time (two copies, accompanied by an application for registration and the statutory fee) in the same manner as is required in the case of works published in the first place.

PUBLISHED WORKS.

DEPOSIT OF COPIES.

Deposit of copies.

22. After publication of the work with the copyright notice inscribed, two *complete* copies of the best edition of the work must be sent to the Copyright Office, with a proper application for registration correctly filled out and a money order for the amount of the legal fee.

The statute requires that the deposit of the copyright work shall be made 'promptly', which has been defined as 'without unnecessary delay'. It is not essential, however, that the deposit be made on the very day of publication.

Definition of 'published work'.

23. Published works are such as are printed or otherwise produced and 'placed on sale, sold, or publicly distributed' (i. e. so that all persons who desire copies may obtain them without restriction or condition other than that imposed by the copyright law). Representation on the stage of a play is not a publication of it, nor is the public performance of a musical composition publication. Works intended for sale or general distribution must first be printed with the statutory form of copyright notice inscribed on every copy intended to be circulated.

NOTICE OF COPYRIGHT.

Form of notice.

24. The ordinary form of copyright notice for books, periodicals, dramatic and musical compositions is 'Copyright, 19— (the year of publication), by A. B. (the name of the claimant)'. The name of the claimant printed in the notice should be the real name of a living person, or his trade name if he always uses one (but not a pseudonym or pen name), or the name of the firm or corporation claiming to own the copyright. The copyright notice should not be printed in the name of one person *for the benefit of another*. The beneficiary's name should be printed in such cases.

Short form of notice.

25. In the case of maps, photographs, reproductions of works of art, prints or pictorial illustrations, works of art, models or designs for works of art, and plastic works of a scientific or technical character, the notice may consist of the letter C, inclosed within a circle, thus (C), accom-

panied with the initials, monogram, mark, or symbol of the copyright proprietor. But in such cases the name itself of the copyright proprietor must appear on some accessible portion of the work, or on the mount of the picture or map, or on the margin, back, or permanent base or pedestal of the work.

Notice upon each copy.

26. The prescribed notice must be affixed to each copy of the work published or offered for sale in the United States. But no notice is required in the case of foreign books printed abroad seeking *ad interim* protection in the United States, as provided in section 21 of the copyright act.

AMERICAN MANUFACTURE OF COPYRIGHT BOOKS.

Works produced in United States.

27. The following works must be manufactured in the United States in order to secure copyright:

(*a*) All 'books' in the English language and books in any language by a citizen or domiciled resident of the United States must be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text of such books be produced by lithographic process or photo-engraving process, then by a process wholly performed within the limits of the United States; and the printing of the text and binding of the book must be performed within the limits of the United States.

(*b*) All *illustrations* within a book produced by lithographic process or photo-engraving process and all *separate lithographs* or *photo-engravings* must be produced by lithographic or photo-engraving process wholly performed within the limits of the United States; except when the subjects represented in such illustrations in a book or such separate lithographs or photo-engravings 'are located in a foreign country and illustrate a scientific work or reproduce a work of art'.

Books by foreign authors.

28. Books by foreign authors in any language other than English are not required to be printed in the United States.

Books printed abroad.

In the case of books printed abroad in the English language an *ad interim* term of copyright of thirty days from

registration made in the Copyright Office within thirty days after publication abroad may be secured; but in order to extend the copyright to the full term of protection, an edition of the work must be published in the United States within the thirty days *ad interim* term, printed or produced within the limits of the United States as required in section 15 of the copyright act.

APPLICATION FOR REGISTRATION.

Application for registration.

29. The application for copyright registration required to be sent with each work (see No. 20) must state the following facts, without which no registration can be made:

(1) The *name* and address of the claimant of copyright.

(2) The *nationality* of the author of the work.

(3) The *title* of the work.

(4) The name and address of person to whom certificate is to be sent.

(5) In the case of all *published* works the actual date (year, month, and day) when the work was published.

Name of author.

30. In addition, it is desirable that the application should state for record the name of the author. If, however, the work is published anonymously or under a pseudonym and it is not desired to place on record the real name of the author, this may be omitted. In the case of works made for hire, the employer may be given as the author. By the nationality of the author is meant citizenship, not race; a person naturalized in the United States should be described as an American. An author, a citizen of a foreign country having no copyright relations with the United States, may secure copyright in this country, if at the time of publication of his work he is a permanent resident of the United States. The fact of such permanent residence in the United States should be expressly stated in the application. Care should be taken that the title of the work, the name of the author, and the name of the copyright claimant should be correctly stated in the application, and that they should agree exactly with the same statements made in the work itself.

Nationality of author.

APPLICATION FORMS.

Application forms.

31. The Copyright Office has issued the following application forms, which will be furnished on request, and should be used when applying for copyright registration :

A[1]. Book by citizen or resident of the United States.

A[1] for. Book by citizen or resident of a foreign country, but manufactured in the United States.

A[2]. Edition printed in the United States of a book originally published abroad in the English language.

A[3]. Book by foreign author in foreign language.

A[4]. Ad interim. Book published abroad in the English language.

A[5]. Contribution to a newspaper or periodical.

B[1]. Periodical. For registration of single issue.

B[2]. Periodical. General application and deposit.

C. Lecture, sermon, or address.

D[1]. Published dramatic composition.

D[2]. Dramatic composition not reproduced for sale.

D[3]. Dramatico-musical composition.

E[1]. Published musical composition.

E[2]. Musical composition not reproduced for sale.

F. Published map.

G. Work of art (painting, drawing, or sculpture) ; or model or design for a work of art.

H. Reproduction of a work of art.

I. Drawing or plastic work of a scientific or technical character.

J[1]. Photograph published for sale.

J[2]. Photograph not reproduced for sale.

K. Print or pictorial illustration.

AFFIDAVIT OF MANUFACTURE.

Affidavit for book.

32. In the case of books by American authors and all books in the English language the application must be accompanied by an affidavit, showing the following facts :

(1) That the copies deposited have been printed from type set within the limits of the United States ; or from plates made within the limits of the United States from

type set therein ; or if the text be produced by lithographic process or photo-engraving process, that such process was wholly performed within the limits of the United States. Stating, in either case, the place and the establishment where such work was done.

(2) That the printing of the text has been performed within the limits of the United States, showing the place and the name of the establishment doing the work.

(3) That the binding of such book has been performed within the limits of the United States, showing the place and the name of the establishment where the work was done. This can be omitted if the work is unbound.

(4) That the completion of the printing of said book was on a stated day, or that the book was published on a given date.

Date of publication.

Section 62 of the copyright act defines the date of publication as ' the earliest date when copies of the first authorized edition *were placed on sale, sold, or publicly distributed* by the proprietor of the copyright or under his authority '.

Affidavit must be under seal.

33. The affidavit may be made before any officer authorized to administer oaths within the United States who can affix his official seal to the instrument.

The applicant and the officer administering the oath for such affidavit are specially requested to make sure that the instrument is properly executed, so as to avoid the delay of having it returned for amendment. Experience shows that among the common errors made by applicants are the following :

Errors by applicants.

Failure to write in the ' venue ', that is, the name of the county and State, and to make sure that the notary's statement agrees.

Reciting a corporation or partnership as affiant. Oaths can be taken only by individuals.

Failure to state in what capacity the affiant takes the oath, whether as a claimant, agent of the claimant, or printer. Where a corporation or firm is the claimant, the affiant should swear as agent.

Failure to state the *exact date* of publication or completion of printing. The month alone is insufficient.

Failure to sign the affidavit. The signature should correspond exactly with the name of the affiant stated at the beginning. Corporation or firm names must not appear in this place.

Failure to obtain signature of the notary after swearing to the contents.

Failure to obtain the seal of the notary.

Swearing before an officer not authorized to act in the place stated in the venue.

Variance between names and dates as stated in the affidavit and the application.

The affidavit must never be made before the day of publication.

By whom affidavit may be made.

34. The affidavit may be made by: (1) The person claiming the copyright; or (2) his duly authorized agent or representative residing in the United States; or (3) the printer who has printed the book.

The person making the affidavit must state in which of the above-mentioned capacities he does so.

Book in foreign language.

35. In the case of a foreign author applying for a book in a language other than English, no affidavit is required, as such books are not subject to the manufacturing clause.

In the case of a foreign author applying for a book in the English language, the same affidavit must be made as in that of an American author, except where a book is deposited for *ad interim* protection under section 21. In such cases the affidavit must be filed when the *ad interim* copyright is sought to be extended to the full term.

The affidavit is only required for BOOKS.

PERIODICALS (FORM B).

Periodicals.

36. Application should be made in the same manner as for books, depositing two copies, but no affidavit is required.

Separate registration is necessary for each number of the periodical published with a notice of copyright, and can only be made after publication. It is not possible to register the title of the periodical in advance of publication.

CONTRIBUTIONS TO PERIODICALS (FORM A[5]).

37. If special registration is requested for any contribution to a periodical, *one* copy of the number of the periodical in which the contribution appears should be deposited promptly after publication. Contributions to periodicals.

The entire copy should be sent; sending a mere clipping or a page containing the contribution does not comply with the statute.

The date of publication of a periodical is not necessarily the date stated on the title-page. The application should state the day on which the issue is 'first placed on sale, sold, or publicly distributed', which may be earlier or later than the date printed on the title-page.

AD INTERIM APPLICATIONS (FORM A[4]).

38. Where a book in the English language has been printed abroad, an *ad interim* copyright may be secured by depositing in the Copyright Office one complete copy of the foreign edition, with an application containing a request for the reservation and a money order for $1. Such application should state: (1) Name and nationality of the author; (2) Name and nationality of the copyright claimant; (3) Exact date of original publication abroad. Ad interim copyright.

The deposit must be made within thirty days from publication abroad. Whenever, within the thirty days' period of *ad interim* protection, an edition manufactured in the United States is published, and two copies are deposited, the copyright claim therein may be registered the same as any other book (Form A[2]).

MAILING APPLICATIONS AND COPIES.

39. All mail matter intended for the Copyright Office should be addressed to the 'Register of Copyrights, Library of Congress, Washington, D.C.' No letters dealing with copyright matters should be addressed to individuals in the office. Address of mail matter.

Copyright matter designed for deposit in the Copyright Office will be transmitted by the postmaster free of charge

when requested. The postmaster will also, when requested, give a receipt for matter so delivered to him for transmission.

No franking label is issued by the Copyright Office for this purpose.

FEES.

Copyright fees.

40. The fee required to be paid for copyright registration is $1, except that in case of photographs it is only 50 cents when no certificate of registration is desired.

Remittances.

All remittances to the Copyright Office should be sent by money order or bank draft. Postage stamps should not be sent for fees or postage. Checks can not be accepted unless certified. Coin or currency inclosed in letter or packages if sent will be at the remitter's risk.

Publishers may for their own convenience deposit in the Copyright Office a sum of money in advance against which each registration will be charged.

ASSIGNMENTS OF COPYRIGHT.

Assignments of copyright.

41. When a copyright has been assigned the instrument in writing signed by the proprietor of the copyright may be filed in this office for record within six calendar months after its execution without the limits of the United States or three calendar months within the United States.

After having been recorded the original assignment will be returned to the sender with a sealed certificate of record attached.

Fee for recording assignment.

42. The fee for recording and certifying an assignment is $1 up to 300 words; $1 from 300 to 1,000 words; and another dollar for each additional thousand words or fraction thereof over 300 words.

Name of assignee in claim.

43. After the assignment has been duly recorded, the assignee may substitute his name for that of the assignor in the copyright notice on the work assigned. Such substitution or transfer of ownership will be indexed in this office upon request, at a cost of 10 cents for each work assigned.

NOTICE OF USER OF MUSICAL COMPOSITIONS.

Notice of user of music.

44. Whenever the owner of the copyright in a musical composition uses such music in phonographs himself or permits any one else to do so, he must send a notice of such use by him or by any other person to the Copyright Office to be recorded.

Notice in absence of licence.

45. Whenever any person in the absence of a licence intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce the same mechanically, the act requires that he shall serve notice of such intention upon the copyright proprietor and must also send a duplicate of such notice to the Copyright Office.

APPLICATION FOR THE RENEWAL OR EXTENSION OF SUBSISTING COPYRIGHTS.

Renewals and extensions.

46. Application for the renewal or extension of a subsisting copyright (except copyright of a composite work) may be filed within one year prior to the expiration of the existing term by :

(1) The author of the work if still living ;

(2) The widow, widower, or children of the author if the author is not living ;

(3) The author's executor, if such author, widow, widower, or children be not living ;

(4) If the author, widow, widower, and children are all dead, and the author left no will, then the next of kin.

Renewal for composite work.

47. If the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor is entitled to the privilege of renewal and extension.

Renewal fee.

48. The fee for the recording of the renewal claim is 50 cents. Application for the renewal or extension of copyright can not be recorded in the name of an assignee nor in that of any person not expressly mentioned in section 24 of the act.

SEARCHES.

Searches.

49. Upon application to the Register of Copyrights search of the records, indexes, or deposits will be made for such

information as they may contain relative to copyright claims. Persons desiring searches to be made should state clearly the nature of the work, its title, the name of the claimant of copyright and probable date of entry; in the case of an assignment, the name of the assignor or assignee or both, and the name of the copyright claimant and the title of the music referred to in case of notice of user.

Search fee. The statutory fee for searches is 50 cents for each full hour of time consumed in making such search.

April 9, 1910. BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Copyrights. Preamble. Whereas it is provided by the Act of Congress of March 4, 1909, entitled 'An Act to amend and consolidate the Acts respecting Copyright', that the benefits of said Act, excepting the benefits under Section 1 (*e*) thereof, as to which special conditions are imposed, shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only upon certain conditions set forth in Section 8 of said Act, to wit:

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto:

And, whereas, it is also provided by said section that 'The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by

proclamation made from time to time as the purposes of this Act may require ' :

And, whereas satisfactory evidence has been received that in Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and possessions, Norway, Portugal, Spain, and Switzerland the law permits and since July 1, 1909, has permitted to citizens of the United States the benefit of copyright on substantially the same basis as to citizens of those countries :

Countries entitled to benefits.

Now, therefore, I, William Howard Taft, President of the United States of America, do declare and proclaim that one of the alternative conditions specified in Section 8 of the Act of March 4, 1909, is now fulfilled, and since July 1, 1909, has continuously been fulfilled, in respect to the citizens or subjects of Austria, Belgium, Chile, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her possessions, Italy, Mexico, the Netherlands and possessions, Norway, Portugal, Spain, and Switzerland, and that the citizens or subjects of the aforementioned countries are and since July 1, 1909, have been entitled to all of the benefits of the said Act other than the benefits under Section 1 (*e*) thereof, as to which the inquiry is still pending.

Musical productions not included.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this ninth day of April in the year of our Lord one thousand nine hundred
(Seal) and ten, and of the Independence of the United States of America the one hundred and thirty-fourth.

WM. H. TAFT.

By the President :

P. C. KNOX,
Secretary of State.

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