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LAW OF COPYRIGHT

BY

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OF THE MIDDLE TEMPLE AND THE NORTH EASTERN CIRCUIT

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INTRODUCTION

THE passing of The Copyright Act, 1911, has completely recast the Law of Copyright, at any rate those parts which depend primarily on Statute Law, such as the term of protection and ownership of copyright. Only those parts of the law which are practically judge-made—such as the questions as to infringement by a new work other than an exact copy—have remained to any great extent unaltered, and even they are not untouched. The new Act possesses many merits, and when the older law has been rendered obsolete by the lapse of time, it will largely simplify Copyright Law, but at present—like all Consolidation Acts dealing with subjects of the like nature—it has, for the time being, greatly complicated the law in many respects. In cases where from

the nature of things the new law cannot immediately render the old obsolete, even the most necessary and the best conceived reforms cause additional inconvenience when they first come into operation. In the history of real property law, the time when the law was most complicated and uncertain was not before the Reform Act; it was probably in the 'fifties and 'sixties, when the practitioner required full knowledge of the old law as it stood in 1830 and of all the changes made in it afterwards.

Besides this unavoidable cause of complication The Copyright Act, 1911, contains a more serious one. It was not content with consolidating and amending the old Copyright Law; it introduced the royalty system, a very doubtful experiment. The Copyright Commission of 1878 decisively condemned the royalty system as an alternative to copyright. Time alone can show how these two systems will work together. The truth is that the Act was passed too late or too soon for a scientific piece

of legislation; too late for pure copyright legislation, too soon for its supersession by the royalty system, or for a scientific combination of them.

In addition to the legislative alterations in the law, there has been a distinct change in the spirit in which the Courts have dealt with the claim of authors to be protected against unfair treatment of their works other than literal copying. Statements which were true even thirty years ago are true no longer. At one time the law as to infringement might be fairly summed up in the words "addition condones subtraction"; in later cases the chief stress is laid on the question of competition; then any derivative work of the same nature is forbidden; then The Copyright Act, 1911, protects the owner of copyright against reproduction by mechanical contrivances (subject to the royalty system). Practically every reproduction of which the author may reasonably complain is forbidden.[1]

[1] Except so far as the royalty system is introduced; and perhaps a few instances under The Copyright Act, 1911.

The obvious method of dealing with a branch of law which has been codified is by way of commentary on the codifying Act, but after careful consideration this has been abandoned. In the first place the Act does not lend itself easily to commentary. Secondly, the method leads to unnecessary length, as lengthy provisions of the Act can be summarized very shortly. But the chief objection is the difficulty of working in the old law, if this method is followed. Knowledge of the old law is essential in dealing with copyright questions. Nearly all the questions of the present Copyright Law can be brought under the following heads:—(1) What intrinsic qualities must a work possess to be capable of copyright? (2) What steps must the author take to secure copyright? (3) Who is the owner of the copyright? (4) What acts will infringe the copyright? (5) What are the remedies for infringement? In any actual case (1), (2), and (3) may depend solely on the old law; (4) depends mainly on

the present law, but that present law must be collected from decided cases under the old law; (5) alone depends purely on present law.

The method adopted in dealing with the subject in the present work is as follows:— A short outline of the history of Copyright is given first, chiefly dealing with the history of Literary Copyright, to give the reader an idea of the outline of the law on the eve of The Copyright Act, 1911, and including a short summary of the chief changes introduced by that Act (Chapter I.). In the General Part the system set up by the Act is considered (Chapter II.). In the Special Part the various branches of Copyright Law are separately discussed (Chapters III. to VII.). In these the old law as to each branch is discussed so far as it has not been rendered obsolete, and the chief changes in the law have been pointed out. All old law will be found under this head, and such of the present law as must be collected to any large extent from decided cases, notably

"Qualifications for Copyright" and "Infringement." On the other hand, such subjects as "Remedies" will be treated in the "General Part." Chapter VIII. deals with "Colonial Copyright." Then follows the consideration of the International system set up by the Berlin Convention and The Copyright Act, 1911, in Chapter IX., dealing with the relations with Foreign States and also with the conditions requisite for securing copyright in the United States of America.

J. B. RICHARDSON.

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Yovatt *v.* Winyard, 1 J. & W. 394 - - - 44

AUTHORITIES CITED

COPINGER.—The Law of Copyright in Works of Literature and Art. By WALTER ARTHUR COPINGER. Fourth Edition, by J. M. EASTON (1904).

DRONE.—A Treatise on the Law of Property in Intellectual Productions in Great Britain and the United States. By EATON S. DRONE (1879).

LOWNDES.—An Historical Sketch of the Law of Copyright. By JOHN J. LOWNDES (1840).

MACGILLIVRAY.—A Treatise upon the Law of Copyright in the United Kingdom and the Dominions of the Crown, and in the United States of America. By E. J. MACGILLIVRAY, LL.B. (Cantab.), (1902).

MAUGHAM.—A Treatise on the Laws of Literary Property. By ROBERT MAUGHAM (1828).

SCRUTTON.—The Law of Copyright. By T. E. SCRUTTON, M.A., LL.B. (Cantab). Fourth Edition (1903).

Unless otherwise stated, all References are to the above-mentioned Editions.

CHAPTER I.

HISTORY OF THE LAW OF COPYRIGHT.

Copyright at Common Law.

THE chief interest in the history of the Law of Copyright centres round the question, Was copyright known to the Common Law? or, in other words, Had the author of a published work the exclusive right of multiplying copies of it in perpetuity by the Common Law? For all practical purposes the question was settled in *Donaldson v. Becket*,[1] where it was decided by the House of Lords, in accordance with the opinion of a bare majority of the judges, that, whatever might have been the rights of the author at Common Law, such rights had been impliedly abolished by the Statute of Anne,[2] and that since then the Law of Copyright rested wholly on Statute. But on account of the great historical interest of the question, and also on account of the light which it throws on many decisions which are still good law, and (it is submitted) on the varying attitude of the Courts towards the claim of authors to be protected against unfair use of their works other than open or colourable piracy, it is advisable to consider briefly the facts which formed the subject of so much controversy during the eighteenth century.[3]

The question is greatly complicated by the fact that prior to the final expiration of the Licensing Act in 1694

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[1] [1774] 2 Bro. P. C. 129; 4 Burr 2408; 17 Cobbett Parl. History 954.

[2] 8 Anne c. 19.

[3] Later, if we include Jefferys v. Boosey, [1854] 4 H. L. C. 815, and the debates in Parliament in the years prior to the passing of The Copyright Act, 1842.

the rights of authors are almost lost sight of in the struggle for complete control over the press, first by means of the prerogative and afterwards by Acts of Parliament. Moreover down to 1640 this control was exercised exclusively through the Star Chamber. Under such conditions it was almost impossible for the private rights of authors to be considered in the Common Law Courts apart from the public question of licensing. Nor did the supposed owners of copyrights themselves desire it. They had "a much speedier and more effectual remedy than actions at law or bills in equity."[1] Usage and general opinion, as evidenced by the acknowledgment of "copy"[2] in Acts and Ordinances and other public documents and by the writings of Milton and others, are the only possible evidence of the Common Law at the time.

Introduction of Printing.

The history of copyright begins with the introduction of printing into England in the reign of Edward IV., according to the generally received story by Caxton in 1471, or by Corsellis at Oxford at the King's expense in 1468. Prior to that time there is no trace of copyright, the reason probably being that the multiplication of copies was so slow that the value of any one copy was not substantially affected by the making of others. From that point the history of copyright falls naturally into the following periods.

Period I.—From the Introduction of Printing to the Incorporation of the Stationers' Company in 1556.

At first there seems to have been perfect liberty to print any book whatsoever, and in 1483-4 an Act of Parliament[3] was passed allowing the importation of books

[1] Per Willes, J., in Miller v. Taylor, [1769] 4 Burr, at p. 2313.
[2] The technical word for copyright at this time.
[3] 1 Ric. III. c. 9, s. 12; repealed by 25 Henry VIII. c. 15, s. 1

printed abroad, but as the number of printers and the importance of the press increased the King assumed a general prerogative jurisdiction over the press.

Royal Prerogative.

As the Royal claims develop in the seventeenth and eighteenth centuries they appear to consist of two parts, one of which was allowed by the Courts and one disallowed. First, the King claimed complete control over certain classes of books, such as Acts of Parliament, Ordinances, Law Books, and Law Reports, as Head of the State; and the Bible and Book of Common Prayer as Head of the Church. These claims were afterwards partly based on the ground of property; that the King paid the judges who declared the law: that the Year Books were reported at his expense: that the translation of the Bible had been bought by him, and consequently that he had acquired the "copy" in them.[1] The other claim was a general property in the art of printing, on the ground that it had been introduced by Corsellis at the King's expense. This was plainly stated in the argument in *Atkins v. Stationers' Company*,[2] but there, according to Lord Mansfield, the claim was at once rejected. But these distinctions belong to a later age. During this period the assumption by the Crown of absolute power over the press was universally acquiesced in, although it was made a source of profit to the King and his courtiers.[3]

Privileges.

One William Faques, or Fakes, styles himself "Regius Impressor" in a proclamation issued in 1504.[4] In 1518 Richard Pynson, the successor of William Faques, is granted an exclusive privilege of printing a particular

[1] Millar v. Taylor, [1769] 4 Burr 2303. Compare the dicta of Willes, J., at pp. 2315-7, and Lord Mansfield, at pp. 2401-5, with those of Yates, J., at pp. 2381-4.

[2] [1666] Carter's Reports 89; 4 Burr 2316.

[3] See the instances collected in Scrutton, pp. 9-11.

[4] Herbert's Ames Typographical Antiquities, vol. i., p. 308.

book for two years.[1] During the reign of Henry VIII. privileges were very freely granted to various printers for varying periods, generally seven years. These include a patent to Reginald Wolfe of the office of King's printer, coupled with a general prohibition to print such books as were therein specially assigned to him, or such books as "propria sua industria diligentia atque labore conquisivit" —the first acknowledgment of property in a literary work apart from the material form.[2] A little earlier occurs the first case of piracy on record. Peter Trevers, or Treveris, took the liberty of reprinting a Treatise on Grammar by Robert Witinton, first printed by Wynken de Worde in 1523; and in a second edition printed by de Worde in 1533 he is bitterly attacked by Robert Witinton for so doing. To prevent any further piracy a privilege is obtained for the second edition.[3] About this time we find instances of privileges granted expressly in recompense of the labour which the author had bestowed on his work. In 1530 a privilege for seven years is granted to "maistre Jehan Palsgraue Angloys natyf de Londres et gradue de Paris" for a book to teach French in "dewe consyderation of his sayd long tyme and great dyligence about this good and very necessary purpose employed, and also of his sayd great costes and charges bestowed about the imprintyng of the same."[4] And in 1537 there is a letter from Grafton to Lord Cromwell asking for protection against attempts to reprint the Bible commonly known as Matthew's Bible, until he should have disposed of the copies already printed, on the following grounds:—

1. That he has been put to great cost in printing the work and will be ruined if other printers are allowed to print it in a cheaper form.

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[1] Herb. Ames Typ. Ant., vol. i., p. 264.
[2] Rym. Foedera, vol. xv., p. 150. Lowndes, pp. 4-5.
[3] Lowndes, pp. 6-8. Herb. Ames Typ. Ant., vol. i. 187.
[4] Herb. Ames Typ. Ant., vol. i. 470-1.

2. That such cheaper copies will be worthless and inaccurate.

3. *That it is unreasonable for others to reap the fruits of his labour and expenses.*[1]

During this period the only check on the complete freedom of the printers to print any book they desired was the Royal Prerogative; and this was afterwards seized upon by the enemies of copyright at Common Law as a clear proof of the non-existence of any literary property. The restraints imposed by the Royal Prerogative were stigmatized as usurpation and tyranny. But this is not in harmony with the political theory of the times. Down to the end of the Tudor period the King is regarded as possessing unlimited powers, save where he has expressly granted them away. He is entitled to full jurisdiction over any matter not expressly assigned to some other authority; he possesses not merely the "residuary Royal jurisdiction" in matters of law, but also powers of general supervision over trade, &c., as *parens patriae*.[2] It is not until the seventeenth century that a Coke can say, "The King hath no prerogative but what the Common Law allows him."[3]

Period II.—From the Incorporation of the Stationers' Company in 1556 to the Fall of the Star Chamber in 1640.

Incorporation of the Stationers' Company.

In 1556, avowedly for the purpose of suppressing "heretical and seditious" works, it was determined to unite all the printers into one body and make the heads of it responsible for the conduct of individual members. By letters patent, therefore, the Stationers' Company was

[1] Lowndes, 7–8. [2] Bate's Case, 2 St. Trials 371.
[3] Proclamations, 12 Coke's Rep. 74.

incorporated on the 4th May, 1556. By their Charter they were empowered to make bye-laws binding on their members, and the art or mystery of printing in England was strictly confined to their body. The Master and Wardens were authorised to search for and destroy all prohibited books, and to imprison anyone exercising the art of printing contrary to their direction. This Charter was confirmed by Elizabeth in 1559.[1]

In exercise of this power the Company required everyone who printed a work to enter it first in their Register Book; and anyone omitting to do so, or printing a *book belonging to another member*, was fined.[2]

More than 2000 copies were thus entered as the property of particular persons between 1576 and 1595, and from 1582 onwards there are entries with the express proviso "that if it be found any other has right to any of the copies. then the licence touching such of the copies *so belonging to another* shall be void."[3]

Decrees of the Star Chamber.

During the reign of Queen Elizabeth the granting of patents to print books was greatly abused, often extending to the sole right to print all books of a particular class. such as all books of Common Law or all music books. These patents pressed so hard on the poorer printers that obtaining no redress by petitions to the Queen. they began to print in defiance both of the Queen's patents, and also of the laws of the Company.[4] On her accession the Queen had strictly forbidden the printing of any book without a licence[5]; and by way of enforcing this a decree of the Star Chamber in 1566 enacted that "the printing of any book against the force and meaning of any

[1] Lowndes, p. 10; Maugham, Literary Property, p. 12.
[2] *Ibid.*, p. 11; per Willes, J., in Millar v. Taylor, [1769] 4 Burr, at p. 2314.
[3] Carte; Maugham Lit. Prop., p. 17.
[4] Lowndes, p. 11. [5] *Ibid.*, p. 12.

ordinance, prohibition or commandment contained, or to be contained in any of the Statutes or laws of the realm, or in any injunctions, letters patent, or ordinances should be visited with the forfeiture of all such books and disability to exercise the art of printing, besides imprisonment for three months without bail or mainprize."[1] In 1586, in response to petitions by the Company for the enforcement of their bye-laws, another decree renews the directions as to licensing contained in the injunctions of 1559, and enacts "that no one shall print any book or other paper, contrary to any Statute, letters patent, &c., or *contrary to any allowed ordinance* set down for the good government of the Company of Stationers within the City of London."[2] A proclamation of the 25th September, 1623, recites the above decree, and states that it had been evaded "by printing beyond sea such books, works, or writings as had been imprinted within the realm by such to whom the sole printing thereof, by letters patent *or lawful ordinance or authority*" [clearly referring to the ordinances of the Stationers' Company] "did appertain," and subjects importers to the penalties appointed for persons offending against the decree of 1586.[3] And by the decree of the 11th July, 1637[4] [the last issued by the Star Chamber on the matter], no person is to print or import any book or copy "which the said Company of Stationers or any other person have or shall, by any letters patent, order, or entrance in their Register Book *or otherwise*,[5] have the right, privilege, authority, or allowance solely to print" (Section 7); and by Section 2 all books and pamphlets are to be entered in the Register Book of the Company.

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[1] Lowndes, p. 13; Luck, History of Printing, p. 104.

[2] Maugham, p. 13; Herb. Ames Typ. Ant. iii., p. 1668. [3] *Ibid.*, p. 13.

[4] Middle Temple Library Tracts, vol. xlviii; Lowndes, p. 15.

[5] Relied on by Willes, J., in Millar v. Taylor, 4 Burr, at p. 2314, as showing a right to exist at Common Law apart from patent, order, or entry on the Register of the Company.

During this period there are certain indications of a Common Law right on the part of the author, but the greatest part of the evidence is of a most unsatisfactory character. Its significance depends entirely on the answer to the question, What entitled a member of the Stationers' Company to enter a "copy" in his name on the Register? If purchase from the owner entitled him, copyright at Common Law is proved beyond a doubt; if not, it is practically disproved. This question is, however, unanswerable. The most that can be said is that there are certain indications that the former is the true view, and the expressions of opinion during the next period strongly confirm it.

Period III.—From the Fall of the Star Chamber in 1640 to the Final Expiration of the Licensing Act in 1694.

Ordinances of the Long Parliament.

In 1640 the Court of Star Chamber was abolished,[1] and all proclamations or decrees regulating the Press were treated as illegal. The two Houses made an Ordinance in 1641 prohibiting printing unless the book was first licensed and entered in the Register of the Stationers' Company. In this Ordinance occurs the first unequivocal recognition of an owner of the "copy"—the prohibition of printing or importing *without the consent of the owner* upon pain of forfeiting the same to the *owner or owners* of the copies of the said books.[2] Attempts were made in 1641 to procure the free printing of all works, but a protest was made by several divines, who were in favour of the prevailing party, against this. They urged "that, to their knowledge, very considerable sums of money had been paid by stationers and printers to many authors for

[1] 16 Car. I., c. 10. [2] Maughan, p. 13.

the copies of such useful books as had been imprinted. In regard whereof we conceive it to be both just and necessary that they should enjoy a property for the sole imprinting of their copies." This, they said, was the only means of recompensing scholars and preventing "vicious impressions, to the great discouragement of learned men and extreme danger of all kinds of good learning."[1] In 1643 the two Houses published an Ordinance[2] for suppressing "the great abuses and disorders in printing" which recites (*inter alia*) that divers persons "(contrary to former orders and *the constant custom used among the Stationers' Company*) had taken liberty to print, vend, and publish the most profitable vendible copies of books belonging to the Company and other Stationers," and provides that all books should be entered in the Register Book of the Company of Stationers "*according to ancient custom*," and that no one should print or import printed any book so entered "for any particular member thereof without the license and consent of the *owner* thereof," on pain of forfeiture to the *owner or owners of the copies* of the said books and such further punishment as shall be thought fit.

The Ordinance also forbade the printing of books without a licence before publication, and in 1644 Milton published his famous plea in favour of unlicensed printing, mentioning as one of the glosses used to colour the Ordinance "the just retaining of each man his several copy: which God forbid should be gainsaid."

Another Ordinance follows in 1647, without any mention of the rights of the owner[3]; and another in 1649, for putting down false and scandalous pamphlets and regulating printing, contains the following enactment:—"That no person shall print or reprint any book entered in the Register

[1] Lowndes, p. 16; Maugham, p. 14. [2] Scobell, Acts and Ordinances, p. 44.
[3] *Ibid.*, p. 134.

Book of the Stationers' Company *without the consent of the owner thereof*, or stitch or bind or put to sale any book upon pain of forfeiture of the same and 6s. 8d. for each book."[1]

Licensing Act, 1662.

The fall of the Commonwealth in 1660 was almost immediately followed by the Licensing Act in 1662,[2] which was continued from time to time with one interval of six years[3] down to 1694. The primary object of the Act is to give the Government complete control over the press, though there is a distinct recognition of "copy."

Section 8 forbids the printing of any book without a licence and without previous entry of the books in the Register of the Stationers' Company; and forbids the Universities to meddle either with books of Common Law or matters of State and Government, "*nor any book the right of printing whereof doth solely and properly belong to any particular person or persons, without his or their consent.*"

Section 6 forbids the printing or importing of any book which any person by force or virtue of any entry duly made in the Register Book has the right, privilege, authority, or allowance solely to print, "*without the consent of the owner or owners of such book or books, copy or copies,*" on pain of forfeiture of the books and a fine, half to go to the King and half to the *owner*. Section 7 provides that the mark of the person who has the privilege, authority, or allowance to print is not to be put on books without his consent, and the licenser is to return copies to the printer *or owner*.[4] By Section 17 three copies of each work are to be reserved, one for the King's library and one for each of the Universities of Oxford and Cambridge.

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[1] Scobell, p. 89, at p. 92; renewed in 1652, but with the omission (*inter alia*) of the "owner's clause."

[2] 13 and 14 Car. II., c. 33. [3] 1679-1685.

[4] Clearly implying that the owner need not be the printer, and therefore not necessarily a member of the Company.

According to Willes, J., the various provisions of this Act effectually prevented piracies without actions at law or bills in equity. Hence there is no clear case where the courts restrained the actual piracy of a book at the suit of the author or his assigns.

Decisions of the Courts.

Cases, however, came before the Courts with regard to books where the ownership was disputed. In the first case dealing with copyright heard in the ordinary courts[1] Atkins claimed the sole right of reprinting Roll's Abridgment under a grant from the King, and sought an injunction against the Stationers' Company for printing it. The Chancellor granted an injunction, and this was upheld by the House of Lords. The plaintiff rested his case on the following grounds:—(1) That the King had a general prerogative over the art of printing, as it had been brought into England at his expense by Corsellis to Oxford in 1468,[2] and (2) That the King had a prerogative copyright in all law books. In *Roper v. Streater*[3] the point was considered in the King's Bench. Roper sued Streater for printing the third part of the reports of Crook, J., which his executors had sold to Roper; Streater pleaded the King's grant; Roper demurred and the demurrer was allowed in the King's Bench, but, on appeal, the House of Lords overruled the demurrer, upon the opinion that the "copy" belonged to the King. In the case of *Stationers' Company v. Parker*[4] it was said *arguendo* that the Licensing Act (then expired) did not give a right but only an action of debt. And in the case of *Company of Stationers v. Seymour*,[5] where the plaintiffs claimed the sole right of

[1] Atkins v. Stationers' Company; 18 Car. II.,[1666] Carter, p. 89; 4 Burr 2316.

[2] According to Lord Mansfield this argument was completely rejected, 4 Burr, at p. 2401.

[3] [1670] Skinner, p. 234, 4 Burr 2316.

[4] (Pasche, 1 Jac. II.). Skinner 233, at p. 234.

[5] Trinity, 29 Car. II (C. B.) 1 Mod. 256.

printing almanacks by patent from the King, their counsel, Serjeant Pemberton, admitted a doubt how far a grant from the King would "stand good against them that claim a property in the copy paramount to the King's grant," but he rested his claim on the ground that the almanack had no certain author and therefore the property was in the King. The Court assented to this argument and further stated—"These additions of prognostications and other things that are common in almanacks do not alter the case; *no more than if a man should claim a property in another man's copy, by reason of some inconsiderable additions of his own.*"

Ponder v. Bradyl.

During the temporary lapsing of the Licensing Act an action on the case was brought for printing "The Pilgrim's Progress"[1] "*of which the plaintiff was and is the true proprietor; whereby he has lost the profit and benefit of his copy.*" But there is no trace of this action being proceeded with.

Bye-law of the Stationers' Company.

In 1681 the Stationers' Company, for the purpose of checking abuses which became very frequent among the members after the expiration of the Licensing Act in 1679 passed the following bye-law:—

"And whereas several members of this Company have great part of their estates *in copies*; and by ancient usage of this Company, when any book or copy is duly entered in the Register Book of this Company to any member or members of this Company, such person to whom such entry is made is and always hath been reputed and taken to be *proprietor of such book or copy and ought to have the sole printing thereof*; which privilege or interest is now of late often violated and abused—it is therefore ordained that,

[1] Ponder v. Bradyl, [1680] Lilly's Entries 67; 4 Burr 2317.

where any entry is or shall be duly made of any member of this Company, if any member of this Company shall then after without the licence or consent of such member for whom such entry is duly made print or import any such copy or book; or shall sell, bind, stitch, or expose the same for sale, then such member so offending shall forfeit twelvepence for every such copy or book."[1]

Expiration of the Licensing Act.

The Licensing Act was revived by the 1 Jac. II. c. 33, and continued from time to time until the 25th April, 1694, when it finally expired. In spite of the protection which it gave to the owners of "copies" duly entered in the Register Book of the Stationers' Company, the way in which the Act worked left the authors at the mercy of the Company.

In a protest signed by eleven Lords against the Bill continuing the Act in 1692 we find the following reasons:—"Because it subjects all learning and true information to the arbitrary will and pleasure of a mercenary and perhaps ignorant licenser, *destroys the property of authors in their copies;* and sets up many monopolies."[2] And from "Reasons humbly offered to be considered before the Act for printing be renewed," it appears that the Company often asked large sums for making an entry, and at other times refused or neglected to enter books, or made false entries. The petitioners say—"The property of English authors hath been always *owned as sacred* among the traders and generally forborne hitherto to be invaded; but if any should invade such properties, *there is remedy by laws already made*, and no other were ever thought needful till 1662"; and in another petition "As for securing property, *it's secured by law already* as our own experience may show."[3] And on

[1] Found by the jury in Millar v. Taylor, 4 Burr 2307 (slightly condensed).
[2] Lowndes, pp. 24–5. [3] *Ibid.*, p. 30.

the last attempt to revive the Act in 1694 at the conference between the Lords and Commons the Commons submitted the following reason, amongst others, against its renewal:—"The Company are empowered to hinder the printing of all innocent and useful books; and have an opportunity to enter a title to themselves and their friends, for *what belongs to and is the labour and right of others.*[1]

This period is marked by repeated and unequivocal acknowledgments of the existence of copyright in books, both on the part of the general public, and also on the part of the Legislature. No Statute calls any such right into existence, therefore it could only have existed at the Common Law. There is no actual decision in its favour in the courts, but that appears to be only because no one challenges it. In *Seymour's Case* in particular the existence of "copy" is assumed on both sides; the only question is whether the King possesses it or not.

Period IV.—From the Expiration of the Licensing Act in 1694 to the Passing of the Statute of Anne.

During this period copyright rests wholly on the Common Law.

Applications for Legislation to Protect Copyright.

In 1694 the Stationers' Company passed another bye-law,[2] practically the same as the one quoted above; but, this not having the desired effect, repeated petitions were presented to Parliament for more effective securing of the "copy." There is no hint given of any doubt as to the existence of copyright at Common Law, but it is stated that present remedies are ineffective. As is stated in one petition, "The liberty now set on foot of breaking through this ancient and reasonable usage is no way to be effectually

[1] Lowndes, p. 27.
[2] Found by the jury in Millar v. Taylor, 4 Burr 2308.

restrained but by an Act of Parliament. For by Common Law. a bookseller can recover no more costs than he can prove damage; but it is impossible for him to prove the tenth, nay, perhaps the hundredth part of the damage he suffers. because a thousand counterfeit copies may be dispersed into as many different hands all over the Kingdom, and he is not able to prove the sale of ten. Besides. the defendant is always a pauper; and so the plaintiff must lose his costs of suit. No man of substance had been known to offend in this particular, nor will any ever appear in it. Therefore, the only remedy by the Common Law is to confine a beggar to the rules of the King's Bench or Fleet; and there he will continue the evil practice with impunity. We therefore pray that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders." They also stated that large sums had been paid to authors for copies, amounting to at least £50,000, and that the copies had been made the subject of family settlements.[1]

Statute of Anne.

In consequence of these applications for protection Parliament passed an Act[2] in 1709 entitled "An Act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies *during the times therein mentioned*,"[3] and generally referred to as the "Statute of Anne." The most important provisions are as follows:—

"Whereas printers, booksellers, and other persons have of late frequently *taken the liberty* of printing, reprinting, and publishing books and other writings without the consent of the *authors or proprietors* of such books and writings to their very great detriment

[1] Lowndes 28-31. [2] 8 Anne c. 19.

[3] According to Willes, J., the Bill went into Committee as a Bill "to secure the undoubted property of copies for ever" (4 Burr 2333).

and too often to the ruin of them and their families. For preventing therefore such *practices* for the future and for the encouragement of learned men to compose and write useful books" be it enacted.

Section 1, "From and after the 10th April, 1710, the author of any book already printed, or the bookseller, printer, or other person who hath purchased the copy shall have the sole right and liberty of printing such book for the term of twenty-one years from the 10th April, 1710, *and no longer*;[1] and the author of any not yet printed and published shall have the sole liberty of printing and reprinting the same for the term of fourteen years from the first publishing the same *and no longer*."[1] A penalty of a penny per sheet is imposed on infringers, and the books are to be delivered up to the proprietors of the "copy" for destruction.

Section 2 requires entry of the title to the "copy" in the Register Book of the Stationers' Company before publication; otherwise neither penalties nor forfeiture will be incurred. Section 3 imposes a penalty on the clerk of the Stationers' Company refusing to make the entry. Section 4 provides for the fixing of the prices. Section 5 requires the delivery of nine copies of each book for the use of specified libraries. Section 7 excepts books in Greek, Latin, or any foreign language from the operation of the Act.

Section 9: "Provided that nothing in this Act contained shall extend, or to prejudice, or confirm any right that the said Universities or any person have or claim to have, to the printing or reprinting any book or copy."

Section 10 limits the time within which actions may be brought for offences against the Act to three months.

[1] These words were relied on in Donaldson v. Becket as destroying the Common Law right, but this interpretation is quite inconsistent with Section 9.

Section 11: "Provided always, that after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years."

The unfortunate and ambiguous wording of this Act raised another question: viz.—Whether, assuming the existence of copyright at Common Law, such right was not impliedly abolished by the Statute of Anne. Section 1 rather favours this view; but Section 9 expressly preserves all existing rights.

Period V.—From the Passing of the Statute of Anne to the Decision in Donaldson v. Becket in 1774.

Right to Restrain Publication.

Down to 1735 no question as to the continued existence of copyright at Common Law came before the Courts. But another point was raised for the first time in the early part of the eighteenth century: viz.—As to the Common Law right of the author *before publication*.[1] The question was first raised in *Webb v. Rose*[2] where the clerk of Mr. Webb the conveyancer was restrained by Sir Joseph Jekyll from printing his master's drafts. The same relief was granted by Lord Hardwick in *Pope v. Curl*,[3] though there the Court proceeded merely on the Statute of Anne, but in *Duke of Queensberry v. Shebbeare*[4] the injunction was grounded on its proper basis—the Common Law right before publication. After that case it has scarcely been questioned.

[1] Hereafter referred to as "the right to restrain publication." See pp. 35-43, *infra*.

[2] [1732] 4 Burr 2330.

[3] [1741] 2 Atk. 341.

[4] [1758] 2 Eden 329.

Injunctions granted in Chancery.

In 1735 the question as to the existence of copyright at Common Law came before the Court of Chancery for the first time in the case of *Eyre v. Walker*[1] where Sir Joseph Jekyll granted an injunction to restrain the printing of *The Whole Duty of Man*, the first assignment of which had been made in December, 1657. In *Motte v. Faulkner*[2] an injunction was granted to restrain the printing of Pope and Swift's "Miscellanies," some of which had been published in 1701, 1702 and 1708, and in *Walthoe v. Walker*[3] to restrain the printing of Nelson's "Festivals and Fasts," although it was first printed in the lifetime of the author, who died in 1714. In the case of *Tonson v. Walker otherwise Stanton*,[4] Lord Hardwicke granted an injunction to restrain the printing of "Paradise Lost", the plaintiffs claiming under an assignment of the copy in 1667. And in the case of *Tonson v. Walker and Marchant*,[5] where the defendant had advertised a publication of Milton's "Paradise Lost," with his life by Fenton and notes by former authors, compiled by Dr. Newton, although Lord Hardwicke in his judgment guarded himself from being thought to determine the general question, he granted an injunction "in the disjunctive" restraining the defendants from printing "Paradise Lost," *or* the life of John Milton, *or* the notes compiled by Dr. Newton.

The injunctions in all these cases were acquiesced in. The decisions were, of course, not binding on the Common Law courts, but they were entitled to "great attention and respect."[6]

Millar v. Taylor.

Apart from the abortive case of *Tonson v. Collins*[7] where judgment was refused on the ground that the proceedings

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[1] 4 Burr 2325.
[2] [1735] 4 Burr 2326.
[3] [1736] 4 Burr 2325.
[4] [1739] 4 Burr 2325.
[5] [1752] 4 Burr 2325; 3 Swanst 681.
[6] Per Yates, J., in Millar v. Taylor, 4 Burr, at p. 2377.
[7] 4 Burr 2327.

were collusive, the question came before the Common Law Courts for the first time in the famous case of *Millar v. Taylor*.[1] The facts of the case were as follows:—James Thomson wrote and published his poem, "The Seasons," between the years 1727 and 1729. In 1729 he sold the copyright to Andrew Millar, the plaintiff. In 1763 Robert Taylor printed and exposed for sale copies of "The Seasons," and Millar brought an action of trespass on the case against Taylor for infringement of his copyright.

The question was argued with extraordinary ability, and practically all the arguments available on both sides of the question are summed up in the various judgments delivered. Willes, J., pronounced in favour of the Common Law right—mainly on the ground of general usage, and its accordance with principles of "general fitness, justice, morality, and convenience which, when applied to a new subject, make Common Law without a precedent."[2] His judgment contains a most valuable historical survey of the whole question.[3] Aston, J., concurred, mainly on abstract principles, and Lord Mansfield delivered a short but very effective opinion on the same side. On the other hand, Yates, J., pronounced decisively against the Common Law right, on the grounds that there was no such right at Common Law, and, if there was, it was taken away by the Statute of Anne. The arguments on which he chiefly relied were—(1) That no such property was consonant with Common Law principles, as it was (*a*) neither a property in goods, nor a debt, nor a contract, which were the only species of property known to the Common Law; (*b*) but it was a property in *ideas* which were incapable either of identification or of exclusive appropriation; (*c*) that it was *a monopoly*—in ultimate analysis the "right of bringing an action against those that print the

[1] [1769] 4 Burr 2303. [2] 4 Burr, at p. 2312.

[3] It was said by Lord Abinger in the case of Chappell v. Purday that this judgment was the work of Lord Mansfield himself.

author's work without his consent"—and, therefore, was certainly not assignable at Common Law, although it might be created and made so by Statute; (2) That it could not have been from time immemorial as printing was only introduced in the reign of Edward IV.; (3) That the usages of the Stationers' Company and of authors and printers could not alter the Common Law: and (4) That in any case the express gift of "fourteen years from publication *and no longer*" by the Statute of Anne took away all right beyond the statutory term. He, however, admitted the existence of the Common Law right before publication, and also the King's right in prerogative copies, and thereby exposed nearly all his arguments on the Common Law to the charge "that they proved too much." Practically every one applies with equal force to the right before publication. And too much stress is laid on the necessity for immemorial custom, and too little on the flexibility of the Common Law when confronted by new questions. The value of general usage as a source of Common Law, when applied to a new subject, is absolutely denied, contrary to the latest pronouncements on the subject. The construction to be put on the decrees of the Star Chamber is very doubtful, unless contemporary expressions of belief in "copy" are taken into account: but, in the light of these expressions it is quite clear that protection was given, and hence they form valuable authority in favour of the right. It is now universally admitted that the Star Chamber was a perfectly legitimate Court,[1] and the Common Law with respect to misdemeanours is mainly founded on its precedents.

Donaldson v. Becket.

In 1774 the question came before the House of Lords in the famous case of *Donaldson* v. *Becket*[2] on appeal from

[1] Holdsworth's History of English Law, vol. i., pp. 279-292 (pp. 290-1 especially).

[2] 4 Burr 2409; 2 Bro. P. C. 129; 17 Cobbett Parl. History 954.

the Court of Chancery. The judges were directed to attend and deliver their opinions severally on the following questions put to them by the House:—

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

Ten judges were of opinion that the author had this right, but two of them thought that he could only bring an action if the manuscript had been obtained by fraud or violence. One denied the right altogether. The numbers on this point may be taken as either ten to one or eight to three in favour of the right before publication, whichever the reader pleases.

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

Seven judges answered in favour of the Common Law right, four (including the three against protection for the right before publication) against it.[1]

3. If such action would have lain at Common Law, is it taken away by the Statute of Anne? And is an author by the said Statute precluded from every remedy, except on the foundation of the said Statute, and on the terms and conditions prescribed thereby?

Five of the judges thought that the Common Law right was unaffected by the Statute. Six (including the four against Common Law copyright) thought the right had been taken away.

[1] Drone and Scrutton gave the numbers as eight to three; but I am unable to discover any authority for this.

It was well known that Lord Mansfield adhered to his former opinion, and therefore was in favour of the author on all three points, but, it being unusual for a peer to support his own judgment in the House, he took no part in the proceedings.

Upon these answers Lord Camden moved to reverse the decree, and enter judgment in favour of the appellant. He first considered the arguments founded on "patents, privileges, Star Chamber decrees, and the bye-laws of the Stationers' Company," and dismissed them as "the effects of the grossest tyranny and usurpation." He stated that prior to the Revolution the whole of the press was subject to the arbitrary prerogative of the King; and cited the Statute of Anne itself as a strong proof that at the time when it was passed there was no idea of a Common Law claim. He defined the claim as a claim to property in ideas, and poured scorn on the suggestion that there could be such a property (an argument which, if it proved anything, proved that Parliament had been trying to create an impossible species of property). He refused to admit that "private justice, moral fitness, and public convenience" could create new law. He denied that the claim had any foundation in sound policy or good sense. "Why did we enter into society at all, but to enlighten one another's mind and improve our faculties for the common welfare of the species? Knowledge has no value or use for the solitary owner; to be enjoyed it must be communicated—Glory is the reward of science, and those who desire it scorn all meaner views. It was not for gain that Bacon, Newton, Milton, and Locke instructed the world; it would be unworthy such men to traffic with a dirty bookseller for so much a sheet of letterpress. When the bookseller offered Milton five pounds for his 'Paradise Lost,' he did not reject it and commit his poem to the flames, nor did he accept the miserable

pittance as the reward of his labour; he knew that the real price of his work was immortality and that posterity would pay it." Lord Chancellor Apsley seconded the motion, and in spite of the opposition of Lord Lyttleton the decree was reversed by a majority of twenty-two to eleven.

It will be noted that the arguments of Lord Camden are directed against the existence of the right at Common Law, not against its continuance after the Statute of Anne. He doubtless found that the former topic lent itself best to rhetoric.

Thus the long controversy ended in a denial of the author's rights, against, it is fairly safe to say, the weight of judicial opinion and against an overwhelming weight of argument, the force of which would be felt far more to-day than it was then. As Lord Mansfield said in *Millar v. Taylor*,[1] practically all the positive arguments against the right "*proved too much*"; the negative largely depend upon views about the nature of the Common Law and as to the legality of the Star Chamber which have been abandoned.

Apart, however, from the strict question of law, it is by no means unlikely that the decision in *Donaldson v. Becket* was for the true interest of authors themselves in the long run. Whatever may be said about the right of property residing in the "order of words" and not in the ideas, it is certain that the mere right of protection against the reproduction of that order of words is not sufficient for the author, and it is equally certain that any wider protection handicaps other literary labourers, besides being difficult to support on Common Law grounds. The remedy for these difficulties is in wide and adequate protection of the author during a fairly long but terminable period. This will not be given where there is perpetual

[1] 4 Burr, at p. 2399.

copyright, for the Courts, knowing that whatever restraint they lay on the use of the author's book by others will never be removed by time, instinctively lean against imposing permanent fetters on the progress of human knowledge. In *Dodsley v. Kinnersley*[1] an abridgment formed by "leaving out all the moral reflections" was held a legitimate and meritorious work. In *Weatherby v. International Horse Exchange*[2] the mere taking of information collected by another author in one work and using it in a work which could not compete with it was held unlawful. The former decision could never have been given under a system of limited copyright, the latter never under a system of perpetual copyright.

Beckford v. Hood.

The Common Law right was again under consideration in the cases of *Beckford v. Hood*[3] and *Jefferys v. Boosey.*[4] In *Beckford v. Hood*[3] the question was whether registration was necessary to bring an action for damages; and it was held that it was not. Grose, J., suggested that the true interpretation of *Donaldson v. Becket* was not that the Common Law right was destroyed, but that it was limited to the periods prescribed by the Statute.

Jefferys v. Boosey.

In *Jefferys v. Boosey*[4] the question turned mainly on matters of international copyright; but the question of copyright at Common Law was raised, and several of the judges in their opinions refer to the point. Erle and Coleridge, JJ., strongly supported the right, the former's opinion being one of the strongest ever pronounced in its favour. One of his points that "the claim is not to ideas,

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[1] [1761] Ambler 403. At that time copyright was believed to be perpetual The attitude of the Courts adopted during this period, persisted, of course, down to a much later period.

[2] [1910] 2 Ch. 297. [3] [1798] 7 T. R. 620. [4] [1854] 4 H. L. C. 815.

but to the order of words, and that this order has a marked identity and a permanent endurance,"[1] completely disposes of many arguments on which Yates, J. and Lord Camden lay the greatest stress. On the other hand, Parke, B., Pollock, C. B., and Jervis, C. J., all denied the existence of copyright apart from Statute, mainly on the ground of monopoly, and on the analogy of patents. In this they were supported by the three Law Lords, who pronounced judgment. Lord Cranworth gave it as his opinion that copyright after publication, "if not the creature, as I believe it to be, of our Statute Law, is now entirely regulated by it."[2] Lord Brougham went into the question at some length, and expressed himself as strongly against it,[3] while Lord St. Leonards "had arrived long since at the conclusion that no Common Law right exists after publication."[4]

Drama.

Apart from literary works the question of copyright at Common Law has only been considered in the cases of *Morris v. Kelly*[5] and *Murray v. Elliston*.[6] In the first case Lord Eldon restrained the unauthorised representation of a play which appears to have been performed in public. In the second, it was held by the Court of King's Bench that representation of an abridged version of "Marino Faliero" did not infringe the copyright. It is, however, almost impossible to extract a rule of law from either decision, as the facts given are scanty.

Period VI.—From the Decision in Donaldson v. Becket to The Copyright Act, 1911.

During this period statutory copyright alone exists, and is gradually extended both in the length of the term of copyright and in the measure of protection given to the author.

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[1] 4 H. L. C., at p. 860.
[2] *Ibid.*, at p. 954.
[3] *Ibid.*, at pp. 961-2.
[4] *Ibid.*, at p. 977.
[5] [1820] 1 Jac. & W. 481.
[6] [1822] 5 B. and Ald. 657; see *infra*, pp. 130-1.

Effect of Donaldson v. Becket.

The decision in *Donaldson v. Becket* caused great dismay among the booksellers, and they immediately petitioned Parliament for redress. A Committee was appointed to enquire into the matter. The chief witness examined was William Johnston, a retired bookseller, who stated that the universal opinion in the trade, down to the last decision, had been that there was perpetual copyright at Common Law, and that the universal practice was to assign this right on any transfer of copyright. The effect of the late decision had been to reduce greatly the value of copyrights. The author unquestionably got more for twenty-eight years than fourteen. The trade did not rely on an action at Common Law, but a Bill in equity. The penalties under the Statute were not worth contending for. It was also stated that nearly £50,000 had been laid out in the purchase of copyrights at public auctions since 1755.[1] On the report of this Committee a Bill was brought in the House of Commons "for relief of booksellers and others by vesting the copies of printed books in the purchasers of such copies from authors or their assigns, for a time therein to be limited." It was strongly supported by Edmund Burke and Wedderburn, and opposed by Thurlow and Charles Fox, and counsel were heard both for and against it. The Bill passed the Commons,[2] but it was thrown out in the Lords (in the absence of Lord Mansfield) on the motion of Lord Denbigh supported by the Lord Chancellor (Apsley) and Lord Camden.[3]

University Copyright.

The Universities were successful in obtaining an Act vesting in them perpetual copyright in all books bequeathed or otherwise given to them so long as the Universities themselves printed the books.[4]

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[1] 17 Cobbett 1077–1088.
[2] *Ibid.* 1088–1110.
[3] *Ibid.* 1400–2.
[4] 15 Geo. III. c. 53.

Copyright Act, 1814.

In 1814[1] the term of copyright was extended from fourteen years, with a reversionary term of fourteen years to the author if living at the expiration of the first fourteen years, to a term of twenty-eight years, or the life of the author, whichever should be the longer.

Copyright Act, 1842.

It was found, however, that even this extended term did not provide adequate remuneration for works of enduring value and popularity, and in the fourth decade of the nineteenth century the sympathy of the public was greatly excited by the misfortunes of authors of the first rank, including some whose works had only won their way into popular favour just before the copyright expired. After a struggle of several years in which Serjeant Talfourd took the leading part on behalf of the authors, an Act[2] giving a further measure of protection to authors was passed in 1842. The chief alterations in literary copyright made by the Act were :—

1. The term of copyright in books was extended to forty-two years from publication, or the life of the author and seven years, whichever should be the longer period.[3]

2. Registration was made a necessary preliminary to legal proceedings to protect copyright, but not to the attachment of the right itself.[4]

3. Copyright in a book unpublished at the death of its author is traced from the proprietor of the manuscript from which publication is first made.[5]

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[1] 54 Geo. III. c. 156.

[2] 5 & 6 Vict. c. 45; commonly known as "Talfourd's" Act. The history of the struggle is very well given in Drone on Copyright, at pp. 74–82, and in Scrutton on Copyright, at pp. 42–46, and I do not propose to repeat it.

[3] s. 3. [4] s. 24.

[5] s. 3; Macmillan v. Dent, [1907] 1 Ch. 107.

4. Provision is made against the suppression of any published book after the death of its author.[1]

This Act governed literary copyright down to the coming into force of The Copyright Act, 1911.

Other Subjects of Copyright.

The history of copyright, apart from that of literary copyright, presents few features of interest. On the eve of The Copyright Act, 1911, the various branches of copyright works were regulated as follows:—

Lectures delivered in public were protected by an Act of 1835.[2] Drama was provided for by an Act of 1833,[3] commonly known as "Bulwer Lytton's" Act. In music the right of multiplying copies of a musical piece has always been protected under the various Literary Copyright Acts, but the performing right was only created by The Copyright Act, 1842. Since then, music has also been dealt with in Acts of 1882, 1888, 1902, and 1906.[4] The last two Acts first introduced the principle of summary remedies against pirates, which have now been extended to all forms of copyright by The Copyright Act, 1911. Engravings and prints were provided for by Acts of 1735, 1767, 1777, and 1836[5]; sculpture by an Act of 1814[6]; and paintings, drawings, and photographs by The Fine Arts Copyright Act, 1862.[7] Under the last Act copyright attaches on creation, not publication; and this principle has been extended by The Copyright Act, 1911, to all artistic works other than engravings.

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[1] s. 4.
[2] 5 and 6 Will. IV. c. 65.
[3] 3 Will. IV. c. 15, and also by The Copyright Act, 1842.
[4] 45 & 46 Vict. c. 40; 51 & 52 Vict. c. 17; 2 Edw. VII. c. 15; 6 Edw. VII. c. 36.
[5] 8 Geo. II. c. 13; 7 Geo. III. c. 38; 17 Geo. III. c. 57; 6 & 7 Will. IV. c. 59; see also 15 & 16 Vict. c. 12, s. 14.
[6] 54 Geo. III. c. 56.
[7] 25 & 26 Vict. c. 68.

Royal Commission of 1876.

In 1876, a Royal Commission sat to consider the Law of Copyright and its practical working. A great quantity of valuable evidence was taken, and the Committee reported in 1878, advising many changes in the law. These recommendations, however, were never carried out.

Owing to the continual progress of International copyright—a subject which is treated of later[1]—it was found desirable to fix some common period for the duration of copyright, and this was fixed by the Berlin Convention of 1908 at the life of the author and fifty years from his death.[2] In consequence of this Convention legislation became necessary, and the opportunity was taken to consolidate and amend the law.

The Copyright Act, 1911.

The Law of Copyright now rests on The Copyright Act, 1911,[3] and no rights (other than contractual) of the nature of copyright can exist in any work except under that Act.[4] The chief changes introduced by the Act are as follows:—

1. The unification of the Law of Copyright, *e.g.*, the law of Artistic copyright is made exactly the same as that of Literary copyright as far as the subject-matter allows. This is unquestionably a great improvement in the law.

2. The consolidation of the various rights bearing the name of copyright into one; thus the post-publication right and the Common Law right to prevent publication are both united into one and called "copyright."[5]

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[1] See pp. 200-213, *infra*.
[2] Article 7.
[3] 1 & 2 Geo. V. c. 46.
[4] s. 31.
[5] s. 1 (2).

3. The abolition of the rule in *Macmillan v. Dent.*[1] (Unquestionably good.)[2]

4. The conditions for acquiring copyright to be: (*a*) in the case of a work of which no copies have been issued to the public, that the author should be a British subject or resident within the British Dominions to which the Act extends; (*b*) in the case of a work of which copies have been issued, first issue of those copies in the British Dominions.[3]

This is a very unfortunate provision. In the first place it is quite possible that under it a work may fall into the public domain and then become the subject of copyright. Secondly, it leaves many things, *e.g.*, private letters, entirely without protection from the Law of Copyright unless the author is a British subject or resident here. Fortunately International copyright and the contractual right of secrecy will preserve us from the consequences in most cases; it is none the less a blunder.[4]

5. The extension of the term of copyright to the life of the author and fifty years.[5]

6. The introduction of the royalty system twenty-five years after the death of the author.[5]

7. The abolition of registration as a preliminary to protection or litigation.

8. The extension of all civil remedies to the period before publication.[6]

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[1] [1907] 1 Ch. 107. [2] s. 5.

[3] s. 1 (1).

[4] Probably the following represents the ideal: complete protection to unpublished works in any case; for published works, first publication within the area of protection where the value lies in the rapid multiplication of copies, creation within the area where the value lies in the original work.

[5] s. 3. [6] ss. 6–10.

9. The protection of the innocent infringer against all penalties except an injunction.[1]

10. The extension of summary remedies to all cases.[2]

11. The extension of protection to architecture[3] and mechanical records &c.[4]

12. Various extensions of the owner's rights; in particular, protection against mechanical reproductions.[5]

13. The restriction of the author's right of transfer over the last twenty-five years of the term to transfer by bequest.[6]

14. Protection to extend throughout the British Dominions other than self-governing Dominions; self-governing Dominions to be treated as foreign countries unless they themselves desire to be brought within the Act.[7]

[1] s. 8.
[2] s.s. 11–13, but there are exceptions.
[3] s. 1.
[4] s. 19.
[5] s. 1 (2).
[6] s. 5.
[7] s.s. 25–27.

GENERAL PART.

CHAPTER II.

THE COPYRIGHT ACT, 1911.

IN this Chapter it is proposed to consider the system set up by The Copyright Act, 1911, which came into force on the 1st July, 1912. Certain parts of the law as it stood on the eve of the Act rested mainly on judicial decisions, and these are only affected to a small extent. Again, these parts of the law vary to a considerable extent with the subject-matter of protection, *e.g.*, the principles of infringement require different treatment in the cases of Literary and Artistic Copyright. They are therefore dealt with separately. The main body of the law set up by the Act of 1911, resting wholly on Statute, and now the same for all branches of Copyright Law, is considered in this Chapter.

Nomenclature.

There are three[1] different rights which have at various times been denoted by or included in the word "copyright": viz.—

(1) The Common Law right to restrain publication. This rested wholly on the Common Law, and has been said to be an incident of property, not a branch of the Law of Copyright at all. It belonged to all species of copyright property indiscriminately, was perpetual until publication, and was destroyed by publication. So far as it is not included in the right next considered it has been abolished.[2] It must be

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[1] Assuming that the first and second are not identical.

[2] 1 & 2 Geo. V. c. 46, s. 31.

carefully distinguished from (*a*) "Common Law copyright"[1] which refers to post-publication copyright at Common Law before the Statute of Anne, (*b*) contractual rights arising out of the repose of confidence by one man in another preventing the latter from publishing the former's work.

(2) The inchoate right to publish and so acquire post-publication copyright. If this right carries with it (as it is submitted that it does) the right to restrain anyone else from publishing,[2] it includes the Common Law right to restrain publication.

The present writer respectfully submits that these two rights are really the same right looked at from two different aspects; they are merely the right to preserve the fruit until it is plucked, and the right to pluck it when desired. But, as Buckley, L. J., in *Macmillan v. Dent*,[3] clearly contemplates their separation, they are here set out separately.

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[1] This phrase is occasionally applied to the right to restrain publication, but its more usual and more accurate meaning is copyright at Common Law, apart from the Statute of Anne.

[2] *I.e.*, as a general rule. The whole difficulty arises under the rule in Macmillan v. Dent, [1907] 1 Ch. 107. Where the right to acquire copyright is traced from the author, both the right to publish and the right to restrain publication are united in the same person, and it is unnecessary to distinguish between them. But under Section 3 of The Copyright Act, 1842, the right to acquire statutory copyright in a work unpublished at the death of its author is conferred on the owner of the manuscript. According to Buckley, L. J., however, the personal representatives of the author retain the right to restrain publication. Consequently, until the owner publishes, his property would be at the mercy of anyone who can get a copy and chooses to pirate it, unless he possesses the right to protect his property before publication; more especially, if unlawful publication is not such publication as will divest the Common Law right. Such a lack of protection is contrary to elementary principles. Hence the owner of the inchoate right must be able to protect his property before publication.

There may, however, be several manuscripts in different hands. Each owner possesses a right to acquire copyright, and the first who publishes rightfully acquires copyright. In this case none of the owners have a right to insist that another shall not publish. The true view, it is submitted, is that the owner of the manuscript possesses the Common Law right to restrain publication, and that the representatives of the author have merely a contractual right to restrain the publication of the author's sentiments against his wishes. See pp. 38-9, *infra*.

[3] [1907] 1 Ch., at p. 129.

(3) The right of multiplying copies after publication This is copyright in its strictest sense, and, according to the modern theory, is purely the creature of Statute.

The term "copyright" is usually reserved for the last of these rights, and it appears to have this meaning in all the earlier Statutes dealing with the subject. But in the Act of 1911 all three rights are included in the term.[1]

In the present work "copyright" is used as the equivalent of "statutory copyright." Prior to The Copyright Act, 1911, it will therefore include only post-publication copyright. Under the present law it includes all three rights, and also "playright" or the right of public performance.

In all Statutes, cases, and treatises prior to The Copyright Act, 1911. "publication" is used with the natural meaning of "making a work public to the world at large by any method by which the work can be made public." It may be defined as "any act which, if done by the author, would destroy the control of the multiplication of copies of his work given him by the Common Law." In The Copyright Act, 1911, it is defined as "the issue of copies to the public,"[2] and it is to bear that meaning throughout the Act. It has been found, however, impossible to explain the law as it stood before the Act, if the word is used with this restrictive meaning in the present work. It is, therefore, used with the wider meaning throughout this work, except in extracts from The Copyright Act, 1911; and in dealing with publication by issue of copies the phrase "publication by issue of copies" is always used. In describing the law as it stands now, the word is as far as possible avoided. After the commencement

[1] s. 1 (2).
[2] s. 1 (3). Similarly in the Berlin Convention.

of the Act, publication by issue of copies is the only form of publication which affects the copyright, except in the case of posthumous works.

"Qualifications for copyright" is used to denote the intrinsic qualities which a book or other work must possess to be capable of copyright, *e.g.*, innocency, originality.

"Conditions for acquiring copyright" is used to denote the circumstances unconnected with the intrinsic qualities of the work which are necessary for the author to acquire copyright, *e.g.*, British nationality of the author, first publication within the United Kingdom.

Copyright as Defined by The Copyright Act, 1911.

Copyright is defined by The Copyright Act, 1911, as "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever; to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public: if the work is unpublished, to publish the work or any substantial part thereof, and shall include, &c."[1]

Common Law right to restrain Publication.

Copyright, therefore, as defined by the Act, includes, besides the statutory right of multiplying copies or repeating performances of a work already published, a corresponding right over unpublished works. This right almost exactly corresponds to the old Common Law right of restraining publication of an unpublished work. So far as literary, dramatic, and musical works are concerned, it is submitted that the right remains exactly the same. In the case of artistic works it has never been decided whether the right included the right to prevent the

[1] *s.* 1 (2).

exhibition of an artistic work.[1] Whether this was the case at Common Law or not, it is probably not the case now; and any attempt to prevent the exhibition of an artistic work must be based on the contractual right of secrecy.[2] So far as decided cases go, it is impossible to distinguish in essence between this Common Law right and statutory copyright. It was not infringed by the sale of the manuscript by a person other than the possessor of the Common Law right,[3] nor by the owner of the manuscript making any use he pleased of the contents except publishing them or extracts from them, or paraphrases of them.[4] In the American case of *Kiernan v. Manhattan Quotation Co.*[5] it was held that the exhibition of copies to the public did not constitute a publication sufficient to divest the Common Law right. The alterations made in the Common Law right by The Copyright Act, 1911, are as follows—

(1) Under the old law the right attached to any work capable of copyright, whether the author was a British subject or resident or not. Under the present law certain conditions of allegiance or residence must be fulfilled.

(2) At Common Law the right of restraining publication was perpetual until waived. Under The Copyright Act, 1911, in the case of artistic works other than engravings it expires fifty years after the death of the author.

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[1] Prince Albert v. Strange, [1849] 1 MacN. & G. 25, which is the nearest case, turns on the contractual right of secrecy. In any case the copies exhibited were wrongfully made, and the Court was entitled to order their destruction. Turner v. Robinson, [1860] 10 Ir. Ch. Rep. 121, 510, actually decided that exhibition to all the public who chose to come at picture galleries where there was such a rule forbidding copying, did not constitute publication.

[2] See pp. 44-6, *infra*.

[3] Macmillan v. Dent, [1907] 1 Ch. 107.

[4] Phillip v. Pennell, [1907] 2 Ch. 577; *cf.* Duke of Queensberry v. Shebbeare, [1758] 2 Eden 329; Lalouchere v. Hess, [1897] 77 L. T. 550.

[5] [1876] 60 How Pr. N. Y. 104.

(3) Under the old law, in all probability, certain acts would have infringed the Common Law right before publication which would not have infringed the copyright after publication.[1] In the Act of 1911, generally speaking, no distinction is drawn between the right before and the right after publication. Any "fair dealing" with a work for the purpose of private study, research, criticism, review, or newspaper summary is allowed.[2] But it seems very unlikely that it would be considered "fair dealing" with an unpublished work to review or criticise it or to give a newspaper summary of it. If it is not, then the distinction between the right before publication and the right after publication still survives, and the right before publication is practically identical with the old Common Law right to restrain publication. In any case it is necessary to deal with the right as the existence of copyright in an existing work may depend on the question whether it has been published or not.

The right is essentially a right of property, not of privacy. It is doubtful whether the Common Law knows of a right of privacy,[3] although a right of property may be of use to protect privacy and little else. Thus, I may prevent strangers from intruding into my house or garden, but I can do so, not because their conduct is an intrusion on my privacy, but because it is a trespass done to my property. By publication the author secured to himself the statutory post-publication copyright and its fruits; and at Common Law the right to restrain publication was nothing but the right of the author to preserve such fruits until the time arrived when he desired to pluck

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[1] *Cf.* Prince Albert v. Strange, [1849] 2 De G. & S., at p. 693.

[2] 1 & 2 Geo. V. c. 46, s. 2 (1).

[3] Chandler v. Thompson, [1811] 3 Camp. 80; Roberson v. The Rochester Folding Box Co., [1902] 171 N.Y. 538 (Am.).

them.[1] In cases where the work is of such a character that no copyright can exist in it, *e.g.*, of an immoral, seditious, or libellous nature, no right to restrain publication exists. Thus in *Southey v. Sherwood*,[2] where the defendants had published "Wat Tyler," a juvenile work of Southey, which he had left with the publishers for twenty-three years and had completely forgotten, and Southey sought an injunction expressly for the sole purpose of suppressing the work, Lord Eldon refused an injunction. Fully acknowledging the evil effects which might follow, he stated that his jurisdiction to restrain publication arose solely from the right of property in the author, and that there could be no right of property in a seditious work. So, also, his reasonings in *Gee v. Pritchard*[3] all proceeded on the ground of the right being a right of property. It is not distinguishable from other forms of personal property, and at Common Law was descendible and bequeathable like other personalty.[4] On the other hand, there are dicta in an American case that not even a man's creditors can seize his manuscript for publication against his will.[5] According to the reasoning in *Macmillan v. Dent*,[6] The Copyright Act, 1842, has severed this right after the author's death, from the right to acquire the statutory copyright by publication, the latter depending on the possession of a manuscript. The actual decision in that case is only that the owner of a manuscript, obtained

[1] But see Macmillan v. Dent, [1907] 1 Ch., at p. 129 (per Buckley, L. J.). The opinion expressed in the text does not necessarily imply the existence of copyright at Common Law. In any case the author was entitled to the first distribution of books to the public; *cf.* Wheaton v. Peters, [1834] 8 Peters 591 (Am.).

[2] [1817] 2 Mer. 435. The dicta at p. 438 are inconsistent with the reasoning on which the actual decision is based. I can find no word to suggest that the right was lost by waiver.

[3] [1818] 2 Sw. 402.

[4] Palmer v. De Witt, [1872] 47 N. Y. 532 (Am.).

[5] Bartlett v. Crittenden, [1849] 5 McLean 32. If this dictum is correct the right to restrain publication must be a right of privacy as well as a right of property, though it has always been treated as a right of property and nothing else. But the dictum is unsupported and seems contrary to principle.

[6] [1907] 1 Ch. 107.

under an implied contract never to publish, may acquire the copyright in it by publishing it, if his publication is acquiesced in; and it was impossible to decide otherwise in the face of Section 3. But it does not decide that the right to restrain publication does not belong to the person owning the manuscript, and therefore enabled to acquire copyright, instead of to the person who cannot. Now, however, The Copyright Act, 1911, has re-united it to the post-publication copyright, and included it in the general term "copyright," and protects it with the statutory penalties for infringement of copyright.

Nearly all the cases turn on the question whether there has been publication sufficient to divest the Common Law right. Publication to a limited class or under special conditions will not divest the right. Thus the delivery of lectures to a limited audience under an implied contract that they are not to publish their notes, does not constitute publication,[1] though the lecturer may be under a duty to deliver them. The presumption in the case of a lecture delivered to a limited audience is that the auditors are entitled to take the fullest notes for their own personal benefit, but not to publish such notes. So, also, the hanging of a picture at a public gallery or exhibition where copying is not permitted, does not constitute publication.[2] Nor is the right lost by publication to a limited number under pledge of secrecy,[3] nor by distributing copies among friends,[4] nor by private circulation,[5] nor by sale of the manuscript.[6] The presumption in the case of a gift of a manuscript is

[1] Abernethy v. Hutchinson, [1825] 3 L.J. (O.S.) Ch. 209; Nicols v. Pitman, [1884] 26 Ch. D. 374; Caird v. Sime, [1887] 12 App. Cas. 326.

[2] Turner v. Robinson, [1859] 10 Ir. Ch. 121, 510.

[3] Exchange Telegraph Co., Limited v. Gregory & Co., [1896] 1 Q. B. 147; Exchange Telegraph Co., Limited v. Central News, Limited, [1897] 2 Ch. 48 (perhaps it would be safer to put these cases on the footing of implied confidence); Kenrick v. Danube Collieries, [1891] 39 W. R. 473 (case of 100 copies of an Engineer's report distributed to a Syndicate).

[4] Prince Albert v. Strange, [1849] 1 MacN. & G. 25.

[5] Per Lord Brougham in Jeffreys v. Boosey, [1854] 4 H. L. C., at p. 962.

[6] White v. Geroch, [1819] 2 B. & Ald. 298; *cf.* Turner v. Robinson.

that the receiver may make every use of it he pleases (including destruction) except multiplying copies of it,[1] and his assignee in bankruptcy is under the same disability.[2] Guilty knowledge is not necessary to make the infringer liable.[3]

In *Macklin v. Richardson*,[4] the author of a play allowed it to be acted on the stage, but only occasionally and by his special permission, and the defendants were restrained from publishing the play in their magazine. But this decision appears to turn, not on the question as to what constitutes publication of a play, but on the peculiar rule of English Law, that literary copyright and dramatic copyright or playright are of such different natures that a work published for the purposes of public representation may be unpublished for the purpose of multiplication of copies and *vice versa*.[5] This rule of law has now lost all its importance under the Act of 1911,[6] except as regards existing works.

The case of private letters is particularly instructive. In the case of a private letter, the property in the ink and paper passes to the receiver, but the property in the order of the words used remains in the writer, and he is entitled to restrain the receiver from publishing the contents, or extracts, or paraphrases from them.[7] At first, in the case of *Pope v. Curl*,[8] the letter was treated as published, and the restraint was grounded on the Statute of Anne; but in later cases it has been based on the non-destruction

[1] Duke of Queensberry v. Shebbeare, [1758] 2 Eden. 694; per Lord Mansfield in Millar v. Taylor, [1769] 4 Burr., at p. 2399.

[2] Mayall v. Higby [1862] 1 H. & C. 148.

[3] Mansell v. Valley Printing Co., [1908] 2 Ch. 441.

[4] [1770] Ambler 694.

[5] *Cf.* also Coleman v. Wathen, [1793] 5 T. R. 245, where it was held that representation of a play on the stage did not constitute an infringement of the literary copyright.

[6] *Cf.* s. 17, where in the case of a posthumous dramatic work copyright endures until performance in public or "publication" (*i.e.*, issue of copies to the public), whichever first may happen, and for a period of fifty years afterwards.

[7] Philip v. Pennell, [1907] 2 Ch. 577.

[8] [1741] 2 Atk. 341.

of the Common Law right by a confidential communication.[1] There are repeated dicta[2] that the receiver has a right to publish the letters if his object is not profit but the vindication of his own character, and if the letters will effectually vindicate him from attacks made by the writer; but the extent of this supposed right is doubtful. Letters must be produced "for the purposes of public justice, publicly administered according to the established institutions of the country."[3] But the only other case in which the receiver has been allowed to publish letters is *Perceval v. Phipps*,[4] before Sir Thomas Plumer; and Lord Eldon suggested in *Gee v. Pritchard*,[5] that this decision might be explained on the following grounds:—(1) The author had implicitly authorised publication; (2) Her conduct had been such as to deprive her of any right to the assistance of the Court of Chancery. Again the decision in *Perceval v. Phipps*,[4] is based partly on the ground that the rule does not apply where the receiver's object is not profit, and partly on the ground that there is no literary property in familiar letters; two propositions both overruled in *Gee v. Pritchard*.[6] It seems doubtful how far *Perceval v. Phipps*[4] can be relied on. Even in vindication of his character, the receiver cannot publish letters to disprove something which he has admitted in Court to be true.[7] It appears that the justification alleged to be contained in the letters must actually exist,[8] and

[1] Thompson v. Stanhope, [1774] Ambler 737; Earl of Granard v. Dunkin, [1809] 1 Ball & B. 207.

[2] Per Lord Eldon in Gee v. Pritchard, [1818] 2 Sw., at p. 427; Bacon V. C. in Lytton v. Devey, [1884] 54 L. J. Ch. 293; see also Woolsey v. Judd, [1855] 4 Duer N. Y. 379 (Am).

[3] Per Lord Eldon in Gee v. Pritchard, [1818] 2 Sw., at p. 427; Hopkinson v. Lord Burghley, [1867] L. R. 2 Ch. 447; *cf.* also Taylor v. Sheppard, [1835] 1 Y. & C. Ex. 280.

[4] [1813] 2 V. & B. 19.

[5] [1818] 2 Sw. 402, 415, 427.

[6] See also Woolsey v. Judd.

[7] Palin v. Gathercole, [1844] 1 Coll. 565.

[8] Lytton v. Devey.

the Court will look at the letters if necessary.[1] The receiver is not allowed to publish the letters for the purpose of attacking the writer's character, even in retaliation for an attack by him.[2] No person who has wrongful possession of the letters may publish them in any case.[3] But a solicitor (or probably any agent), who writes a letter clearly intended to be taken as written on behalf of someone else, cannot restrain publication as against his principal, even although he swears that it was not written in his capacity as agent.[4] The receiver of the letter has the property in the ink and paper, and may maintain detinue or trover for it, even against the writer,[5] and may destroy it, and may also, in the absence of special circumstances, inform his friends of its contents, and make any use of it he pleases, except publication.[6] It has been suggested in an American case that the Government has a right to publish, or to restrain publication of, official letters addressed to it, or to any of its departments.[7]

The right attaches as soon as the work is in any form capable of being pirated; thus, in the case of a lecture, putting the lecture into writing is not necessary. In *Caird v. Sime*,[8] where it appears that the lectures were never reduced to writing, the Lords rested their decision wholly on the ground of property.

Under The Copyright Act, 1911, the right only attaches where the author is a British subject, or resident within the parts of the British Dominions to which the Act

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[1] Gee v. Pritchard. [2] Labouchere v. Hess, [1897] 77 L. T. 559.
[3] Woolsey v. Judd. [4] Howard v. Gunn, [1863] 32 Beav. 462.
[5] Oliver v. Oliver, [1861] 11 C. B. N. S. 139. The damages for conversion are not limited to the value of the paper; Thurston v. Charles, [1905] 21 Times L. R. 659.
[6] Philip v. Pennell, [1907] 2 Ch. 577; Labouchere v. Hess; Gee v. Pritchard; but see Palin v. Gathercole (as to shewing letters).
[7] Folsom v. Marsh, [1841] 2 Story 100 (Am.); *cf.* right of Government to prevent evidence being given as to affairs of State; Stephen's Digest of Evidence, Art. 112.
[8] [1887] 12 App. Cas. 326, Lord Halsbury at pp. 337-9; Lord Watson at 343-4. For absence of manuscript, see p. 335.

extends.[1] Anyone else must rely on International Copyright or on the contractual right of secrecy.[2] The contractual right is wider than the Common Law right, but it is doubtful whether it can be enforced against a purchaser for value without notice.

The right is lost by—

(1) Publication. The publication must be to the world at large and not to a limited class selected by the author.[3] Thus in the case of books private circulation, in the case of lectures delivery to a selected audience, will not divest the Common Law right. But if anyone who chooses can purchase the books or can attend the lecture otherwise than on conditions imposed by the author, then the Common Law right is divested.[4] But the publication must, of course, be with the consent or acquiescence of the owner of the copyright.[5]

(2) Waiver.[6]

(3) Expiration of the statutory term of copyright in certain cases.[7] At Common Law the right, unless lost by publication or waiver, was perpetual; and it still continues to be so in the case of a literary, dramatic, or musical work, or engraving not in any way made public. But in all other cases the statutory period of life and fifty years begins to run, not from publication, but from the creation of the work; and on the expiration of that period the Common Law right lapses as well as the rights which have always depended on Statute.[8]

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[1] 1 & 2 Geo. V. c. 46, s. 1 (1); pp. 50-2, *infra*. [2] See pp. 44-6, *infra*.

[3] Blank v. Footman, [1888] 39 Ch. D. 678; McFarlane v. Hulton, [1899] 1 Ch. 889

[4] See pp. 39-40, *supra*.

[5] This is expressly provided by s. 35 (2).

[6] Scrutton on Copyright, p. 65; Macmillan v. Dent, [1907] 1 Ch. 107.

[7] s. 17. Photographs are excluded from the class of work in which this right is perpetual, although surely no works have a stronger claim to be in it. The customer is, however, protected by the implied contract of secrecy.

[8] s. 31.

Rights arising out of the Repose of Confidence.

The right which has just been dealt with must be carefully distinguished from any contractual rights to prevent publication which the author or his assigns may possess. The former is a right of property resting primarily on the Common Law and available against the world, and is now governed by The Copyright Act, 1911; the contractual rights arise out of the repose of confidence by one party in another, are only available against certain persons, and are entirely unaffected by the Copyright Act. Since the Act their importance has greatly increased, as they are available in cases where there is no copyright; and as, under the Act, a work may fall into the public domain on creation, and then become capable of copyright on publication, the only protection of the author before publication may be his contractual rights.[1]

Apart from an express contract of secrecy, where the circumstances are such that the Court will imply such a contract it will enforce secrecy. Thus where a person is employed by another to discharge duties which necessitate the entrusting to him of secrets or information which it is not reasonable to suppose that the employer intended him to publish to the world, he will be restrained from disclosing those secrets or information, although the employer might have no claim to be protected against the world.[2] This right arises out of an implied contract of secrecy and is enforced at law by an action for damages, in equity by an injunction[3]; and it extends to works which may be the

[1] s. 1 (1). In all probability the present system of International copyright will prevent nearly all practical inconveniences, but it is an unfortunate piece of legislation.

[2] Morison v. Moat, [1851] 9 Ha. 241; Tipping v. Clark, [1843] 2 Ha. 383, at p. 303; Yovatt v. Winyard, [1820] 1 J. & W. 394 (where information was obtained by a breach of trust); James v. James, [1872] L. R. 13 Eq. 421.

[3] Tipping v. Clark, 2 Ha., at p. 393; per Jessel, M. R., in Reuter's Telegram Co. v. Byron, [1874] 43 L. J. Ch. 661; per Kekewich, J., in Merryweather v. Moore, [1892] 2 Ch., at pp. 522-3; per Bowen, L. J., in Lamb v. Evans, [1893] 1 Ch., at p. 220.

subject of copyright. Thus a photographer will not be allowed to sell or exhibit copies of a photograph of a customer, although the negative remains the property of the photograper,[1] unless the circumstances are such as to rebut this presumption.[2] So also a clerk who has left his employers will not be allowed to publish information compiled or to make use of materials collected while in their service[3]: for instance, canvassers who have been employed by the proprietor of one trade directory will not be permitted to use the material so obtained for the purposes of another.[4] Again, a workman employed to make copies for the author cannot make and retain copies for his own use.[5] The actors of a play not yet produced are under an obligation not to divulge its contents.[6] This confidential obligation survives,[7] although the employer has repudiated the contract of service, and so has deprived himself of any right to enforce any of its stipulations.[8] The leading case on the subject is *Prince Albert v. Strange*.[9] In that case Queen Victoria and Prince Albert, who were in the habit of making etchings for their own amusement, entrusted certain of the plates to a workman for the purpose of printing off impressions; and he, in violation of the trust reposed in him, took impressions for himself which got into the hands of Strange. Strange made a collection of them of which he intended to form a public exhibition, and published a catalogue of "The Royal Victoria and Albert Gallery of

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[1] Pollard v. Photographic Co., [1888] 40 Ch. D. 345.

[2] Ellis v. Horace Marshall & Son, [1895] 64 L. J. Q. B. 757. Here the learned judge found that the copyright belonged to the photographer; see p. 180, *infra*.

[3] Merryweather v. Moore, [1892] 2 Ch. 518; Louis v. Smellie, [1895] 11 Times L. R. 515; Robb v. Green, [1895] 2 Q. B. 315; Tipping v. Clarke.

[4] Lamb v. Evans, [1893] 1 Ch. 218, doubting the reasoning in Reuter's Telegram Co. v. Byron, [1874] 43 L. J. Ch. 661.

[5] Tuck v. Priester, [1887] 19 Q. B. D. 629; Prince Albert v. Strange, [1849] 2 D. G. & S. 652, 1 MacN. & G. 25; Murray v. Heath, [1831] 1 B. & Ad., at p. 804.

[6] Gilbert v. Star Newspaper Co. [1894] 11 Times L. R. 4.

[7] Measures Bros., Limited v. Measures, [1910] 1 Ch. 336, affirmed as to another point [1910] 2 Ch. 248.

[8] General Billposting Co. v. Atkinson, [1909] A. C. 118.

[9] [1849] 2 D. G. & S. 652; 1 MacN. & G. 25

Etchings." The Queen and Prince Albert had given certain copies to their friends, but had no intention of publication. Strange was restrained from publishing or in any way parting with the copies, and was ordered to deliver up all copies, and to destroy or deliver up all copies of the catalogue, both on the ground of the Common Law right and also on the ground that his action involved a gross breach of confidence to which he was privy.

It is difficult to say whether many decisions come under this head or under the preceding. As a general rule, under the old law anyone unlawfully publishing a work against the will of its author both infringed the right to restrain publication and committed a breach of trust as well. Consequently, it is difficult to ascertain the exact extent of each right apart from the other. But it appears that, while the right arising out of the repose of confidence is broader than the Common Law right of property, being indeed limited only by the agreement of secrecy which will be implied under the circumstances, and by the power of the Court to enforce that agreement, and probably extends to cases where all copyright is lost, it cannot be enforced against purchasers for value without notice.[1] It does not seem to be in any way affected by The Copyright Act. 1911. Except in the case of a purchaser for value without notice, it is probable that the Courts will under all circumstances imply a contract sufficiently wide to prevent all acts which would have been breaches of the Common Law right before The Copyright Act. 1911, although the author may possess no Imperial copyright in his work, where the work has not been published in any manner.

[1] Per Turner, V. C., in Morison v. Moat, [1951] 9 Ha., at p. 263; *cf.* Philip v. Pennell, [1907] 2 Ch. 577.

Right of Public Performance.

In addition to the Common Law right to restrain publication, "Copyright" as defined by The Copyright Act, 1911, also includes the right of performing a drama or musical work (sometimes referred to as "playright"), and also the exclusive right to deliver the work in public, if a lecture, a right which probably did not exist before the Act of 1911 in the case of a published work.[1]

Works Protected by The Copyright Act, 1911.

The Act applies to "literary, dramatic, musical, and artistic" works,[2] and "artistic work" is defined to include works of painting, drawing, sculpture, and artistic craftsmanship, and architectural works of art and engravings and photographs.[3] But the Act does not apply to designs capable of being registered under The Patents and Designs Act, 1907,[4] except designs which are not used or intended to be used as models or patterns to be multiplied by an industrial process.[5] General rules under the Act of 1907 may be made to determine when a design is so used.[6]

Authorship.

There is no definition of the "author" of a work in the Act, and certain parts of the Act, *e.g.*, the provisions as to duration of copyright and ownership in the case of photographs and mechanical instruments, seem to have been drawn to avoid the necessity of deciding the authorship in difficult cases. For the purpose of deciding the question of authorship we are, therefore, thrown back on decisions under the old law. There is little authority on the point, but the general result seems to be that the author is the last mind or master-mind concerned with the creation of the work. In the case of photographs, it was eventually held that the author was the person who superintended

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[1] s. 1 (2). [2] s. 1 (1). [3] s. 35 (1).
[4] 7 Edw. VII c. 29. [5] 1 & 2 Geo. V. c. 46, s. 22 (1); see pp. 104-5, *infra*.
[6] s. 22 (2).

and directed the taking of the photographs.[1] "In my opinion 'author' involves originating, making, producing, as the inventive or master-mind the thing which is to be protected."[2] In most cases there will be no difficulty. The main difficulty will be in the case of composite works planned by one person as a whole and written by others. Under the Statute of Anne, the projector might be regarded as the author of the composite work as a whole.[3] Under The Copyright Act, 1842, the Court of Appeal was fully prepared to hold in *Lamb v. Evans*,[4] that there were two separate copyrights in a sheet of advertisements, one that of each advertiser in his separate advertisement, the other that of the proprietor of the sheet in the mass as arranged. The copyright of the proprietor could only be obtained by his own authorship. It is submitted that these cases are still good law. On general principles it would seem that the proprietor of a newspaper or other composite work should have the right of restraining other persons from copying his work as a whole, although he might not have copyright in any single article. But this right implies a copyright in the work as a whole, and this copyright must be founded on authorship. In such cases it is not an infringement of copyright in the work as a whole to copy a single article.[5]

The Act clearly contemplates that the author of a work may be a person under a contract of service[6]; *i.e.*, "a person subject to the command of his master as to the manner in which he shall do his work."[7] It does not follow, however, that the actual mechanical execution

[1] Melville v. Mirror of Life Co., [1895] 2 Ch. 531; *cf.* Nottage v. Jackson, [1883] 11 Q. B. D. 627; Wooderson v. Tuck, [1887] 4 Times L. R. 57.

[2] Per Cotton, L. J., in Nottage v. Jackson, [1883] 11 Q. B. D., at p. 635.

[3] Barfield v. Nicholson, [1824] 2 L. J. O. S., at p. 102. *Cf.* under the Act of 1842, Hatton v. Kean, [1859] 7 C. B. N. S. 268; Wallerstein v. Herbert, [1867] 16 L. T. 453.

[4] [1893] 1 Ch. 218.

[5] Walter v. Howe, [1881] 17 Ch. D. 708.

[6] 1 & 2 Geo. V. c. 46 s. 5 (1).

[7] Per Brunwell, L. J., in Yewens v. Noakes, [1880] 6 Q. B. D., at p. 532.

always constitutes authorship. If the workman simply follows the directions of his master without any exercise of his own skill and judgment, he is probably no more the author of the work than a clerk who takes down th words of a book from dictation is the author of the book. On the other hand, the person who merely suggests the idea is not the author of the work.[1]

In the case of photographs made after the 30th June, 1912, the first owner of the negative is deemed to be the author[2]; and in the case of mechanical contrivances, the first owner of the original plate from which such contrivance was directly or indirectly derived, is deemed to be the author.[3]

Joint Authorship.

A joint work is defined as "a work produced by the collaboration of two or more authors, in which the contribution of one author is not distinct from the contribution of the other author or authors."[4] "Collaboration" probably implies a joint design.[5] When a work is created by one man and the second makes alterations in it, the two are not joint authors of the result; if the alterations are insignificant, the first man remains the author; if they are extensive and important, the second man becomes the author of the work in its final shape.[6]

Qualifications for Copyright.

The necessary qualities which a work must possess to be capable of protection under the Law of Copyright are dealt with in the chapters devoted to the different species of copyright works.[7] They mainly depend on judicial

[1] Kenrick v. Lawrence, [1890] 25 Q. B. D. 99; *cf.* Nottage v. Jackson, [1883] 11 Q. B. D. 627.

[2] s. 21. [3] s. 10 (1).

[4] 1 & 2 Geo. V. c. 46 s. 16 (3).

[5] This was the case under the old law; Levy v. Rutley, [1871] L. R. 6 C. P. 523

[6] *Cf.* Levy v. Rutley; Springfield v. Thame, [1903] 89 L. T. 242.

[7] See *infra*, pp. 76-87 for literary works; pp. 104, 108, 182, 104, 105 for artistic.

decisions. Two qualifications are necessary for all kinds: (1) originality, *i.e.*, the work must not infringe the copyright in a copyright work nor be a slavish copy of a non-copyright one; (2) innocency, *i.e.*, the work must not display characteristics forbidden or discouraged by law.

Conditions for acquiring Copyright.

Under The Copyright Act, 1911, the conditions of attaining copyright are—(1) In the case of a work copies of which have not been issued to the public creation by a person who at the date of the making of the work was a British subject[1] or resident within the parts of the Empire to which the Act extends, in which case the "date of the making of the work" means the date of its completion. (2) In the case of a work, copies of which have been issued to the public, issue of copies first within such parts.[2]

In the first case, if the work is one which has taken a considerable period to create, it is sufficient if the author is a British subject or resident within the said parts of the British Dominions during a substantial part of that period.[3]

Nothing is said as to the meaning of the phrase "considerable period." A person domiciled in any part of the British Dominions to which the Act extends is considered resident in that part.[4] In the case of a work of joint authorship it is sufficient if one of the authors fulfils either of these conditions.[5]

In the case of photographs or mechanical contrivances, the first owner of the negative or original plate is deemed to be the author. When the first owner is a body corporate, such body corporate is deemed to be resident within the parts of the British Dominions to which the Act extends if it has established a place of business there.[6]

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[1] Who is not resident in the parts of the British Dominions to which the Act does not extend (s. 26 (3)).

[2] s. 1 (1). [3] s. 35 (4). [4] s. 35 (5).

[5] s. 16 (2). [6] s. 19 (1); s. 21.

In the second case simultaneous publication (by issue of copies) within the parts of the British Dominions to which the Act extends and also in some other place, will vest Imperial copyright in the author or his assigns; and the work is deemed to be published simultaneously in the two places, if the interval does not exceed fourteen days.[1] This period of fourteen days may be lengthened by Order in Council. The issue of copies within the British Dominions must be genuinely intended to satisfy the reasonable requirements of the public and not merely colourable.[1] Where it appears that any foreign country does not afford adequate protection to British authors, the Crown may exclude, by Order in Council, the subjects or citizens of such country not resident[2] in the British Dominions[3] from any benefit to be gained by first publication by issue of copies after the date of the Order within the parts of the British Dominions to which the Act extends.[4] Publication by any method other than by issue of copies will not affect copyright.[5] Thus a drama may be performed or a lecture delivered abroad, or a picture exhibited, or photographs and engravings of a work of sculpture issued, without affecting its Imperial copyright; but the issue of copies of a book or drama or of an artistic work abroad will destroy the copyright. It appears that the issue of engravings or photographs of any artistic work other than a work of sculpture or architecture is an issue of copies sufficient to affect the copyright.

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[1] s. 35 (3).

[2] Probably at the date of the making of the work. The object of the provision seems to be this. An author can gain copyright in two ways—(1) by being a British subject or resident at the date of making the work; (2) by issue of copies within the British Dominions. The Crown is empowered to exclude the subjects or citizens of a Foreign State from the benefits of the latter method. If this is so, then an author already possessing copyright at creation cannot be excluded from the benefits of publication by issue of copies.

[3] Is this limited to the parts to which the Act extends? See note [2].

[4] s. 23. It is clear from this provision that the conditions for obtaining copyright are alternative, not cumulative.

[5] s. 1 (3).

It is therefore clear that a work may fall into the public domain on creation, and afterwards become the subject of copyright. Consequently, the making of copies will be lawful at one time and unlawful afterwards. What will be the position of the manufacturer of copies made before the issue of copies and not sold until afterwards? Can they be lawfully sold? Probably they can, as they are lawfully made.[1] In any case the copier must lose the benefit of any plate exclusively designed for multiplying copies.

Term of Copyright.

The term of copyright in all classes of works (except in the case of photographs, mechanical instruments, and Government publications) is the life of the author and fifty years after his death.[2] This applies to all works in which copyright subsists at the date of the coming into force of the Act.[3] It is, however, subject to the royalty system introduced by the Act, which is allowed twenty-five years after the death of the author, or thirty years after in the case of a work in which copyright exists at the passing of the Act.[4]

Joint Works.

In the case of joint works the term of copyright is the life of the author who dies first and fifty years after his death, or the life of the author who dies last, whichever period shall be the longer.[5]

The royalty system comes into operation twenty-five years after the death of the first author, or after the death of the author who dies last, whichever event shall happen last.[5]

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[1] s. 2 (2). See also Taylor v. Pillow, [1869] L. R. 7 Eq. 418.

[2] s. 3. [3] s. 24 (1).

[4] s. 3. The date of the passing of the Act was the 16th day of December, 1911. "Copyright" includes the Common Law right. For the details of the royalty system, see pp. 55 7, *infra*.

[5] s. 16 (1).

Posthumous Works.

In the case of a literary, dramatic, or musical work, or an engraving, which has not been published by issue of copies or publicly performed or delivered at the date of the death of its author, or the last of its authors, and in which copyright subsists at the date in question, and is not determined by first issue of copies abroad, copyright shall subsist in the work until such publication, or public performance, or delivery and fifty years afterwards.[1] The royalty system comes into operation twenty-five years after publication by issue of copies, or performance, or delivery.

Existing Works.

In the case of works in which copyright exists at the commencement of the Act, the term of copyright is extended to that which would have been given by The Copyright Act, 1911, if it had been in force when the work was made, and the work had been entitled to copyright under it.[2]

This applies to all works, although they may not fulfil the qualifications or the conditions necessary to acquire copyright if they had been made or published after the Act came into force. On a literal construction it would seem that, in the case of an unpublished work, not even first publication by issue of copies abroad after the commencement of the Act, would destroy its copyright; but it is conceived that the Courts would not accept this construction, as contrary to all principles of English Copyright Law.

The extended term becomes the property of the owner of the copyright before the commencement of the Act, or, where the existing copyright has been split up into various interests, the property of the various owners of

[1] s. 17 (1). This seems to be the meaning of the section, which is very badly drafted. The "period" referred to in the section is the period from the coming into operation of the royalty system to the expiration of the copyright.

[2] 24 (1).

those interests, except where the author himself was the first owner of the copyright.[1] In that case the additional term of copyright reverts to the author.[2] But any person, to whom he has assigned the right or granted any interest therein for the whole term, has the option of purchasing the right or the grant of a similar interest for the remainder of the term. If he desires to exercise the option he must give written notice to the author,[3] not more than one year or less than six months before the date at which the right would have expired; and the notice must be sent by registered post or, if the author cannot be found, advertised in the *London Gazette* and two London newspapers. The amount to be paid is to be fixed by arbitration.[3] The owner of the right or interest has also the option to continue to exercise the privileges which he previously enjoyed, subject to the payment of royalties if demanded within three years after the expected termination of the right. The royalties are to be determined by arbitration. Where the work forms part of a collective work of which the assignee or grantee is the "proprietor," no royalties need be paid.[4] There is no definition of "proprietor" in the Act; it is a term borrowed from the Act of 1842, and means the owner of copyright in the collective work as a whole.

Where anyone has, before the 26th July, 1910, incurred any expenditure or liability in connection with the reproduction or performance of any work, which at the time was lawful or would have been lawful but for the passing of The Copyright Act, 1911, all rights or interests

[1] This appears to be the true meaning of the provision. "Copyright" here includes the inchoate right to acquire copyright by publication as well as statutory copyright. A writes a book and sells it to B, who publishes it; A is the first owner of the copyright for the purposes of this section. C writes a book under such circumstances that the copyright vests *ab initio* in D; it is conceived that D is the first owner. E writes a book and gives F a copy of the manuscript, from which the work is published after E's death; F or other the owner of the manuscript at E's death is the first owner of the copyright.

[2] Including his personal representatives. [3] s. 24 (1) (a). [4] s. 24 (1).

arising under such transaction and still valuable and subsisting shall not be prejudiced, unless the person entitled under the Act to restrain reproduction or performance agrees to pay compensation. This seems to mean that, where any one has incurred any legal liability or expenditure for the purpose of doing something, which under the Act is a breach of copyright, but under the law existing at the time would not have been, he can proceed as he could have done if the Act had not been passed, unless the owner of the copyright is prepared to compensate him.

In the case of a work unpublished at the commencement of the Act, copyright is conferred on the owner of the Common Law right to restrain publication.[1] In the case of a dramatic or musical work where the copyright and playright were in different hands before the Act, the owner of the playright has the performing right, but the owner of the copyright acquires all the other rights included in copyright by the Act.[1] Where either the copyright or playright has expired, the expired right is not revived by the Act.

Photographs, Mechanical Records, and Government Publications.

In the case of photographs the term is fifty years from the making of the original negative,[2] and in the case of mechanical instruments for the reproduction of sounds fifty years from the making of the original plate.[3] The term of fifty years from first publication is given to Government publications.[4]

Royalty System.

After the expiration of twenty-five years from the death of the author of a work which has been published

[1] s. 24 (1). First Schedule.
[2] s. 21. "Making" clearly means "completion."
[3] s. 19 (1). [4] s. 19.

by the issue of copies to the public, anyone is at liberty to reproduce the work for sale on the following conditions:—

(1) The prescribed notice in writing must be given to the owner of the copyright;

(2) Royalties must be paid to the owner on all copies sold, calculated at the rate of ten per cent. on the published price.[1]

In the case of a work in which copyright exists at the passing of the Act[2] the period is thirty years after the death of the author.[1]

The Board of Trade are empowered to make regulations concerning the notices to be given and the manner of payment of the royalties.[1] In pursuance of these powers the Copyright Royalty System (General) Regulations were issued. The notice must contain:—

(*a*) The name and address of the person intending to reproduce the work;

(*b*) The name of the work and (if necessary) a sufficient description of it;

(*c*) The intended manner of reproduction;

(*d*) The price; and

(*e*) The earliest date at which a copy will be delivered to a purchaser.[3]

The notice must be sent not less than one month before any copies are delivered to a purchaser, to the owner or his agent for the receipt of notice, if the name and address within the United Kingdom are known or can be ascertained with reasonable diligence; if not, an advertisement must be put in the *London Gazette* giving particulars (*a*) and (*b*), and an address from which a copy of the notice can be obtained.[4]

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[1] s. 3. [2] 10th December, 1911.
[3] Regulation (2). [4] *Ibid.* (3).

Unless otherwise agreed, royalties are payable by means of adhesive labels affixed to the copies. The owner of the copyright must intimate by registered letter to the person giving the notice some reasonably convenient place within the United Kingdom from which such labels can be obtained, and must supply them on demand in writing and tender of the price. No copy may be sold without an adhesive label affixed, unless the owner fails to give such intimation after the expiration of fourteen days after the notice or fails to supply such labels within fourteen days after demand duly made. In these cases the royalties are a debt due to the owner from the person reproducing the work.[1]

The labels must conform to the regulations.[1]

The Act only speaks of copies, but in all probability any work that would otherwise infringe the copyright may be produced under this section, on the principle that the greater includes the lesser.

Extension of Imperial Copyright.

The protection given by The Copyright Act, 1911, extends throughout the British Dominions other than self-governing Dominions.[2] The self-governing Dominions are the Dominions of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.[3] The self-governing Dominions may adopt the Act, if they so desire, or pass copyright laws practically identical with it; and then they will be treated as parts of the British Dominions to which the Act extends.[4]

The Crown is empowered to extend the Act to Cyprus and to any territories under British protection,[5] and by

[1] Regulation (4). [2] s. 25 (1). [3] s. 35 (1).
[4] s. 25. See pp. 197-9, *infra*. [5] s. 28.

an Order in Council[1] of the 24th June, 1912, the Act was extended to Cyprus, and to the following protectorates:—The Bechuanaland Protectorate, East Africa Protectorate, Gambia Protectorate, Gilbert and Ellice Islands Protectorate, Northern Nigeria Protectorate, Northern Territories of the Gold Coast, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia, Sierra Leone Protectorate, Somaliland Protectorate, Southern Nigeria Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Weihaiwei.

Ownership.

First Owner.

Subject to the following exceptions, the first owner of the copyright is the author.[2] In the case of joint authorship the joint authors are probably owners in common. In the two cases of photographs[3] or mechanical instruments for the reproduction of sounds[4] the first owner of the copyright is the owner of the original negative or plate at the time of its making.

Exceptions.—1. Where the author is in employment under a contract of service or apprenticeship and the work is made in the course of that employment then, subject to any agreement, the employer is the first owner of the copyright.[5]

The test as to whether one person employed to do work for another is a servant, is whether the employer retains the power of controlling the work.[6] In *Yewens v. Noakes*[7] Bramwell, L. J., said: "A servant is a person subject to the command of his master as to the manner in which he shall do his work." These principles were

[1] See p. 274, *infra*; *London Gazette*, 28th June, 1912, p. 4658.
[2] s. 5 (1). [3] s. 21.
[4] s. 19 (1). [5] s. 5 (1).
[6] Per Crompton, J., in Sadler v. Henlock, [1855] 4 E. & B., at p. 578.
[7] [1880] 6 Q. B. D., at p. 532.

accepted by the Court of Appeal in *Simmons v. Heath Laundry Company*.[1] "The question to be asked," said Buckley, L. J., "is: was he employed upon the terms that he should within the scope of his employment obey his master's orders, or was he employed to exercise his skill and achieve an indicated result in such manner as, in his judgment, was most likely to ensure success?"[2] If he is bound to render obedience to his employer, it does not matter that in certain circumstances it is his duty to exercise his own judgment.[3]

The principle is quite clear and has long been settled; the only difficulty is to apply it to the case of authorship. There is no authority as to what constitutes a contract of service in this case. The present writer submits the following test:—*Where the author is bound to produce a work and is bound to alter the work as his employer pleases without the option of refusing to go on with the work, the author is the servant of the employer.*

Examples.—(*i*) A agrees to write a book, B agrees to publish it. A writes the book. Unless the book contravenes the conditions of the publishing agreement, B is bound to publish it as A wrote it. A is not B's servant.

(*ii*) A writes an article and offers it to B, the editor of a Review. B refuses to insert it unless A makes certain alterations in it. A will not get it inserted unless he makes those alterations, but he is not bound to make them. A is not B's servant.

(*iii*) A is a reporter for a newspaper, of which B is the editor and proprietor. A is bound to furnish reports, he is also bound to follow B's directions as to the length and nature of his reports and to alter them in accordance with B's directions. A is B's servant.

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[1] [1910] 1 K. B. 543. [2] *Ibid.*, at p. 553.
[3] Walker v. Crystal Palace Football Club, [1910] 1 K. B. 87.

It should be noted that the servant must actually exercise his own skill or judgment; otherwise (it is submitted) he is not the author.[1] Thus a clerk making a plan under minute directions from his employer is not the author of that plan. He is exactly in the position of a clerk writing a letter from dictation.

Where the work is an article or contribution to a periodical, the author is to be deemed to have reserved a right to restrain the publication of the work otherwise than as part of a periodical, in the absence of agreement to the contrary.[2] This right is probably a purely contractual right.[3]

A contract of apprenticeship is a contract where the employer agrees to teach and the employé to serve.[4] There is no apprenticeship without a contract to teach, express or implied; a contract to give the employé an opportunity of learning is not sufficient.[5] There is also authority that the teaching must be the primary object of the contract.[6]

2. Where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered and made for valuable consideration in pursuance of that order, then in the absence of agreement the first owner is the person who gave the order.[7]

3. In the case of Government publications, *i.e.*, works prepared or published under the direction or control of His Majesty or any Government department, the copyright belongs to the Crown, in the absence of agreement to the contrary.[8]

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[1] See pp. 47-9, *supra*. [2] s. 5 (1).
[3] *Cf.* Mayhew v. Maxwell, [1860] 1 J. & H. 312.
[4] St. Pancras v. Clapham, [1860] 2 E. & E. 742; Horan v. Hayhoe, [1904] 1 K. B. 288.
[5] R. v. Shinfield, [1811] 14 East 547.
[6] R. v. Burbach, [1813] 1 M. & S. 370.
[7] s. 5 (1). [8] s. 18.

In the case of joint works not published by issue of copies, only these authors who fulfil the necessary conditions of allegiance or residence are the owners of the legal interest in the copyright.[1] They hold the legal interest as trustees for themselves and the other authors who do not fulfil the necessary conditions.

Transfer.

The owner of the copyright may assign his copyright or any interest therein for any period or over any area, subject to the following exception; but such assignment or licence must be in writing and signed by the grantor or by his duly authorized agent.[2] But if the first owner of the copyright is the author he cannot assign or grant any interest in the right which shall endure beyond the space of twenty-five years from his death otherwise than by will.[3] This applies to all assignments after the passing of the Act (16th December, 1911). It does not apply to an assignment of copyright in a collective work or to a licence to publish a work as part of a collective work.[2]

Copyright is personal property[3] and will descend like other personalty to the owner's next-of-kin on intestacy, and will also pass to the owner's trustee in bankruptcy.[4] The copyright in a work can be assigned as a whole to more than one person as part owners; and they may take either as tenants in common or as joint tenants. But the presumption is that they take as tenants in common.[5] No part owner can grant a valid licence without the consent of all the other part owners.[6] In *Lauri v. Renad*[7]

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[1] s. 13 (2). [2] s. 5 (2).

[3] Latour v. Bland, [1818] 2 Stark 382.

[4] Mawman v. Tegg, [1826] 2 Russ. 385, p. 392.

[5] Lauri v. Renad, [1892] 3 Ch. 402; but there Kekewich, J., relies on the authority of Powell v. Head, [1879] 12 Ch. D. 686. Powell v. Head does not decide this point.

[6] Powell v. Head. [7] [1892] 3 Ch. 402.

Kekewich, J., allowed three part owners to sue without joining the fourth. Nothing was said on this point by the Court of Appeal.

Licences.

A licence must be in writing and signed by the grantor or by his duly authorized agent.[1] It is not part of the copyright, but merely a permission to do what would otherwise infringe the copyright. It is not presumed to be a sole licence.[2] A sole licensee cannot sue in his own name[3]; but it has been suggested that the owner of the copyright must join him as a plaintiff.[4]

Compulsory Licences.

In the case of a literary, dramatic, or musical work which has been published by issue of copies or publicly performed, and of which the owner of the copyright refuses to republish or to allow the republication or performance, the Judicial Committee may, at any time after the death of its author, order the owner of the copyright to grant a licence to republish or perform the work on such terms and subject to such conditions as it may think fit.[5] It will be noted that nothing is said about inadequacy of supply.

Destruction.

Copyright is lost by—

1. Expiration of the term of protection;

2. First issue of copies outside the parts of the British Dominions to which the Act extends.[6]

Infringement.

Infringement of the copyright in a work is committed by making copies of, or performing or delivering in

[1] s. 5 [2]. [2] Warne v. Routledge, [1874] L. R. 18 Eq. 497.

[3] Neilson v. Hornimen, [1909] 26 Times L. R. 188.

[4] Taylor v. Neville, [1878] 26 W. R. 299; Tree v. Bowkett, [1896] 74 L. T. 77; *sed quære* whether these cases are not instances of a partial assignment of copyright. *Cf.* Macmillan v. Dent, [1907] 1 Ch. 107.

[5] s. 4. [6] See s. 1 (1).

public the work in question, or a work derived from it and not recognised by the law as an original and legitimate work, without the consent of the owner.[1] What use of one work in composing or making another will render the latter illegitimate, will be considered later.[2]

Copyright is also infringed by any person who sells or lets for hire, or by way of trade exposes or offers for sale or hire, or distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright, or by way of trade exhibits in public or imports within the British Dominions to which the Act extends, any work which *to his knowledge* infringes copyright, or would do so if made within the parts of the British Dominions in question.[3]

It is also infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance of the work in public, unless he was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of copyright.[4] These acts must all be done within the parts of the British Dominions to which the Act extends to render the infringer liable.[5]

Civil Remedies.

Remedies against the Infringer.

Where copyright is infringed, the owner has all the remedies conferred by law for the protection of a right against any person who infringes it[6]: viz.—

1. Damages. Theoretically the owner of the copyright can recover compersation for all the damage

[1] s. 2 (1).

[2] See pp. 98-119, *infra* for Literary Copyright; pp. 143-8 for Dramatic; pp. 153-9 for Musical; pp. 171-6 for Engravings; pp. 179-180 for Sculpture; pp. 187-191 for Paintings &c.; p. 195 for Architecture.

[3] s. 2 (2). [4] s. 2 (3). See pp. 144-6, *infra*.

[5] Saccharin Corporation v. Rietmayer, [1900] 2 Ch. 659; Badische Anilin und Soda Fabrik v. Hickson, [1906] A. C. 419.

[6] s. 6.

caused to him by the infringement, *i.e.*, by the diminution of his profits, and for any injury done to the reputation of the work. But it appears that the diminution in the sales of the original work is *primâ facie* measured by the number of infringing copies sold, not by any actual fall in the sales. In *Pike v. Nicholas*,[1] James, V. C., directed that the infringer should account for each infringing copy as if it had been a copy of the original work, and should pay to the owner the amount of profit which he would have received from the sale of the same number of copies of the original work. In that case there was no question of any injury to the reputation of the original work. It is submitted that compensation may be recovered for any such injury.[2]

2. An account of profits made by the infringer.[3]

3. An injunction or interdict.[4] This may be granted although only one copy has been wrongfully dealt with.[5]

4. Destruction of all copies made in violation of the owner's rights. This is given by the Common Law,[6] but it is practically superseded by the right given by the Act for the delivery up of infringing copies.

Only an injunction or interdict can be obtained if the defendant alleges and proves that at the date of the infringement he was not aware, and had no reasonable ground for suspecting that copyright existed in the work.[7]

This only applies where the infringer is not aware of the existence of copyright in the original work. It

[1] [1860] L. R. 5 Ch., 251.
[2] Gambart v. Ball, [1863] 14 C. B. N. S. 306; Dicks v. Brooks, [1880] 15 Ch. D. 22.
[3] Baily v. Taylor, [1829] 1 R. & M. 73.
[4] Cooper v. Whittingham, [1880] 15 Ch. 501.
[5] Butterworth v. Kelly, [1886] 4 Times L. R. 430.
[6] Prince Albert v. Strange, [1849] 2 D. G. & S. 652: Hole v. Bradbury, [1879] 12 Ch. D. 886.
[7] *s. 8.*

is no defence that he was not aware that he was committing a breach of copyright; *e.g.*, in the case of a printer who is printing an infringing copy.[1] It is doubtful whether it is a defence that the infringer was not aware of the existence of the work whose copyright he is infringing, *e.g.*, where he is writing a novel founded on a drama, with the permission of the author of the drama, and is not aware that the drama is founded on an earlier copyright novel. It would seem that the infringer must be taken to know of the existence of the work whose copyright he is infringing, and then the question arises whether he had reasonable grounds of suspicion.

The provision only affects remedies, not rights; hence, where the innocent infringer is protected under this section, the infringing work is still illegal and can possess no copyright of its own; and it will be a breach of copyright to sell or distribute the copies after the maker has learnt of the infringement.

In the case of architecture, where the infringing building has been commenced, the owner cannot obtain an injunction restraining its completion or ordering its demolition[2]; and no order for forfeiture can be obtained.[3]

In any action for infringement of copyright in any work, the work is deemed to be a work in which copyright subsists, and the plaintiff is presumed to be the owner, unless the defendant puts these questions in issue.[4] If he puts in issue the plaintiff's title, then, if a name purporting to be that of the author is indicated in the usual manner, the owner of that name is presumed to be the author of the work. If there is no such name, or if the name so indicated is not the author's true name, or

[1] Baschet v. London Illustrated Standard Co., [1900] 1 Ch. 73.
[2] s. 9 (1). [3] s. 9 (2).
[4] 9 (3).

the name by which he is commonly known, and a name purporting to be that of the publisher is indicated in the usual manner, the owner of that name is presumed to be the owner of the copyright.

The costs are in the absolute discretion of the Court.[1]

No action is to be commenced three years after the infringement.[2]

Forfeiture of Infringing Copies.

All infringing copies and all plates used or intended to be used for the production of such copies, are deemed to be the property of the owner of the copyright, who may take proceedings for the recovery of such copies or plates, or for damages for their conversion.[3]

An infringing copy is defined to be "any copy, including any colourable imitation, made or imported in contravention of the provisions of the Act."[4] It is submitted that this definition includes all works made or imported in violation of the rights of the owner of the copyright. There is no reason for convenience for putting a narrower interpretation on it, as the remedies given by the Common Law include the right to the delivery up for destruction of all copies made in contravention of the owner's rights. Where part of the infringing work is innocent the whole must be delivered up, unless the innocent part can be severed from the infringing part.[5]

This provision does not apply to the case of architecture.

"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,

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[1] s. 6 (2). [2] s. 10.
[3] s. 7. [4] s. 35 (1).
[5] Warne v. Seebohm, [1888] 39 Ch. D. 73; Boosey v. Whight (No. 2), [1899] 81 L. T. 265.

perforated rolls, or other contrivances for the acoustic representation of the work, are, or are intended to be made."[1] It is submitted that the essential distinction between plate which is to be forfeited under this provision, and plate which is not, is that the former can only be used for the production of infringing copies.

It is submitted that an action for the delivery up of infringing copies is not "an action for infringement of copyright"; it is an action for the recovery of property[2] and can be brought against innocent parties. If this is so, none of the provisions dealing with proof of the ownership of the copyright, or protecting the innocent infringer, or limiting the time for bringing actions, will apply.

Summary Remedies.

If a person knowingly—

(1) Makes for sale or hire, or

(2) Sells or lets on hire or by way of trade exposes or offers for sale or hire, or

(3) Distributes for the parposes of trade or to such an extent as to affect prejudicially the owner, or

(4) By way of trade exhibits in public, or

(5) Imports for sale or hire into the United Kingdom any infringing copy or copies of any work in which copyright exists;

he commits an offence under the Act punishable on summary conviction by a fine not exceeding forty shillings per copy and fifty pounds in respect of a single transaction: or, in the case of a second or subsequent offence, by imprisonment with or without hard labour for a term not exceeding two months.[3]

[1] s. 35 (1).

[2] *Cf.* Muddock v. Blackwood, [1808] 1 Ch. 58.

[3] s. 11 (1).

If a person makes or has in his possession any plate for the purpose of making infringing copies, or knowingly and for his private profit causes any copyright work to be performed in public without the consent of the owner, he is liable on summary conviction to a fine not exceeding fifty pounds, or on a second or subsequent offence to imprisonment, with or without hard labour, for a term not exceeding two months.[1] The Court may order all infringing copies or all plates for making them in the possession of the alleged offender to be destroyed, or delivered up to the owner of the copyright, whether the alleged offender is convicted or not.[2]

An appeal from a summary conviction lies to Quarter Sessions.[3]

These provisions only extend to the United Kingdom,[4] and are not applicable to infringing copies of architectural work.[5]

Importation of Copies.

The owner of the copyright in any work may give notice in writing to the Commissioners of Customs and Excise that he desires that copies of the work made without his consent shall not be imported into the United Kingdom, and in that case the importation of such copies is forbidden.[6] The Commissioners are empowered to make regulations concerning the information to be given and other conditions to be complied with before ordering the detention of the imported copies;[7] and such conditions may include the indemnification of the Commissioners against all expenses and damages incurred

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[1] s. 11 (2). [2] s. 11 (3).
[3] s. 12. [4] s. 13.
[5] s. 9 (2). As to summary remedies in the case of musical works see pp. 160-2, *infra*.
[6] s. 14 (1). [7] s. 14 (2), (3).

through such detention.[1] The regulations may also deal with the security to be given and the evidence necessary,[1] and may vary with the different classes of work.[2] The copies may be destroyed or otherwise dealt with as the Commissioners direct.[3] For the purposes of this section the United Kingdom does not include the Isle of Man.[4] These provisions apply with the necessary modifications to importation into a British Possession to which the Act extends.[5]

By the Regulations[6] of the 19th June, 1912, the Commissioners provide forms of notice to be given by the owner of the copyright, and a statutory declaration to be made by him. He must also, before any article is detained, give such further information and evidence, if the Commissioners so desire, as may satisfy them that the article is liable to detention or forfeiture, and must also deposit a sum of money sufficient to cover the expenses of the examination of the goods. If so required, he must give an undertaking to indemnify the Commissioners against all expenses and damages, and must also enter into a bond with two sureties within four days after the detention. Apparently only copies of the original work are excluded by the provision, not colourable imitations.

Right to Restrain "Passing Off."

The preceding pages describe the system set up by The Copyright Act, 1911. Roughly speaking, all rights in the nature of copyright depend solely on that Act. But the owner of copyright possesses another right in his work given him solely by the Common Law, the right to restrain "passing off."[7] At one time the right

[1] s. 14 (5).
[2] s. 14 (4).
[3] 39 & 40 Vict. c. 30, s. 42.
[4] s. 14 (6).
[5] 1 & 2 Geo. V. c. 46, s. 14 (7).
[6] See pp. 267–271 *infra*.
[7] *Cf.* Reddaway v. Banham, [1896] A. C. 199.

was grounded on a supposed copyright in the title of the work; but since *Dicks v. Yates*[1] it is clear that the right rests on the Common Law and not on the Law of Copyright. There cannot, as a general rule, be copyright in a title[2]; there may possibly be such in a page of title.[3]

Two conditions are necessary to give a right of action, viz.—(1) The original work must have acquired a reputation in the market, (2) the second work must be likely to deceive persons of ordinary intelligence into buying it instead of the original. (1) If the work has acquired no reputation in the market, no one will be deceived into buying the second in mistake for it; thus in *Maxwell v. Hogg*[4] two rival publishers projected magazines with identical titles: viz.—"Belgravia," which in the case of one publisher had been extensively advertised for two months, and in the case of the other the title had been entered at Stationer's Hall three years previously. but, as no reputation had been acquired by publication. neither publisher was allowed to restrain the other from using the name "Belgravia." Again, in *Licensed Victuallers' Newspaper Co. v. Bingham*,[5] the owners of the first newspaper failed to restrain the publication of the second, on the ground that no reputation could be acquired by publication for three days with a very small sale (80 copies). And in *Franke v. Chappell*[6] an injunction to restrain the defendants from describing their concerts as "Richter Concerts" was refused, as the plaintiff failed to shew that the term "Richter Concerts" meant the plaintiff's concerts (previously, but no longer, conducted by Dr. Richter).

[1] [1881] 18 Ch. D. 76; Hogg v. Kirby, [1803] 8 Ves 215, per Lord Eldon, p. 223.

[2] Schove v. Schmincké, [1886] 33 Ch. D. 546; Crotch v. Arnold, [1900] 54 S. J. 49. Weldon v. Dicks, [1878] 10 Ch. D, 247, must be treated as bad law; Dicks v. Yates; Licensed Victuallers' Newspaper v. Bingham, [1888] 38 Ch. D. 139 (per Lindley, L. J., at p. 142).

[3] Per Jessel, M. R., Dicks v. Yates, 18 Ch. D., at p. 89.

[4] [1867] L. R. 2 Ch. 307, judgment of Cairns, L. J.

[5] [1888] 38 Ch. D. 139.

[6] [1887] 57 L. T. 141; Schove v. Schmincké, [1886] 33 Ch. D. 546.

(2) The second publication must also be calculated to deceive sensible people into buying it in mistake for the original, and all circumstances, the size, shape, and appearance of the works, and, if they are newspapers, the times of publication, will be taken into account. Thus in *Bradbury v. Beeton*,[1] an application by the proprietors of *Punch* to restrain the publication of a comic journal, which differed in appearance from the threepenny *Punch* and was actually published on a different day of the week (though nominally on the same day), under the title of "*Punch & Judy*," was dismissed, although Malins, V.C., thought that the title had been chosen on account of the plaintiff's reputation. In *Cowen v. Hulton*,[2] the proprietor of the *Newcastle Chronicle* failed to restrain the publication in the same town, Newcastle, of another paper under the title of *The Sporting Chronicle & Prophetic Bell*, with different appearance and contents; and in *Walter v. Emmott*,[3] the proprietor of a twopenny paper published three times a week at 11 a.m., called the *Mail*, failed to restrain the publication of a daily halfpenny paper published at 3 a.m., also called the *Mail*. The intention of the publisher of the second newspaper to deceive the public does not make him liable, if the public are not in fact deceived, although he may be deprived of his costs on this ground.[4] On the other hand the defendent is not protected by the absence of any intention to deceive, if the actual result has been to damage the plaintiff by deceiving the public.[5] Besides deceiving the public, the second work must cause, or in the natural course of events, must be likely to

[1] [1869] 18 W. R. 33.
[2] [1882] 46 L. T. 807.
[3] [1885] 54 L. J. Ch. 1059.
[4] Bradbury v. Beeton, *supra*; Borthwick v. *The Evening Post*, [1888] 37 Ch. D. 449.
[5] Clement v. Maddick, [1859] 1 Giff. 98, 5 Jur. N. S. 592 (*sed quære* if this does not rest on the exploded ground of copyright); per Bowen L. J. in Walter v. Emmott, 54 L. J. Ch. at p. 1064.

cause damage to the sale of the first. Without this there is no cause of action. Thus in *Borthwick v. The Evening Post*,[1] the proprietor of the well-known daily newspaper, *The Morning Post*, sought to restrain the publication of a daily evening newspaper under the title of *The Evening Post*. The Court found as a fact that the name had been taken for the purpose of deceiving the public into the belief that there was some connection with *The Morning Post*, and that a certain number of people had been deceived. But, as it was not suggested that *The Evening Post* would be mistaken for *The Morning Post*, and it was difficult to see how a single copy the less of *The Morning Post* would be sold in consequence of the issue of *The Evening Post*, an injunction was refused. "There has been an attempt to deceive the public, but there has not been shewn to be within any measurable distance any probability of injuring *The Morning Post*. A person would not buy *The Morning Post* the less because he buys *The Evening Post*."[2] This case was, however, very near the line. The fact that the new paper might hamper the development of the old (*e.g.*, that the old might be unable to bring out an evening edition under the most appropriate name), or that discredit might be thrown on the old by reason of the inferior character of the new, and its different attitude with regard to politics, is not considered damage of which the Courts can take note.[3]

The appearance of the works, the times of publication, if newspapers, and the prices, are all taken into consideration, as well as the similarity of title, but the following cases may be useful as examples. In *Ingram v. Stiff*,[4] the proprietor of a weekly journal, *The London Journal*,

[1] [1888] 37 Ch. D. 449.

[2] Per Bowen L. J. 37 Ch. D. at p. 464.

[3] Borthwick v. *The Evening Post* (*supra*) and Walter v. Emmott, [1885] 54 L. J. Ch. 1050.

[4] [1859] 5 Jur. N. S. 947.

succeeded in preventing the publication of *The Daily London Journal*, and in *Clement v. Maddick*,[1] the publishers of *Bell's Life* restrained the publication of a *Penny Bell's Life*. and in *Mack v. Petter*,[2] the publisher of "The Birthday Scripture Text Book" restrained the publication of "The Children's Birthday Text Book." On the other hand in *Kelly v. Byles*,[3] the proprietor of the *Post Office Directory of the West Riding of Yorkshire* failed to restrain the publication of the *Post Office Bradford Directory*. But each case depends so much on its own particular facts that, apart from the general principles, now so well settled. on which the Court proceeds, the cases are only valuable as illustrations.[4] The Court will also restrain the proprietor of one work from advertising it in terms calculated to induce the public to believe it is another work.[5]

Author's Reputation.

When the author has sold the copyright in his work, the purchaser is entitled to alter the work as he pleases[6]; but, if he injures the author's reputation by publishing the work in its altered shape as being entirely the work of the original author, he is liable to an action for libel.[7]

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[1] [1859] 1 Giff. 98, 5 Jur. N. S. 502.

[2] [1872] L. R. 14 Eq. 431.

[3] [1879] 13 Ch. D. 682.

[4] See also Chappell v. Sheard, [1855] 2 K. & J. 117; Kelly v. Hutton, [1868] L. R. 3 Ch. 703; Metzler v. Wood, [1878] 8 Ch. D. 606; Walter v. Head, 25 Sol. J. 742, 757; The Primrose Press Agency Co. v. Knowles, [1885] 2 Times L. R. 404; Talbot v. Judges, [1887] 3 Times L. R. 398; Reed v. O'Meara, [1888] 21 L. R. Ir. 216; Prowett v. Mortimer, [1856] 2 Jur. N. S. 414; Chance v. Sheppard, [1869] Sebastian's Digest, p. 189; Edmonds v. Benbow, [1821] Sebastian's Digest, p. 16.

[5] Seeley v. Fisher, [1841] 11 Simons 581.

[6] Cox v. Cox, [1853] 11 Hare 118.

[7] Archbold v. Sweet, [1832] 5 C. & P. 219; Lee v. Giblings, [1892] 67 L. T. 263.

SPECIAL PART.

CHAPTER III.

LITERARY COPYRIGHT.

Statutes.

PRIOR to the 1st July, 1912, the law of literary copyright rested on The Copyright Act, 1842. Since then it rests on The Copyright Act, 1911.

Definition of a "Book."

The Copyright Act, 1842, confers copyright only on books, and defines a book as meaning and including "every volume, part, or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published."[1] A copy of every "book" is required to be delivered to the British Museum.[2] The Act of 1911 confers copyright on "literary" works,[3] but requires delivery of copies of "books" to the British Museum[4]; and a "book" is defined to include "every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart, or table separately published."[5] It would seem, therefore, that the Act of 1842 restricts copyright to works of such a character as to be furnished to the British Museum. Thus writing on a tombstone would probably not be protected under the Act of 1842. Apart from this, no particular shape or binding is necessary to constitute a "book"; the one thing needful is the power of communicating information by words or signs.[6]

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[1] 5 & 6 Vict. c. 45, s. 2. [2] s. 6.

[3] 1 & 2 Geo. V. c. 46, s. 1 (1). "Literary work" includes maps, charts, plans, tables, and compilations, s. 35 (1).

[4] s. 15.

[5] s. 15 (7). [6] See pp. 76-8, *infra*.

Thus a folding card in the shape of the human hand, containing verses, has been held to be a "book" within the meaning of the Act,[1] and a form of application written out on a single sheet.[2]

After some difference of opinion newspapers have been held to be within the definition.[3]

The definition does not include anything which can be described as part of a machine,[4] nor directions on machines or tools as to the proper method of using them.[5] This is probably the case under The Copyright Act, 1911.

"*Separately Published.*"

In *Johnson v. Newnes*[6] the meaning of the words "separately published" was considered. There the author of a serial story in a magazine, who had not parted with his copyright, sought to restrain the publication of the story in separate form by the proprietor. It was objected that he had no title to sue, as his work had not been "separately published." But the Court held that, as the story could be distinguished from the other contributions, it was "separately published" within the meaning of the Act, and therefore the author was entitled to sue without publishing his work in volume form.

In *Aflalo v. Lawrence*[7] Romer and Stirling, L. JJ., followed *Johnson v. Newnes*,[8] but Vaughan Williams, L. J., expressed the opinion that "separate publication" did not

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[1] Hildesheimer v. Dunn, [1891] 64 L. T. 452.

[2] Southern v. Bailes, [1894] 38 Sol. J. 681.

[3] Walter v. Howe, [1881] 17 Ch. D. 708; Trade Auxiliary Co. v. Middlesborough Tradesmen's Association, [1888] 40 Ch. D., at pp. 435-6; Cate v. Devon Newspaper Co., [1889] 40 Ch. D., at p. 503. Cox v. Land and Water Journal Co., [1869] L. R. 9 Eq. 324 must now be taken to be wrongly decided.

[4] Boosey v. Whight, [1900] 1 Ch. 122; Newmark v. National Phonograph Co., [1907] 23 Times L. R. 430.

[5] Boosey v. Whight; Hollinrake v. Truswell, [1894] 3 Ch., at p. 426 (per Lindley, L. J.)

[6] [1894] 3 Ch. 663.

[7] [1903] 1 Ch. 318.

[8] [1894] 3 Ch. 663.

include publication with other articles in a collective work which formed a complete whole in itself. The decision of the Court of Appeal was reversed in the House of Lords,[1] but no opinion was expressed about the meaning of the words "separately published."

Qualifications for Copyright.

For a literary work to be capable of protection under the Copyright Acts it must fulfil three conditions.

Literary Nature.

I. *The work must be of a literary nature*, i.e., *capable of conveying ideas or information by means of words, or signs, or illustrations.* No literary merit is required as the law is quite unable to measure this.[2] But the work must be literary in nature, for the protection granted to books will not be extended to tools. Thus protection will be extended to a catalogue of books unless it is a mere "dry" list of names,[3] and to an alphabetical catalogue of articles, medicines, and drugs of use to veterinary surgeons with their prices sold by the advertiser,[4] and to a list of brood mares,[5] and to a Court Calendar.[6] The calculator of a set of mathematical tables has copyright in his own set.[7] Again, after some difference of judicial opinion, it has been decided that there is copyright in a descriptive advertise-

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[1] Lawrence v. Aflalo, [1904] A. C. 17.

[2] Per Lord Halsbury, in Walter v. Lane, [1900] A. C., at p. 549; per Lord Davey, at p. 552: per Lord Brampton, at p. 558: *cf.* also dicta of Jessel, M. R., in Maple's Case, [1882] 21 Ch. D., at p. 377. The contrary opinion is expressed in Scrutton on Copyright [4th Ed.], p. 114, and by Parker, J., in Weatherby v. International Horse Exchange, Limited [1910] 2 Ch., at p. 304. *But it is submitted that the requirement* of literary merit is without foundation. The cases only show that the protection intended for books will not be extended to (1) works of art; (2) tools; (3) mere expressions of opinion.

[3] Hotten v. Arthur, [1863] 1 H. & M. 603.

[4] Collis v. Cater, [1898] 78 L. T. 613.

[5] Weatherby v. International Horse Exchange, Limited [1910] 2 Ch. 297; *cf.* Cox v. Land and Water Journal Co., [1869] L. R. 9 Eq. 324.

[6] Longman v. Winchester, [1809] 16 Ves. 269; *cf.* Matthewson v. Stockdale, [1806] 12 Ves. 270.

[7] Bailey v. Taylor, [1824] 3 L. J. O. S. 66; Macneill v. Williams, [1847] 11 Jur. 344.

ment[1]; and a man may have copyright in the arrangement of a mass of advertisements, although he does not possess copyright in any single advertisement.[2] A telegraphic code has been protected from infringement,[3] and a shorthand system.[4] In *Trade Auxiliary Co. v. Middlesborough Tradesmen's Association*[5] the Court of Appeal restrained the copying of lists of bills of sale and deeds of arrangement, a work requiring merely labour and expense, in the plaintiff's periodicals; and in *Leslie v. Young*[6] the House of Lords protected a compilation of circular tours, described by Lord Herschell as "containing an abridgment of information of a very useful character," although the rest of the case (charging the defendant with having infringed the plaintiff's copyright in a time table, compiled by copying the time tables issued by the railway companies with certain stations left out) was dismissed in the absence of any proof of direct copying from the plaintiff's work.[7] In *Carnan v. Bowles*[8] a road book was protected under the Statute of Anne.

Engravings and illustrations composing part of a book are within The Copyright Act, 1842.[9] It is now settled that there may be copyright in illustrations to a book which contains no copyright letterpress.[10] In *Davis v. Benjamin*,[11] Swinfen Eady, J., gave protection under the

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[1] Grace v. Newman, [1875] L. R. 19 Eq. 623; Maple v. Junior Army and Navy Stores, [1882] 21 Ch. D. 369, over-ruling Cobbett v. Woodward, [1872] L. R. 14 Eq. 407.

[2] Lamb v. Evans, [1893] 1 Ch. 218.

[3] Ager v. P. and O. Navigation Co., [1884] 26 Ch. D. 637.

[4] Pitman v. Hine, [1884] 1 Times L. R. 30.

[5] [1888] 40 Ch. D. 435. [6] [1894] A. C. 335.

[7] The headnote and some of the dicta of Lord Herschell go further; but this, I submit, is the meaning of the decision. It is admitted that in the case of direct copying the copyright might be infringed (p. 341); and this implies that copyright exists. The only point decided is that copying will not be presumed where it was so easy for the defendants to go to the originals and compile the same tables for themselves.

[8] [1786] 2 Bro. C. C. 80.

[9] Bogue v. Houlston, [1852] 5 D. G. & S. 267; Marshall v. Bull, [1901] 85 L.T. 77. The illustrations need not be physically attached to the work, Comyns v. Hyde, [1895] 13 R. 362. *Cf.* Petty v. Taylor, [1897] 1 Ch. 465, p. 475.

[10] Maple v. Junior Army and Navy Stores, [1882] 21 Ch. D. 369

[11] [1906] 2 Ch. 491

Literary Copyright Act to sheets of drawings with no letterpress except the name of the advertising firm and the names and prices of the articles. In all probability a book of drawings without letterpress would be protected under the Act. In *Maple v. Junior Army and Navy Stores*,[1] Jessel, M. R., said: "There may be such things as picture books for those who cannot read letterpress." On the other hand, in *Schove v. Schmincké*,[2] Chitty, J., was prepared to hold that an album for holding photographs with pictorial borders containing views of castles with short descriptions attached was not a "book" within the Act: but this was doubted by Kekewich, J., in *Hildesheimer v. Dunn*.[3] If an illustration is first published as a poster, it cannot be protected as part of the book.[4] In *Stannard v. Lee*[5] a map was held by the Court of Appeal to be within the protection of The Copyright Act, 1842. It was, said James, L. J., intended to convey information, and was therefore properly protected as a literary work. In *Hildesheimer v. Dunn*[6] a card representing a gloved hand and cut to the exact shape and size of the human hand, which opened bookwise and contained on one side certain verses and on the other the lines of palmistry, was held to be properly registered under both The Literary Copyright Act, 1842, and The Fine Arts Copyright Act, 1862. It was not, however, decided under which Act the representation of the lines of palmistry was properly registered.

In *Hollinrake v. Truswell*[7] the Court of Appeal refused protection to a cardboard pattern containing upon it scales, figures, and descriptive words, for adapting it to sleeves of

[1] [1882] 21 Ch. D., at p. 377.
[2] [1886] 33 Ch. D. 546. [3] [1891] 64 L. T. 452, at p. 454.
[4] Strong v. Worskett, [1893] 12 Times L. R. 532.
[5] [1871] L. R. 6 Ch. 346. [6] [1891] 64 L. T. 452.
[7] [1894] 3 Ch. 420; Contrast Drury v. Ewing, [1862] Bond 540, but that was the case of a chart containing diagrams and instructions and not a tool to be used for measurement. It came under the American Act, 1831.

any dimensions, on the ground that it was not a literary production, though it might be protected as a patent or a tool. So also in *Cable v. Marks*[1] Bacon, V. C., held a piece of perforated cardboard, called "The Christograph," perforated so as to throw a shadow closely resembling the picture "*Ecce Homo*," not to be "a literary production in any sense of the word." In *Davis v. Comitti*[2] Chitty, J., held that the printed face of a barometer was incapable of protection as a literary work, as the face was meaningless apart from the barometer, and the whole barometer could not be considered a literary work. In *Boosey v. Whight*[3] where the infringement complained of consisted in selling perforated rolls of paper representing the musical score of certain songs, on which rolls particular directions as to time and expression had been copied from the plaintiff's sheets of music, it was held that there was no copyright in such directions. And in *Page v. Wisden*[4] Malins, V. C., refused protection to a cricket scoring sheet in which the only novelty was a line for recording the runs at the fall of each wicket. "To say that a particular mode of ruling a book constituted an object for copyright is absurd." The absence of originality was the reason why protection was refused to the sheet as a whole; thus in *Southern v. Bailes*[5] Chitty, J., protected a form of application for students issued by a tutor. It would seem to follow from the decision in *Davis v. Comitti*[2] that a meaningless collection of words is not the subject of copyright; and in *Fournet v. Pearson, Limited*,[6] where a jury found that a drunken scrawl was not a literary composition on the ground of its utter unintelligibility, the Court of Appeal refused a new trial.

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[1] [1882] 47 L. T. 432.
[2] [1885] 52 L. T. 539.
[3] [1900] 1 Ch. 122.
[4] [1869] 20 L. T. 435.
[5] [1894] 38 Sol. J. 681.
[6] [1897] 14 Times L. R. 82.

There is no copyright in a general subject,[1] or in ideas or opinions. Thus in *Kenrick v. Lawrence*[2] the plaintiffs had invented a card representing a hand holding a pencil in the act of making a cross on a voting paper, with a view to such cards being used for the guidance and instruction of illiterate voters. The defendants published a card with a hand in a slightly different position making a cross as in the plaintiff's card. Wills, J., held that what had been taken by the defendant was the plaintiff's idea, not the form in which he had clothed it, and that the idea was not the subject of copyright. There is no copyright in a system of treating a subject; thus in *Jarrold v. Houlston*,[3] it was held that one author could not prevent another throwing the information he wished to convey into the form of question and answer. So in American cases it has been held that a system of arbitrary signs for maps[4] and a particular system of book-keeping[5] are not subjects of copyright. In *Chilton v. Progress Printing Company*[6] the Court of Appeal refused to protect certain "sporting tips," consisting of the name of a race and the name of a horse, on the ground that such "tips" were merely an expression of opinion which everyone was entitled to make use of, and not a literary composition which was intended to be protected. But the form in which news is conveyed is capable of protection; thus, in *Walter v. Steinkopff*,[7] the copying of three trivial

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[1] Wilkins v. Aikin, [1810] 17 Ves. 422.

[2] [1890] 25 Q. B. D. 99.

[3] [1857] 3. K. & J. 708.

[4] Perris v. Hexamer, [1878] 9 Otto 674 (Am.).

[5] Baker v. Seldon, [1879] 11 Otto 99 (Am.).

[6] [1895] 2 Ch. 29; *Cf.* Millar v. Wane, [1894] 11 Times L. R. 130.

[7] [1892] 3 Ch. 489. The infringement complained of was the copying of an important literary article and three trivial news paragraphs. After the commencement of the action the defendants offered an undertaking not to publish the article again, but refused to undertake with regard to the news paragraphs. The plaintiffs were disallowed their costs subsequent to the offer (see p. 105, *infra*).

news paragraphs was restrained. In *Boosey v. Whight*[1] perforated rolls for a mechanical organ were held to be parts of a machine for the purposes of infringement. It is conceived that they would be held incapable of copyright before The Copyright Act, 1911.

As a general rule there can be no copyright in a title.[2]

Innocency.

II. *The work must be innocent, i.e.*—

(1) Not forbidden by the criminal law. Thus protection will be refused to seditious[3] or libellous works, at any rate where the libel is so gross as to affect the public morals,[4] and probably if they are merely libels on individuals.[5] And it must not be blasphemous; thus protection was refused by the Court of Chancery to Lawrence's "Lectures on Physiology" as hostile to revealed religion and to the doctrines of the immateriality and immortality of the soul,[6] until the plaintiff had established his right at law. Lord Eldon also refused protection to Lord Byron's "Cain"[7] and Sir John Leach to his "Don Juan" on similar grounds. But this case will not be construed so as to prevent the putting forth of heterodox views in a grave and decent manner; thus in the case of *Hopps v. Long*[8] the Sheriff's Court of Lanarkshire held that a work entitled "The Life of Jesus, re-written for young Disciples," written from the Unitarian point of view, was capable of

[1] [1900] 1 Ch. 122.

[2] Crotch v. Arnold, [1909] 54 S. J. 40; Dicks v. Yates, [1881] 18 Ch D. 76. In America it has been held that there is no copyright in a label; Coffeen v. Brunton, [1849] 4 McLean 516 (Am.); Higgins v. Keufell, [1880] 33 Davis, 428 (Am.)

[3] Southey v. Sherwood, [1817] 2 Mer. 435.

[4] Hime v. Dale, [1803] 2 Camp. 27 n.; Stockdale v. Onwhyn, [1826] 5 B. & C. 173.

[5] Stockdale v. Onwhyn. The book was refused protection both on the ground of licentiousness, and also on the ground that parts were libels on individuals.

[6] Lawrence v. Smith, [1822] 1 Jacob 471.

[7] Murray v. Benbow, [1822] 1 Jacob 474 n.

[8] Cited in Copinger (4th Ed.), p. 78.

copyright. Blasphemy, it would seem, consists in the manner in which doctrines hostile to Christianity are put forward, not in the doctrines themselves.

(2) Not forbidden by the civil law, *e.g.*, not fraudulent; *i.e.*, not a work expressly intended to deceive the public. Thus a work purporting to be a translation of a devotional work by Sturm[1] was refused protection. as this was a serious statement calculated to deceive persons into buying the work who would not otherwise have bought it, and not a mere harmless fiction not calculated to deceive the public, or to injure them if believed, such as the profession that "The Castle of Otranto" was a translation from the Italian; and so also protection was refused to an illustrated catalogue of articles manufactured by the author, in which he represented himself as "Inventor, Patentee and Sole Maker" of large numbers, falsely so far as England was concerned.[2] But in the case of *Macfarlane v. Oak Foundry Co.*,[3] where the plaintiffs were charged with inserting untrue statements in their catalogue to deceive the public, and a few instances were given of articles described as registered which either never had been or had ceased to be registered, and a large number of articles described as "patent" which were not patent, the Court gave judgment for the plaintiffs. It was held not sufficient to show that the authors were guilty of mistakes involving a penalty, but that it must be shown that the book was deliberately intended to make money by misrepresentation. The full scope of this decision is not clear. It is, of course, obvious that mere mistakes do not render the book incapable of copyright. But this decision strongly suggests

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[1] Wright v. Tallis, [1845] 1 C. B. 893.

[2] Slingsby v. Bradford Patent Truck Co., [1905] W. N. 122, affirmed by C. A., [1906] W N 51.

[3] [1883] 10 Scotch Sess. Cases (4th Series) 801; *cf.* Hayward Brothers v. Lely, [1887] 56 L. T. 418.

that a book may be capable of copyright although it contains a small proportion of statements calculated and expressly intended to deceive the public, provided that, apart from this small proportion, it is an honest and useful work.

(3) Not immoral or indecent. Thus the memoirs of a courtesan were refused protection.[1] In the event of the indecency being repeated by the infringer an action for infringement will be dismissed without costs.[2]

The denial of protection to works of a criminal, immoral, or fraudulent nature does not rest on Statute; it is simply an instance of the general policy of the law in its discouragement of vice. The denial of copyright to works infringing the rights of other authors is probably another instance of the same rule,[3] but it is convenient to treat it separately.

Originality.

III. *The work must be original.* This has been laid down by all text-writers on the subject,[4] and is now expressly required by The Copyright Act, 1911,[5] but it is extremely difficult to say in what sense the work must be original. The work must not be an infringement of another work in which copyright subsists[6]; but, apart from this, it is difficult to say what is required. A work may be capable of copyright which would have infringed the copyright in another work, had not the copyright in that work expired. Thus in *Walter v. Lane*[7] the defendant published a book called "Appreciations and Addresses: Lord

[1] Stockdale v. Onwhyn, [1826] 5 B. & C. 173.
[2] Bascbet v. London Illustrated Standard Co., [1900] 1 Ch. 73.
[3] Cary v. Faden, [1799] 5 Ves. 24; Barfield v. Nicholson [1824] 2 Sim. & St. 1.
[4] Copinger, p. 38 (3rd Edition); Scrutton, p. 119.
[5] s. 1 (1). [6] Barfield v. Nicholson, [1824] 2 Sim. & St. 1.
[7] [1900] A. C. 539.

Rosebery." It consisted of reports of public speeches delivered by Lord Rosebery, taken (substantially verbatim) from the reports in *The Times*, but slight alterations were made by comparing them with other reports. The copyright in the speeches had ceased on publication. It was held that a verbatim report, requiring "labour, skill, and capital" to produce it, was a book within The Copyright Act, 1842, of which the reporter was the "author," and was, therefore, capable of copyright. Hence, although the speeches were now *publici juris*. and the defendant was perfectly entitled to reproduce them verbatim, he was not entitled to copy *The Times* reports for that purpose.

It may be that the reporter can only be considered the "author" of the report within The Copyright Act, 1842, when, without him, the work would be entirely lost.[1] Mere copying does not give a copyright; thus in *Wyatt v. Barnard*[2] Lord Eldon refused to protect specifications of patents copied at the Patent Office. But it may be that this decision is no longer law as far as direct copying from the first copy and not from the originals in the Patent Office is concerned, where there is any real difficulty or trouble in copying them.[3] It appears to be settled that there is copyright in law reports; thus in *Butterworth v. Robinson*[4] an interlocutory injunction until answer, and in *Sweet v. Maugham*[5] an injunction until action brought, were granted to restrain the copying of law reports. In *Hodges v. Welsh*[6] a perpetual injunction

[1] *Cf.* judgment of Lord Brampton, [1900] A. C., at p. 559. It has been suggested that any person who first reduces any literary matter to "book" form is the author; and the fact of reduction to "book" form confers sufficient originality; Macgillivray, p. 30. If this is so, the report of a written speech possesses no copyright. See pp. 120-7, *infra*.

[2] [1814] 3 V. & B. 77; *cf.* dicta of Lord James of Hereford, in Walter v. Lane, [1900] A. C., at p. 554.

[3] *Cf.* Parry v. Moring, *Times*, 4th April, 1903; Copinger, p. 172.

[4] [1801] 5 Ves. 709. [5] [1840] 11 Sim. 51. [6] [1840] 2 Ir. Eq. Rep. 206.

was granted after full argument on the point. In *Saunders v. Smith*[1] an injunction was refused until the plaintiffs should have established their right at law, but it was not disputed that there might be copyright in law reports. The only question was whether proper use had been made of them. In *Sweet v. Benning*[2] all the members of the Court were of opinion that there was copyright in the reports of *The Jurist*. The actual decision was that there was copyright in the headnotes to the reports. The point as to copyright in reports of the verbatim judgments delivered by the members of the Court has not yet arisen. In *Walter v. Lane*[3] North, J., expressly refrained from deciding it. In American cases[4] it has been decided that there is no copyright in them, nor can the judges confer such right on any reporter.

The decision in *Walter v. Lane*, being that of the House of Lords, is of course final with regard to reports made before the commencement of The Copyright Act, 1911, and the copyright in them is preserved by Section 24. But as regards reports after the Act the case is not so. The word "original" does not occur in The Copyright Act, 1842, and considerable stress was laid on this in *Walter v. Lane*.[5] On the other hand, mere labour has been held enough to create a work worthy of copyright, and it is impossible to deny the expenditure of time and labour by the reporter. The better view appears to be that the Act has made no difference.

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[1] [1838] 3 Myl. & Cr. 711. The book complained of was Smith's "Leading Cases."

[2] [1855] 16 C. B. 459.

[3] [1899] 2 Ch., at p. 756. As regards written judgments at any rate, the copyright would seem to be in the Crown; Roper v. Streater, [1670]; Skinner's Reports 234.

[4] Wheaton v. Peters, [1834] 8 Peters 591 (Am.); Banks v. Manchester, [1888] 21 Davis 244 (Am.).

[5] Per Lord Halsbury, [1900] A. C., at pp. 540-7.

A mere compilation has been held worthy of copyright.[1] Thus in *Scott v. Stanford*[2] statistical returns of all coal imported into London were protected. And in cases where different works must be identical so far as they are accurate, such as mathematical tables, directories, guide books, there is copyright in each individual work that is the fruit of independent labour and inquiry, and not mere copying of another work.

When a new edition is brought out, which is not substantially a reprint of the older edition, there is copyright in the new parts of the work which dates from its issue,[3] and this, under the old law giving a fixed period of years, might still be the subject of copyright, although the copyright in the earlier work had expired. But the alterations must be substantial, as immaterial additions will not constitute practically a new work.[4] The same rule applies to annotated editions of works the copyright of which has expired. In *Hedderwick v. Griffin*[5] a reprint of a work, which had been originally published abroad and therefore had no copyright in this country, was held not to be a new work merely on account of certain alterations neither important nor extensive, made with the assistance of the author. And in *Black v. Murray*[6] the Lord President said: "A new edition of a work may be a mere reprint of an old edition, and plainly that would not entitle the author to a new term of copyright running from the date of the last edition. On the other hand, the new edition may be so enlarged and improved as to constitute in reality a new work that will just as clearly entitle the author to a copyright running from the date of the new edition.

[1] Gray v. Russell, [1839] 1 Story 11 (Am.); *cf.* Murray v. Bogue, [1852] 1 Dr. 353; Lewis v. Fullarton, [1839] 2 Beav. 6; Kelly's Directories, Limited v. Gavin, [1902] 1 Ch. 631.

[2] [1867] L. R. 3 Eq. 718.

[3] Murray v. Bogue, [1852] 1 Dr. 353.

[4] Thomas v. Turner, [1887] 33 Ch. D. 292. In the actual case the alterations were omissions.

[5] [1841] 3 Scotch Sess. Cas. (2nd Series) 383.

[6] [1870] 9 Scotch Sess. Cas. (3rd Series), at p. 343.

The difficulty will be to lay down any general rule as to what amount of addition or alteration a new matter will entitle a second or new edition of a book to the privilege of copyright, or whether the copyright extends to the book as amended or improved, or is confined only to the additions and improvements themselves, distinguished from the rest of the book." It is, however, now fairly settled that the new copyright extends only to the additions; if a work is produced which does not infringe the copyright in them, it is not an infringement of the copyright in the new edition, for it could have been produced by making use of the old edition only, and of that edition the later author is entitled to make what use he will.[1] In *Moffatt v. Gill*[2] it was held that there was copyright in the notes to an annotated edition of Shakespeare, though, of course, the editor has no copyright in the text.

Conditions for Copyright.

Persons who may Acquire the Right.

Under The Copyright Act, 1842, statutory copyright or the post-publication right could be acquired by—

(1) British subjects wherever resident;

(2) Alien friends resident at the date of publication in any part of the British Dominions; and

(3) Alien friends wherever resident (but this only rests on the dicta of Lord Cairns and Lord Westbury in *Routledge v. Low*).[3]

The last point was considered by the House of Lords in *Jefferys v. Boosey*,[4] and decided by all the Law Lords in the negative: but this decision turned on the construction of the old Statute of Anne, and the reasoning was doubted by Lord Westbury in *Routledge v. Low*.[3]

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[1] Murray v. Bogue, [1852] 1 Dr., at p. 365; Scrutton, p. 125; *cf.* Cary v. Longman, [1801] 1 East 358.

[2] [1902] 86 L. T. 465.

[3] [1868] L. R. 3 H. L. 100, at pp. 110-1; 119-120.

[4] [1854] 4 H. L. C. 815.

Publication.

According to the unanimous opinion of the Lords in *Routledge v. Low*,[1] publication in the United Kingdom of a book previously unpublished was necessary (and sufficient, according to Lord Cairns and Lord Westbury) to confer statutory copyright under the Act of 1842. Lord Cairns said:[2] "The intention of the Act is to obtain a benefit for the people of this country by the publication to them of works of learning, of utility, of amusement. This benefit is obtained, in the opinion of the Legislature, by offering a certain amount of protection to the author, thereby inducing him to publish his book here." Lord Westbury said:[3] "The real condition of obtaining [the Act's] advantages is the first publication by the author of his work in the United Kingdom." But in *Reid v. Maxwell*[4] the Court of Appeal doubted whether the condition of first publication in this country was required in the case of a British subject. In that case the story was published in parts, and, after several chapters had been published in England, the story was published by permission of the author in America, also in parts, but it was completely published in America before complete publication in England. It was held that the assignee of the British copyright could prevent the American publisher from publishing in England. Cotton, L. J., admitted that the cases clearly showed that in order to entitle a foreigner to copyright in this country the first publication must be in the United Kingdom, but doubted whether this was so in the case of a British subject. But this seems quite inconsistent with the provisions of The International Copyright Act, 1844[5] which enacts that there shall be no copyright in a book first published outside

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[1] [1868] L. R. 3 H. L. 100, at pp. 110-1; 119-120.

[2] L. R. 3 H. L., at p. 110. [3] At p. 118. [4] [1886] 2 Times L. R. 790.

[5] s. 18. This section was not cited to the Court in Reid v. Maxwell. In the case of a drama written by a British subject first publication abroad will destroy both *copyright and playright*; *Boucicault* v. *Delafield*, [1863] 1 H. & M. 597; Boucicault v. Chatterton, [1876] 5 Ch. D. 267.

the *British Dominions*. Nor does it in any way fit in with the policy of The Copyright Act, 1842, as laid down in *Routledge v. Low*.[1] If the theory of Cotton, L. J., were right, an author would be able to deprive the inhabitants of the United Kingdom of access to a book in full circulation abroad, and this does not tend to the "encouragement of native literature," and constitutes a direct invitation to the author to publish abroad and so secure copyright in two countries instead of one. The actual decision in *Reid v. Maxwell*[2] is that the prior publication of parts of a book abroad does not involve the destruction of copyright in the whole, or, perhaps more strictly, in the parts first published here: and there seems no reason to doubt the correctness of this decision. It was suggested at the Bar that in the case of a serial work the date of publication of the first part was taken to be the date of the publication of the whole work for the purpose of acquiring British copyright; and the suggestion met with the approval of Lopes, L. J. But it seems inconsistent with the decision in *Low v. Ward*.[3] There a citizen of the United States published his work in the consecutive parts of a monthly magazine published in the United States from January to December. In October he went to reside in Canada, and subsequently, before the last six chapters had been published in the United States, the whole work was published in England. It was held that he had acquired British copyright in the last six chapters only. The case of a work published in the British Dominions other than the United Kingdom does not seem to have arisen, but the unanimous opinion of the House of Lords in *Routledge v. Low*[4] required first publication in the United Kingdom. But now under The International Act, 1886, the Copyright Acts are to apply to any literary

[1] [1868] L. R. 3 H. L. 100.
[2] [1886] 2 Times L. R. 700.
[3] [1868] L. R. 6 Eq. 415.
[4] [1868] L. R. 3 H. L. 100.

or artistic work first "produced" in a British Possession as if it had been "produced" in the United Kingdom.[1] The point is, however, still open as to a publication in the British Dominions before 1886; and, as the copyright under the Act extends throughout the British Dominions, it may well be that publication in any part of them is sufficient; and, in fact, it is very difficult to see any reason why it should not. Simultaneous publication here and abroad will confer British copyright.[2] As regards books published after the 30th June, 1912, they fall within the rules laid down in The Copyright Act, 1911.[3]

Duration and Extent of Right.

Under The Copyright Act, 1842, the term of copyright is the life of its author and seven years, or forty-two years from publication, whichever of these periods should be the longer.[4] The Act of 1911 gives a period of life and fifty years, or fifty years from publication where the book is published after the death of its author. This goes to the owner of the copyright under the earlier Act, except in the cases where the author is the first owner of the copyright, when it reverts to the author on certain conditions.[5] The right under the Act of 1842 extended throughout the British Dominions. The right under the Act of 1911 extends throughout the British Dominions other than self-governing Dominions, but it is provided that the legislature of a self-governing Dominion may declare the Act to be in force in that Dominion with or without modifications of procedure or remedies.[6] If any self-governing Dominion passes legislation substantially identical with the Act of 1911 (except as regards works

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[1] s. 8.

[2] Cocks v. Purday, [1848] 5 C. B. 860; Buxton v. James, [1851] 5 D. G. & Sm. 80.

[3] See pp. 50–2, *supra*.

[4] 5 & 6 Vict. c. 45, s. 3.

[5] See p. 54, *supra*.

[6] s. 25 (1).

first "published," or where authors are residents there) and the Secretary of State certifies it by notice in the *Gazette*, then such Dominion is to be treated whilst such legislation continues in force as a Dominion to which the Act of 1911 extends.[1]

Ownership.

First Owner.

The first owner of the copyright in a book under the Act of 1842 was the man who legally published it for the first time. The right to publish the book is derived by assignment from the author in the case of books published in his lifetime; in the case of books published after his death, the right is derived from the proprietor of the author's manuscript from which the book is first published.[2] In the case of *Macmillan v. Dent*[3] it was decided that the word "manuscript" meant the written document, not the literary composition. Fletcher Moulton, L. J., said, "In the first part of the section which relates to a publication during the life of the author [the Legislature] uses language which shows that the source of copyright in that case is the author, and that ownership of the copyright must be derived from him. In the latter part of the section which relates to a publication after the death of an author, it uses language which shows that the source of copyright must be derived from the owner of the manuscript."[4]

Where one person employs another to compose a book or any part of a book or article in an encyclopædia or periodical—(1) on the terms that the copyright therein

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[1] s. 25 (2). [2] 5 & 6 Vict. c. 45, s. 3. [3] [1907] 1 Ch. 107.

[4] At p. 122. The rule in Macmillan v. Dent has been abolished by The Copyright Act, 1911, but under Section 17, Sub-Section (2), where ownership of an author's manuscript is acquired by a testamentary disposition and the work has not been published in any form, such ownership is *prima facie* proof of the ownership of the copyright. No provision is made for the existence of two or more manuscripts.

shall belong to the employer, and (2) the employer shall have actually paid for the work—then the employer shall be the owner of the copyright in the book or article, and shall enjoy the same right therein as if he were the actual author thereof.[1] The writer of the work in question must be actually paid, a mere contract for payment is not enough.[2] The question as to whether the copyright was intended to belong to the employer is a question of fact. There need be no contract in writing nor express words, and the inference that the copyright was intended to belong to the employer may fairly be drawn from the facts of employment and payment alone.[3] "I think that what the Court has to do is to look at all the circumstances of the case and to say to the jury, What is the inference which you would draw?; or, as Bowen, L. J., puts it in judgment in *Lamb v. Evans*,[4] 'What is the way in which business men would look at the question?'"[5] The difficulty is to ascertain when the copyright is to belong to the employer. Thus in *Bishop of Hereford v. Griffin*[6] Sir L. Shadwell held that the copyright did not pass, where the former wrote an article for an encyclopædia published by the latter and received payment for it. There were no special circumstances in the case, and the presumption is that copyright remains with the author. In *Walter v. Howe*[7] Sir George Jessel refused to hold that the copyright in an obituary article written for and published in *The Times* was intended to pass to the

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[1] 5 & 6 Vict. c. 45, s. 18.

[2] Brown v. Cooke, [1846] 16 L. J. Ch. 140; Richardson v. Gilbert, [1851] 1 Sim. N.S. 336; Collingridge v. Emmott, [1887] 57 L. T. 864; but see Ward v. Long, [1906] 2 Ch. 350. *If this decision is right it would seem that Section 18 only applies to* unwritten agreements; and, if the agreement is in writing, the employer can sue as an ordinary assignee of the copyright without payment to the author.

[3] Sweet v. Benning, [1855] 16 C. B. 459; Lawrence v. Aflalo, [1904] A. C. 17 *cf.* Lamb v. Evans, [1893] 1 Ch. 218; Chantrey v. Dey, [1912] 28 Times L. R. 490.

[4] [1893] 1 Ch. 218.

[5] Per Lord Davey, in Lawrence v. Aflalo, [1904] A. C., at p. 23.

[6] [1848] 16 Sim. 190; Trade Auxiliary Co. v. Jackson, [1887] 4 Times L. R. 130.

[7] [1881] 17 Ch. D. 708.

proprietor of *The Times*. But in *Lawrence v. Aflalo*[1] the House of Lords drew that conclusion merely from the facts of employment and payment, in the absence of special circumstances. And in *Lamb v. Evans*,[2] where the question incidentally arose as to the copyright of the proprietor of a trades directory in the headings composed by his agent for a mass of advertisements furnished by tradesmen and paid for, a very strong Court of Appeal held, from the mere facts of employment and payment, that the proprietor had copyright in the headings, although he could not have copyright in any single advertisement, because the tradesman must be at liberty to insert it elsewhere.

Where the writer is not employed directly by the original employer, but is employed by A's employer B, the copyright will vest in A, where B is a mere agent for A[3]; if B is the person employed by A to do the work it is doubtful whether the copyright would vest in A under this section. Probably it would not, as A does not employ the writer, and the section only contemplates a direct relationship between the employer and the employed.[4]

The section in question appears to deal primarily with collective works; but the words are wide enough to include the case of a work written as a whole by a single author for an employer. This was the view taken by Lord Romilly in *Grace v. Newman*.[5] On the other hand *Shepherd v. Conquest*[6] seems to be a direct authority that, where one person employs another to write a book for him and pays him for it,

[1] [1904] A. C. 17; *cf.* also Sweet v. Benning, [1855] 16 C. B. 459, not cited to the Court in Walter v. Howe.

[2] [1893] 1 Ch. 218.

[3] Stubbs v. Howard, [1895] 11 Times L. R. 507; 19 Eq. 623.

[4] Macgillivray, p. 68.

[5] [1875] L. R. 19 Eq. 623; *cf.* Hazlitt v. Templeman, [1900] 13 L. T. N. S. 593; Ward Lock & Co. v. Long, [1906] 2 Ch. 550.

[6] [1856] 17 C. B. 427. The actual question in the case was whether the playright in a drama passed to the employer without writing, but copyright and playright are treated in exactly the same manner by English law; 5 & 6 Vict. c. 45, s. 20

the copyright does not pass without a written transfer. In the case of a composite work, where one person designs the whole work and employs others to write parts of it, he may be the "author" of the whole, although not the writer.[1]

In the case of an article or essay published in a review or periodical, but not an encyclopædia,[2] composed on the terms that the copyright shall belong to the proprietor, the proprietor is not at liberty to publish the article separately without the consent of the author[3]; and at the end of twenty-eight years the right of publishing the article separately reverts to the author.[3] It was held that the right to prevent the proprietor from publishing the article separately was not "copyright" under the Act of 1842, but was of the nature of a contractual right.[4] From this it has been deduced that the author has no right to prevent separate publication by any person other than the proprietor[5]; but this seems very doubtful in principle. The author possesses a legal and valuable, although reversionary, proprietary interest in the work; he is protected against the only other person who has any property in it; it seems contrary to all principles of English law that this right should be unprotected against all other persons except at the discretion of another person who possesses an adverse right in the subject-matter. It cannot be said that his interests are unaffected by the manufacture of infringing copies, for in any case they will injure the market: and, if they are lawfully made with the consent of the proprietor, the author cannot prevent them from being sold when his interest falls into possession.[6] It is true that the infringer

[1] Per Leach, M. R., in Barfield v. Nicholson, [1824] 2 L. J. O. S., at p. 162; Hatton v. Kean, [1859] 7 C. B. N. S. 268. *A fortiori* the man who collects information and sets it out in a book is the author; Nisbet v. Golf Agency, [1907] 23 Times L. R. 370.

[2] Per Shadwell, V. C., in Bishop of Hereford v. Griffin, [1849] 16 Sim., at p. 194.

[3] 5 & 6 Vict. c. 45, s. 15.

[4] Mayhew v. Maxwell, [1860] 1 J. & H. 312.

[5] Scrutton, p. 132 (i.).

[6] Taylor v. Pillow, [1860] L. R. 7 Eq. 418.

may be exposed to two actions, but this would probably be the case where there are two copyrights as in *Lamb v. Evans*.[1]

In a case where he has not parted with the copyright the author can sue an infringer without publishing the article in a separate form.[2]

As regards separate publication Romer, J., said,[3] "If you find in a volume separate parts, each distinguished or perfectly distinguishable from the other parts, and the volume is published, each part that is separate and clearly distinguished in the volume itself is separately published within the meaning of Section 2," and this was approved of by the Court of Appeal in *Aflalo v. Lawrence*.[4] That case was reversed in the House of Lords, but no opinion was expressed about the meaning of "separately published." The dictum of Romer, J., is, it is submitted, correct.[5] In *Mayhew v. Maxwell*[6] a story written for the Christmas number of the "Welcome Guest" was advertised to be republished along with other stories, one or more of which had not been published in the Christmas number, and this was held an infringement of the author's rights. It was held that the proprietor could not publish the story otherwise than in reprints of the Christmas number.

As regards publication in a separate form where the copyright passes to the employers, the rights of the author were held to be infringed in *Smith v. Johnson*,[7] where the proprietors of the *London Journal* republished certain tales written by the plaintiff for and published in the Christmas number. Stuart, V. C., said that the Act of Parliament was

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[1] [1893] 1 Ch. 218.
[2] Johnson v. Newnes, [1894] 3 Ch. 663.
[3] *Ibid.*, p. 669.
[4] [1903] 1 Ch. 318, reversed [1904] A.C. 17.
[5] Copinger, p. 106.
[6] [1860] 1 J. & H. 312.
[7] [1863] 4 Giff. 632.

intended to give a licence only to the proprietors of periodical works, purchasing and paying for a literary composition to print that composition as part of a periodical work, and that any other use of it was unlawful. "To reprint in numbers which may be had with or without the concurrent number of the work is an act not permitted by the Legislature."[1]

The point has never been decided whether under the Act of 1842 the copyright in a work can be vested in an employer without a written transfer, apart from Section 18. It has been suggested that a contract of service is enough. In *Hildesheimer v. Dunn*[2] Kekewich, J., said: "I entertain a strong impresssion that where a person has composed verses, we will say on behalf of another, that is to say as his servant or agent, whether for pay or not, the person on whose behalf such verses are composed is properly registered under the Act as the proprietor, notwithstanding that there is no assignment in writing, or, indeed, any assignment at all." During the argument in *Sweet v. Benning*,[3] Maule, J., hinted that employment alone would vest the copyright in the employer; but this must be confined to the case of servants or agents; it is certainly not true in the case of an independent contractor. It is submitted, however, that the copyright will only pass (apart from Section 18) where the work done by the servant or agent is only part of a general whole, of which the employer is the "author."[4] The Act provides for conditions under which the copyright passes to the employer; and the presumption is that, where these conditions are not fulfilled the copyright does not pass.

Under The Copyright Act, 1911, the copyright in a work written by one person for another will not vest in the latter

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[1] [1863] 4 Giff., at p. 637.

[2] [1891] 64 L. T., at p. 454.

[3] [1855] 16 C. B. N. S., at p. 408.

[4] *Cf.* Barfield v. Nicholson, [1824] 2 L. J. O. S., at p. 102; Hatton v. Kean, [1859] 7 C. B. N. S. 268. *Contra* Macgillivray, pp. 73-4.

as first owner, except under the following conditions. The writer must be under a contract of service or apprenticeship, and the work must be written in the course of his employment; then, in the absence of agreement to the contrary, the copyright vests in the employer as first owner. If the work is a contribution to a newspaper, magazine, or other periodical, the writer is deemed to have reserved the right to restrain the publication of the article otherwise than as part of a newspaper or periodical,[1] in the absence of agreement to the contrary. He retains no right of publication himself.[2] Payment is not required.[2]

A mere agreement to write a book will not vest the copyright in the employer without a written transfer. The writer must be the servant of the employer, not an independent contractor. The provision applies to books written as a whole by one man, as well as to contributions to a collective work.

Transfer.

The transfer of copyright must be in writing[3] except under Section 18 of the Act of 1842, but transfer by entry on the Register was sufficient.[4] But according to Kekewich, J., there may be a good assignment by an agreement to purchase the copyright of a yet unwritten book at a fixed price, good as against a subsequent purchaser for value without notice; and in that case the transferee can sue although the case falls within Section 18, and payment has not been made.[5] Any portion of the assignor's interest

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[1] *Cf.* Smith v. Johnson, [1863] 4 Giff. 632. [2] 1 & 2 Geo. V. c. 46, s. 5 (1).

[3] Leyland v. Stewart, [1876] 4 Ch. D. 419. [4] s. 13.

[5] Ward Lock and Co. v. Long, [1906] 2 Ch. 550; *sed quære* as to the exact meaning of the decision. The headnote treats the assignment as equitable, but good as against a subsequent purchaser of the legal interest for value without notice. This seems contrary to principle. The judgment on the other hand strongly suggests that the legal interest passed. There is no authority for the proposition that the legal ownership in an unwritten book can be assigned; and Sweet v. Shaw, [1839] 8 L. J. Ch. 216, is an authority the other way. The decision, so far as regards the subsequent purchaser, is of very doubtful authority.

may be transferred.[1] In *Dennison v Ashdown*,[2] where the defendant had exercised the rights of the owner of the copyright for several years unquestioned, Bruce, J., held that he must assume a proper assignment.

Destruction by Waiver.

It seems doubtful whether copyright can be lost by waiver. In *Platt v. Button*[3] and *Rundell v. Murray*[4] it was suggested at the Bar that the right had been lost by waiver, and Lord Eldon refused an injunction on the ground of delay until the right was established at law. But in *Weldon v. Dicks*[5] Malins, V. C., held that an author did not lose his copyright in the title of his book merely because the book had been out of print for several years and was completely forgotten.

Infringement.

General Principles.

There is no property in the subject of a work,[6] or in the ideas expressed, or in the words themselves, but only in the form in which those ideas have been clothed, or, as it is sometimes put, in "the order of words."[7] The principle has perhaps been pushed too far at times; thus in *Stowe v. Thomas*[8] Grier, J., defined the right of the author to be "the exclusive right of multiplying copies of that particular combination of characters which

[1] s. 13; thus providing for the difficulty raised by Lord St. Leonards' opinion expressed in Jefferys v. Boosey that copyright is one and indivisible (4 H. L. C., p. 992), decided under the Statute of Anne.

[2] [1897] 13 Times L. R. 226; but *cf.* Latour v. Bland, [1818] 2 Stark 382.

[3] [1815] 19 Ves. 447.

[4] [1821] Jac. 311; *cf.* dicta of Willes, J., in Millar v. Taylor, [1769] 4 Burr at p. 2311; but there the learned Judge was deciding in favour of copyright in perpetuity and wished to minimise its inconveniences.

[5] [1876] 10 Ch. D. 247. In this case Malins, V. C., held that there was copyright in a title; and this part of his judgment has been universally treated as wrong. see pp. 60-70, *supra*.

[6] Wilkins v. Aikin, [1810] 17 Ves. 422; Pike v. Nicholas, [1869] L. R. 5 Ch. 251.

[7] *Cf. Jefferys v. Boosey*, [1854] 4 H. L. C. 815; *opinion of Erle, J.*, at pp. 866-870.

[8] [1853] 2 Am. Law. Reg., at p. 228 (Am.).

exhibits to the eye of another the ideas intended to be conveyed." As has been justly pointed out, this doctrine would sanction any piracy not consisting in literal extracts; "it would prohibit the literary plagiarist from compilations by scissors and paste, but allow him to construct his piracy by aid of a dictionary of synonyms";[1] but the principle at bottom is sound, although, in view of certain recent decisions, it ought to be extended so as to cover *information* compiled by the author as well as the form in which it is cast.[2]

The author's property is also subject to the further qualification that, where absolute originality is excluded by the nature of the work, as in the case of scientific or mathematical tables or directories (and probably where it is not excluded), there may be several independent copyrights in the same set of words or figures in the same order, provided that each work was the result of original work and not of copying or making illegitimate use of a previous copyright work.[3] And in *Lamb v. Evans*[4] the Court of Appeal was prepared to hold that there were two separate copyrights in the advertisements in a newspaper; one, that of each advertiser in his separate advertisement, the other, that of the proprietors in the general mass as arranged.

Copyright then consists in the right to prevent an unfair use of the work. But what is an unfair use? Three distinct tests have been applied at various times to decide whether the substantial use of a copyright work in the composition of another is legitimate. Down to a point which may roughly be put between

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[1] Scrutton, p. 143.

[2] Weatherby v. International Horse Exchange, [1910] 2 Ch. 297.

[3] Matthewson v. Stockdale, [1806] 12 Ves. 270; Longman v. Winchester, [1809] 16 Ves. 269; Wilkins v. Aikin [1810] 17 Ves. 422; Leslie v. Young [1894] A.C. 335 (per Lord Herschell, at p. 341).

[4] [1893] 1 Ch. 218.

1800 and 1830 the question is, Has the borrower put original thought and labour into the new work? Not merely does "addition condone subtraction"[1]; subtraction itself, if done with care, is sufficient to produce a new and legitimate work.[2] With the doubtful exception of abridgments,[3] this test must now be considered insufficient though necessary. Afterwards another test is applied. Will the new work compete with the old work, or with any new work which the owner of the copyright in the old can compile out of the old practically by the mere use of scissors and paste? This is the test applied in the cases of translation and dramatization of novels (where it is held that the exhibition of a play on the stage does not interfere with the sale of copies of the novel on which it is founded, but that the printing of the play does), and in cases like *Bradbury v. Hotten*.[4] The third has not been fully worked out, but perhaps the following is fairly accurate. Has the borrower in fact taken valuable results from the copyright work instead of going to the *original sources*[5] *for a work in which* the value of the material borrowed is not completely lost in the merit of the new work? This is the principle which was adopted by The Copyright Act, 1911, with respect to dramatization and translation, and seems to be the one adopted by Parker, J., in *Weatherby v. International Horse Exchange*.[6] Very probably it will be applied to all cases not yet settled by the application of the earlier

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[1] *Cf.* dictum of Shadwell, V. C., in Martin v. Wright, [1833] 6 Simons, at p. 298. "Any person may copy and publish the whole of a literary composition, provided he writes notes upon it, so as to present it to the public, connected with matter of his own.

[2] *Dodsley v. Kinnersley*, [1761] Ambler 403, where the abridger was held to have made a new and laudable work out of Dr. Johnson's "Rasselas" by "leaving out the moral reflections." *Cf.* Newbery's Case [1774] Lofft 775.

[3] See pp. 105-9, *infra*.

[4] [1872] L. R. 8 Ex. 1; see p. 103, *infra*.

[5] The test might possibly stop here, but the words following are necessary to keep within the actual decisions.

[6] [1910] 2 Ch. 297.

principles alone. It appears, however, that an amount of borrowing which is legitimate in the case of a non-competitive work would be illegal in the case of a competitive one.[1]

The only ways in which copyright can be infringed are by—(1) The unauthorised copying of the whole or a substantial part of the work; and (2) The illegitimate appropriation of the fruits of the author's labour embodied in it. The first has been described by James, L. J., in *Dicks v. Yates*[2] as *Piracy*, the second as *Literary Larceny*.

Piracy.

There is no difficulty about the piracy of the whole work, the only thing to be said is that the addition of notes will no longer excuse the piracy.[3] In the case of smaller extracts anything exceeding the limits of fair quotation is a piracy; and the facts that the matter was taken in good faith, and with full acknowledgment of its source, will make no difference.[4] Extracts are allowed for the purpose of illustration or criticism.[5] But criticism to be fair must conform to the following rules:—(1) The amount taken must not be sufficient to compete with the original work[6]; (2) The extracts must be genuinely used as illustrations, and not in fact constitute the principal part of the work. Thus in *Campbell v. Scott*[7]

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[1] Per Parker, J., [1910] 2 Ch., at p. 305. [2] [1881] 18 Ch. D., at p. 90.

[3] *Cf.* Weatherby v. International Horse Exchange, [1910] 2 Ch. 207.

[4] Scott v. Stanford, [1867] L. R. 3 Eq. 718.

[5] Whittingham v. Wooler, [1817] 2 Sw. 428; Bell v. Whitehead, [1839] 8 L. J. Ch. 141.

[6] Roworth v. Wilkes, [1807] 1 Camp. 94, per Lord Ellenborough, at p. 97: "A review will not in general serve as a substitute for the book reviewed; and even there, if so much is extracted that it communicates the same knowledge with the original work, it is an actionable violation of literary property." So also per Lord Eldon in Mawman v. Tegg, [1826] 2 Russ., at p. 393: "Quotation for instance is necessary for the purpose of reviewing: and quotation for such a purpose is not to have the appellation of piracy affixed to it; but quotation may be carried to the extent of manifesting piratical intention"; *cf.* Wilkins v. Aikin, [1810] 17 Ves., at p. 424.

[7] [1842] 11 Sim. 31.

the defendants had published a work consisting of an original essay on modern English poetry, biographical sketches of forty-three modern poets and selections from their poems, including six short poems and parts of longer poems by the plaintiff. The essay comprised thirty-four pages out of seven hundred and ninety, and the selections seven hundred and fifty-eight, those from the plaintiff eighteen. The Court held that in fact the resulting work was a selection of poems with an introductory essay, not a critical essay with illustrations, and therefore was unlawful; and that *animus furandi* was inferred from the taking. "If there were critical notes appended to each separate passage, or to several passages in succession, which might illustrate them and show from whence Mr. Campbell had borrowed an idea, or what idea he had communicated to others, I could understand that to be a fair criticism. But there is, first of all, a general essay, then there follows a mass of pirated matter, which, in fact, constitutes the value of the volume."[1] In *Sweet v. Benning*[2] the defendants published in their work "The Monthly Digest," the headnotes of the law reports published in the preceding month, analytically arranged under appropriate headings, and were restrained on the application of the proprietors of *The Jurist*, although the extracts only constituted a twentieth part of the Digest, the Court holding that the resulting work was not original nor demanding thought or skill, but was merely a compilation of headnotes. In *Bowerth v. Wilkes*[3] the proprietor of an encyclopædia had in one of the articles taken seventy-five out of one hundred and eighteen pages of the plaintiff's work and was held liable in damages. The test suggested in that case was whether the new work would serve as a substitute for the old, but this is evidently an insufficient test to-day.

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[1] Per Shadwell, V. C., at p. 38. [2] [1855] 16 C. B. 459. [3] [1807] 1 Camp. 94.

The case of *Bradbury v. Hotten*[1] is a particularly instructive one on the subject of fair extracts for the use of criticism or illustration. The defendants published a book called "The Man of his Time" consisting, first, of the "Story of the Life of Napoleon III.," by James M. Haswell, and, secondly, of "The same Story as told by Popular Caricaturists of the last Thirty Years." Among the caricatures were copies of nine cartoons from *Punch*. It was held, though not without some doubt, that the defendant had exceeded the limit of fair extraction for the purpose of illustration, for the proprietors of *Punch* might desire to issue a collection of all the cartoons dealing with Napoleon, and the circulation of such a work would be interfered with by the defendant's book. The case was, however, very near the line.

In some of the earlier cases stress was laid on the presence or absence of *animus furandi*. Thus in *Cary v. Kearsley*[2] Lord Ellenborough said, "That part of the work of one author is found in another is not of itself piracy or sufficient to support an action; a man may fairly adopt part of the work of another; he may so make use of another's labours for the promotion of science, and the benefit of the public, but having done so, the question will be, Was the matter so taken used fairly with that view, and without what I may term the *animus furandi*?" And the learned Judge goes on to say that the test was "whether what was so taken or supposed to be transmitted from the plaintiff's book, was fairly done with a view of compiling a useful book for the benefit of the public, upon which there has been a totally new arrangement of such matter, or taken colourable, merely with a view to steal the copyright of the plaintiff." But in *Campbell v. Scott*[3] it was decided that *animus furandi* would be inferred from

[1] [1872] L. R. 8 Ex. 1; *cf.* Smith v. Chatto, [1874], 31 L. T. 775.
[2] [1802] 4 Esp. 168, at p. 170.
[3] [1842] 11 Sim. 31.

the mere fact of unlawful taking, and in *Scott v. Stanford*[1] the defendant was restrained from copying statistical returns of all the coal imported into the London market, although he had done so in good faith and with full acknowledgment of the source of his information. "Mere honest intention on the part of the appropriator will not suffice, as the Court can only look at the result, and not at the intention, in the man's mind at the time of doing the act complained of, and he must be presumed to intend all that the publication of his work effects."[2] And this must be taken as settling the law, in conformity with principle, for copyright is a species of property, and in wrongs done to property the wrongdoer is not protected by the absence of wrong intentions. It has been suggested that the presence of *animus furandi* will render a smaller amount of borrowing unlawful than would otherwise be culpable,[3] but this seems very doubtful. If a man has only made a legitimate use of a predecessor's book, why should this become unlawful because his intentions were wrong? The most that can be said is that where there is evidence of *animus furandi* the Court will be inclined to find doubtful questions against the defendant, *e.g.* questions whether he took certain information directly from the prior copyright work instead of going to the original sources, but this is a different thing from saying that, given a certain amount of unquestioned taking, the question of lawfulness or unlawfulness depends on the intention with which it was taken.

Quotations in the usual sense, such as single lines or verses of poetry, are permitted, probably on the principle *de minimis non curat lex*.

There appears to be copyright, but not monopoly in quotations.[4]

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[1] [1867] L. R. 3 Eq. 718; *cf.* Moffatt v. Gill, [1902] 86 L. T. 465.

[2] Per Page Wood, V. C., at p. 723.

[3] Spiers v. Brown, [1852] 6 W. R. 352; Scrutton, p. 138.

[4] Per Collins, M. R., in Moffatt v. Gill, [1902] 86 L. T., at p. 471. The second writer is not entitled merely to take a quotation, verify it, and copy it into his work.

In *Walter v. Steinkopff*[1] the defence was set up of a general practice among newspapers to copy from each other if the following conditions were observed:—(i) That the source was acknowledged; (ii) That there was no direct competition between the newspapers; (iii) That the newspaper which had been copied had itself taken matter from the other; and (iv) That the editor of the newspaper which had been copied had not objected. This contention was, however, overruled.

Abridgments.

The law with regard to abridgments cannot be regarded as settled; in the first place, all the decisions are those of a court of first instance, and, secondly, the cases in favour of the lawfulness of a fair abridgment are all old cases, and proceed on the principle that, where the new author expends genuine thought and labour on the new work, his borrowing is lawful—a principle which is no longer followed to-day. In *Gyles v. Wilcox*,[2] the earliest case in point, Lord Hardwicke stated the law thus:—"Where books are colourably shortened only, they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the Statute, and cannot be called an abridgment. But this must not be carried so far as to restrain persons from making a real and fair abridgment, for abridgments may with great propriety be called a new book, but the invention, learning and judgment of the author is shown in them, and in many cases are extremely useful, though in some cases are prejudicial, by mistaking and curtailing the sense of the author." And in *Tonson v. Walker*[3] he stated that a fair abridgment would be entitled to protection. In *Dodsley v. Kinnersley*[4] an abridgment of Dr. Johnson's

[1] [1892] 3 Ch. 489. As a matter of fact these conditions were not fulfilled. *Cf.* Wyatt v. Barnard, [1814] 3 V. & B. 77; and Maxwell v. Somerton, [1874] 30 L. T. 11.
[2] [1740] 2 Atk. 141; *Cf.* Bell v. Walker, [1785] 1 Bro. C. C. 451.
[3] [1752] 3 Sw., at p. 681.
[4] [1761] Amb. 403.

"Rasselas," less than one tenth the size of the original and formed by "leaving out the moral reflections," was held a fair abridgment. Sir Thomas Clarke plainly stated that a fair abridgment was not a piracy. "No certain line can be drawn to distinguish a fair abridgment but every case must depend on its own circumstances." He, however, materially relied upon the conclusion which he drew that it could not tend to prejudice the plaintiffs, when they had before published an abstract of the work in the London *Chronicle*—a very doubtful inference. And in ——— *v. Newbery*[1] Lord Chancellor Apsley expressed his opinion to be: "That to constitute a true and proper abridgment of a work the whole must be preserved in its sense, and then the act of abridgment is an act of understanding, employed in carrying a large work into a smaller 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 of a new and a meritorious work. That he had consulted Blackstone, J., whose knowledge and skill in his profession was universally known, and who, as an author himself, had done honour to his country. That they had spent some hours together and were agreed that an abridgment, where the understanding is employed in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work."

The later cases have been strongly against the abridger. In *D'Almaine v. Boosey*,[2] Lord Abinger admitted that an abridgment might be lawful, "but it must be a *bonâ fide* abridgment, because if it contains many chapters of

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[1] [1774] Lofft 775.

[2] [1835] 1 Y. & C. Ex., at p. 301. The case was a musical case, and the remark was obiter.

the original work, or such as made that work most saleable, the maker of the abridgment commits a piracy." And he required "such a modification of an original work as shall absorb the merit of the original into the new composition." In *Dickens v. Lee*,[1] the last English case on the subject, Knight Bruce, V. C., expressed himself as follows: "Now this has been said to be an abridgment, and, as an abridgment, to be protected. *I am not aware that one man has a right to abridge the works of another.* On the other hand, I do not mean to say that there may not be an abridgment which may be lawful, which may be protected; but to say that one man has the right to abridge, and so publish in an abridged form the work of another, without more, is going much beyond my notion of what the law of this country is." He held that the work in question, Dickens' "Christmas Carol" in a condensed form, was an infringement of the copyright in the original work.

In the United States the question arose much later than in England; and it was reluctantly held on the authority of the English cases that a fair abridgment was no piracy,[2] but the principle was severely criticised, particularly in *Story's Executors v. Holcombe*, where the learned judge pointed out that every abridgment, however fair, effects more or less adversely the sale of the original work, and that the theory that it adds to the value of the original by making it more extensively known is unfounded in fact. The very merit of an abridgment is in the fact that it contains the principle of the original work and conveys the same knowledge in a condensed form. Story, J., on the other hand, placed among the elements to be considered in deciding whether

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[1] [1844] 8 Jur. 183, at p. 184.

[2] Folsom v. Marsh, [1841] 2 Story 100 (Am.); Gray v. Russell, [1839] 1 Story 11 (Am.); Story's Executors v. Holcombe, [1847] 4 MacLean 306 (Am.).

an abridgment was innocent, or not the question "Whether the abridgment in its present form would prejudice or supersede the original work."[1] There is little as to what constitutes a fair abridgment, but in *Folsom v. Marsh*[2] Story, J., required "a real substantial condensation of the materials and intellectual labour and judgment bestowed thereon, and not merely the facile use of the scissors or extracts of the essential parts constituting the chief value of the work." A mere selection from or different arrangement of parts of the original work so as to bring the whole into a smaller compass will not be held to be such an abridgment.

The English cases are quite irreconcilable. Thus in *Dodsley v. Kinnersley*,[3] and in *Newbery's Case*[4] the abridgment appears to have been made by leaving out "the moral reflections" in the one case and "unnecessary and uninteresting circumstances" in the other, the very process condemned in *D'Almaine v. Boosey*[5] and in *Dickens v. Lee*.[6] The principle laid down in *D'Almaine v Boosey*,[5] that the abridgment must not contain "many chapters of the original work *or such as made that work most saleable*," is sufficient to condemn any abridgment which is not an original work on a smaller scale, *i.e.*, in effect not an abridgment at all. But will the cases be followed? In the first place the decisions in favour of the abridger are all old cases and all decisions of a court of first instance. Secondly, they proceed on a principle which is no longer law to-day, viz., that where a man has mixed his own labour with the original work, the resulting work is not a piracy. The principle followed to-day is that laid down by Lord

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[1] Gray v. Russell.
[2] [1841] 2 Story, at p. 107.
[3] [1761] Amb. 403.
[4] [1774] Lofft 775.
[5] [1835] 1 Y. & C. Ex. 301.
[6] [1844] 8 Jur. 183.

Herschell in *Leslie v. Young*,[1] viz., that where you find "a substantial appropriation by the one party of the independent labour of another," there is an infringement of copyright. The explanation is of course historical; the question as to abridgments came before the Courts when the protection afforded by copyright was at its narrowest, the judges, believing that copyright was perpetual, did all that they could to prevent it interfering to any great extent with the right of other persons to make use of an earlier work in the composition of a new one. Thirdly, the argument in favour of an abridgment, that it does not compete with the original work, but on the contrary serves as an advertisement for it,[2] is admittedly false.[3] On the whole it is conceived that the Courts will refuse to follow the old cases in favour of abridgments as contrary to modern principle. But if they shrink from over-ruling a rule of law laid down so long ago, and possibly so long relied on, there is the uncertainty as to what constitutes a fair abridgment which gives them an opportunity of declaring that any actual abridgment which comes before the Courts is not a fair one. The balance of convenience is greatly in favour of declaring all abridgments of copyright works illegal.

An abridgment of a non-copyright work is, of course, an original work capable of copyright.[4]

Translations.

Apart from the International Acts there is no definite decision binding on the English Courts as to whether a translation of a copyright work is an infringement of the copyright. The only case in the English Courts was that

[1] [1894] A.C., at p. 341.

[2] Dodsley v. Kinnersley, [1761] Amb., at p. 405.

[3] Per McLean, J., in Story's Executors v. Holcombe, [1847] 4 McLean, at p. 308.

[4] Leslie v. Young, [1894] A. C. 335; *cf.* Springfield v. Thame, [1903] 89 L. T. 242.

of *Burnett v. Chetwood*[1] in 1720, where the executor of Dr. Burnett sought to restrain the printing of an English translation of the treatise "Archæologia Sacra" written in Latin. The Lord Chancellor held that, although a translation might not be a piracy of the original, yet that particular book was one containing strange notions, intended by the author to be concealed from the vulgar in the Latin language, and he granted an injunction to restrain printing and publishing in English, in exercise of "the superintendency over all books," which he ascribed to the Court of Chancery. That "superintendency" was repudiated by Lord Eldon in *Southey v. Sherwood*,[2] so that no authority attaches to the decision. There are, however, dicta by two of the three judges in the majority in *Millar v. Taylor*,[3] and by Knight Bruce, V.C., in *Prince Albert v. Strange*[4] to the effect that a translation is lawful. And in the United States in the case of *Stowe v. Thomas*[5] where the lawfulness of a German translation of "Uncle Tom's Cabin" was in question, the decision was in the translator's favour. Grier, J., expressed himself as follows: "By the publication of her book the creations of the author have become as much public property as those of Homer and Cervantes. Uncle Tom and Topsy are as much *publici juris* as Don Quixote and Sancho Panza. All her conceptions and inventions may be used and abused by imitators, playrights, and poetasters. They are no longer her own—those who have purchased her book, may clothe them in English doggerel, in German or Chinese prose. In tropical but not very precise phraseology, a translation may be called a transcript or copy of her thoughts or conceptions, but in no correct sense can it be called a copy of her book."[6] There are,

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[1] 2 Mer. 441.
[2] [1817] 2 Mer. 435.
[3] [1769] 4 Burr, 2303, per Willes, J., at p. 2311, per Aston, J., at p. 2348.
[4] [1848] 2 D. G. & Sm., at p. 693.
[5] [1853] 2 Am. Law Reg. 210 (Am.)
[6] At p. 231.

besides, two Indian decisions that a translation is not piracy.[1] The reason given in *Burnett v. Chetwood*[2] for this rule of law is "that the translator has bestowed his care and pains upon it." This, however, cannot be the reason, for in *Murray v. Bogue*[3] the Court stated that if C re-translates into English a translation into German by B of A's work in English, A's book will be protected against C's re-translation. Yet C has bestowed the same care and pains on the translation from the German that B did on the translation of the original English work. The real reason must be that C's re-translation would seriously compete with A's work while B's translation would not.[4] This is the principle which English law proceeds on with respect to dramatization. On principle, therefore, and having regard to the dicta of the eminent judges and to the American case referred to, it may well be held that a translation is no infringement of the original. On the other hand, the judges are always ready to extend the protection enjoyed by the author to all cases in which he can show any claim to be protected, and, although the test of competition is too firmly established to be overruled as to dramatization, it can easily be overruled as to translation.[5] A distinction might, perhaps, be drawn between a literal and mechanical translation and a translation of original and literary merit, such as a translation of verse into verse.[6] Some translations of course are as original as many professedly original works; and these will be treated, it is conceived, as original works.

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[1] Munshi Shaik Abdurruhman v. Mirza Mahomet Shirazi, [1890] 14 Ind. L. R. Bomb. 586; Macmillan v. Shamsul Ulama Zaka, [1895] 19 Ind. L. R. Bomb. 557.

[2] 2 Mer. 441.

[3] [1852] 1 Dr., at p. 368.

[4] This would be doubtful with regard to a translation into Gaelic or Welsh, or into one of the native languages in India.

[5] *Cf.* principles laid down by Parker, J., in Weatherby v. International Horse Exchange, Limited, [1910] 2 Ch., at p. 305. Of text-writers Scrutton, p. 142, and Copinger, p. 187, are of opinion that a translation of a copyright work is illegal.

[6] Scrutton, p. 142.

A translation of a non-copyright work is protected.[1]

Under The Copyright Act, 1911, the right of translation is expressly included in the definition of copyright.[2]

The law as to dramatization of a novel is discussed under Dramatic Copyright.[3]

Unfair Use.

Copyright may be infringed by making an unfair use of an earlier work in composing a new one. The question as to what constitutes a fair use of an earlier work is by no means easy to answer; it varies with the nature of the subject, and it has also varied with the same subject from time to time. In the earlier cases nothing short of a fraudulent attempt to reprint the original work under a colourable disguise was held to be illegal; if a man honestly endeavoured to write a new work the new work was legitimate, no matter what use he made of his predecessor's works. Thus in *Sayre v. Moore*[4] Lord Mansfield considered that a new edition of sea charts taken in the main from the plaintiff's original charts for which the materials had been collected at great expense would be a legitimate work, provided the defendants had been correcting errors and not servilely copying. But a much more stringent rule has been applied in later cases. The principle was thus laid down by Lord Langdale, in *Lewis v. Fullarton*,[5] "While all are entitled to resort to common sources of information, none are entitled to save themselves trouble and expense by availing themselves for their own profit of other men's works still subject to copyright and entitled to protection." In *Jarrold v. Houlston*[6] Page Wood, V. C., stated the law

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[1] Wyatt v. Barnard, [1914] 3 V. & B. 77.

[2] 1 & 2 Geo. V. c. 46, s. 1 (2). [3] See pp. 146-8, *infra*.

[4] [1785] 1 East 361 n. Contrast Trusler v. Murray, [1789] 1 East 363 n, before Lord Kenyon; but *cf.* Cary v. Kearsley, [1802] 4 Esp. 168, and dictum of Shadwell, V. C., in Martin v. Wright, [1833] 6 Simons, at p. 298, quoted p. 108, *supra*.

[5] [1839] 2 Beav. 6, at p. 8.

[6] [1857] 3 K. & J., at p. 716. The work in question was "The Guide to Science," a book intended to explain some of the ordinary phenomena of nature, thrown into the form of questions and answers.

as follows—"I take the illegitimate use, as opposed to the legitimate use, of another man's work on subject-matters of this description to be this; if, knowing that a person whose work is protected by copyright has, with considerable labour, compiled from various sources a work in itself not original, but which he has digested and arranged, you being minded to compile a work of a like description, instead of taking the pains of searching into all the common sources, and obtaining your subject-matter from them, avail yourself of the labour of your predecessor, adopt his arrangements, adopt moreover the very questions he has asked, or adopt them with but a slight degree of colourable variation and thus save yourself pains and labour by availing yourself of the pains and labour which he has employed, that I take to be an illegitimate use." And he elsewhere states that the second writer might make what use he pleased of common sources, but that the only uses which he could make of the earlier work[1] were—(1) To use it as a guide to the common sources; and (2) To use it as a test of the completeness and correctness of his own work. These principles were approved of in *Pike v. Nicholas*.[2] There the Court of Appeal reversed the decision of James, V. C., but there was no difference of opinion as to the law, only as to the right conclusions to be drawn from the evidence. The two works in question were books written to prove the descent of the modern English from the Ancient Britons, and were extremely alike in scheme, arguments, and even in the quotations from the original authorities. It was held—(1) That in the circumstances similarities of that nature must

[1] In the actual case the defendant pleaded that he had taken nothing from "The Guide to Science," and therefore these were the only uses which he could have made of the book consistent with his plea. It is conceived, however, that these are the only uses which can be made of an earlier work by the author of a competing one; and that the statements of law in the case are true, independently of the particular facts in it. See the "directory" cases and Weatherby's Case.

[2] [1869] L. R. 5 Ch. 251.

be expected in works dealing with the same subject and intended to prove the same theories, and were, therefore, no proof of direct copying; (2) That, in the absence of direct copying, the first author had no monopoly in his theory or in the arguments used to prove it, or in the plan of his treatise[1]; (3) That, in the case of quotations from an earlier work, the former author could not prevent his successors from quoting the same passages, provided that he went to the original sources, although he might have been led to make them by his predecessor's work.[2]

In the case of works where an original result is impossible, such as Court circulars and directories, the principles are those laid down in the "directory cases." There it was held that the compiler of a rival directory was not entitled to compose his directory by means of slips cut from an earlier one, although he took steps to verify them;[3] but that he was entitled to use the slips to guide him to the sources from which information could be obtained.[4] "The subsequent compiler is not entitled to take one word of the information previously published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information."[5] So also in the case of a map the author must himself have the measurements taken, and in the case of mathematical tables he must work out the calculations himself.[6]

[1] It appears, however, that there is copyright in the plan of a work; per Lord Ellenborough, in Roworth v. Wilkes, [1807] 1 Camp., at p. 97.

[2] But *cf.* dictum of Collins, M. R., in Moffatt v. Gill, [1902] 86 L. T., p. 471, showing illegitimate appropriation of quotations.

[3] Kelly v. Morris, [1866] L. R. 1 Eq. 697; Morris v. Ashbee, [1869] L. R. 7 Eq. 34.

[4] Morris v. Wright, [1870] L. R. 5 Ch. 279.

[5] *Per* Page Wood, V. C., Kelly v. Morris, L. R. 1 Eq., at p. 701, quoted with approval by Giffard, L. J., in Morris v. Wright, L. R. 5 Ch., at p. 284.

[6] Per Lord Eldon, in Longman v. Winchester, [1809] 16 Ves., at p. 271; Cary v. Longman, [1801] 1 East 358; Wilkins v. Aikin, 17 Ves., at p. 424.

The principle has been extended even to cases where there was no likelihood of competition. In the case of *Weatherby v. International Horse Exchange, Limited*,[1] the plaintiffs had published in the "General Stud Book" lists of all the thoroughbred brood mares at the stud in Great Britain, one in alphabetical order, another under their sires, who were arranged in alphabetical order. The defendants published a book which contained two lists practically the same as these, and Parker, J., found as a fact that so much use had been made of the "General Stud Book" in compiling these lists that they might be treated as having been practically copied from it. To the name of each mare in the defendants' lists was appended the "Bruce-Lowe" number, *i.e.*, the number by which the late Bruce-Lowe distinguished the family to which the mare belonged.[2] It was held that this book infringed the plaintiffs' copyright. Parker, J., said[3]: "It is no doubt true that where, as is often the case, it is a difficult matter to determine whether in preparing one publication an unfair use has been made of another, the nature of the two publications and the likelihood or unlikelihood of their entering into competition with each other is not only a relevant but may be even the determining factor in the case. But in my opinion an unfair use may be made of one book in the preparation of another, even if there is no likelihood of competition between the former and the latter. In preparing this book the defendants have utilised, wholesale and without permission, lists prepared by the plaintiffs at much trouble and expense. In so doing they have appropriated the result of this labour and expense to their own use.

[1] [1910] 2 Ch. 297.

[2] The late Bruce-Lowe had previously issued a book in which all thoroughbreds were grouped into families, descent being traced through the females only; and each family was distinguished by a number denoting its position in order of merit as indicated by the success of its members on the turf.

[3] At p. 304.

and even if they have injured the plaintiffs in no other way, they have at any rate deprived them of the advantage which their copyright conferred on them, of being able to publish such a book as the defendants' book at much less labour and expense than anyone else. That this consideration is relevant appears from the case of *Bradbury v. Hotten*."[1]

The decision in this case is unquestionably correct, as, on the facts found, the defendants had practically copied the plaintiffs' lists wholesale. but some of the dicta go very far, unless they are carefully confined to the actual facts proved. They all but assert an exclusive right to information merely on the ground that the compiler might like to use it himself. To act on such a principle, it is submitted, would be practically to abandon all claim to take a former labourer's results for the purpose of furthering knowledge. An author has a perfectly valid claim to be protected against unfair competition. But that does not justify the claim that every writer has an exclusive right to the information collected in his book. It is conceived that (1) where there is no likelihood of competition, and (2) where the resulting work is of such a nature that the merit of the matter taken is entirely lost in that of the new work, the latter is perfectly legitimate, although the writer may have taken some of his information from copyright sources.

In the case of *Spiers v. Brown*[2] a much less severe test was applied. There the question was whether B had made an improper use of A's dictionary, and Page Wood, V. C.,

[1] [1872] L. R. 8 Ex. 1. It should be noted, however, that in Bradbury v. Hotten the new work could have been prepared by the mere use of scissors and paste, while in the later case considerable labour and research was required. Having regard to the English law as to dramatization, it cannot be contended that in all cases the author has an exclusive right to the use of the results of his work in preparing a new one. In certain cases it has been definitely decided that others can make use of it. The tendency of the courts is, however, strongly in favour of the author, and it may well be that, upon all points still open, the use of the results of his labours will be reserved to him exclusively.

[2] [1858] 6 W. R. 352 (the French Dictionary Case).

found as a fact that B had taken a considerable amount of his work directly from A's dictionary and had made far more use of it than of other dictionaries, although he had tested it by comparison with other dictionaries, and had added much of his own. He held, however, that B's work was a different one from A's, and therefore legitimate, although he had to a great extent reaped the fruit and benefit of another man's labour. The only way in which this decision can be reconciled with the later cases on the point is by referring it to the peculiar nature of the work in the case. In the case of dictionaries the only original sources are other dictionaries, and it is very difficult to distinguish the legitimate from the illegitimate use of them. Still the case is of very doubtful authority, particularly as the Vice-Chancellor appears to have been much influenced by the fact that the defendant had bestowed labour and pains on what was taken.

Part taken must be substantial.

Summing up, the law appears to be that if any substantial part of a copyright work is taken, the taking is piracy, whether the infringer has bestowed labour and pains on his work or not, or whether the resulting work is likely to interfere with the original or not. The part taken must be substantial,[1] but in connection with this point Lord Cottenham said: "It is not only quantity but value that is always looked to"[2]; a dictum repeatedly quoted with approval. And it appears, from the dictum of Parker, J., quoted above,[3] that the amount necessary to constitute piracy depends to a large extent upon the likelihood of competition between the works. The amount also varies with the nature of the subject; in cases like

[1] *Chatterton v. Cave*, [1878] 3 App. Cas. 483; *per* Lord Herschell, *in Leslie v. Young*, [1894] App. Cas., at p. 341.

[2] Braunwell v. Halcomb, [1836] 3 Myl. & Cr. at p. 738; *cf.* Planché v. Braham, [1837] 4 Bing. N. C. 17.

[3] Weatherby v. International Horse Exchange, Limited, [1910] 2 Ch., at p. 305.

directories, mathematical tables, and other works where the results if accurate are identical, it appears that the smallest direct taking constitutes piracy.[1]

In certain cases only a very small portion of the original work may be taken, but this may constitute an important part of the defendant's work; and in such a case the new work will constitute an infringement of the original. Kekewich, J., put the matter as follows:—"The test was not so much what proportion of the plaintiff's work had been taken, but rather what proportion of the defendant's work was the plaintiff's."[2]

Piracy will be committed by the multiplication of copies for gratuitous distribution, however small the issue, and whatever the means by which the copies may be multiplied.[3] And it is quite irrelevant whether the pirated matter is copied directly from the original, or from another reproduction of the same matter whether legal or illegal.[4]

Under The Copyright Act, 1911,[5] short literary passages from a copyright work not itself published for the use of schools may be included in a collection of passages mainly composed of non-copyright matter, and *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, on the following conditions:—

(*i*) The original work must itself have been published.

(*ii*) The source from which the passages are taken is acknowledged.

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[1] Per Page Wood, V. C., in Kelly v. Morris, [1866] L. R. 1 Eq., at p. 701; *cf.* Trade Auxiliary Co. v. Middlesborough Tradesmen's Protection Association, [1889] 40 Ch. D. 425, at pp. 428-9.

[2] Neale v. Harmer, [1897] 13 Times L. R. 209; *cf.* Kelly v. Hooper, [1839] 4 Jur 21.

[3] *Cf.* Novello v. Sudlow, [1852] 12 C. B. 177; Warne v. Seebohm, [1888] 39 Ch. D. 73.

[4] Cate v. Devon & Exeter Constitutional Newspaper Co., [1889] 40 Ch. D. 500.

[5] 1 & 2 Geo. V. c. 46, s. 2 (i).

(*iii*) And not more than two passages from the same author are published by the same publisher within five years.

It is doubtful whether the recitation or reading aloud of a copyright book in public constitutes an infringement of copyright. The Copyright Act, 1911, expressly provides that the reading aloud in public of a reasonable extract from a "published" work shall not infringe the copyright.[1] This would seem to imply that the reading aloud of a larger portion would constitute an infringement. The author is given the exclusive right of "performing" his work[2]; and "performance" is defined[3] as "any acoustic representation of a work and any visual representation of any dramatic action in a work." This definition seems wide enough to cover the reading aloud of a non-dramatic literary work.

Crown and University Copyrights.

The Crown still claims perpetual copyright in the Authorised Version of the Bible[4] and the Book of Common Prayer. and, probably, in the various works of the Established Church of Scotland.[5] Various reasons have been given for the existence of these copyrights: in *Millar v. Taylor*[6] Lord Mansfield ascribed it to a right of property in the Crown, acquired by King James paying for the translation, and declared that there was no prerogative right in the Bible in the original tongues; in *Manners v. Blair*[7] the right is ascribed to the King in virtue of his Headship of the Church. In any case,

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[1] 1 & 2 Geo. V. c. 46, s. 2 (1). [2] s. 1 (2). [3] s. 35 (1).

[4] Universities of Oxford and Cambridge v. Richardson, [1802] 6 Ves. 697; Manners v. Blair, [1828] 3 Bligh N. S. 301; In *re* Red Letter New Testament, [1900] 17 Times L. R. 1. [5] Manners v. Blair.

[6] [1769] 4 Burr, at p. 2405. [7] 3 Bligh N. S. 301.

however, no claim has been made to a prerogative right in the Bible in its original languages, and this seems to conflict with the latter theory. No objection has ever been made to printing the Authorised Version with notes.[1]

The Treasury claim copyright in the following works:—

(1) Reports of Select Commissions.

(2) Papers required by Statute to be laid before Parliament.

(3) Papers laid before Parliament by Command.

(4) Acts of Parliament.[2]

(5) Official Works.

(6) Literary or quasi-literary works.

(7) Charts and Ordnance Maps.

The intentions of the Treasury as to enforcing the copyright in these various classes of works are expressed in a Treasury Minute dated the 28th June, 1912.

Broadly speaking, the first four classes are open to the general public; the copyright in the last three will be strictly enforced.

There is no decision as to the term of copyright in Government publications before The Copyright Act, 1911, but the opinion has been expressed that they have only the statutory period.[3] Under The Copyright Act, 1911, they have fifty years from publication; and this applies to all Government publications, whether existing before the Act or not.[4]

Under The Copyright Act, 1775, the Universities have perpetual copyright in all works given or bequeathed to

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[1] Copinger, p. 263.
[2] Baskett v. University of Cambridge, [1758] 1 W. Bl. 105.
[3] Scrutton, p. 130. [4] s. 18.

them.[1] Under The Copyright Act, 1911, these copyrights are preserved; but the remedies for infringement are to be those given by the Act of 1911.[2] As regards any future copyrights the Universities will only have the usual term—the life of the author and fifty years after his death.

Registration.

Registration as a necessary preliminary to suing for infringement of copyright has been abolished. But, as the title to an existing work may depend upon a transfer by registration, and as certain precedents are unintelligible without some knowledge of the system, the following outline is given:—

The old law as to registration under The Copyright Act, 1842, was governed by Sections 11 to 14. A Registry Book was to be kept at Stationers' Hall, and in this the owner of the copyright in any book had the right, if he so pleased, of entering himself as proprietor of such copyright on payment of a fee of five shillings.[3] The entry was to be in the form set out in the Schedule to the Act and comprised the title of the book,[4] the time of first publication,[5] the name and place of abode of the first publisher,[6] and the name and place of abode

[1] 15 Geo. III. c. 5, s. 1.

[2] 1 & 2 Geo. V. c. 46, s. 33.

[3] 5 & 6 Vict. c. 45, s. 11.

[4] s. 13; Harris v. Smart, [1889] 5 Times L. R. 594. It seems that if the book has no title registration of a short description will suffice (per Lord Coleridge, C. J. Lindley and Lopes, L.JJ., expressed no opinion).

[5] s. 13. The day of first publication must be accurately given, Low v. Routledge, [1864] 10 L. T. N. S. 838; Mathieson v. Harrod, [1868] L. R. 7 Eq. 270; Page v. Wisden, [1869] 20 L. T. 435; Collingridge v. Emmott, [1887] 57 L. T. 864, following a dictum of Blackburn, J., in Wood v. Boosey, [1867] L. R. 2 Q. B. 340, at p. 355. *Cf.* also Thomas v. Turner, [1887] 33 Ch. D. 292 (reprint of old edition). The object is to inform all persons interested when the period of copyright will run out (per Kay, J., in Collingridge v. Emmott, 57 L. T., at p. 865).

[6] s. 13; Coote v. Judd, [1883] 23 Ch. D. 727. In the case of a firm, the trade name is sufficient (Weldon v. Dicks, [1878] 10 Ch. D. 247). According to Field, J., in Nottage v. Jackson, [1883] 49 L. T., at p. 340, it is sufficient to enter the place of business. A mistake in the name was held fatal, Low v. Routledge.

of the proprietor of the copyright.[1] Registration in the name of an agent or a director was bad,[2] unless he was a trustee.[3] No assignments previous to the first entry of proprietorship need be entered,[4] but the registration did not protect the copyright in the hands of subsequent assignees without a fresh registration.[5] (Under The Fine Arts Copyright Act, 1862, all subsequent assignments were to be registered[6]). Assignments might be made by entry in the registry in like manner on payment of the fee of five shillings, and in that case assignment in any other way was to be unnecessary.[7] The publication referred to must actually have taken place; entry of the proprietorship of the copyright in a yet unpublished book was bad, although the day given as the date of publication was that on which the book was actually published afterwards, as there could be no copyright in a yet unpublished work.[8] Registration of the *name* of a periodical before publication gave no exclusive property in the name,[9] property in a title can only be acquired in the manner previously explained,[10] *i.e.*, by constant usage giving rise to property analogous to that in a trade name.

The effect of registration was to enable the owner of the copyright to sue for infringements of his copyright. Prior to registration he could not sue, but after registration he

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[1] s. 13. If the proprietor has no place of business in England it has been held that the place of business of his publisher is sufficient (Lover v. Davidson, [1856] 1 C. B. N. S. 182). The object is to provide for means of communicating with him (per Cresswell, J., at p. 186).

[2] Petty v. Taylor, [1897] 1 Ch. 465.

[3] London Printing Alliance v. Cox, [1891] 3 Ch. 291; per Lindley, L. J., at p. 301, per Fry and Lopes, L.JJ., at p. 303.

[4] Weldon v. Dicks; *cf.* per Kennedy, J., in Liverpool General Association v. Commercial Press Telegram, [1897] 2 Q. B. 1, at pp. 3, 4.

[5] Liverpool General Association v. Commercial Press Telegram, dissenting from a dictum of Cockburn, C. J., in Wood v. Boosey, L. R. 2 Q. B., at p. 351.

[6] 25 & 26 Vict. c. 68, s. 4. [7] 5 & 6 Vict. c. 45, s. 13.

[8] Henderson v. Maxwell (No. 2), [1877] 5 Ch. D. 892; *cf.* Correspondent Newspaper Co., Limited, v. Saunders, [1865] 12 L. T. N. S. 540.

[9] Maxwell v. Hogg, [1867] L. R. 2 Ch. 307. [10] See pp. 69–73, *supra*.

was entitled under the Act of 1842 to sue for infringements committed before registration.[1]

The Registry Book was to be open for inspection to anyone on payment of a fee of one shilling, and a copy certified by the officer and impressed with the stamp of the company was to be given on payment of five shillings; and such copies were admissible in evidence in all Courts, and to be *primâ facie*,[2] but not conclusive,[3] evidence of the proprietorship of the copyright.[4] Assignments might be made by entry in the Register in like manner on payment of the fee of five shillings, and any other assignment was to be unnecessary.[5]

Delivery of Books to Libraries.

Under The Literary Copyright Act, 1842, it was the duty of the publisher to deliver at his own expense a copy of every book and of every subsequent edition (other than reprints) to the British Museum within one month after publication in the United Kingdom or twelve months after publication in any other part of the British Dominions.[6] He was also to deliver a copy within one month after the receipt of a written demand for the same to each of the following libraries: viz.—The Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library at Trinity College, Dublin.[7] The copy for the British Museum was to be one of the best copies,[6] the copy for each of the other libraries was to be one of the copies, of which the largest number were printed for sale.[7]

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[1] s. 24; Goubaud v. Wallace, [1877] 36 L. T. 704.

[2] s. 11; Hildesheimer v. Dunn, [1891] 64 L. T. 452.

[3] Lucas v. Cooke, [1880] 13 Ch. D. 872.

[4] s. 11. Means were provided for expunging false entries. s. 14.

[5] s. 13. If unnecessary portions are added they will not affect the portions which are correct (Fairlie v. Boosey, [1879] 4 App. Cas. 711), at any rate so long as they are not misleading (p. 724, per Lord O'Hagan; but see p. 731, per Lord Blackburn); Scrutton thinks they must not be misleading, p. 151.

[6] 5 & 6 Vict. c. 45, s. 6. [7] s. 8.

These provisions have been preserved by The Copyright Act, 1911,[1] with regard to books published in the United Kingdom. A written receipt is to be given for the copy delivered to the British Museum.[2] In the case of the other libraries the copy is to be delivered to some depôt in London named in the written demand.[3] The National Library of Wales is added to the libraries entitled to demand a copy, but the Board of Trade may make regulations excluding their right to demand copies of books belonging to any particular classes.[4] The publisher is liable to a fine on summary conviction not exceeding five pounds and the value of the book in the event of non-compliance, and the fine is to be paid to the library.[5] A book is defined to include "every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart, or table separately published."[6] In the case of a work published in a series of books or parts the written demand may include a demand for all parts to be published subsequently.[7]

[1] 1 & 2 Geo. V. c. 46, s. 15. [2] s. 15 (1). [3] s. 15 (2).
[4] s. 15 (5); see p. 265, *infra*. [5] s. 15 (6). [6] s. 15 (7) [7] s. 15 (2).

CHAPTER IV.

LECTURES.

Lectures under The Copyright Act, 1835.

A LECTURE is a species of literary work, and might therefore be expected to be governed by the Act dealing with copyright in books. Such, however, is not the case. Down to The Copyright Act, 1911, the law relating to published lectures was governed by The Lectures Copyright Act, 1835,[1] and the duration of copyright by the Statute of Anne as amended by the Act of 1814.[2] The law, however, with regard to infringements of copyright rests purely on judicial decisions, and therefore it is conceived that the law relating to infringements of copyright in books holds good with respect to copyright in lectures.[3] No case has arisen with regard to an infringement of copyright in a published lecture, but the Act of 1835 appears only to contemplate the case of printing a lecture, and does not deal with the unauthorised oral reproduction of it.

Two points arise with regard to copyright in published lectures. The first is whether prior to The Copyright Act, 1911, there was such a thing as a right to the exclusive delivery of a lecture. That Act has expressly conferred the right of delivery on the lecturer,[4] but the Act of 1835 speaks only of the right of "printing and publishing"; it seems to confer on the lecturer only the rights which he would have had at that date under the amended Statute of

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[1] 5 & 6 Will. IV. c. 65.
See pp. 98–119, *supra*.

[2] 8 Anne c. 19; 54 Geo. III. c. 156.

[4] 1 & 2 Geo. V. c. 46, s. 1 (2).

Anne if he had first published his work as a book. There is no actual decision as to whether unauthorised reading aloud of a book constitutes an infringement of the copyright in the book, but in *Hanfstaengl v. Empire Palace.*[1] Stirling, J., said: "Suppose that at a public meeting some portion of a copyright work was recited or read from an authorised copy of a book; that would be no infringement of the rights of the owner of the copyright." And this view seems in accordance with the principles of English law with regard to dramatization.[2] If there were a right to restrain unauthorised oral reproduction of a book it could not be said that the performance of a dramatized version of a novel on the stage was not an infringement of the copyright in the novel. On the other hand, the law of the United States seems to forbid such unauthorised recitations.[3]

The point is now only of interest in so far as it throws light on the second point, viz.—In the case of a written work, does its character as a book or a lecture depend on the method in which it is first published? There is no doubt that, in the case of an unwritten speech, delivery in public destroyed all copyright in the speech unless notice was given under the Act of 1835. On the other hand, in the case of a drama, public performance on the stage did not divest the Common Law right to restrain publication,[4] and was certainly not an infringement of statutory copyright.[5] Now public performance on the stage amounts to no more than recitation of the words of the play with the assistance of action and scenery. It would seem, therefore, that the same rules apply to the reading aloud

[1] [1894] 3 Ch., at p. 116. The dictum was purely *obiter* as the actual case related to the copying of a picture. *Cf.* also dicta of Page Wood, V. C., in Tinsley v. Lacy, [1863] 1 H. & M. 747, at p. 751.

[2] See pp. 146-8, *infra*.

[3] Boucicault v. Fox, [1862] 5 Blatchford 87, at p. 98; Palmer v. De Witt, [1872] N. Y. 530.

[4] Macklin v. Richardson, [1770] Amb. 694.

[5] Coleman v. Wathen [1793] 5 T. R. 245.

of a book. Take the case of a work composed and intended to be published as a book. Suppose the author has a large edition printed and prepared for issue. Is he to lose all copyright in the book if, prior to the issue of these copies to the public, he reads or recites it aloud in public? Yet no distinction can be drawn between this case and the reading aloud of a written speech from a single written manuscript.

Distinction between Lectures and Books.

The question whether a non-dramatic work was to be treated as a lecture or a book depended, prior to the Act of 1911, on whether it was first published as a lecture or a book. If the first publication was in the form of a book it was protected as a book[1] and the fact that it had *previously been delivered as a lecture was immaterial*, provided such delivery had not amounted to publication. If it was first published as a lecture, then there was copyright in the work for twenty-eight years or the life of the author, whichever should be the longer,[2] provided that at least two days' notice in writing had been given to two justices of the peace living within five miles of the place where the lecture was delivered.[3] If no such notice was given then the author's property in his composition ceased on delivery.

Publication.

The chief point of difficulty with regard to lectures is the question as to what amounts to publication.[4] The principle seems to be that where the lecturer exercises

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[1] This of course leaves open the question whether the reading aloud of a written work amounts to publication of it as a lecture or as a book.

[2] 5 & 6 Will. IV. c. 65, s. 4. The term of copyright therein referred to is that given by 54 Geo. III. c. 156. The reader should, however, be warned that previous text-writers have placed the term given for copyright in lectures at twenty-eight years only; Scrutton, p. 68; Copinger, p. 57.

[3] 5 & 6 Will. IV. c. 65, s. 5.

[4] See also pp. 30–40, *supra*.

any control over the composition of his audience, the law will infer that the lecture was delivered to them under a contract of secrecy, and hence there was no publication.[1] "The understanding between the lecturer and the audience is that whether the lecture has been committed to writing beforehand or not the audience are quite at liberty to take the fullest notes they like for their own personal purposes, but they are not at liberty, having taken these notes, to use them afterwards for the purpose of publishing the lecture for profit."[2] Conversely, where all the world is invited to listen, as in the case of a political speech, or of a sermon in a church which is open to all mankind, the lecture is published and the author loses all rights in it.[3]

University Lectures.

The Act of 1835 expressly exempts all lectures delivered "in any University or Public School or College or on any Public Foundation or by any Individual in virtue of or according to any Gift Endowment or Foundation" from its operation.[4] With regard to these the law is settled by *Caird v. Sime*.[5] It seems that where the lecture is delivered on behalf of a University to the public at large, the lecture is published and all the lecturer's rights are gone and cannot be saved by notice under the Act. But if the publication is to members of a University or School only,[6] or to an audience, no matter how composed, limited by ticket,[7] then the law implies conditional publication only:

[1] Nicols v. Pitman, [1884] 26 Ch. D. 374; Caird v. Sime, [1887] 12 App. Cas. 326. In Boucicault v. Delafield, [1863] 1 H. and M. 597, and Boucicault v. Chatterton, [1878] 5 Ch. D. 267, a play was held to be "published" by being publicly acted on the stage, admission presumably being by ticket and paid for: but the point that this did not amount to publication was not taken.

[2] Per Kay, J., Nicols v. Pitman, 26 Ch. D., at p. 381. "For profit" seems superfluous: *cf.* Novello v. Sudlow, [1852] 12 C. B. 177.

[3] Per Lord Halsbury, Caird v. Sime, 12 App. Cas., at p. 338.

[4] 5 & 6 Will. IV. c. 65, s. 5.

[5] [1887] 12 App. Cas. 326; *cf.* Abernethy v. Hutchinson, [1825] 3 L. J., Ch. (O. S.) 209.

[6] Per Lord Halsbury, *Ibid.* at p. 337-8. [7] Nicols v. Pitman, [1884] 26 Ch. D. 374

and it does not matter whether the lectures were reduced into writing or not, or whether the lecturer was legally bound to deliver them or not.[1]

Alterations Introduced by The Copyright Act, 1911.

By The Copyright Act, 1911, the author of any lecture has copyright in it[2] for the term of his life and fifty years from his death;[3] and no notice is necessary to acquire copyright. The owner's rights now include the exclusive right to deliver the lecture;[4] but his right to prevent reports in newspapers is limited in various ways. In the case of a political speech delivered at a public meeting, a report in a newspaper is expressly permitted; and it does not seem necessary that such report should be contemporaneous.[5] In the case of any other lecture delivered in public, a report may be published in the newspapers, unless expressly prohibited by a conspicuous written notice affixed before and maintained during the lecture at the main entrance of the building in which the lecture is given, and, except where the building is used for public worship, near the lecturer.[6] In no case can a lecturer prevent a newspaper summary.[6] This provision appears to apply to lectures given in private; but any report or abstract of these will be forbidden by the general law implying a contract of secrecy under such circumstances.[7] "Lecture" includes address, speech, or sermon.[8]

[1] Caird v. Sime, 12 App Cas. 326.
[2] s. 1 (1). [3] s. 3. [4] s. 1 (2). [5] s. 20.
[6] s. 2 1). [7] See pp. 44-7, *supra*. [8] s. 35 (1).

CHAPTER V.

DRAMATIC COPYRIGHT.

Copyright and Playright.

IN the case of the typical[1] dramatic composition there are two distinct rights under the law of copyright—the right to publish the drama as a book, and the right to have it acted on the stage. These rights are *entirely distinct from each other*, may arise and end at different times, and be vested in different persons. The former right is exactly the same as that in non-dramatic literary works, and down to 1912 depended on 5 & 6 Vict. c. 45 alone, and is dealt with in Chapter III. The performing right depended on 3 Will. IV. c. 15 and 5 & 6 Vict. c. 45, and is hereafter referred to as "playright" in the present work, following Drone and Scrutton.[2]

Prior to 1833, playright rested on the Common Law. In *Morris v. Kelly*,[3] Lord Eldon restrained the unauthorized performance of a comedy which appears to have been previously performed by assignees of the author, although it is not expressly stated so in the report. And in *Macklin v. Richardson*[4] Lord Commissioner Smythe speaks of the double right of the author of a dramatic piece: the right to the advantage of performance and the right to the profits of printing and publishing. The point actually decided in this case was that performance on

[1] See pp. 131-9, *infra*, as to whether both rights are essential for a dramatic piece.

[2] "Stage-right" is another name given to the performing right by Charles Reade.

[3] [1820] 1 J. & W. 481.

[4] [1770] Amb. 694.

the stage does not destroy the author's Common Law right to prevent publication in print, and it is the first case that establishes the principle of law—viz., that copyright and playright move in such entirely different planes from each other, that the one may exist without the other, and that infringements of the one are not infringements of the other—which down to 1912 lay at the root of the English law as to dramatization of novels. On the other hand, in *Murray v. Elliston*[1] the Court of King's Bench certified to the Lord Chancellor that the representation of an altered and abridged version of Lord Byron's tragedy "Marino Faliero" was not an infringement of the plaintiff's copyright. But the weight of this case as an authority against Common Law playright is diminished by two considerations. First, the version actually represented was an abridgment, and, as such, would, on the principle of *Dodsley v. Kinnersley*,[2] be considered a new work. Secondly, the plaintiff was the assignee of the *copyright* in the work, and it is not certain whether the playright was vested in him or Lord Byron. No reasons are given for the decision. And in *Wall v. Taylor*[3] in the Divisional Court Field and Cave, JJ., said: "Previous to 1833 the liberty of performing dramatic pieces was not the subject of property," but the dictum was purely *obiter*. Playright was not within the Statute of Anne. In *Coleman v. Wathen*,[4] an action for penalties under the Statute, it was held that representation on the stage was not a publication within the Statute.

In 1833, the Act 3 Will. IV. c. 15,[5] commonly known as "Bulwer-Lytton's Act," conferred playright on the author of any "tragedy, comedy, play, opera, farce, or

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[1] [1822] 5 B. & Ald. 657.
[2] [1761] Ambler 403; see pp. 105-6, *supra*.
[3] [1882] 9 Q. B. D., at p. 730.
[4] [1793] 5 T. R. 245.
[5] s. 1. I have disregarded the provisions as to dramas already published.

any other dramatic piece or entertainment" for the following periods:—(1) If printed and published, for the period of twenty-eight years from the date of the printing and publication, or for the life of the author or the surviving author, whichever period should be the longer; and (2) If not printed and published, for a period not stated in the Act, but, on reading this provision for unpublished works together with that for published, clearly amounting to perpetuity so long as the work is not printed and published and then for the period of twenty-eight years or life from the date of such publication.[1] The Act imposed certain penalties on persons guilty of infringements of playright[2] which were preserved by The Copyright Act, 1842.[3] The Copyright Act, 1842,[4] after reciting that it is expedient to extend the term of the sole liberty of representing dramatic pieces to the full time provided by that Act, *enacts* that the sole liberty of representing such dramatic piece shall be the property of the author "*for the term in this Act provided for the duration of copyright in books*," except that the first public representation shall be deemed equivalent for this purpose to the first publication of the book.

There seems to be little doubt as to the meaning of this provision. Playright extends from the first public representation of the piece for the period of forty-two years or the life of the author and seven years, and is entirely independent of the copyright in the play. A doubt has been suggested whether the Act of 1842 was intended to apply to unprinted pieces,[5] on the ground that the section refers to extending the period of playright

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[1] Scrutton on Copyright, p. 75. In Tate v. Fullbrook, [1908] 1 K. B., at p. 831, Farwell, L. J., notes that no express limit is given to the right. It is, however, obvious that the right lasts as long as the work is not published in print.

[2] s. 2. [3] s. 21. [4] s. 20. [5] Scrutton, p. 76.

and, if it applies to unprinted pieces, the period is cut down. The words of the enacting part of the section are, however, perfectly plain and cannot be controlled by words of preamble.[1] In *Chappell v. Boosey*[2] North, J., and in *Tate v. Fullbrook*[3] Farwell, L. J., expressly stated that the combined effect of the Acts was to give playright to the author for forty-two years, or life and seven years, to be computed from the date of the first public representation. The author has, therefore, two distinct rights in his work under the Act of 1842. He has copyright (including the right to prevent publication in print of the work while yet unpublished) or the right of multiplying copies for his life and seven years, or for forty-two years from the first publication. He has also playright (including the right to prevent publication by representation of the play while yet unrepresented) or the exclusive right of public representation for life and seven years, or for forty-two years from the first representation in public. These rights are entirely independent of each other,[4] may arise and expire at different times, and may be assigned separately to different persons.[5]

Now, under The Copyright Act, 1911, copyright and playright are united and included in the general term "copyright" as defined by that Act.[6] They come into being at the same time and end at the same time, viz., fifty years after the death of the author, or fifty years after the first publication, whether by issue of copies to the public or by public performance.[7]

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[1] Per Jessel, M. R., in Maple's Case, [1882] 21 Ch. D., at p. 377.
[2] [1882] 21 Ch. D., at pp. 238-9.
[3] [1908] 1 K. B., at p. 831. But see dicta of Wills, J., in Hardacre v. Armstrong, [1905] 21 Times L. R. 189; *cf.* also Macgillivray, pp. 126-8.
[4] Macklin v. Richardson, [1770] Amb. 694.
[5] Chappell v. Boosey, [1882] 21 Ch. D., at pp. 238-9.
[6] 1 & 2 Geo. V. c. 46, s. 1 (2). [7] s. 17 (1).

In the case of an existing work where the playright and copyright were in different hands on the 30th June, 1912, the owner of the playright becomes the owner of the performing right, but the owner of the copyright becomes the owner of all the other rights included in copyright as defined by the Act.[1]

Conditions for acquiring Playright.

In the Digest of Copyright Law appended to the Report of the Copyright Commission of 1878, Sir James Fitzjames Stephen expressed the opinion that playright was destroyed by publication in print before public performance[2]; and the Commission treated the point as doubtful.[3] There seems to be no authority for such a suggestion. It is clear that the Act of 1833 confers playright on the author of a drama published in print, and says nothing about public representation preceding such printing; and the Act of 1842 in no way refers to the matter. The cases on which this proposition is based are *Murray v. Elliston*[4] and *Toole v. Young*.[5] Of *Murray v. Elliston*[4] it need only be said that it refers exclusively to the Common Law and not to the statutory right, while even with regard to the Common Law it is quite impossible to say what it actually did decide.[6] *Toole v. Young*[5] is a case of the dramatization of a novel. A wrote a novel and subsequently dramatized it; B also dramatized the novel, going direct to the novel and not to A's version. It was held (1) that it was no infringement of the copyright in the novel to represent a dramatized version of it on the stage, and that, therefore, all persons were at liberty to do so; (2) that the fact that the author of one of the

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[1] s. 24 and First Schedule.
[2] Articles 14 & 16.
[3] s. 73.
[4] [1822] 5 B. & Ald. 657.
[5] [1874] L. R. 9 Q. B. 523.
[6] See p. 131, *supra*.

dramas was also the author of the novel on which it was founded did not entitle him to prevent other members of the public from making legitimate use of the source on which his drama was founded.[1] The case shows that publication *in the form of a drama* must precede publication *in the form of a novel*, if the author desires to prevent other persons *from dramatizing his novel*; but it does not show that publication *of a drama* by public performance on the stage must precede publication in print if the author desires to preserve his *playright*.

In *Chappell v. Boosey*,[2] the only case on the point up to the present, North, J., held that prior publication in print did not destroy the author's playright. This, it is submitted, may be taken as settling the law.

The other qualification related to publication out of the British Dominions. By the provisions of The International Copyright Act, 1844,[3] in the case of a play first published out of the British Dominions, whether the publication were in print or by public representation on the stage, the author lost both copyright and playright, except such rights as he might enjoy under the Act. In *Boucicault v. Delafield*[4] it was argued for the author that the Act was not intended to apply to British subjects, but Page Wood, V. C., held that no distinction was made. And in *Boucicault v. Chatterton*,[5] where the publication abroad was by public representation only, the Court of Appeal held that, even in this case, the Act applied to British subjects, and that the author had lost both copyright and playright.

The rule rested on statute, and was probably opposed to that of the Common Law.[6] In the case of *Palmer v.*

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[1] See pp. 146-8, *infra*.

[2] [1882] 21 Ch. D. 232; *cf.* also dicta of Lord Blackburn, in Fairlie v. Boosey, [1878] 4 App. Cas., at p. 727 (musical case).

[3] 7 Vict. c. 12, s. 19. [4] [1863] 1 H. & M. 597. [5] [1878] 5 Ch. D. 267.

[6] *Cf.* Macklin v. Richardson, [1770] Amb. 694.

De Witt,[1] a case decided on the principles of the Common Law, the Courts of the United States held that representation of a play in London, written by a British subject but never published in print, did not prevent him from restraining the unauthorised publication of it in print. In other words, playright was destroyed by public representation abroad, but not copyright.

From 1886 publication in any part of the British Dominions vested the right equally with publication within the United Kingdom.[2]

It is doubtful whether publication before 1886 within the British Dominions other than the United Kingdom would have destroyed copyright or playright, as the case might be.[3] But, if this was so, it is submitted that only copyright was destroyed by publication in print, and only playright by public representation.

The conditions for acquiring copyright rights in a drama now rest on The Copyright Act, 1911.[4]

Qualifications for Playright.

The Act of 1833 gave protection to any "tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment."[5] As regards the interpretation of this provision two questions have arisen:—

1. Is the subject matter of playright something which can be put into writing or are scenic effects, situations, &c. protected as well?

The earliest case is that of *Lee v. Simpson*[6] where the representation of a *written* introduction to a pantomime was restrained, but it is extremely difficult to collect anything in point from the report. In the case of

[1] [1872] 47 N. Y. 532 (Am).
[2] 49 & 50 Vict. c. 33, s. 8.
[3] See pp. 88-90, *supra*.
[4] 1 & 2 Geo. V. c. 46, s. 1 (1); see pp. 50-2, *supra*.
[5] s. 1.
[6] [1847] 3 C. B. 871.

Chatterton v. Cave[1] in the Court of Common Pleas Brett, J., is reported in the *Law Times* as saying: "Now it was first said that the subject-matter of the action was not the subject of copyright; that the Act gives a property in words, but not in situations and scenic effects, but I think that these latter are more peculiarly the subject of copyright[2] than the words themselves." These words do not appear in the *Law Reports*. In the same case Grose, J., said: "A very striking stage situation or important novel scenic effect might very well be, under some circumstances, the subject of dramatic copyright . . . . The intention is to protect original merit; it would be descending to absurdity to give protection to the application of a commonplace expedient of scenic art to the end of a version of a drama."[3] But in *Tate v. Fullbrook*[4] the Court of Appeal held that the subject of playright is something which can be printed and published. Farwell, L. J., stated the law as follows[5]:—"It is clear that the only things which are protected by it are things which are capable of being printed and published. It follows, therefore, that scenic effects, taken by themselves, and apart from the words and incidents of the piece, are not the subject of copyright, because they cannot be the subject of printing and publication. Nor do I say that scenic effects may not be protected as part and parcel of the drama; scenes do, of course, form part of a drama, and it is the dramatic piece, as a whole, that is protected by the Act.[6] It is essential, however, to such protection that there should be something in the nature of a dramatic entertainment, for a mere spectacle standing alone is no more within the Act than a singer who sings in character costume is within it. The

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[1] [1875] 33 L. T., at p. 256.

[2] *I.e.* playright.

[3] L.R. 10 C. P., at p. 579.

[4] [1908] 1 K. B. 821.

[5] At p. 832.

[6] *Cf.* judgment of Lord Blackburn in Chatterton v. Cave, [1878] 3 App. Cas., at p. 503.

scene can only be protected as part of a whole which is within the Act, and as such carries the statutory protection to its accessories. *In order to obtain protection there must be matter capable of being printed and published, and the plagiarist must copy a material part thereof.*"

In *Karno v. Pathé Frères*,[1] Jelf, J., held, on the authority of *Tate v. Fullbrook*,[2] that a pantomimical sketch entitled "The Mumming Birds," the permanent part of which consisted mainly in dumb show, was not within the protection of the Copyright Acts. The Court of Appeal upheld his decision on another ground, but expressed no opinion as to this point.

The result seems to be this: unless the work can be printed and published it is incapable of playright[3]; if it is capable of playright, there is, of course, no property in the *idea* of any scenic effects;[4] but the point still seems open whether there can be infringement of playright in a drama otherwise than by taking the actual words, or (to put it in a different form) whether the *playright* in one drama can be infringed by the *representation* of another, although the *copyright* in the first would not be infringed by the *printing* of the second. The dicta in the English cases quoted above seem in favour of an affirmative answer. The point was neatly raised in the American case of *Daly v. Palmer*,[5] where the stage action in one play was only a colourable imitation of that in another, although the words used

[1] [1908] 99 L. T. 114, affirmed by the C. A., [1909] 100 L. T. 260. There was no plot, and although a good deal of "gag" was employed by the performers, the whole of this varied from night to night.

[2] [1908] 1 K. B. 821.

[3] Tate v. Fullbrook; *cf.* Martinetti v. MacGuire, [1867] 1 Deady 216 (Am.) where protection was refused to the "Black Crook" on the ground that it was a "mere spectacle." The force of this decision is considerably weakened by the fact that the judge also based his decision on an alternative ground—the immoral and undesirable character of the "spectacle."

[4] Chatterton v. Cave, [1878] 3 App. Cas. 483.

[5] [1868] 6 Blatchford 256. It might possibly be urged against this case as an authority that the learned judge did not lay sufficient stress on the rule that there is no copyright in ideas.

by the characters were totally different. It was decided that this was an infringement of the playright.

2. *What constitutes a dramatic piece?*

The leading case on this subject is *Fuller v. Blackpool Winter Gardens*,[1] and the earlier decisions are of somewhat doubtful authority, though no opinion was expressed as to their soundness except in the case of the decision in *Roberts v. Bignell*.[2] In *Russell v. Smith*,[3] a song which related to the burning of a ship at sea and the escape of those on board, describing their feelings in vehement language and sometimes expressing them in words supposed to be spoken by persons on board, was held to be dramatic, although it was sung by one person only, sitting at a piano and giving effect to the verses by his delivery, but without any assistance from scenery or appropriate dress. The Court held that the Act protected[4] "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."

In *Clark v. Bishop*[5] a comic song sung in costume and accompanied by appropriate gestures and expression was held

[1] [1805] 2 Q. B. 429.
[2] [1887] 3 Times L. R. 552.
[3] [1848] 12 Q. B. 217.
[4] At p. 236.
[5] [1872] 25 L. T. (N. S.) 908. The facts in that case were as follows:—A was the proprietor of the right of printing the words of a song, and of singing it in public. The song had never been published, except by being sung in public. B printed and published a volume of songs, including one which was a colourable variation of A's song. A was held entitled to restrain the printing of B's song, although he had not registered his own, on the ground (1) that the printed song was not a "book" within the meaning of The Copyright Act, 1842, and therefore did not require registration; (2) that the printing of the song constituted an infringement of A's property in it as a dramatic piece. It is respectfully submitted that the *reasoning* is entirely wrong. In the first place, if the song was not a "book" within the Act there was no copyright (in the narrower sense) in it and B's action was no infringement of A's copyright. But it is quite clear that the words of a song printed on a sheet constitute a sheet of letterpress, and come within the Act. And, on the other point, the printing of a drama does not constitute an infringement of its playright. Can the opinion of the Court as to what constitutes a dramatic piece carry much weight? The decision is quite right, as the performance in public does not constitute such a publication as to destroy the author's Common Law right with regard to publishing in print.

a dramatic piece. And in *Roberts v. Bignell*[1] a song called "Oh, Jenny Dear," set to music not of the proprietor's authorship was held a dramatic piece.

But in *Fuller v. Blackpool Winter Gardens*[2] the Court of Appeal held that a song called "Daisy Bell" was not a dramatic piece, although intended to be sung in appropriate costume, but without dramatic effect or scenery. Lord Esher expressed the view[3] that the words "any other dramatic piece or entertainment" must be read as *ejusdem generis* with the things previously enumerated, "tragedy, comedy, play, opera, or farce."[4] A. L. Smith, L. J., said[5] "In each case it is a question of fact, I think, that to constitute a song a dramatic piece it must be such a song as for its proper representation acting, and possibly scenery, forms a necessary ingredient, and that if neither of these be a requisite to the efficient representation of the song it is not a dramatic piece." Lord Denman is treated as having confused two questions, viz., what is "dramatic" in the usual sense of the word and what is "dramatic" within the meaning of the Act.

By the Interpretation Section[6] of The Copyright Act, 1911, "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 . . . of original character." It is very difficult to say what the words "or otherwise" mean.

The other qualifications for playright are innocency and originality. It is conceived that these qualifications

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[1] [1887] 1 Times 3 L. R., 552; doubted by Kay, L. J., in Fuller's Case, [1895] 2 Q. B., at p. 437.

[2] [1895] 2 Q. B. 429. [3] At p. 433. [4] 3 Will. IV. c. 15, s. 1.

[5] [1895] 2 Q. B., at p. 442. [6] 1 & 2 Geo. V. c. 46, s. 35 (1).

are exactly the same as in the case of Literary Copyright.[1] Thus, in *Hatton v. Kean*[2] an adaptation of "Much Ado About Nothing" was held sufficient to constitute an original work in which playright might exist.

Duration and Extent of Right.

These are the same as in the case of Literary Copyright (see p. 90, *supra*).

Ownership.

First Owner.

The first owner of the playright in a dramatic work was the person who first publicly performed it, having the right to do so; and, as a general rule, his right to do so must be traced from the author. It has not yet been decided whether, under the Act of 1842, the playright of a drama published after the death of its author belonged to the owner of the manuscript from which such drama was first published.[3] It would probably be decided that it did, as it is expressly provided that all provisions in the Act dealing with the ownership of the copyright shall apply to playright also.[4] Moreover, the copyright in the drama unquestionably belonged to the owner of the manuscript, and it would seem very anomalous if the playright did not.

Under the Act of 1842 mere employment of the author to write a play and payment by the employer did not vest the playright in the employer without a written transfer,[5] nor does the fact that the employer

[1] See pp. 81–7, *supra*.

[2] [1850] 7 C. B. N. S. 268; *cf.* Tree v. Bowkett, [1900] 74 L. T. 77.

[3] *Cf.* Macmillan v. Dent, [1907] 1 Ch. 107, 5 & 6 Vict. c. 45 s. 3.

[4] 5 & 6 Vict. c. 45 s. 20: "and the provisions hereinbefore enacted in respect of the property of such copyright . . . . shall apply to the liberty of representing . . . . any dramatic piece . . . . as if the same were herein expressly re-enacted and applied thereto." This would bring playright within the meaning of Section 3.

[5] Shepherd v. Conquest, [1850] 17 C.B. 427; Eaton v. Lake, [1888] 20 Q.B.D. 378; see pp. 93–4, *supra*.

suggested the subject make any difference.[1] The only case in which playright in the work vested in a person other than the author was where that work formed an accessory to another work the playright of which was in that other person.[2] In that case, if the author was paid to compose the accessory work on the terms that the playright should belong to the employer, then the playright vested *ab initio* in the employer, without any need for a written transfer.[3]

To constitute joint authorship with another person there must be a preconcerted joint design. Mere alterations of or additions to an already completed work by another person will not constitute him a joint author, whether such alterations or additions were made with or without the consent of the true author.[4]

Transfer.

The assignment of playright must be in writing.[5] In the case of a licence, the licence need not be in the writing of the author but may be given by a duly authorised agent.[6] It has not been decided whether this applies to the case of an assignment.[7] The assignment need not be attested[8] or by deed.[9] No particular form appears necessary. Thus in *Lacy v. Toole*,[10] a written agreement by A to "let B have" a particular drama in discharge of a

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[1] Levy v. Rutley, [1871] L. R. 6 C. P. 523; Shelley v. Ross, [1871] L. R. 6 C. P. 531 n. But see pp. 91–7, *supra*.

[2] The reason is that the person who designs the whole is considered the author of the whole; Barfield v. Nicholson, [1823] 2 L. J. (O. S.) 90, per Sir John Leach, at p. 102.

[3] Hatton v. Kean, [1859] 7 C. B. N. S. 268; Wallerstein v. Herbert, [1867] 16 L. T. 453.

[4] Levy v. Rutley.

[5] Shepherd v. Conquest, [1856] 17 C. B. 427; Eaton v. Lake, [1888] 20 Q. B. D. 378, and general opinion of text-writers; but see dicta of Byles, J., in Lacy v. Toole, [1867] 15 L. T. 512.

[6] Morton v. Copeland, [1855] 16 C. B. 517; given by the secretary of the Dramatic Authors' Society.

[7] Scrutton treats it as sufficient, p. 92.

[8] Cumberland v. Copeland, [1862] 1 H. & C. 194.

[9] Marsh v. Conquest, [1864] 17 C. B. N. S. 418.

[10] [1867] 15 L. T. 512.

debt was held sufficient to pass all A's interest in a drama already written. A sole licensee cannot sue in his own name.[1]

Unless expressly mentioned, the assignment of copyright in a drama did not convey the playright therein under the Act of 1842.[2] *Cumberland v. Planché*,[3] which seems to decide the contrary, is purely a decision on the Act of 1833, not on the Act of 1842. And a valid assignment of one right was not vitiated by the attempted but invalid assignment of the other in the same instrument.

Under the Copyright Act, 1911, an assignment of "copyright" would convey all the owner's rights, unless expressly limited.[4]

Infringement.

Public Representation.

Playright is infringed by the unauthorised representation of the drama in public. Under 3 Will. IV. c. 15, it was necessary that the performance should be in a place of dramatic entertainment, *i.e.*, a place habitually used for dramatic entertainments.[5] Under 5 and 6 Vict. c. 45, it was not necessary that the performance should be at a place of dramatic entertainment, but it must be in public,[6] and in *Duck v. Bates*[7] it was held that a performance in a room in Guy's Hospital for the entertainment of the nurses, attendants, and physicians and medical students was not "in public" for the purposes of the Act, and that the admission of reporters made no difference. But it is not necessary that the entertainment shall be for profit. Playright may, of course, be infringed by representing a drama, in the composition of which an unfair use has been made of

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[1] Neilson v. Horniman, [1909] 26 Times L. R. 188.
[2] 5 & 6 Vict. c. 45, s. 22; Marsh v. Conquest.
[3] [1834] 1 A. & E. 580.
[4] See the definition of "copyright" in s. 1 (2).
[5] s. 2.
[6] Wall v. Taylor, [1883] 11 Q. B. D. 102; 1 & 2 Geo. V. c. 46 s. 1 (2).
[7] [1884] 13 Q. B. D. 843.

an earlier work, whether the second drama has been derived directly or indirectly from the first.[1] Mere similarity is not enough to constitute an infringement,[2] thus in the case of two plays founded on the same novel each of them possesses playright of its own.[3] The principles governing the use of earlier plays by a new author are, it is conceived, the same as those in the case of books.[4] There is no copyright in ideas.[5] Beyond this, there must also be a taking of a substantial and material part;[5] but what amounts to a substantial and material part is a question of fact, and in *Planché v. Braham*[6] a jury was held to be justified in finding that the singing of two or three songs from the plaintiff's work was an infringement of his playright.

Permitting Theatre to be used for Unlawful Representation.

Under The Copyright Act, 1911, it is an infringement for any person, for his private profit, to permit a theatre or other place of entertainment to be used for the performance in public of a copyright drama, unless he was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of copyright.[7]

There is no definition of "place of entertainment." In The Dramatic Copyright Act, 1833, the words "place of dramatic entertainment" are used, and have been interpreted by the Courts. In the case of *Russell v. Smith*[8] a place of dramatic entertainment is defined as "a place used *for the time* for the public representation for profit of a dramatic piece," whether that was its

[1] Schlesinger v. Turner, [1890] 63 L. T. 764.

[2] Reichardt v. Sapte, [1893] 2 Q. B. 308; Rohl v. Palace Theatre, [1911] 28 Times L. R. 69.

[3] Toole v. Young, [1874] L. R. 9 Q. B. 523; Schlesinger v. Bedford, [1890] 63 L. T. 762.

[4] See pp. 98-119, *supra*.

[5] Chatterton v. Cave, [1878] 3 App. Cas. 483; 1 & 2 Geo. V. c. 46 s. 1 (2).

[6] [1837] 4 Bing N. C. 17.

[7] 1 & 2 Geo. V. c. 46, s. 2 (3).

[8] [1848] 12 Q. B. 217.

general use or not. This definition was considered again in *Duck v. Bates*,[1] and the Judges of the Court of Appeal seem to have held (1) that "for profit" is unnecessary; (2) that any performance *in public* was sufficient to constitute the place where it was held "a place of dramatic entertainment," but that private and domestic representations were allowable.

The dicta (all but the last) were purely obiter.

It would appear that the proprietor must retain control over the theatre to be responsible under this section. Thus under the old law in *Russell v. Briant*[2] the letting of a room by the proprietor, who derived no profit from the play except the rent of the room, was held not to render him liable. And in *Lyon v. Knowles*[3] the proprietor of a theatre was not held responsible, although he paid for the printing and advertising, furnished the lighting, workmen, and supernumeraries, and paid the band, his lessee having the right of selecting the pieces to be represented. But in *Marsh v. Conquest*[4] where the proprietor let the theatre together with the services of his company to one of them, his son, for one night for the son's benefit, at the price of thirty pounds, he was held liable on the ground that he retained entire control over the theatre, and that what was done was done by his permission. In *Monaghan v. Taylor*[5] it was held that, where the proprietor of a theatre had engaged a singer to sing what songs he liked, and exercised no control or supervision over his choice of songs, there was evidence to go to the jury of agency and a general authority to sing the song in question, and therefore a verdict

[1] [1884] 13 Q. B. D. 843; *cf.* Glenville v. Selig Polyscope, [1911] 27 Times L. R. 554.

[2] [1849] 8 C. B. 836.

[3] [1863] 3 B. & S. 556. These cases were approved in Kelly's Directories v. Gavin, [1901] 1 Ch. 374, [1902] 1 Ch. 631; *cf.* also French v. Day, [1893] 9 Times L. R. 548.

[4] [1864] 17 C. B. N. S. 418.

[5] [1890] 2 Times L. R. 685.

against the proprietor ought to stand. In another case the proprietor of a music hall was held liable for the unauthorised singing of a song which he knew was being sung there.[1]

Apart from the provision requiring guilty knowledge or reasonable grounds for suspicion, these cases are probably still good law; but in view of this provision it is submitted that a mere general authority to an employé to perform what dramas he pleased is not in itself sufficient to render the proprietor or occupier of the theatre liable.

Representation of a copyright drama by mechanical means without the consent of the owner of the copyright is an infringement of copyright.[2] It is doubtful what the old law was on this point.[3] Arguing from the analogy of mechanical reproductions by musical instruments, it would seem that it was not an infringement.[4] The point may arise with regard to money invested in the production of such exhibition prior to the commencement of the Act.

Dramatization of Novels.

The principles governing the old law as to dramatization of novels and the "novelization" of dramas were, it is submitted, as follows:—

(1) A drama possesses both playright and copyright. A novel only possesses copyright.

(2) Playright and copyright are so completely different in character, that the same act cannot infringe both at the same time.[5]

(3) (Doubtful.) When a drama and a novel by the same author are published at different times, the

[1] Roberts v. Bignell, [1887] 3 Times L. R. 552.
[2] 1 & 2 Geo. V. c. 46, s. 35 (1).
[3] *Cf.* Karno v. Pathé Frères, [1909] 99 L. T. 114.
[4] *Cf.* Boosey v. Whight, [1900] 1 Ch. 122.
[5] *Cf.* Macklin v. Richardson, [1770] Amb. 694.

> law concludes that the work published first is the original and that the other was derived from it.[1]

Hence it was no infringement of the copyright in a novel to represent a play founded upon it;[2] but to print such play was an infringement of the copyright.[3]

If, however, the novel was founded upon a drama, *i.e.*, the drama was published (in any form) first, then the representation of a dramatized version of the novel infringed the playright in the original play.[4] Printing such dramatized version infringed the copyright in both the novel and the original play.[5] Absence of guilty knowledge did not protect the infringer.[6] It follows, therefore, that to prevent anyone else from dramatizing his novel the author must publish his work in dramatic form first,[7] or (probably) simultaneously with the novel. The novel, once published, became a common source to which all the world might go, and a dramatization of a novel, if fairly and directly taken from the novel, did not infringe the playright in another dramatization of the novel, even if made by the author of the novel.[8]

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[1] This principle is strongly suggested by the cases, but none of them actually goes so far. In all cases where the facts are fully given it is stated that the work published first, whether drama or novel, was the original on which the other was actually founded. In Schlesinger v. Turner, [1890] 63 L. T. 764, and in Schlesinger v. Bedford, [1890] 63 L. T. 762, it is not stated whether the work published after the other was actually derived from it; and there the work published first was treated as the original. In the former case Kekewich, J., said:—"(This is) the case of a defendant dramatizing a novel published by the plaintiff before his, the plaintiff's, dramatic version of it." The headnotes go the whole way, and may possibly be justified by the facts of the case, but those facts are not stated in the report.

[2] Reade v. Conquest, first case, [1931] 9 C. B. N. S. 755; Schlesinger v. Bedford [1890] 63 L. T. 762.

[3] Tinsley v. Lacy, [1863] 1 H. & M. 747.

[4] Reade v. Conquest, second case, [1862] 11 C. B. N. S. 479; Schlesinger v. Turner, [1890] 63 L. T. 764.

[5] Reade v. Lacy, [1861] 1 J. & H. 524; Tinsley v. Lacy. [6] Reade v. Lucy.

[7] Per Page Wood, V. C., Tinsley v. Lacy, 1 H. & M., at p. 751.

[8] Toole v. Young, [1874] L. R. 9 Q. B. 523. "All this is subject to the doubt previously expressed as to whether the law considers prior publication conclusive or *prima facie* proof of originality

It seems clearly to follow from these principles, that the "novelization" of a drama was an infringement of the copyright in the drama. The reason, it is submitted, why the acting of a dramatized version of a novel was not an infringement of copyright is, not that the dramatization was a new and original work (for in that case the printing of the dramatization would be lawful), but that representation on the stage was a question of playright only, and there was no playright in a novel.

Although the dramatization of a novel was lawful, this did not give the dramatizer the right of multiplying copies of his dramatic version, even for the sole purpose of having the drama acted. In *Warne v. Seebohm*[1] the defendant dramatized "Little Lord Fauntleroy" and caused four copies of his version to be made, one for the Lord Chamberlain and three for the performers. The owners of the copyright in the book admitted that the representation was legal, but contended that the making and distributing of these copies of the play was an infringement of the copyright in the novel.[2] The Court upheld their contention and decided that all passages from the plaintiff's book in the copies must be cancelled. But, as was pointed out at the trial, this could have been evaded by buying a few copies of the novel and cutting out the passages taken from it and pasting them in the necessary copies of the play.

By The Copyright Act, 1911, the right of dramatizing a novel and of "novelizing" a drama is reserved for the owner of the copyright.[3]

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[1] [1888] 39 Ch. D. 73.
[2] *Cf.* Novello v. Sudlow, [1852] 12 C. B. 177.
[3] 1 & 2 Geo. V. c. 46, s. 1 (2).

CHAPTER VI..

MUSICAL COPYRIGHT.

Definition of a Musical Composition.

THERE is no definition of a musical composition in The Copyright Act, 1911, nor in the Act of 1842. In The Musical (Summary Proceedings) Copyright Act, 1902,[1] a musical work is defined as "any combination of melody and harmony, or either of them, printed, reduced to writing or otherwise graphically produced or reproduced."

It is doubtful whether anything more than a fixed sequence of sounds is required. This view is strongly supported by the provision as to copyright in contrivances for the mechanical reproduction of sounds, where no qualification as to the nature of the sounds is required.[2]

Copyright and Playright in Musical Compositions.

The law with respect to copyright in Music closely resembles that in Drama. There are the same two distinct rights—the exclusive right of multiplying copies or copyright in its narrower sense, and the exclusive right of performing the music or playright. The right of multiplying copies of a composition has always been protected under the various Literary Copyright Acts; thus, in *Bach v. Longman*,[3] the Court of King's Bench held that a musical composition was within the Statute of Anne.[4] Lord Mansfield compared it to the case of a work

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[1] 2 Edw. VII. c. 15, s. 3 (unrepealed).

[2] [1777] 2 Cowper 623; followed in Storace v. Longman, [1788] 2 Camp. 27 n., and in Clementi v. Goulding, [1809] 2 Camp. 25, where the Court gave protection to a musical composition written on a single sheet. In Bach v. Longman, the plaintiff pleaded a royal grant.

[3] 1 & 2 Geo. V. c. 46, s. 19 (1).

[4] 8 Anne c. 19.

on algebra or mathematics, or a treatise in hieroglyphics, all of which were included in the Act.[1] The performing right was not protected until The Copyright Act, 1842,[2] which expressly extends to musical compositions the remedies given to dramatic compositions by itself and The Dramatic Copyright Act, 1833[3]; but there was some doubt as to whether the Act had a retrospective operation with regard to musical compositions published before the Act.[4] It was by The Copyright Act, 1842, incorporating the Act of 1833 that protection was given to music down to The Copyright Act, 1911.

The law with respect to the copyright in musical compositions thus rests on the same Acts as that with respect to dramatic compositions, and is for the most part identical with it. There are, however, certain points peculiar to musical copyright: viz., originality, infringement, certain summary remedies reserved for musical copyright only,[5] and notices necessary to preserve the right in the case of musical compositions published after 1882. Under The Copyright Act, 1911, protection has been extended to mechanical instruments for the reproduction of sounds as if they were musical works, but with certain modifications.[5]

Qualification.

Originality.

As in the case of Literary copyright,[6] almost any dealing with, and the expenditure of labour and trouble on the alteration of, a musical composition is sufficient to

[1] 2 Cowper, at p. 624.

[2] 5 & 6 Vict. c. 45, s. 20 21. See also s. 2 for protection of the copyright.

[3] 3 Will. IV. c. 15.

[4] In *Ex parte* Hutchins & Romer, [1878] 4 Q. B. D. 483, the C. A. expressed the opinion that it had a retrospective operation, dissenting from the Queen's Bench Court which thought that it had not (4 Q. B. D., p. 50). The actual decision was affirmed, but on other grounds. The point is, however, of no practical importance to-day.

[5] 1 & 2 Geo. V. c. 46, s. 19.

[6] See pp. 83-7, *supra*.

create a new work with an independent copyright, provided that the new work is not an infringement of the copyright in the old. It is not necessary that the new work should be one which would not have been an infringement, if the copyright in the old had been still subsisting and the new work had been made without the permission of the owner. Thus in *Wood v. Boosey*[1] A composed and published an opera in full score, and B arranged the score of the opera for the pianoforte, the overture for the piano, and the whole opera *pour le piano seul*; it was held that the arrangements were independent compositions of which B was the author. Lord Cockburn said[2]: "It may be, if the arrangement be made without the consent of the composer of the opera, such an adaptation would be an infringement of his copyright. It is not necessary to decide that. But it may be that, after the copyright has expired, an arrangement for the pianoforte might be made in the first instance, or some musical composer, thinking that an arrangement that already existed of some well known and popular opera is not so good as it can be made, might apply his hand to the work, and make a new arrangement. Can it be said that such an arrangement, useful as regards the musical world, shall not be the subject of protection under the Copyright Acts?"

Thus an accompaniment composed for words adapted to an old air is a new and original composition.[3] There appears to be no case where the addition of original matter or the alteration of old has been held to be too small to confer a new copyright.

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[1] [1867] L. R. 2 Q. B. 340. [2] L. R. 2 Q. B., at p. 350.

[3] Lander v. Purday, [1840] 7 C. B. 4; Lover v. Davidson, [1856] 1 C. B. N. S. 182 (prelude and accompaniment).

Condition.

Notice to be given where the work was first published after the 10th August, 1882.

In the case of musical compositions published after the 10th August, 1882, and before the 1st July, 1912, The Copyright Act, 1882,[1] required that, where the proprietor of the right of public representation desired to retain such right in his own hands, he must have a notice reserving such right printed on the title page of every published copy. Where the performing right and the copyright in any such musical composition should become, after the passing of the Act, vested in different hands *before* publication then the owner of the performing right was required to give, before publication, notice to the owner of the copyright to print the required notice on each copy.[2] Where the separation of the two rights took place *after* publication, and the required notice had been printed on all copies previous to the separation, the owner of the performing right was required to give, before publication of any further copies, notice in writing to the owner of the copyright to print the required notice on each copy.[2] In case the owner of the copyright failed to comply with such notice given under the conditions prescribed by the Act he was to forfeit a sum of twenty pounds to the owner of the performing right.[3]

The Act of 1882 touches the nadir of bad drafting even for Copyright Acts. It is not clear whether failure to print or give the required notice destroys the performing right for ever, or only affects the right to sue an infringer who fails to receive notice. The better opinion

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[1] 45 & 46 Vict. c. 40, s. 1.

[2] s. 2. The section is very badly drafted, and does not explicitly state whether it only applies to musical compositions first published after the Act. Reading it together with the first section, it clearly must apply only to them.

[3] s. 3.

is that it destroys the right.[1] In the first place the words "retain the right of public representation" are used; and these words imply that the right itself is lost, not merely that the owner has no remedy against an infringer. Secondly, in the second section it is required that the common owner should have printed the notice on all copies issued before the copyright and the performing right came into different hands. This points strongly against the right surviving any omission to print the required notice. If the owner of the copyright failed to print the notice on being required by the owner of the playright to do so, it seems fairly clear that the playright was not destroyed.

This notice was required in the case of all musical compositions, although they might come within the definition of dramatic compositions as well.[1] It is not required in the case of copies issued on or after the 1st July, 1912.

Infringement.

It is an infringement of the copyright in a musical composition to multiply copies of it, or of an unlawful imitation of it. Likewise it is an infringement of the performing right to perform publicly either it or an unlawful imitation of it. The law as to public performance is the same as in the case of Drama,[2] with the exception of the notices to be given in the case of works published after 1882.[3]

Test of Piracy.

The question as to what constitutes such a modification of a copyright musical composition as to be an original and allowable work was considered in *D'Almaine v. Boosey*.[4] In that case certain airs in an opera were adapted to waltzes and quadrilles, and this was held to be piracy.

[1] *Cf.* Fuller v. Blackpool Winter Gardens, [1895] 2 Q. B. 429, 434, 438.
[2] See pp. 143-6, *supra*. [3] See pp. 152-3. [4] [1835] 1 Y. & C. (Ex.) 288.

Lord Abinger said:[1] "It must depend on whether the air taken is substantially the same with the original. Now the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. *The ear tells you that it is the same.* The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. *Substantially, the piracy is where the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear.* The adding variations makes no difference in the principle." It does not matter whether the unlawful adaptation is made directly from the original or from a licensed or unlicensed adaptation of it.[2]

Under The Musical (Summary Proceedings) Copyright Act, 1902, "Musical Copyright" as used in that Act is defined as "the exclusive right (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."[3] This seems to be an accurate summary of the rights included in musical copyright (in the narrower sense).

Mechanical Contrivances.

It was not, however, every reproduction of a sheet of music that was forbidden by the earlier Acts. In *Boosey*

[1] At p. 302.

[2] Fairlie v. Boosey, [1870] 4 App. Cas. 711. A composed an opera. B made two "arrangements" of it for the voice with A's permission. The copyright in the opera and the "arrangements" became the property of C. The opera was registered; the "arrangements" were not. D produced another opera, taking his music from the "arrangements." C obtained an injunction on the ground that it was an infringement of his rights in the opera.

[3] 2 Edw. VII. c. 15, s. 3.

v. Whight,[1] the question arose as to the legality of perforated rolls of paper representing the musical score of certain songs, to be used in a mechanical organ called an "Æolian." It was held both by Stirling, J., and the Court of Appeal that the rolls were not "copies" within the meaning of The Copyright Act, 1842, but were "part of a mechanical contrivance for producing musical notes,"[2] and were therefore perfectly legitimate. This decision was applied in *Mabe v. Connor*[3] to a similar case under The Musical Copyright Act, 1902.

Now under The Copyright Act, 1911,[4] it has been made an infringement of copyright to make any mechanical contrivances for reproducing musical compositions in which copyright subsists, except under the following conditions:

A. In the case of a musical work published by issue of copies before the commencement of the Act.

The prescribed notice must be given and the prescribed royalties paid: viz.—

(*i*) In the case of a contrivance sold before the 1st July, 1913, where contrivances reproducing the same work have been lawfully made or placed on sale before the 1st July, 1910, within the British Dominions to which the Act extends, nothing.

(*ii*) In all other cases $2\frac{1}{2}$ per cent. on the retail selling price, but in no case less than a halfpenny per contrivance for each separate musical work reproduced thereon; and in calculating the royalty all fractions of a farthing are to be reckoned as a farthing.[5]

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[1] [1899] 1 Ch. 836; [1900] 1 Ch. 122; *cf.* Monckton v. Gramophone Co., Limited, [1912] L. T. 84.

[2] Per Lindley L. J., [1900] 1 Ch., at p. 124; *cf.* Stirling, J., [1899] 1 Ch., at p. 842.

[3] [1903] 1 K. B. 515. [4] 1 & 2 Geo. V. c. 46, s. 1 (2). [5] s. 19 (7) & (3).

This right of making or authorizing the making of mechanical contrivances and of receiving the royalty, is to belong to the author or his personal representatives, notwithstanding any assignment of the copyright before the passing of the Act.[1] It is doubtful whether this would apply to a case where the copyright had vested in another *ab initio* under The Copyright Act, 1842.[2]

The saving of existing rights by the Act[3] does not entitle anyone who has lawfully made any contrivances to sell them except under these conditions.[1] Where the work is only protected by International Copyright, these rights shall not be included in the copyright, except so far as they are expressly provided for by the Order in Council conferring the copyright.[1]

B. In the case of works not published by issue of copies before the commencement of the Act.

(1) Such contrivances must have been previously made by, or with the consent or acquiescence of, the owner of the copyright.[4]

(2) The prescribed notice must be given and the prescribed royalties paid[4]: viz.—

(*i*) For a contrivance sold within two years after the commencement of the Act, $2\frac{1}{2}$ per cent. on the retail selling price.

(*ii*) In all other cases 5 per cent.;

but in no case less than a halfpenny per contrivance[5] for each separate musical work reproduced thereon; and all fractions of a farthing shall be reckoned as a farthing.

(3) There shall be no alterations or omissions with regard to the work reproduced unless such alterations or

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[1] s. 19 (7) & (3).
[2] See pp. 91–6, *supra*.
[3] s. 24 (1); see pp. 54–5, *supra*.
[4] s. 19 (2).
[5] s. 19 (3).

omissions are reasonably necessary for the adaptation of the work to the contrivances in question, or 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.[1]

Where contrivances have been made, the owner of the copyright is deemed to have given his consent, if he fails to reply to the prescribed inquiries within the prescribed time.[2]

The Board of Trade may in all cases make regulations respecting the notice to be given, the manner in which royalties are to be paid, and any inquiries to be made under this section[3]; and it is provided that where any mechanical contrivances have been made, they shall, in relation to any person who makes the prescribed inquiries, be deemed to have been made with the consent of the owner of the copyright, if he fails to reply within the prescribed time.[2] The Board of Trade may also, at the expiration of seven years from the commencement of the Act, make an order increasing or decreasing the rate at which royalties are calculated; but such order is only provisional until confirmed by Parliament. Such revisions can only be made at intervals of fourteen years at least.[4]

In exercise of these powers, the Board of Trade issued The Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, which came into force on the 1st July, 1912.[5] Under these Regulations the notice required by the Act must contain:—

(*a*) The name and address of the person intending to make the contrivance;

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[1] s. 19 (2).
19 (3).
[2] s. 19 (5).
[3] s. 19 (6).
[4] App. II., pp. 261-4.

(*b*) The names of the musical work and of its author (if known), and a description sufficient to identify the work if necessary;

(*c*) The class of contrivance;

(*d*) The ordinary retail selling price and the royalty payable;

(*e*) The earliest date at which a contrivance will be delivered to a purchaser;

(*f*) Whether any other musical work will be reproduced on the same contrivance.

Not less than ten days before any contrivance is delivered to a purchaser this notice must be sent to the owner of the copyright or his agent, by registered post, if the name and an address within the United Kingdom is known or can be discovered with reasonable diligence; if not, an advertisement must be inserted in the *London Gazette* containing (*a*) and (*b*) and an address from which the prescribed notice can be obtained.[1] Unless otherwise agreed, royalties are to be payable by adhesive labels, purchased from the owner of the copyright and affixed to the contrivance, or in the case of cylinders, to a carton or box enclosing it. The owner of the copyright is to intimate (in writing sent by registered post) to the person intending to make the contrivances, some reasonably convenient place within the United Kingdom from which the labels can be obtained; and to supply them on demand in writing and tender of the price. If labels are not available because the owner of the copyright has not sent an intimation of such place after the expiration of five days after the date of the prescribed notice, or advertisement, or fails to supply them within three days after demand duly made, the contrivances may be sold without having

[1] Regulation (3).

labels affixed, and the royalties payable will be a debt due to the owner of the copyright; otherwise no contrivances may be sold without having labels affixed.[1]

The ordinary retail selling price is to be calculated at the marked or catalogued selling price of single copies, or, if there is no marked or catalogued selling price, at the highest price at which single copies are sold.[2]

The inquiries under Section 19 (5) must contain:—

(*a*) The name of the musical work and of its author (if known), and (if necessary) a description sufficient to identify it;

(*b*) The name, address, and occupation of the person making the inquiries;

(*c*) An allegation that contrivances reproducing the work have been previously made, and a description of the contrivances;

(*d*) An enquiry whether the contrivances were made with the consent or acquiescence of the owner of the copyright.[3]

The inquiries must be sent by registered post to the owner of the copyright if an address within the United Kingdom is known or can be discovered with reasonable diligence; if not, then the inquiries must be advertised in the *London Gazette*.[4]

The prescribed time for reply is seven days after the time when the inquiries would in ordinary course of post be delivered, or after the date of the advertisement in the *London Gazette*.[5]

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[1] Regulation (4). [2] *Ibid.* (5). [3] *Ibid.* (6).
[4] *Ibid.* (7) [5] *Ibid.* (8).

Copyright in Mechanical Contrivances.

Copyright is conferred on mechanical contrivances for reproducing sounds in the same way as if they were musical works; but the period is fifty years from the making of the original plate, and the person who is the owner of that plate is deemed to be the author of the work.[1]

This applies to all mechanical contrivances made before the commencement of the Act, unless they would have infringed the copyright in another contrivance, if this provision had been in force at the time they were made. The first owner of the copyright is the owner of the original plate at the commencement of the Act.[2]

The provisions allowing the reproduction of musical works by mechanical contrivances on payment of royalties do not apply to the case of mechanical contrivances.[3] In all other respects the principles of musical copyright apply. As in all other branches of Copyright Law, protection is commensurate with originality.

Summary Remedies.

Under The Copyright Act. 1902, a Court of Summary Jurisdiction, upon the application of the owner of the copyright in any musical work, may authorize a constable to seize, without warrant, any pirated copies of that work which may be hawked about, sold, or offered for sale, and to bring them before the Court; and such copies may be destroyed or delivered up to the owner of the copyright.[4] Any constable may seize, without warrant, any pirated copies which are hawked about, at the request of the apparent owner of the copyright or of his agent duly authorized in writing; and such copies

[1] s. 19 (1). [2] s. 19 (8). [3] s. 19 (2).
[4] 2 Edw. VII. c. 15, s. 1.

on seizure are to be brought before a Court of Summary Jurisdiction and forfeited, destroyed, or otherwise dealt with as the Court thinks fit.[1] For the purposes of this Act. a perforated roll is not a copy of the musical work which it is intended to reproduce.[2]

In *Ex parte Francis*,[3] it was held that the Court had no power to make any order under the Act dealing with the copies which had been seized, unless the person from whom they had been seized had been served with a summons notifying him of the intention to apply for such an order. In consequence of this decision the Act became practically nugatory,[4] and more stringent remedies were provided by the Act of 1906.[5] Under that Act, any person printing, selling, or having in his possession for sale any pirated copies of a musical work, or having in his possession any plates for printing such copies, is, unless he proves that he acted innocently, liable on summary conviction, to a fine of five pounds, and on a second conviction to a fine of ten pounds, or imprisonment for two months.[6] If the defendant has not been previously convicted, and he proves that the copies had a name purporting to be that of the printer or publisher on the title, he is not liable to any penalty unless actual knowledge is proved.[6] A constable may arrest, without warrant, anyone offering, or having in his possession, for sale in any public place, any pirated copies of any musical work specified in any general written authority addressed to the Chief Officer of Police. and signed by the apparent owner of the copyright, or by his agent, authorized thereto in writing, requesting the arrest of any hawkers of such pirated copies, at the owner's risk.[7] Any such written authority is to be open to inspection, without fee, at

[1] s. 2.
[2] Mabe v. Connor,[1909] 1 K. B. 515.
[3] [1903] 1 K. B. 275.
[4] Per Lord Alverstone, C. J., *in Mabe v. Connor*, [1909] 1 K. B., at p. 527.
[5] 6 Edw. VII. c. 36.
[6] s. 1 (1).
[7] s. 1 (2).

reasonable hours.[1] An appeal from conviction lies to Quarter Sessions.[2] A Court of Summary Jurisdiction may grant a search warrant to enter any house on which there is reasonable ground to suspect that an offence against the Act is being committed, and to seize any copies of any musical work or any plates.[3] Any copies or plates so seized are to be brought before the Court, and, if proved to be pirated copies or plates intended for the reproduction of pirated copies, are to be forfeited, destroyed, or otherwise dealt with as the Court shall think fit.[4]

The Acts of 1902 and 1906 are still in force, and the owner of the copyright has, in addition, the civil and summary remedies provided by The Copyright Act, 1911.

[1] s. 1 (3).
[2] s. 1 (4).
[3] s. 2 (1).
[4] s. 2 (2).

CHAPTER VII.

ARTISTIC COPYRIGHT.

Section 1.

GENERAL.

Artistic Copyright before the Act of 1911.

BEFORE The Copyright Act, 1911, there was no law dealing with Artistic Copyright as a whole, but there was the Law of Copyright in Engravings, the Law of Copyright in Sculpture, and the Law of Copyright in Paintings, Drawings, and Photographs. The Statutes governing these separate branches of copyright law all proceeded on different principles, and are dealt with in Sections 2 to 4 of this chapter. The Copyright Act, 1911, treats them all on practically the same principles.

Artistic Works protected by The Copyright Act, 1911.

"Artistic work" is defined to include "works of painting, drawing, sculpture, and *artistic craftsmanship*, and *architectural works of art*, and engravings, and photographs."[1] "Works of sculpture" includes casts and models. "Engravings" includes "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."[1]

These lists are not given as exhaustive.

[1] 1 & 2 Geo. V. c. 46, s. 35 (1). Italics denote works not previously protected.

Artistic Merit.

It is very doubtful how far artistic merit is required. The only case in point is *Britain v. Hanks*.[1] There the question was whether certain toy soldiers were protected under The Sculpture Copyright Act, 1814, and it was held that they were within the Act on the ground that the figures were anatomically correct and showed artistic merit and skill. But this leaves the point still open whether the models were protected because they aimed at artistic merit or because they attained it. In the case of Literary Copyright we have seen that only literary nature is required, not literary merit.[2] Arguing from analogy, it would seem that so long as the work is of a kind in which artistic merit may be displayed it is capable of protection although it possesses no artistic merit.

It seems fairly clear that no artistic merit is required in the cases of engravings and photographs. The case of architecture is more difficult. In all other cases the balance of convenience is in favour of protecting any work that is good enough to be pirated. The only thing that is likely to be taken in the case of a work with no artistic merit is the idea, and the idea of a work is not protected.[3]

Designs.

The Copyright Act, 1911, does not apply to designs capable of being registered under The Patents and Designs Act, 1907,[4] except to designs which are not used or intended to be used as models or patterns to be multiplied by any industrial process.[5] General rules may be made under the Patents Act of 1907 to determine when a design shall be deemed to be so used.[6]

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[1] [1902] 86 L. T. 765.
[2] See pp. 76–81, *supra*.
[3] Kenrick v. Lawrence, [1890] 25 Q. B. D. 99.
[4] 7 Edw. VII. c. 29.
[5] 1 & 2 Geo. V. c. 46, s. 22 (1).
[6] s. 22 (2).

A design is defined in The Patents and Designs Act, 1907, as "any design (not being a design for a sculpture, or other thing within the protection of The Sculpture Copyright Act, 1814) applicable to any article, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined."[1]

By the Designs Rules, 1912,[2] made under the provisions of The Patents and Designs Act, 1907, and of The Copyright Act, 1911, the following designs are excluded from the protection of the Copyright Act:—

(1) Designs which are reproduced or are intended to be reproduced in more than fifty single articles unless all the articles in which the design is reproduced form only a single set as defined by Rule 5 of the Designs Rules, 1908;

(2) Designs to be applied to (*a*) printed paperhangings, (*b*) carpets, floorcloths or oilcloths, manufactured or sold in lengths or pieces, (*c*) textile piece goods or textile goods manufactured or sold in lengths or pieces, (*d*) lace, not made by hand.

A "set" is defined as "a number of articles of the same general character ordinarily on sale together, or intended to be used together, all bearing the same design with or without modifications not sufficient to alter the character or not substantially affecting the identity thereof."[3]

[1] 7 Edw. VII. c. 29, s. 93; Edmunds and Bentwich on Designs.
[2] See App. II. [3] Designs Rules, [1908] Rule 5. See App. II.

Section 2.

ENGRAVINGS.

Statutes.

The Acts on which copyright in engravings and prints rested before The Copyright Act, 1911, were 8 Geo. II. c. 13; 7 Geo. III. c. 38; and 17 Geo. III. c. 57. The Act 6 and 7 Will. IV. c. 59, extended the protection afforded by the former Acts to Irish works and against breaches of copyright committed in Ireland; and 15 Vict. c. 12, brought prints taken by lithography or any other mechanical process for multiplying prints indefinitely within the Acts.

Subject-Matter of the Right.

The Acts gave to the owner of the copyright the exclusive right of "engraving, etching, working in mezzotinto, or chiaro-oscuro, or in any other manner copying or selling or causing to be engraved in the whole or part, by varying, adding to, or diminishing from the main design" the print in question.[1]

A print is defined as being "any historical print or prints, or any print or prints of any portrait, conversation,[2] landscape, or architecture, *map, chart, or plan*,[3] or any other print or prints whatsoever."[4]

In *Stannard v. Lee*,[5] a "panoramic bird's eye view" of the seat of war in 1870 was pirated, and the owners described the work as a "map" in their bill for an injunction and sought protection under the Engraving Acts. The Court of Appeal held that a map was now only protected under The Literary Copyright Act, 1842, and had been taken out of the scope of the Engraving

[1] 8 Geo. II. c. 13, s. 1.

[2] "A kind of genre painting representing a group of figures." Murray's Dictionary.

[3] Since 1842 protected under 5 & 6 Vict. c. 45, s. 1.

[4] 7 Geo. III. c. 38, s. 1; 17 Geo. III. c. 57.

[5] [1871] L. R. 6 Ch. 340 (see in particular judgment of James, L. J., at p. 349), 24 L. T. N. S. 450.

Acts, and hence required registration. In *Stannard v. Harrison*,[1] Bacon, V. C., refused to set aside a consent order made against other persons in respect of the same work giving protection under the Engraving Acts, and took the opportunity of expressing his opinion that such protection was rightly given. He explained the decision in *Stannard v. Lee*,[2] on the ground that the work had been improperly described as a "map" in the bill and the Court could not go behind it.[3] If the dicta of Bacon, V. C., were right, the question under which Act a "bird's-eye view," sketch, or similar work was to be protected probably depended on whether its primary object was to give information or not.

A Christmas card has been held to be rightly registered both under The Literary Copyright Act, 1842, and The Fine Arts Copyright Act, 1862.[4]

The question is now of no importance except to ascertain whether the copyright in a work existing on the 30th June, 1912. had expired or not.[5]

Where the engravings were prepared and published as illustrations to a book, they were protected under The Literary Copyright Act, 1842,[6] and not under the Engraving Acts, although there might be no copyright in the letterpress but only in the illustrations.[7]

It is not clear whether a book consisting of illustrations only is a literary or artistic work. In *Schove v. Schmincke*,[8] Chitty. J., expressed an opinion that such a work was not

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[1] [1871] 24 L. T. N. S. 570.

[2] [1871] L. R. 6 Ch. 346 (see in particular judgment of James, L. J., at p. 349), 24 L. T. N. S. 459.

[3] 24 L. T. N. S., at p. 573; *cf.* Stannard v. Lee 24 L.T.N.S., at p. 461.

[4] Hildesheimer v. Dunn, [1891] 64 L. T. 452. It is doubtful whether a Christmas card (apart from any writing on it) would come within the operation of The Copyright Act, 1911; see p. 165, *supra*.

[5] 1 & 2 Geo. V. c. 46, s. 24.

[6] See pp. 77–8, *supra*.

[7] Bogue v. Houlston, [1852] 5 D. G. & Sm. 267; *cf.* Davis v. Benjamin, [1906] 2 Ch. 491: *aliter* where the copyrights in the letterpress and the illustrations are in different hands; Petty v. Taylor, [1897] 1 Ch. 465.

[8] [1880] 33 Ch. D. 546, 550.

a "book" within The Copyright Act, 1842; but this expression of opinion was not necessary for the decision of that case, and its correctness was doubted by Kekewich, J., in *Hildesheimer v. Dunn*.[1]

Under The Copyright Act, 1911, "engravings" includes "etchings, lithographs, woodcuts, prints, and other similar works, not being photographs."[2]

Qualifications.

There is no copyright in an indecent[3] or a libellous print.[4] Originality is now required by The Copyright Act, 1911,[5] but this only means that the engraving must not be an exact copy of an earlier engraving,[6] and that it must not infringe the copyright in another work. This was almost certainly the case under the old law.

Conditions for Copyright.

Under the first three Acts it was necessary that the work should have been made in Great Britain.[7] Publication in Great Britain did not confer copyright on a work made abroad,[8] nor apparently was it needed in the case of a work made here.

The Act of 1836[9] extended the provisions of these Acts to Ireland so that, apart from the second section, it was necessary that the work should be made in the United Kingdom, and publication abroad did not destroy the right. But Section 2 forbids the pirating of any print "which may have been or which shall hereafter be published in any part of Great Britain or Ireland." This is open to two interpretations: either the Act *substituted* publication here for manufacture here, or required publication here *in addition to* manufacture here.

[1] [1891] 64 L. T., at p. 454. [2] 1 & 2 Geo. V. c. 46, s. 35 (1).
[3] Forces v. Johnes, [1802] 4 Esp. 97; *cf.* Baschet v. London Illustrated Standard Co., [1900] 1 Ch. 73. [4] Du Bost v. Beresford, [1810] 2 Camp. 511.
[5] s. 1 (1). [6] *Cf.* Graves' Case, [1869] L. R. 4 Q. B. 715. [7] 17 Geo. III. c. 57.
[8] Page v. Townsend, [1832] 5 Simons 395. [9] 6 & 7 Will. IV. c 59.

As the Act refers to prints already published it is fairly certain that the latter is the correct view, as otherwise copyright would have been conferred on works which had already fallen into the public domain.

The International Act, 1844, provided that there should be no copyright in any work first published outside the British Dominions except under the Act.[1] And by the International Act, 1886, first "production" in the British Dominions is made the equivalent of first "production" in the United Kingdom.[2]

Down to 1886, therefore, manufacture and first publication within the United Kingdom were both necessary. From 1886 manufacture and first publication within the British Dominions were both necessary.

The statutory copyright did not attach until publication.[3] It was not necessary that the author should be a British subject or domiciled within the British Dominions. Now the conditions for acquiring copyright in engravings are the same as those for any other work.[4]

The name of the proprietor of the copyright must be truly engraved on each plate and printed on each print,[5] and so must the date of first publication,[5] otherwise the copyright was lost. It was not necessary, however, that the designation "proprietor" should be added to the name[6]; it has been held a sufficient compliance with the Act if he is merely referred to as the publisher.[7] In the case of *Rock v. Lazarus*,[8] Malins, V. C., held that, where the copyright was the property of a firm, the Statute was sufficiently complied with by putting the trading name of the firm on the engraving. Under The Copyright Act, 1911, this is no longer necessary.

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[1] 7 Vict. c. 12, s. 10.

[2] 49 & 50 Vict. c. 33, s. 8 (1).

[3] 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, s. 6.

[4] See pp. 50-2, *supra*.

[5] 8 Geo. II. c. 13, s. 1; Brookes v. Cock, [1835] 4 N. & M. 652; Newton v. Cowie, [1827] 4 Bing 234.

[6] Newton v. Cowie.

[7] Graves v. Ashford, [1867] L. R. 2 C. P. 410; *cf.* Britain v. Hanks, [1902] 86 L. T. 765.

[8] [1872] L. R. 15 Eq. 104.

Duration and Extent of Right.

The period of copyright was twenty-eight years from the date of first publication.[1]

There is nothing in the earlier Acts to indicate whether the right extended throughout the British Dominions or only within the United Kingdom. On the analogy of The Fine Arts Copyright Act, 1862, it would seem that the right was limited to the United Kingdom[2]; although in that Act there is a prohibition of importation into the United Kingdom,[3] whereas in the Engraving Acts importation is forbidden, but it is not stated whether that means importation into the United Kingdom or into the British Dominions.[4] On the other hand, in the Engraving Acts copyright is only conferred on works *made* in the United Kingdom[5]; and this may be taken as an indication that the right is limited to Great Britain and Ireland.

Ownership.

First Owner.

Under the earlier Acts the first owner of the copyright was the person who first published the work, and he derived his title from the author. The author is the person who "invents and designs, engraves, etches, or works,[6] or from his own invention *causes* to be designed and engraved, etched, or worked,[6] or engraves, etches, or works, or *causes* to be engraved, etched, or worked from any picture, drawing, model, or sculpture"[7] the print in question. In *Stannard v. Harrison*,[8] Bacon, V. C., expressed the opinion that it is sufficient to furnish the

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[1] 7 Geo. III. c. 38, s. 6. [2] Graves v. Gorrie, [1903] A. C. 490 (see especially p. 499).

[3] 25 & 26 Vict. c. 68, s. 10. Section 4 is also referred to as supporting this view ([1903] A. C. at p. 499); why, it is not quite clear. The practice of registration is required by The Copyright Act, 1842, which gives protection extending throughout the British Dominions.

[4] 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, s. 2; 17 Geo. III. c. 57.

[5] 17 Geo. III. c. 57, as altered by 6 & 7 Will. IV. c. 59.

[6] 8 Geo. II. c. 13, s. 1. [7] 7 Geo. III. c. 38, s. 2.

[8] [1871] 24 L. T. N. S., at p. 572.

manual worker with a rough sketch to constitute the employer the author. It does not matter in the least that he is unable to draw.[1]

Transfer and Licences.

There is no provision for any formalities for transfer under the Engraving Acts, nor any decision in point. A licence, however, must be in writing, signed by the proprietor, and attested by two credible witnesses.[2] It would seem to follow, from this, that an assignment, being the transfer of a greater interest, must be made with the same formalities.[3] By The Fine Arts Copyright Act, 1862,[4] the right of engraving from a copyright picture is given to the owner of the copyright; and under that Act it has been held that, if the owner grants to another the right of multiplying engravings of one size from the picture, he retains the right of multiplying engravings of other sizes, and of producing copies of the picture in other ways.[5]

Infringement.

As in the case of Literary Copyright, the protection given to the author is intended to be commensurate with the originality displayed in the creation of the subject of copyright, and does not extend to elements already in existence. Thus, in the case of an engraving made from a picture, it is not an infringement of the copyright in that engraving to make another from the same picture, although it may be of the copyright in the picture.[6] So where the design is not original the design may be copied, although the engraving may not.[7] Where a copyright

[1] Kenrick v. Lawrence, [1890] 25 Q. B. D. 99. [2] 17 Geo. III. c. 57.

[3] *Cf.* Power v. Walker, [1814] 3 M. & S. 7 (a decision under the Statute of Anne); applied by Sir George Jessel in Leyland v. Stewart, [1876] 4 Ch. D. 419 (Copyright Act, 1842).

[4] 25 & 26 Vict. c. 68, s. 1. [5] Lucas v. Cooke, [1880] 13 Ch. D. 872.

[6] Berenger v. Wheble, [1819] 2 Stark N. P. C. 548; Dicks v. Brooks, [1880] 15 Ch. D. 22.

[7] See judgment of Bramwell, L. J., in Dicks v. Brooks, at p. 38.

engraving is made from a picture, and the owner of the copyright sues for infringement, the onus is on him to prove that the copy, which he alleges to infringe his rights, was made from his engraving and not directly from the original.[1]

The principles of infringement of Artistic Copyright have been largely altered by The Copyright Act, 1911, and it is unsafe to argue that reproduction in a particular form is permissible under the present law because it was permitted by the old law. The old principles are given here, as they bear on the question of copyright in any existing work; and then any alterations made in the law by the Act are pointed out.

The principles on which protection was given by the old law to the engraving (apart from its design) were discussed in *Gambart v. Ball*,[2] and they were there stated by Erle, C. J., to be: (1) the protection of the artist's reputation from injury by the dissemination of "base" copies; (2) the protection of its commercial value against the competition of copies made by any process, such as photography, whereby they may be multiplied indefinitely. These principles were approved of in *Dicks v. Brooks*.[3]

Considerable doubt has been expressed, prior to The Copyright Act, 1911, as to the lawfulness of copies in pen and ink or pencil, on the ground that these do not compete commercially with the original.[4] Probably the true view was that where a single person made sketches for his own private amusement and not for sale or gratuitous distribution, this did not constitute an invasion

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[1] Lucas v. Cooke. [2] [1863] 14 C. B. N. S. 306.

[3] [1880] 15 Ch. D. 22. The copyright in the original picture was in other hands.

[4] Gambart v. Ball, in particular by Willes, J., at p. 318; *cf.* also Scrutton, pp. 176-7. But in the case of Literary Copyright the multiplication of copies for gratuitous distribution is illegal, however small the number, and whatever the means and object may be: Novello v. Sudlow, [1852] 12 C. B. 177; Warne v. Seebohm, [1888] 39 Ch. D. 73.

of copyright; but where the copies were made for sale or gratuitous distribution it was illegal, as this might interfere with the commercial value of the prints. Under The Copyright Act, 1911, it is expressly provided that any fair dealing with a copyright work for the purpose of private study or research is permissible.[1] Thus it would seem that the copying of an artistic work by a student in the course of study would now be legitimate; but if the copy was made for any other purpose, it would be an infringement of copyright.

In *Dicks v. Brooks*,[2] the question was whether a pattern for working in Berlin wool made from an engraving of Millais' picture "The Huguenot" was legitimate. Here there was no question as to the copyright in the *design*; and it was held to be no infringement of the copyright in the engraving. James, L. J., said[3] "Nobody would ever take it to be the print, nobody would ever buy it instead of the print, nobody would ever suppose that it was, to use the language of the first Act, a base copy of the print. It is a work of a different class, intended for a different purpose and, in my opinion, no more calculated to injure the print *qua* print, or the reputation of the engraver, or the commercial value of the engraving in the hands of the proprietor, than if the same group were reproduced from the same engraving by waxwork at Madame Tussaud's, or in a plaster of Paris cast or in a painting on porcelain. I cannot conceive that such a reproduction of the subject in tapestry, in Berlin wool, or upon china or in earthenware, is within the meaning of the Act of Parliament."

In *Martin v. Wright*,[4] Shadwell, V. C., refused to restrain the exhibition of a copy of a print as a diorama.

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[1] 1 & 2 Geo. V. c 46, s. 2 (1).

[2] [1880] 15 Ch. D. 22.

[3] At p. 35.

[4] [1833] 6 Sim 207. *Sed quære.*

Copies by photography, however, are within the Acts, and any other process, mechanical or otherwise, whereby copies may be indefinitely multiplied.[1] Copies made on a larger or smaller scale or with additions or omissions are all within the Acts.[2]

Under The Copyright Act, 1911, it is an infringement of copyright to reproduce the work in any form.[3] It is probable that the statement of the law given in *Gambart v. Ball*[4] and *Dicks v. Brooks*[5] is no longer accurate.

What constitutes a Copy?

The only definition, until recently, of an imitation so near to the original as to constitute an unlawful copy is that of Bayley, J., in *West v. Francis*[6]: "A copy is that which comes so near to the original as to give to every person seeing it the idea created by the original." The wording is unfortunate, as (1) it does not explicitly state that the copy must be made directly or indirectly from the original; (2) in the use of the word "idea," as no copyright can exist in *ideas*, using that word in its ordinary sense. In *Hanfstaengl v. W. H. Smith & Sons*,[7] Kekewich, J., suggested as a substitute: "A copy is that which comes so near to the original as to suggest the original to the mind of every person seeing it."

Design.

It appears that the design of a copyright engraving is also protected. In *Hanfstaengl v. Empire Palace*,[8] Lindley, L. J., said: "Although it is very true that the

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[1] Gambart v. Ball, [1863] 14 C. B. N. S. 306; Graves v. Ashford, [1867] L. R. 2 C. P. 410. This rests on the provisions of 17 Geo. III. c. 57 "or in any other manner copy," not on 15 Vict. c. 12, s. 14.

[2] 8 Geo. II. c. 13, s. 1; Moore v. Clarke, [1842] 9 M. & W. 692.

[3] 1 & 2 Geo. V. c. 46, s. 2 (1).

[4] [1863] 14 C. B. N. S. 306. [5] [1880] 15 Ch. D. 22.

[6] [1822] 5 B. & Ald. 737, at p. 743; criticized in Hanfstaengl v. Baines, [1895] A. C. 20, in particular at p. 27 (Lord Watson).

[7] [1905] 1 Ch. 519, at p. 524. [8] [1894] 2 Ch., at p. 6.

word 'design' is not used in the Engraving Acts, still the object of the Acts in protecting engravings is exactly the same as the object which the Legislature had in view in protecting paintings, drawings, and photographs in this Act." Consequently decisions under the later Act on this point are authorities for the construction of the Engraving Acts and *vice versâ*.[1]

The only definition of a design under the Acts is that of Lord Watson, in *Hanfstaengl v. Bainc*[2]: "So far as I can judge, the expression 'design' as it is used in the Statute means nothing more than the particular forms and arrangements (whether of lines or colouring) which the copyright author has selected as the vehicle for conveying his idea to those who see his work." Under The Copyright Act, 1911, it is illegal for anyone other than the owner "to reproduce the work or any substantial part thereof in any material form whatsoever."[3] Consequently the making of photographs, paintings, drawings, or representations in sculpture of an engraving are illegal, unless made for the purpose of private study.[4]

Blocks.

Where anyone had purchased plates from the original proprietors, he was entitled under the old law to print from them.[5] The case of *Cooper v. Stephens*[6] was decided under The Copyright Act, 1842, as there the illustrations formed part of a book. In that case the proprietors had sold certain electro blocks from which the illustrations were printed to A; A had lent them to the defendants to print from, and Romer, J., held that the proprietors were entitled to restrain such use by any one but A. He thought that if they had tried to restrain A from using

[1] See pp. 187-191, *infra*.
[2] [1895] A. C., at p. 27.
[3] s. 1 (2).
[4] s. 2 (1).
[5] 8 Geo. II. c. 13, s. 1.
[6] [1895] 1 Ch. 567; approved of and followed by the C. A. in Marshall v. Bull, [1901] 85 L. T. 77.

them the Court would have considered their conduct fraudulent and refused an injunction, in spite of the absence of a written licence under the Act.

The question of the property in blocks is discussed in *Hole v. Bradbury*.[1]

If the person employed to make copies from a plate for the owner made other copies for his own use, he was not guilty of a piracy but of a breach of trust.[2]

Registration was not required under the Engraving Acts.

[1] [1879] 12 Ch. D. 886.

[2] Murray v. Heath, [1831] 1 B. & Ad. 804; *cf.* Tuck v. Priester, [1887] 19 Q. B. D. 629. Prince Albert v. Strange, [1849] 1 MacN. & G. 25, was decided on the Common Law right, not on the Statutes; and the decision also rested on the ground of breach of confidence.

Section 3.

SCULPTURE.

Statutes.

The first Act giving protection to Sculpture was an Act of 1798[1]; but, as this proved an extremely inadequate protection in *Ganaghan v. Cooper*,[2] a new Act was passed in 1814,[3] on which the law of copyright in Sculpture rested down to The Copyright Act, 1911. The former Act was repealed by The Statute Law Revision Act, 1861.

Subject-Matter of the Right.

The Act gave protection to "any new and original[4] sculpture, or model, or copy, or cast of the human figure, or of any bust, or of any part or parts of the human figure clothed in drapery or otherwise, or of any animal 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 of any cast from nature of the human figure or of any part of the human figure, or of any animal or of any part of any animal, or of any subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined."[5]

It was held in the case of *Caproni v. Alberti*,[6] that these words included original casts of fruit and leaves; and in *Britain v. Hanks*,[7] that they included toy soldiers, where the figures were anatomically correct and displayed artistic skill.

It is conceived that the law remains the same under The Copyright Act, 1911.

[1] 38 Geo. III. c. 71. [2] [1811] 3 Camp. 111. [3] 54 Geo. III. c. 56.

[4] This Act and The Fine Arts Copyright Act, 1862, are the only ones in which the word "original" is used prior to 1911. It probably means no more than a work which is not an infringement of the copyright in another work.

[5] 54 Geo. III. c. 56, s. 1. [6] [1891] 65 L. T. 785. [7] [1902] 86 L. T. 705.

Conditions for Copyright.

Under the Act of 1814, the proprietor must have his name with the date on the sculpture, model, cast, or copy before the same is published.[1]

From the recital of The International Copyright Act, 1844, it appears that the date referred to is the date of the publication.[2] The object of this requirement according to Wright, J., is to inform the public when the copyright runs out, and therefore a date a few days earlier than the actual date of publication sufficiently fulfils the condition.[3] Probably if the date misled anyone into copying the sculpture before the period of copyright had expired, the owner would be estopped from denying that the date was correct.

In the same case it was held that putting the name of one of the partners of the *firm* of *proprietors* on the models (the partner in question being also the producer of the model) was a sufficient compliance with the requirements of the Act as to the name.

Neither manufacture nor first publication in the United Kingdom is required by the Act of 1814. But by The International Act, 1844, first publication within the British Dominions is required.[4]

The conditions for acquiring copyright in sculpture are now governed by The Copyright Act, 1911.[5]

Duration and Extent of Right.

The period of copyright was fourteen years from publication, with an additional term of fourteen years to the first owner if he should be then living.[6]

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[1] 54 Geo. III. c. 56, s. 1. [2] *Cf.* also Britain v. Hanks, [1902] 86 L. T. 765.

[3] Britain v. Hanks, *sed quære.* In the case of registration under The Literary Copyright Act, 1842, which was only a preliminary for bringing an action, it was necessary to give the day of publication, not the month only (Mathieson v. Harrod, [1867] 7 Eq. 270); *a fortiori* it would seem that a false date would be fatal.

[4] 7 Vict. c. 12, s. 10. [5] See pp. 50–2, *supra.* [6] s. 6.

There is nothing in the Act to indicate whether the right extended throughout the British Dominions or only within the United Kingdom. On the analogy of The Fine Arts Copyright Act, 1862, it will probably be limited to the United Kingdom,[1] although in that Act there is a prohibition of importation into the United Kingdom,[2] whereas in the Sculpture Copyright Act importation is forbidden, but it is not stated into what places.[3]

Ownership.

The first owner is the person who "makes or causes to be made" the sculpture or model in question.[4]

The transfer of the copyright was required to be by *deed* signed by the transferors and witnessed by two credible witnesses.[5] It is not clear whether a licence was also required to be under seal and witnessed.[5]

Infringement.

There is no case dealing with the question as to what imitations constitute an infringement of copyright, but the Act provides that piracy may be committed by "moulding or copying from or imitating in any way" the pirated work.[6] It is conceived the principles are the same as in the other forms of Artistic Copyright. In a case under The Fine Arts Copyright Act, 1862, Lindley, L. J., expressed the opinion that a statue made from a picture did not infringe the copyright in the picture, as it did not compete with the picture commercially.[7] It may be that this was true of a picture made from a statue under the Act of 1814.

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[1] Graves v. Gorrie, [1903] A. C. 496 (see especially p. 499).

[2] 25 & 26 Vict. c. 68, s. 10. Section 4 is also referred to as supporting this view, [1903] A. C., at p. 499; why, it is not quite clear. The practice of registration is required by The Copyright Act, 1842, which gives protection extending throughout the British Dominions.

[3] 54 Geo. III. c. 56, s.

[4] 54 Geo. III. c. 56, s. 1.

[5] s. 4.

[6] s. 3.

[7] Hanfstaengl v. Empire Palace, [1894] 2 Ch. 1, at p. 5.

In *Britain v. Kennedy*,[1] it was held that a single offer to manufacture imitations of a brass model bust did not constitute an infringement of copyright. Wright, J., seems to have held that the making of a single model was not an infringement of the copyright so long as it was not exposed for sale; but, if this is the true interpretation of the decision, it seems very doubtful. By the express words of Section 4, no person who has purchased the copyright shall be liable for "copying, casting, or vending," thus shewing that in Section 3 the words "for sale" did not refer to "making."

Under The Copyright Act, 1911, it is expressly provided that paintings, drawings, engravings, and photographs may be made of any work of sculpture or artistic craftsmanship, "if permanently situate in a public place or building."[2] It is submitted that the meaning of a public place or building is any place or building to which any member of the public may come who chooses to do so. Thus an open square, the National Gallery, and any municipal gallery to which the public are admitted without charge, are all within the definition. It is thought that a charge made for admission will make no difference, unless there is a custom forbidding copying, as in *Turner v. Robinson*.[3] Otherwise any reproduction of the sculpture in any material form is an infringement of copyright under the Act.[4] The question as to reproduction in the form of a *tableau vivant* is discussed in the next section.[5]

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[1] [1902] 19 Times L. R. 122.

[2] 1 & 2 Geo. V. c. 46, s. 2 (1).

[3] [1860] 10 Ir. Ch. 510.

[4] s. 1 (2).

[5] See pp. 188–191, *infra*.

Section 4.

PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

Statute.

Paintings, drawings, and photographs were not brought within the protection of the Law of Copyright until The Fine Arts Copyright Act, 1862,[1] which governed the law relating to them until The Copyright Act. 1911.

Common Law Rights before the Act of 1911.

The Act recites that "by law, as now established, the authors of paintings, drawings, and photographs have no copyright in such their works"—a statement perfectly true if the word "copyright" was used in its narrower sense of post-publication copyright, but absolutely untrue if it included the Common Law right to restrain publication.[2] The late Sir James Fitzjames Stephen in his "Digest of the Law of Copyright,"[3] and apparently Day, J., in *Seligsen v. Legge*,[4] assumed that the Legislature had used the word "copyright" in its perhaps less correct sense and certainly in the sense which made their statement of the law inaccurate, and doubted whether it had not abolished any such right. It is, however, unnecessary to consider the matter at length; in *Mansell v. Valley Printing Co.*,[5] the Court of Appeal decided that the Common Law right as to paintings and drawings was not abolished by The Copyright Act, 1862.

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[1] 25 & 26 Vict. c. 68.

[2] Turner v. Robinson, [1860] 10 Ir. Ch. 510; Maynll v. Higbey, [1862] 6 L. T. N. S. 362 (decided before the Act).

[3] Art. 21 (note 5) appended to the Report of the Copyright Commission, 1878.

[4] [1883] Unreported, cited in Scrutton, p. 162.

[5] [1908] 2 Ch. 441; followed in Bowden Bros. v. Amalgamated Pictorials, [1911] 1 Ch. 386. *Cf.* Tuck v. Priester, [1887] 19 Q. B. D. 629 (per Lindley L. J., at p. 640). For a full account of the whole controversy see Scrutton, pp. 161-5.

Subject-Matter of Protection.

The Act gave protection to paintings, drawings, and photographs. What is a painting or drawing would seem to be a question of fact.[1] The work must be executed by hand. In *Millar v. Polak*,[2] Neville, J., held that drawings of designs for decorating Christmas cards came within the protection of the Act.

Qualifications for Copyright.

(1) *Innocency.*—There is no copyright in an indecent or an immoral painting.[3]

(2) *Originality.*—The work must be original,[4] but this seems to mean no more than that it must not itself infringe the copyright in a copyright work.[5] There is copyright in a photograph of an engraving from a picture.[6]

Conditions for Copyright.

The Act itself only requires creation by a British subject or a person who is resident within the British Dominions (apparently at the time when the work was made).[7] Copyright attaches immediately on creation, not on publication.[8] The difficulty arises on the incorporation of The International Act, 1844,[9] with the Act of 1862.[10] Under The International Act, 1844, there is to be no copyright in "any print or article of sculpture or of such other work of art, as aforesaid," which shall have been first published out of the British Dominions except that given by the Act.[11] And earlier in the Act, the Crown is empowered to grant international copyright to

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[1] Woodward v. L. & N. W. Railway Co., [1878] 3 Ex. D. 127: a case under The Carriers Act, 1830, but The Fine Arts Copyright Act, 1862, is referred to in the judgment.

[2] [1908] 1 Ch. 433.

[3] Baschet v. London Illustrated Standard Co., [1900] 1 Ch. 73.

[4] 25 & 26 Vict. c. 68, s. 1. [5] s. 2.

[6] Graves' Case, [1869] L. R. 4 Q. B. 715. [7] 25 & 26 Vict. c. 685, 1.

[8] Tuck v. Priester, [1887] 19 Q. B. D. 629 (subject to the necessity of registration).

[9] 7 Vict. c. 12. [10] 25 & 26 Vict. c. 68, s. 12. [11] 7 Vict. c. 12, s. 19.

"books, prints, articles of sculpture and *other works of art*."[1] The joint effect would seem to be that first publication abroad destroyed British copyright in paintings, drawings, and photographs.

Duration and Extent of Right.

The term of copyright was the life of the author and seven years from his death,[2] unless previously lost. The Act gave protection within the United Kingdom, but not within the rest of the British Dominions.[3]

Ownership.

First Owner.

Subject to the following exception the first owner of the copyright under the Act of 1862 was the author.[4]

The author of a photograph is the person who directs and superintends the taking of the photograph.[5]

Where the work was made for another person for a good or valuable consideration, the copyright passed to the person for whom the work was made, unless it was expressly agreed in writing signed by that person that the copyright should belong to the author.[6]

This provision applied where the work was made for an employer by a man regularly paid to execute such works,[7] although the workman and not the employer was the author.[7] Stirling, J., without actually deciding the point, expressed the opinion that, when A's paid servants execute a photograph for B, the copyright passes to B,

[1] 7 Vict. c. 12, s. 2.

[2] 25 & 26 Vict. c. 68, s. 1.

[3] Graves v. Gorrie, [1903] A. C. 496; *cf.* Tuck v. Priester, [1887] 19 Q. B. D. 629.

[4] 25 & 26 Vict. c. 68, s. 1.

[5] Melville v. Mirror of Life, [1895] 2 Ch. 531; *cf.* Nottage v. Jackson, [1883] 11 Q. B. D. 627; Wooderson v. Tuck, [1887] 4 Times L. R. 57.

[6] s. 1. As to the question whether the work has actually been executed on commission see Levi v. Champion, [1887] 3 Times L. R. 286.

[7] Nottage v. Jackson, 11 Q. B. D., at p. 630; Kenrick v. Lawrence, [1890] 25 Q. B. D. 99, at p. 105.

if the circumstances are such that it would have passed to B if the work had been executed by A and not by his servants.[1]

In the case of *Stackemann v. Paton*,[2] Farwell, J., expressly distinguished between "good" and "valuable" consideration. The facts in that case were as follows:—A firm of photographers sent a traveller to the proprietors of certain boys' and girls' schools to take photographs "entirely at their own risk"; where permission was granted they took photographs of views of the schools and of groups of pupils; proofs were submitted to the proprietors and copies purchased by them. Farwell, J., held that the whole transaction amounted to this: that the photographers took photographs for the proprietors of the school in hopes that they might sell copies to them, although the proprietors were not bound to take any; that the permission to the photographers to come all over the houses and to take photographs constituted a "good" consideration, and therefore, the copyright passed to the proprietors. In *Ellis v. Marshall*,[3] Charles, J., held that a sitting given by an actress for which no charge was made and for which she received a number of "complimentary" copies did not constitute a good or valuable consideration; and this was approved of in *Stackemann v. Paton*.[4]

The question generally arises as to the copyright in photographs. Here the question is whether it was made

[1] Wooderson v. Tuck, [1887] 4 Times L. R. 57. [2] [1906] 1 Ch. 774.

[3] [1895] 64 L. J. Q. B. 757; *cf.* Ellis v. Ogden, [1894] 11 Times L. R. 50; see p. 186 *infra*.

[4] [1906] 1 Ch. 774. It is submitted, with the utmost respect to the learned Judges, that (1) there is no authority in English Law for giving a different meaning to the words "good" and "valuable" consideration from what they usually bear: (2) that there is no reason either of construction or of convenience for putting such a meaning on them in The Fine Arts Copyright Act, 1862. "Good" consideration has meant natural affection arising from blood or marriage (Digby, History of Real Property, p. 327, 4th Ed.); "valuable" consideration, anything that can be considered a detriment to the grantee or promisee (Anson, Contract, pp. 95 to 110, 12th Ed.). What is the use of introducing a new distinction by making something, which is a "valuable" consideration for the Law of Contract, a "good" but not a "valuable" consideration under the Fine Arts Copyright Act.

for another for good or valuable consideration[1]; and, where any consideration is given, this appears to turn on the primary object of the photographer in taking it. If the object was primarily to sell copies to the persons on whose behalf it was taken then the copyright belongs to them. Thus in *Boucas v. Cooke*,[2] where the sitter called for the purpose of having his photograph taken and clearly expected to have to pay for it, the Court of Appeal held that the copyright had passed to him. In *Stackemann v. Paton*,[3] the request was made by the photographers, and moreover, Farwell, J., found as a fact that there was no obligation on the persons for whom it was made to take copies if the copies were satisfactory. Even under these circumstances the learned Judge held that the copyright in the photographs had passed to them. The decision seems to have turned largely on the circumstances of the case, the learned Judge holding that the purchaser (the proprietress of a girls' school) could never have intended the photographer to be at liberty to publish copies of her school and pupils. This case clearly shows that the copyright is not necessarily the photographer's, although the photographs are taken at his request.

In *Melville v. Mirror of Life Co.*,[4] where the photographer had, at his own request, been allowed to take photographs of the cricketer Crossland without payment from Crossland, either for the sitting or for copies supplied to him by the photographer, Kekewich, J., held that the copyright remained with the photographer. The decision was approved of in *Boucas v. Cooke*,[5] but not the *reason* given for it: viz.—that the negative remained the property of the photographer. The copyright may be in another person although the photographer retains the property in the negative.

[1] Boucas v. Cooke, [1903] 2 K. B. 227.

[2] [1903] 2 K. B. 227; *cf.* Pollard v. Photographic Co., [1888] 40 Ch. D. 345, per North, J., at p. 353. [3] [1906] 1 Ch. 774. [4] [1895] 2 Ch. 531.

[5] [1903] 2 K. B., per Collins, M. R., at p. 237; per Stirling, L. J., at p. 238; per Mathew, L. J., at p. 239.

Where the sitter gives no good or valuable consideration he gets no copyright under the Act of 1862; and this appears to be the *ratio decidendi* in *Ellis v. Ogden*,[1] and *Ellis v. Marshall*.[2] It must be noted, however, that the consideration given in both cases would have been sufficient to support a contract.[3] It is safer to rest both decisions on the ground that it was not the intention of the parties that the copyright should pass. It makes no difference whether the sitter afterwards purchases copies of the photographs at "reprint" prices or not.[4]

Scrutton, J., suggests that there may be cases in which the copyright belongs to a person other than the photographer, but the photographer has a licence to exhibit and sell copies.[5] This forms part of a passage which was quoted with approval by Collins, M. R., in *Boucas v. Cooke*,[6] but there is no decision to that effect; and it seems contrary to the plain words of the Act.[7]

Even before registration a sitter who was the owner of the copyright in a photograph could restrain the photographer from publishing copies of it on the ground of breach of contract.[8]

In the case of works made after the commencement of the Act of 1911, the ownership of the copyright is determined by the rules laid down by that Act.[9]

Transfer.

The assignment of copyright must be in writing signed by the proprietor or by his agent appointed in writing,[10] and so must every licence to do anything which would otherwise infringe the copyright.[10]

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[1] [1894] 11 Times L. R. 50. [2] [1895] 64 L. J. Q. B. 757.

[3] *Cf.* Bainbridge v. Firmstone, [1838] 8 A. & E. 743.

[4] Ellis v. Ogden. There the sitters received "presentation copies," but afterwards purchased copies. [5] Scrutton, p. 194. [6] [1903] 2 K. B., at p. 236.

[7] s. 3, which requires a licence to be in writing.

[8] Pollard v. Photographic Co., [1888] 40 Ch. D. 345.

[9] 1 & 2 Geo. V. c. 46, s. 5 (1); see pp. 58-61, *supra*. [10] 25 & 26 Vict. c. 68, s. 3.

Destruction.

The copyright is destroyed by—

(1) Expiration of the term of copyright.

(2) Under the Act of 1862, where a painting or drawing or the negative of a photograph was sold or disposed of for the first time (? by the author), the copyright of the work was lost[1] unless there was an express agreement by the parties that either the author or the purchaser should be entitled to it, and such agreement was required to be in writing and signed at or before the sale by

(*i*) the purchaser, if the author was to retain the copyright;

(*ii*) the author or his agent, duly authorized, if the purchaser was to become entitled to it.[2]

This is no longer law under The Copyright Act, 1911.

Infringement.

Under the Act of 1862, it was an infringement of copyright to copy or colourably imitate the work of art or the design thereof.[3] Engraving from, or taking photographs of, a work within the Act was an infringement of the copyright in it[4]; but apparently making a copy of it in sculpture was not.[5]

Under The Copyright Act, 1911, it is an infringement of copyright to reproduce the work "in any material form whatsoever."[6] Hence a reproduction in sculpture would be illegal.

As in the case of books, there is no copyright in ideas,[7] and no monopoly in the right of using a non-copyright source.[8]

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[1] This does not apply to the case of a work made on commission, see pp. 183–6, *supra*. It is not clear whether it applies to the first sale of a work made on commission by the person for whom it is made, but probably it does not; see the wording of s. 1, which treats the making of a work on commission as the equivalent of a first sale. [2] s. 1. [3] s. 11. [4] s. 1.

[5] Per Lindley, L. J., in Hanfstaengl v. Empire Palace, [1894] 2 Ch., at p. 5.

[6] 1 & 2 Geo. V. c. 46, s. 1 (2).

[7] Kenrick v. Lawrence, [1890] 25 Q. B. D. 99. [8] 1 & 2 Geo. V. c. 46, s. 2.

"*Living Picture*" *Cases.*

In the series of cases known as the "Living Picture" cases the facts were as follows:—Hanfstaengl was the owner of the copyright in certain pictures, and these pictures were represented on the stage at the Empire Palace as *tableaux vivants* with painted backgrounds resembling the backgrounds of the pictures. Sketches of these *tableaux vivants* with the backgrounds were published in the *Daily Graphic* and the *Westminster Budget*. Hanfstaengl brought an action against the Empire Palace and the *Daily Graphic*, and a second against the *Westminster Budget*. In the first case the plaintiff moved for an interlocutory injunction against both defendants. On the Empire Palace undertaking to keep the backgrounds until the trial, and to keep accounts of the number of times they were exhibited, and of the money received, Stirling, J., refused to make any order against the Empire Palace on the ground that the representation of the pictures as *tableaux vivants* could not be an infringement of the copyright in the pictures; and his decision was upheld by the Court of Appeal.[1]

The motion as against the *Daily Graphic* stood over and came on for hearing with a similar motion against the *Westminster Budget* in the second action. Stirling, J., granted an injunction against them, but the *Daily Graphic* appealed; and the order against them was reversed by the Court of Appeal[2] who were upheld by the House of Lords.[3] The reasons given for the decision were:—(1) There was no intention to copy the original picture but only the *tableaux vivants*, and this, though not decisive, was an element to be considered. (2) That there were such differences between the sketches in the paper and the original pictures that the sketches could not be

[1] Hanfstaengl v. Empire Palace, [1894] 2 Ch. 1. [2] *Ibid.*, 3 Ch. 109.
[3] Hanfstaengl v Baines, [1895] A. C. 20.

considered to be such copies of the pictures or of their designs as were forbidden by The Fine Arts Copyright Act, 1862. "The faces are different; the mode in which the woman's hair is arranged is different; the dress, especially in the case of the woman, is different; the attitudes are different, the background is different, and in the case of the sketch, the foreground is wanting. In the artist's design all these things play a part, and, though I do not say that a variation in one or even more of these respects would prevent the sketch being a copy of the design, yet comparing the two and considering the design of the painting as a whole, I cannot avoid the conclusion that the sketch is not a copy of the painting or of the design thereof, and therefore, that there has been no infringement."[1]

The actions against the Empire Palace and the *Westminster Budget* then came on for trial. The action against the *Westminster Budget* was dismissed. Against the Empire Palace the one question really fought was the one as to the legality of the painted backgrounds in the *tableaux vivants*. Stirling, J., held that in two cases they were largely copied from the plaintiff's pictures and therefore ordered them to be forfeited and gave penalties for their exhibition. All relief on other points was refused.[2]

In the first case the principle of law laid down is quite clear; the reproduction of a picture as a *tableau vivant* is not an infringement of its copyright. Probably this is no longer the law under The Copyright Act, 1911. The provision giving the owner of the copyright the right to reproduce the work in any material form[3] is wide enough to cover the case of *tableaux vivants*, and the provision giving the owner of the copyright in an artistic work the exclusive right to convert it into a dramatic work can (it is

[1] Per Lord Herschell, [1895] A. C., at p. 24.
[2] Hanfstaengl v. Empire Palace, [1895] 11 Times L. R. 314, 308.
[3] 1 & 2 Geo. V. c. 46, s. 1 (2).

submitted) relate to nothing else than the representation of artistic works as *tableaux vivants*.[1] In the second case the decision appears to have turned largely on a question of fact. It seems, however, to be implied in the decision that a copy of a copy of an original need not be a copy of that original, though it is expressly stated that a copy made from a copy may infringe the copyright in the original.[2] It also appears that the fact that the secondary copy was intended to represent, not the original picture but the *tableaux vivants*, was to be taken into account. Lindley, L. J., suggests that, where there is no intention to copy the original, the one point to be considered is whether there can be any competition[3] between the copy and the original author's copyright work. Probably the question as to the injury to the author's reputation must be considered as well.[4]

In *Hanfstaengl Art Publishing Company v. Holloway*,[5] copies of a picture "The Guardian Angel," produced by photography and put on pill boxes, were held to infringe the copyright. An illegal copy may be on a larger or smaller scale, and may only contain certain features of the original.[6]

It appears that caricatures of a picture, *e.g.*, *Punch's* "Depressions of the Royal Academy," need not infringe its copyright.[7]

In *Guggenheim v. Leng*,[8] a rough sketch made from a photograph was held not to be an infringement of the

[1] 1 & 2 Geo. V. c. 46, s. 1 (2).

[2] Per Lord Shand, [1895] A. C., at p. 30. In *Ex parte* Beal, [1868] L. R. 3 Q. B. 387, an unlicensed photograph of an engraving of a copyright picture was held to be an infringement of the copyright in the picture.

[3] [1894] 3 Ch., at p. 130.

[4] Dicks v. Brooks, [1880] 15 Ch. D. 22 (per James, L. J., at p. 35), approved of in Hanfstaengl v. Empire Palace, [1894] 3 Ch. 109, per Lopes, L. J., at p. 132; per Davey, L. J., at p. 133.

[5] [1893] 2 Q. B. 1.

[6] London Stereoscopic Co. v. Kelly, [1888] 5 Times L. R. 169; Bolton v. Aldin, [1895] 65 L. J. Q. B. 120; Brooks v. Religious Tract Society, [1897] 45 W. R. 476.

[7] Per Lindley, L. J., in Hanfstaengl v. Empire Palace, [1894] 3 Ch., at p. 130.

[8] [1896] 12 Times L. R. 491.

copyright in the photograph. The decision was given expressly on the authority of *Hanfstaengl v. Baines*.[1] but it is doubtful whether the leading case goes so far. "The point," said Davey, L. J., in the Court of Appeal, "is not that these things are bad copies—but they are not copies or reproductions at all within the Act."[2]

Evidence.

In *Lucas v. Williams*,[3] an engraving of the picture was admitted to shew similarity between the picture and the alleged copy; and the Court expressed the view that the opinion of persons, who knew the original well, that the alleged copy was exactly like it, was also admissible. When the copies have been lawfully made and have lawfully become the property of anyone, the owner of the copies may make any use of them he pleases, except copying them, without infringing the rights of the proprietor of the copyright.[4]

Studies and Sketches.

It has been doubted whether the author is entitled to use or to sell studies and sketches made in the process of painting a picture, after he has parted with the copyright to another person.[5] It would seem that, as the sketches were lawfully made, the author had the right of using them as he pleased.[6]

It has now been expressly provided by The Copyright Act, 1911, that he may use them, provided that he does not repeat or imitate the main design.[7]

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[1] [1895] A. C. 20.
[2] [1894] 3 Ch., at p. 134; see also judgments of the Law Lords.
[3] [1892] 2 Q. B. 113.
[4] Frost v. Olive Series Publishing Co., [1908] 24 Times L. R. 649.
[5] See 25 & 26 Vict. c. 68, s. 1. Report of Special Commission, 1878.
[6] *Cf.* Taylor v. Pillow, [1869] L. R. 7 Eq. 418.
[7] 1 & 2 Geo. V. c. 46, s. 2 (1).

Penalties on Fraudulent Productions and Sales.

It was made an offence under the Act of 1862—

(1) Fraudulently to sign or affix upon any painting, drawing, or photograph, or the negative of any photograph, any name, initials, or monogram;

(2) Fraudulently tc sell, publish, exhibit, dispose of, or offer for sale, exhibition, or distribution, any painting &c. having thereon the name, initials, or monogram of a person who did not execute the work;

(3) Fraudulently to utter or dispose of any copy or colourable imitation of any painting &c. as having been executed by the author of the original work;

(4) Where the author of any painting &c. has parted with the possession of his work and alterations have been made therein by another person, to make or knowingly to sell, publish, or offer for sale, during the author's life without his consent, such work, or any copies thereof as altered, as or for the unaltered work of such author.[1]

Any person who commits such an offence forfeits to "the person aggrieved" a sum not exceeding ten pounds, or not exceeding double the full price at which all such copies or altered works have been offered for sale; and all such copies or altered works are forfeited to the person whose name, initials, or monogram were affixed to the work in question, or to whom the work in question was ascribed. But no penalty will be incurred unless the person to whom the work is ascribed or whose name is so affixed has been alive within twenty years of the date of the offence.[1]

To affix a false signature to a picture is not a forgery; but if by means of it a person knowingly and fraudulently induces anyone to buy it as a genuine work of the artist, he may be indicted for a cheat at Common Law.[2]

[1] 25 & 26 Vict. c. 68, s. 7.

[2] Reg. v. Closs, [1857] 27 L. J., M. C. 54.

The penalties under the Act may be recovered—

(1) In England and Ireland, by action or by summary proceeding before the justices having jurisdiction where the offender resides[1];

(2) In Scotland, in accordance with the provisions of Scotch Law.

The sums recoverable under this Act are penal in their nature,[2] and are therefore not barred by a deed of composition with his creditors made by the offender.[2] Interrogatories cannot be administered to prove the offences.[3]

The provisions of Section 7, Clause 4, were discussed by Channell, J., in *Carlton Illustrators v. Coleman & Co., Limited.*[4] The facts of that case were as follows:—One of the plaintiffs had made a fine line drawing bearing his signature for the defendants, to be used by them as an advertisement, and had vested the copyright in them; the defendants had caused the drawing to be enlarged and coloured, and exhibited numerous copies of the drawing so altered and coloured, but still bearing the artist's signature, as advertisements. The evidence showed that alterations had been made in the drawing; that the artist had not contemplated that the drawing would be coloured, and had treated it in a way that made colouring unsuitable; and that his reputation would be seriously affected by the exhibition of the drawing as altered and coloured with his name upon it. Channell, J., held (1) that the alteration must be a material one; (2) that any alteration which was likely to affect the artist's reputation was a material one; (3) That fraud was not necessary to render the defendants liable; (4) That the penalties might be recovered by action under Section 8; and (5) That an injunction might be granted to restrain future breaches.

These provisions are untouched by The Copyright Act, 1911.

[1] 25 & 26 Vict. c. 68, s. 8. [2] *Ex parte* Graves *in re* Prince, [1868] L. R. 3 Ch. 642.
[3] Martin v. Treacher [1886] 16 Q. B. D. 505. [4] [1911] 1 K. B. 771.

Section 5.

ARCHITECTURE.

Not Protected before the Act of 1911.

Architectural works of art were not protected by English Copyright Law until the commencement of The Copyright Act, 1911. Consequently there are no judicial decisions to assist in the determination of the important questions raised on the construction of the Act, in particular, the question of artistic merit. Architecture was not included in the Act without a serious struggle; and a heavy price had to be paid for its inclusion in cutting down the protection afforded and the remedies given for infringement.

Qualifications for Copyright.

Artistic Merit.

An architectural work of art is defined as "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."[1]

This definition seems to imply that the structure must aim at artistic merit. It does not (it is submitted) imply that the work must show merit. In no other branch of Copyright Law is merit required[2]; and it would seem from analogy that merit is not required in architecture. On the other hand, in other branches of Copyright Law the granting of copyright to worthless productions produces little or no inconvenience, whereas in architecture the erection of buildings may be seriously hampered by the

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[1] 1 & 2 Geo. V. c. 46, s. 35 (1).

[2] See pp. 70, 164.

existence of copyright in the structure of a building which possesses no artistic merits but is otherwise admirably adapted to the purposes for which it is intended. The point must remain open until there is an actual decision on it by the Courts.[1]

Originality.

Originality—*i.e.*, some feature differentiating the work from any former work—is required by the Act.[2] The protection given to the work will be commensurate with the originality displayed.

Infringement.

It is not an infringement of the copyright in an architectural work of art to make or publish paintings, drawings, engravings, or photographs of it, unless they are of the nature of architectural drawings or plans.[3]

Remedies.

Where the construction of an infringing copy of an architectural work of art has been commenced, the owner of the copyright is not entitled to an injunction to restrain the construction or to a mandatory injunction ordering its demolition.[4]

The owner is not entitled to the forfeiture of the infringing copy or to the summary remedies provided for other cases by the Act.[5]

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[1] See Minutes of Evidence before the Copyright Committee, 1910, including foreign decisions, pp. 176-8.

[2] s. 1 (1). [3] s. 2 (1).

[4] s. 9 (1). [5] s. 9 (2).

CHAPTER VIII.

COLONIAL COPYRIGHT.

Position of Colonial Copyright before The Copyright Act, 1911.

DOWN to 1886 the position of Colonial Copyright was unsatisfactory. In the case of Literary, Dramatic, and Musical Copyright the protection given by The Copyright Act, 1842, extended throughout the Dominions of the Crown. On the other hand it was very doubtful whether a work first published in British Possessions was protected by the Act[1]; and in *Routledge v. Low*,[2] all the Law Lords expressed the opinion that first publication within the United Kingdom was necessary to acquire British Copyright. In the case of Engravings and Sculpture, first publication or production within the United Kingdom was expressly required.[3] It was long undecided whether the protection given by these Acts extended throughout the British Dominions; but in *Graves v. Gorrie*,[4] it was decided that The Fine Arts Copyright Act, 1862, gave no protection outside the United Kingdom. Probably the protection given by the other Artistic Copyright Acts was similarly limited. The Fine Arts Copyright Act required creation by a British subject or one resident within the Dominions of the Crown.[5] The International Copyright Act, 1886, made creation or publication within any part of the British Dominions equivalent to creation or production within the United Kingdom.[6]

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[1] See pp. 88-90. *supra*.
[2] [1868] L. R. 3 H.L. 100.
[3] See pp. 168-9, 178, *supra*.
[4] [1903] A. C. 496.
[5] 25 & 26 Vict. c. 68, s. 1.
[6] 49 & 50 Vict. c. 33, s. 8.

Under The Copyright Act, 1842, it was found that the Colonies were practically deprived of access to English works, as the reading public was so small that it did not pay the publishers to issue a cheap Colonial edition, and the high-priced English editions found no purchasers in the Colonies. Under these circumstances The Foreign Reprints Act, 1847, was passed enabling the Crown to suspend, by Order in Council, the prohibitions contained in The Copyright Act, 1842, against the importation of foreign reprints of books possessing British copyright into any British Possession where the legislative authorities of that Possession had made suitable provision for the remuneration of the authors of the books.[1] Under the provisions of this Act various Orders in Council were issued permitting the importation of cheap foreign reprints.

Colonial Copyright under The Copyright Act, 1911.

Under The Copyright Act, 1911, the British Dominions are divided into two classes: self-governing Dominions and others. The self-governing Dominions are:—the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.[2] The Act extends to all parts of the British Dominions other than self-governing Dominions; creation, publication, or residence of the author in any part of them is equivalent to creation, publication, or residence within the United Kingdom; and copyright is protected by the same remedies everywhere, except where it is expressly provided otherwise by the Act.[3] The self-governing Dominions are treated as foreign countries for the purposes of the Act, except that the Legislature of any Dominion may declare the Act to be in force in that

[1] 10 & 11 Vict. c. 95.

[2] 1 & 2 Geo. c. 46, s. 35 (1).

[3] s. 25 (1).

Dominion, with or without modifications relating exclusively to procedure and remedies or necessary to adapt the Act to circumstances of the Dominion.[1] The Secretary of State may certify by notice in the *London Gazette* that any self-governing Dominion has passed legislation under which British subjects or other persons resident within the parts of the British Dominions to which the Act extends, enjoy protection for their works substantially equal to that afforded by the Act, notwithstanding that the remedies or the restrictions on the importation of foreign copies may be different.[2] In either case the self-governing Dominion, while such legislation remains in force, is to be treated as a Dominion to which the Act extends.

The Legislature of any self-governing Dominion may repeal any enactments, including The Copyright Act, 1911, so far as they are operative within that Dominion; but no such repeal shall affect any legal rights then existing.[3] Until such repeal all enactments repealed by The Copyright Act, 1911, remain in force in that Dominion.[4]

Where a self-governing Dominion provides adequate protection for the works of British subjects resident elsewhere than in that Dominion, the Crown may by Order in Council extend the protection of the Act (or such parts as may be thought desirable) to works first published, or the authors of which were at the time of creation of the work resident, in the Dominion.[5] But except under such Order, no work made by an author resident in a British Dominion to which the Act does not extend, whether he be a British subject or not, shall be entitled to protection, unless first published by issue of copies within the parts of the British Dominions to which the

[1] s. 25 (1). [2] s. 25 (2). [3] s. 26 (1).
[4] s. 26 (2) [5] s. 26 (3).

Act extends.[1] In the case of a self-governing Dominion to which the Act extends, the Governor of such Dominion is the authority to confer these rights by Order.[2]

The Legislature of any British Possession to which the Act extends may pass legislation modifying the Act, but such legislation shall relate only to procedure and remedies, or to works first published by issue of copies in that Possession or whose authors were resident there.[3]

[1] s. 26 (3). *Cf.* pp. 50–2, *supra.* [2] s. 26 (3) [3] s. 27.

CHAPTER IX.

INTERNATIONAL COPYRIGHT.

History of International Copyright down to the Berne Convention.

THE first Act extending the protection of the English Law of Copyright to literary or artistic works first published abroad was The International Copyright Act, 1838;[1] but the provisions of that Act proved insufficient and the Act was repealed and replaced by The International Copyright Act, 1844.[2] By the Act of 1844 the Crown was empowered to extend the protection given by any of the existing Copyright Acts to works first published abroad; but the Crown was to be at liberty to direct that certain parts of the enactments in question should not apply. Under these provisions a large number of Orders in Council were issued, giving varying measures of protection to works first published in different foreign countries.[3] The Act was modified by The International Copyright Act, 1852,[4] which was necessitated by the Convention of 1852 with France, and by the Act of 1875.[5] The Fine Arts Copyright Act, 1862, incorporated The International Copyright Act, 1844, as part of its provisions.[6] The system of International Copyright set up by these Acts and Orders was highly complicated, as the rights of foreign authors depended on the terms of the particular Order in Council under which they claimed protection. The law of the Continental States suffered

[1] 1 & 2 Vict. c. 59.
[2] 7 & 8 Vict. c. 12.
[3] See the various Conventions collected in Copinger (2nd Edition) App. K.
[4] 15 Vict. c. 12.
[5] 38 Vict. c. 12.
[6] 25 & 26 Vict. c. 68, s. 12.

from the same complications, and in 1885 an attempt was made by several of the chief States in Europe to obtain a uniform system of International Copyright. A draft Convention was agreed to at Berne; then the Conference was adjourned to enable the various parties to obtain the necessary legislation to enable them to assent to the agreement; and on the 5th September, 1887, the "Berne Convention" was signed. In the case of Great Britain the necessary legislative sanction was given by The International Act, 1886;[1] and under this Act an Order in Council was issued on the 28th November, 1887, adopting the Berne Convention and revoking all previous Orders in Council relating to authors of the other States who were parties to the Berne Convention.

Parties to the Berne Convention.

The following States were parties to the Berne Convention of 1887, and formed the Copyright Union:—The British Empire, the German Empire, Belgium, Spain, France, Hayti, Italy, Switzerland, and Tunis. Luxemburg acceded to the Copyright Union as from the 20th June, 1888; Monaco as from the 30th May, 1889; Norway as from the 13th April, 1896; Japan as from the 15th July, 1899; Denmark as from the 1st July, 1903; Sweden as from the 1st August, 1904; Liberia as from the 16th October, 1908. Montenegro acceded to the Convention but subsequently denounced it.

Rights of British Authors Abroad.

The rights of British authors in any of the other States of the Union depended on the Berne Convention and any domestic legislation giving protection to them in force in that State. Redress must be sought in the Courts of that State, for the English Courts will not

[1] 49 & 50 Vict. c. 33.

restrain an infringement of copyright committed or threatened abroad, although the defendant may be within the jurisdiction of the Court.[1]

Rights of Foreign Authors in England.

The rights of foreign authors belonging to any of the countries included in the Copyright Union depended on the International Copyright Acts, 1844 to 1886, and on the Order in Council of the 28th November, 1887, and the Berne Convention, so far as these do not conflict with the plain meaning of the Acts. Under these provisions foreign authors and their assigns enjoyed the protection given by English Law to works possessing English copyright, subject to certain modifications which are considered below.

Country of Origin.

The country in which the work is first published or, in the case of unpublished works,[2] of which the author is a subject or citizen, is the "country of origin."[3] Where the work is simultaneously published in two or more countries belonging to the Copyright Union, the country which gives the shortest term of protection is considered the "country of origin."[3] The ownership of copyright was governed by the law of the country of origin, and a certificate authenticated as provided in the Act of 1886[4] was to be admissible evidence of its existence. All formalities necessary for acquiring or enforcing copyright were to be governed by the law of the country of origin.[3] The English provisions for delivery of books to libraries and for registration of copyright were excluded by the Act of 1886.[5] In the case of anonymous works the publisher might take proceedings, but apparently only as trustee for the owner.[6]

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[1] Morocco Bound Syndicate v. Harris, [1895] 1 Ch. 534. In that case the defendant was a British subject and the work possessed British copyright.

[2] At that time English Law gave complete protection to the unpublished works of any author. [3] Art. 2. [4] s. 7.

[5] s. 5 (1). Surpy v. Holland, [1908] 2 Ch. 198. [6] s. 2 (2).

Works Protected by the Order.

All works produced after the 6th December, 1887, were protected under these provisions. As regards works produced before the 6th December, 1887, The International Copyright Act, 1886, provided that "the author and publisher of any literary or artistic work first produced before the date" of the commencement of any Order "shall be entitled to the same rights and remedies as if the said Acts and this Act and the said Order had applied to the said foreign country at the date of the said production. Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable to the said date."[1]

Two points arise in connection with this provision. The first is as to the meaning of the words "first produced." It was suggested that only works produced after the passing of the Act of 1886 were included; but this contention was opposed to the plain words of the Convention,[2] and in *Hanfstaengl Art Publishing Co. v. Holloway*,[3] Charles, J., held that it applied to works produced before the passing of the Act. In *Lauri v. Renad*.[4] the Court of Appeal had to deal with a kindred question. There the facts were as follows:—In March, 1879, the brothers A acquired the dramatic copyright in a French play which was never printed but was publicly performed in France on the 30th August, 1879; in September, 1879, they were registered as the owners of the playright in Great Britain; B made for them an English translation of the play; and in November, 1879,

[1] s. 6. [2] Art. 14. [3] [1893] 2 Q. B. 1.
[4] [1892] 3 Ch. 402.

B was registered as the owner of it. In 1880 the brothers A acted another English version of the play in England. In 1891 the defendants acted a third English version of the play in England, and were sued by the plaintiff, who claimed to be the assignee of the brothers A. The Court of Appeal held that the right of translation had fallen into the public domain in November, 1884, and that the Act of 1886 did not revive an expired right. This decision has been severely criticised.[1] Article 14 of the Berne Convention expressly states that the Convention is to apply to all works which have not fallen into the public domain in their country of origin, and the Act of 1886 contains provisions intended to prevent any interference with existing rights which might otherwise be caused by the extended protection afforded to foreign works.[2] Nothing is said in the Convention or the Act about the non-revival of expired rights in any country other than the country of origin, whether such expired rights are merely isolated rights, such as the right of translation, or the entire protection given under the International Copyright system. In *Hanfstaengl Art Publishing Co. v. Holloway*,[3] the owners had neglected to acquire International Copyright under the law then existing, and, prior to the Berne Convention, the whole work had fallen into the public domain in England; but protection was given to them under the Act of 1886.

The result of this extended protection was to make acts illegal which had been legal before, and accordingly provision was made for protecting vested interests. The proviso enacted that, where anyone had lawfully produced any work in the United Kingdom before the date of the publication of an Order in Council, no rights or interests in connection with such production which were subsisting

[1] Scrutton, pp. 220–1; Copinger, pp. 485–6; Macgillivray, p. 198.

[2] s. 6.

[3] [1893] 2 Q. B. 1.

and valuable at the date in question should be affected.[1] The leading case on this proviso is *Moul v. Groenings*.[2] In 1877 one of the plaintiffs produced a musical composition called the "Caprice Polka" in France, but took no steps to acquire the copyright in England, and the defendant, a bandmaster, purchased one for his band and performed the piece before the 2nd of December, 1887, and continued to do so after the 6th of December, 1887. The plaintiffs sued him for infringement of their rights in the Brighton County Court, where judgment was given for the defendant, and appealed unsuccessfully to the Divisional Court and to the Court of Appeal. A. L. Smith, J., discussed the proviso at great length. He defined "lawful" production as production without infringing any existing copyright.[3] He defined "rights" as being legal rights in the strict sense of the term, such as copyright in a translation or adaptation, not "rights" in the popular sense, *i.e.*, the liberty to do certain acts as not forbidden by the law which the defendant shared with every member of the public. He held that "interests" meant "pecuniary interests" and held that the bandmaster had such in the reproduction of the composition, acquired by the outlay involved in purchasing the copy and in training his band to perform it. He also suggested that it would be sufficient to shew pecuniary interests in other persons besides the defendant; thus in the actual case Lafleur had an interest in disposing of his unsold copies which might be seriously affected by forbidding all bandsmen to perform it.

These principles have been generally accepted. In *Schauer v. Field*,[4] Chitty, J., held that the proprietors of a trade mark which was a copy of a German painting, had a pecuniary interest in it sufficient to protect them in reproducing copies of it after December, 1887. In

[1] s. 6. [2] [1891] 2 Q. B. 443. [3] At p. 448. [4] [1893] 1 Ch. 35.

Hanfstaengl Art Publishing Co. v. Holloway,[1] Charles, J., held that the "interest" contemplated must be a direct pecuniary interest, and held that the defendant, who had previously used copies of the plaintiff's picture as an advertisement for his pills, was not thereby entitled to print fresh copies for a similar purpose.

Duration of Right.

The term of protection given under The International Copyright Act, 1886, to any class of work was either the term given in England or in the country of origin, whichever should be the shorter.[2] The right extended throughout the British Dominions in the same way as if they had formed part of the United Kingdom.[3]

Infringement.

The foreign work is protected in exactly the same way as if it were a work produced within the United Kingdom, subject to two exceptions.

(1) Down to The Copyright Act, 1911, it was doubtful whether the author of a literary work had the right of translating it.[4] But by the combined effect of The International Act, 1886,[5] and of Article 5 of the Berne Convention, the foreign author has the exclusive right of making or authorizing the translation of his work for the period of ten years. If he does not exercise this right within the ten years, the right of translation falls into the public domain. If he exercises it, it is doubtful how far the exclusive right of translation remains. The International Act, 1886,[5] gives him the exclusive right for the whole period (unless the Order directs otherwise) *and only takes it away if not exercised within ten years.* The Berne Convention only gives it to him for ten years. The Order of November, 1887, made under the Act directs

[1] [1893] 2 Q. B. 1. [2] s. 2 (3). [3] s. 9; Order s. 3.
[4] See pp. 109–112, *supra*. [5] s. 5.

that the Convention shall have full effect throughout the British Dominions. If there is a conflict between these provisions, the Act must prevail.[1] It is submitted, however, that the Act only prescribes a maximum for the protection to be afforded by the Order in Council; and that the Order in Council by incorporating the Convention has cut down the protection afforded to that given by Article 5 of the Convention. The point is, however, very doubtful. The Additional Act of Paris, 1896, provided that the author should retain the exclusive right of translation to the end of the term of copyright, if he issued an authorized translation within ten years.[2]

The translation must be a literal translation of the whole work and not a mere adaptation or imitation of it.[3]

(2) The other point arises out of an apparent conflict between the Act of 1886 and the Berne Convention Article 2 of the Berne Convention stipulates that authors of any of the countries of the Union shall enjoy in the other countries the rights which the Copyright Laws give to natives, but that such protection shall not be for a longer term than that given in the country of origin. The International Act, 1886, enacts that no person shall enjoy in this country "any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was produced."[4] If there is a conflict between these provisions, the Act must prevail. It is true that the Act was passed with the intention of enabling the Crown to assent to the Convention, and should therefore be construed so as to give effect to the Convention, if possible.[5] But it is very difficult to give any meaning to the words "greater right," which will

[1] Scrutton thinks that there is such a conflict, pp. 218-9. [2] Art. 5.

[3] Wood v. Chart, [1870] L. R. 10, Eq. 193; but see Lauri v. Renad, [1892] 3 Ch. 402, at p. 414 (Kekewich, J.). [4] s. 2. (3).

[5] Per Rigby, L. J., Hanfstaengl v. American Tobacco Co., [1895] 1 Q. B., at p. 355.

give full effect to the Convention. The point has only once been taken in the English Courts, in the case of *Hanfstaengl v. Empire Palace*,[1] and there it was not decided; but Lindley, L. J., plainly stated that acts which would not be held infringements of the author's rights in the country of origin, would not be actionable here.[2] Lopes, L. J., concurred in this expression of opinion.[3] The House of Lords expressed no opinion on the point.

Additional Act, 1896.

In 1896 another Conference was held at Paris, and certain alterations of no great importance were made in the Berne Convention. The Additional Act was adopted by an Order in Council, dated the 7th March, 1898. An Interpretative Declaration was agreed to by certain Powers but not by Great Britain.

Berlin Convention, 1908.

In 1908 a Conference was held at Berlin, and the Berlin Convention[4] was provisionally agreed to. The object of this Convention was to secure a certain minimum protection in all countries of the Union for authors belonging to any of them, instead of merely providing for reciprocity between the various countries, as was done by the Berne Convention. The parties to the Convention were: Great Britain, Germany, Belgium, Denmark, Spain, France, Italy,[5] Japan, Liberia, Luxemburg, Monaco, Norway, Sweden,[5] Switzerland, and Tunis. Great Britain subsequently ratified the Convention on the 14th June, 1912, subject to a reservation as to its retrospective effect; and it has also been ratified by Germany, Belgium, Spain, France, Japan, Liberia, Luxemburg, Monaco, Norway, Switzerland, and Tunis.[6]

[1] [1894] 3 Ch. 109; [1895] A. C. 20. [2] [1894] 3 Ch., at p. 125.

[3] At p. 133. Davey, L. J., seems to have agreed, but his words are ambiguous p. 135.

[4] App. IV., pp. 275-293 *infra*. [5] Has not ratified the Convention.

[6] Since the date of the Orders in Council Denmark and Hayti have also ratified the Convention.

subject to certain reservations set out in the Fourth Schedule of the Order in Council, adopting the Convention. Portugal has also acceded to the Convention.

The rights of British authors in any other country of the Union depend on this Convention, and any supplementary domestic legislation.

The chief provisions of this International Copyright code may be summarized as follows—

1. The works to be protected under the Convention are literary, dramatic, musical, and artistic works, including choreographic works and pantomimes, and architecture,[1] and photography.[2]
2. The country of origin of the work, if "unpublished," is to be the country to which the author belongs; the country in which the work is first "published," if "published." A "published" work is one, copies of which have been issued by a publisher.[3] If simultaneously "published" in a country of the Union and a country outside the Union, the country of the Union is to be considered the country of origin; if simultaneously "published" in two or more countries of the Union, the country which grants the shortest term of protection shall be the country of origin.
3. Any author, whether a subject of one of the countries of the Union or not, who first publishes by issue of copies in another country of the Union is to enjoy in that country the rights granted to natives, and in the other countries the rights secured by the Berlin Convention.[4]
4. Any work, the country of origin of which is one of the countries of the Union, is to enjoy in each of the other countries of the Union the protection afforded to native authors as well as the rights stipulated for

[1] Art. 2. [2] Art. 3. [3] Art. 4. [4] Art. 5 & 6.

by the Convention; and such protection is not to be subject to the performance of any formalities.[1]

5. The term of protection is to include the life of the author and fifty years after his death. If the term of protection differs from this, it is to be that of the country of origin, or that in the country in which protection is sought, whichever shall be the shorter. For photographic works, and for posthumous, anonymous, or pseudonymous works the term of protection is to be that of the country of origin, or that in the country in which protection is sought, whichever shall be the shorter.[2]

6. The rights of the author are to include the adaptation of his work to instruments which can produce them mechanically and the public performance by such instruments.[3]

7. Pirated works may be seized by the competent authorities in any country of the Union.[4]

8. The Convention is to apply to all existing works which have not yet fallen into the public domain in the country of origin through the expiration of the term of protection. But no work is to be protected in any country in which it has fallen into the public domain through the expiration of the term of protection.[5] (This provision was not accepted by Great Britain so far as it has a retrospective effect.)

Order in Council adopting the Convention.

The Copyright Act, 1911, enables the Crown to extend the protection of the Act to works first published by issue of copies in a foreign country or works the authors of which were, at the time of making the work, subjects of or resident in that foreign country.[6]

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[1] Art. 4. [2] Art. 7. [3] Art. 13 & 14. [4] Art. 16.
[5] Art. 18. This differs from the Berne Convention Art. 14.
[6] 1 & 2 Geo. V. c. 46, s. 29 (1).

The Order may omit any parts of the Act which are specified in the Order, and may include provisions limiting the term of copyright to that given in the foreign country, requiring conditions and formalities, or modifying the provisions of the Act as to ownership so as to coincide with the law of the foreign country.[1]

Any Order so made is to apply to all parts of the British Dominions other than self-governing Dominions to which the Act extends[2] except such parts as may be expressly excepted by the Order.[3] In the case of a self-governing Dominion the Governor may make the like Orders having effect throughout that Dominion.[4]

An Order in Council,[5] dated 24th June, 1912, was issued under this provision, giving protection to the works of authors belonging to the other countries of the Copyright Union: viz., Belgium, Denmark and the Faröe Islands, France, Germany and the German Protectorates, Hayti, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Portugal, Spain, Sweden, Switzerland, and Tunis.[6] By its provisions The Copyright Act, 1911, is to apply to all works which have been first published by issue of copies in a foreign country of the Copyright Union, whose authors were at the time of making the works resident in, or were subjects or citizens of, a foreign country of the Copyright Union, as if the publication or residence had been in the parts of the British Dominions to which the Act extends, or as if the authors had been British subjects[7]; with the following modifications and subject to the following conditions:—

1. The term of copyright is not to exceed the term of copyright in the country of origin.[8]

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[1] 1 & 2 Geo. V. c. 46, s. 29 (1).
[2] s. 30 (1). [3] s. 30 (3). s. 30 (2).
[5] See pp. 300-5, *infra*; *London Gazette*, 28th June, 1912, p. 4961.
[6] Order, Art. (1). [7] *Ibid.*, Art. 2. [8] *Ibid.*, Art. 2 (ii).

2. Where the country of origin is Denmark, Italy, or Sweden, copyright is not to include the exclusive right to make any contrivance whereby a literary, dramatic, or musical work may be mechanically performed, and there is to be no copyright in mechanical contrivances.[1]

3. In the great majority of cases an express declaration forbidding the reproduction of a newspaper or magazine article is required.[2]

4. Where the country of origin is Denmark, Italy, Japan, or Sweden, the right of translating any literary or dramatic work into any particular language will expire at the end of ten years from the first publication by issue of copies, unless an authorized translation into that language is published by issue of copies within that time.[3]

5. Where the country of origin is Denmark, Italy, Japan, or Sweden, the right of publicly performing a musical work must be reserved by an express declaration on the title page of each copy published.[4]

6. Where the country of origin is Denmark, Italy, or Sweden, the conditions and formalities prescribed by law in the country of origin must be complied with.[5]

7. Where the right of translation has fallen into the public domain, it is not to be revived by the Order.[6]

Except in the cases of Denmark, Italy, and Sweden, the owner of the copyright in a musical work possesses all the rights with respect to the making of mechanical contrivances conferred by the Act, unless the musical

[1] Order, Art. 2 (i).
[2] *Ibid.*, Art. 2 (iii) (*a*) & (*b*).
[3] *Ibid.*, Art. 2 (iii) (*c*).
[4] *Ibid.*, Art. 2 (iii) (*d*).
[5] *Ibid.*, Art. 2 (iii) (*e*).
[6] *Ibid.*, Art. 2 (iv).

work had been previously published by issue of copies, and mechanical contrivances reproducing it had been lawfully made or placed on sale before the commencement of the Act within the parts of the British Dominions to which the Act extends.[1] The Order applies to all territories to which the Act extends.[2] All former Orders under the Berne Convention are revoked, but this is not to affect any rights[3] acquired before the commencement of the Order.[4] The saving of all existing rights and interests is not dealt with by the Order but depends on Section 24 of the Act.

Convention with Austria-Hungary.

Austria has a separate Convention of the 24th April, 1893. with Great Britain; and effect is now given to the Convention by a separate Order in Council dated the 24th June, 1912.[5] By this Order The Copyright Act, 1911, (including the provisions as to mechanical contrivances for the reproduction of sounds), is to apply to works first published by issue of copies in the Austrian Dominions and to works whose authors are Austrian subjects or residents, subject to the following provisions:—

1. The term of copyright is not to exceed the term given by Austrian law.
2. An authorized English translation of any literary or dramatic work must be published within ten years of the publication of the original work; otherwise the right of translation lapses.
3. In the case of works first published by issue of copies in the Austrian Dominions the conditions and formalities prescribed by Austrian law must be complied with.

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[1] Order, Art. 3; 1 & 2 Geo. V. c. 46, s. 19.

[2] *Ibid.*, Art. 5.

[3] See pp. 204–6, *supra*.

[4] *Ibid.*, Art. 6.

[5] See p. 307, *infra*.

American Copyright

Before The Chace Act, 1891.

As in the case of English law before The Copyright Act, 1911, there are two distinct rights in American law—the old Common Law right of restraining publication of an unpublished work, and the post-publication copyright in the case of a published work. This post-publication right, it has now been decided, rests wholly on Statute.[1]

The Common Law right of restraining publication appears to be exactly the same as it was in England before the Act of 1911. It attaches to all works, whether the author is an American citizen or resident in the United States or not. It is still preserved by the American Copyright Act, 1909.[2]

In the case of the post-publication statutory right, no author who was not either a citizen of the United States or resident there could acquire copyright in the United States until the passing of the Chace Act.

Copyright under the Chace Act.

The result of this illiberal policy on the part of the United States was to crush native literature by the competition of cheap reprints of popular foreign works. It "condemned the whole American community to a literary servitude unparalleled in the history of thought."[3] At the same time it inflicted great hardship on foreign authors, who were deprived of their market in the United States, and who often found it difficult to exclude the cheap American reprints from their own country. Attempts were repeatedly made to obtain a system of International copyright, but all these attempts were defeated by the power of the Typographical Union until 1891.

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[1] Wheaton v. Peters, [1834] 8 Peters' Rept. 591.
[2] s. 2.
[3] Maine, Popular Government, p. 247.

Strictly speaking, there is not, and never has been, any system of International copyright in the United States. What the Chace Act introduced was a system whereby persons other than citizens of the United States or resident there could acquire United States copyright. The Chace Act came into force on the 1st July, 1891. Under this Act any one might acquire United States copyright who was a citizen or subject of a foreign State, which permitted citizens of the United States to acquire copyright in its dominions on substantially the same terms as its own citizens or subjects, or was a party to an international agreement providing for reciprocity in granting copyright, to which agreement the United States might become a party at its pleasure.[1] The existence of either condition was to be determined by the President of the United States by proclamation. Under a proclamation of 1st July, 1891, the President included Great Britain among the States fulfilling the first condition.

Apparently residence in the United States did not entitle an author to copyright who was not a citizen or subject of a foreign country included in such proclamation. The conditions for acquiring copyright were as follows: On or before the day of first publication the author must deliver at the office of the Librarian of Congress or deposit in the mail within the United States, addressed to the Librarian (1) a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts; and (2) two copies of such book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph, or a photograph of such painting, drawing, statue, statuary, model, or design for a work

[1] s. 13.

of the fine arts. In the case of a book, photograph, chromo, or lithograph, the copies must be printed from type set within the limits of the United States or from plates made therefrom, or from negatives or drawings on stone made in the United States, or from transfers made therefrom.[1]

A notice in the prescribed form must be printed on every copy to enable the owner of the copyright to sue for infringement.[2]

The deposit of two copies probably amounts to publication. Consequently any author, whether British or American, who desires to acquire copyright in both countries, must publish simultaneously in each.

The Copyright Act, 1909.

The Copyright Laws of the United States were consolidated by an Act of 4th March, 1909. Under this Act the author of any work possessing the necessary qualifications for copyright may acquire copyright in the United States, if he be—

(1) A citizen of the United States; or

(2) A resident alien domiciled in the United States at the time of first publication; or

(3) A citizen or subject of any country which grants to citizens of the United States the benefit of copyright on substantially the same basis as its own citizens. The existence of reciprocal copyright conditions is determined by presidential proclamation.[3]

The assignees or executors of the author can secure copyright if the author himself could have done so, but not otherwise.

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[1] s. 3.
[2] s. 4962 of the Revised Statutes of the United States.
[3] Copyright Act s. 8; Registration Rules 2.

By a Proclamation of 9th April, 1910, citizens or subjects of the following countries were admitted to share in the benefits of United States copyright:—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.

Copyright is secured by publication of the work with the notice of copyright required by the Act.[1] In the case of literary, dramatic, and musical works, the notice must be in the form: "Copyright, 19 , [the year of publication] by A. B." (the owner of the copyright). In the case of maps and works of art the notice may be in the following form "©," and the name of the owner must appear on some accessible portion of the work.[2] This notice must be affixed to each copy sold in the United States, except in the case of works seeking *ad interim* protection under Section 21 of the Act.[1] Copyright may also be secured for unpublished works by the deposit, with claim of copyright, of one complete copy of the work.[3]

The claim for copyright must be registered at the Copyright Office, and the necessary number of copies deposited. No action for infringement can be maintained until this is done.[4]

In the case of an "unpublished" work of the kinds enumerated in Section 11, one copy only must be deposited; if a lecture or a dramatic or musical composition, one typewritten or manuscript copy; if a photograph, one positive print; if any other work of art, a photographic reproduction of it.[5] In the case of

[1] Copyright Act, s. 9.

[2] Copyright Act, s. 18; R. Rules 21-22.

[3] *Ibid.*, s. 11. It is thought that this will not affect the Common Law right which is preserved by s. 2.

[4] *Ibid.*, s. 12; R. Rule 3.

[5] *Ibid.*, s. 11; R. Rules 17-21.

"published" works, two complete copies of the best edition must be deposited. This need not be done on the day of publication, but must be done "without unnecessary delay."[1] In the case of failure to deposit them promptly the Registrar may require the owner to deposit them within three months (or six months in the case of foreign countries), and on failure to do so, the copyright will be forfeited.[2] In the case of "books" (as defined in the Act[3]) or of periodicals in the English language, the two copies must be printed from type set within the United States or produced by some process performed wholly within the United States; and this provision applies to all illustrations in the "book," "except where the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art."[4] The copies deposited must be accompanied by an affidavit stating that the copies were so printed and bound within the States, and also where the printing and binding was done and the date of publication.[5]

This provision only applies to books in the English language and not in characters for the blind.[4]

In the case of books in the English language published abroad, *ad interim* protection may be secured by the deposit within thirty days of publication of one 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 owner and the date of publication. The *ad interim* protection lasts for thirty days after the deposit.[6] The owner must comply with the usual provisions as to deposit of copies within the thirty days.[7] The period of copyright is twenty-eight years from publication, with

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[1] Copyright Act, s. 12; R. Rules 22-23.
[2] *Ibid.*, s. 13.
[3] *Ibid.*, s. 5; R Rule 4.
[4] *Ibid.*, s. 15; R. Rule 27.
[5] *Ibid.*, s. 16; R. Rules 32-35.
[6] *Ibid.*, s. 21; R. Rule 28.
[7] *Ibid.*, s. 22; R. Rule 28.

a right of renewal for twenty-eight years longer.[1] Application must be made one year prior to the expiration of the term. Assignments of copyright must be recorded in the Copyright Office within three or six months after its execution; otherwise it is void against a purchaser for valuable consideration without notice whose assignment has been recorded.[2] Assignments outside the United States must be acknowledged before a consular officer or secretary of legation of the United States.[3]

[1] Copyright Act, s. 23; R. Rules 46–48. [2] *Ibid.*, s. 44; R. Rules 41–43.
[3] *Ibid.*, s. 43.

APPENDIX I.

STATUTES.

THE COPYRIGHT ACT, 1911.

[1 & 2 Geo. V. c. 46.]

ARRANGEMENT OF SECTIONS.

PART I.

IMPERIAL COPYRIGHT.

Rights.

1. Copyright.
2. Infringement of copyright.
3. Term of copyright.
4. Compulsory licences.
5. Ownership of copyright &c.

Civil Remedies.

6. Civil remedies for infringement of copyright.
7. Rights of owner against persons possessing or dealing with infringing copies &c.
8. Exemption of innocent infringer from liability to pay damages &c.
9. Restriction on remedies in the case of architecture.
10. Limitation of actions.

Summary Remedies.

11. Penalties for dealing with infringing copies &c.
12. Appeals to quarter sessions.
13. Extent of provisions as to summary remedies.

Importation of Copies.

14. Importation of copies.

Delivery of Books to Libraries.

15. Delivery of copies to British Museum and other libraries

Special Provisions as to certain Works.

16. Works of joint authors.
17. Posthumous works.
18. Provisions as to Government publications.
19. Provisions as to mechanical instruments.
20. Provision as to political speeches.

21. Provisions as to photographs.
22. Provisions as to designs registrable under 7 Edw. VII. c. 29.
23. Works of foreign authors first published in parts of His Majesty's dominions to which Act extends.
24. Existing works.

Application to British Possessions.

25. Application of Act to British Dominions.
26. Legislative powers of self-governing Dominions.
27. Power of Legislatures of British Possessions to pass supplemental legislation.
28. Application to protectorates.

PART II.

INTERNATIONAL COPYRIGHT.

29. Power to extend Act to foreign works.
30. Application of Part II. to British possessions.

PART III.

SUPPLEMENTAL PROVISIONS.

31. Abrogation of common law rights.
32. Provisions as to Orders in Council.
33. Saving of university copyright.
34. Saving of compensation to certain libraries.
35. Interpretation.
36. Repeal.
37. Short title and commencement.

SCHEDULES.

An Act to Amend and Consolidate the Law relating to Copyright.

[16th December, 1911

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

IMPERIAL COPYRIGHT.

RIGHTS.

Copyright.

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if—

(*a*) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(*b*) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.[1]

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof[2]; and shall include the sole right,—

(*a*) to produce, reproduce, perform, or publish any translation of the work[3];

(*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work[4];

(*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[4];

(*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,[5]

and to authorise any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.[6]

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[1] pp. 50–2. [2] pp. 33–47. [3] pp. 109-112.
[4] pp. 140-8. [5] pp. 154–9. [6] pp. 34-5; 51.

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[1]: 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[2];

(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[3]:

(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[4]:

(iv) The publication in a collection, mainly composed of non-copyright matter, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged[5]:

(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[6]:

(vi) The reading or recitation in public by one person of any reasonable extract from any published work[7]:

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[1] pp. 62-3. [2] pp. 37, 98-119. [3] p. 191. [4] p. 195.
[5] pp. 118-9. [6] p. 129. [7] p. 119.

(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.[1]

(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.[2]

Term of Copyright.

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of 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.[3]

[1] p. 63. [2] p. 63; pp. 144-6. [3] pp. 52-7

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.[1]

Ownership of Copyright &c.

5. (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(*a*) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and

(*b*) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.[2]

(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

[1] p. 62. [2] pp. 59-61.

be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.[1]

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

Civil Remedies.[2]

Civil Remedies for Infringement of Copyright.

6. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

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[1] pp. 61-2.

[2] pp. 63-7.

(*a*) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(*b*) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Rights of Owner against Persons possessing or dealing with Infringing Copies &c.

7. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Exemption of Innocent Infringer from Liability to pay Damages &c.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work.

Restriction on Remedies in the case of Architecture.

9.—(1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

Limitation of Actions.

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

SUMMARY REMEDIES.[1]

Penalties for dealing with Infringing Copies &c.

11. (1) If any person knowingly—

(*a*) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(*b*) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or

(*c*) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(*d*) by way of trade exhibits in public any infringing copy of any such work; or

(*e*) imports for sale or hire into the United Kingdom any infringing copy of any such work:

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(3) The court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or

[1] pp. 67-8.

plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906.[1]

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.

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.[2]

14.—(1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be included in the table of prohibitions and restrictions contained in section forty-two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations,

[1] pp. 160-2. [2] pp. 68-9.

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.[1]

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876: Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

Delivery of Books to Libraries.[2]

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

[1] pp. 267–271. [2] pp. 123–4.

in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade.[1]

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

Special Provisions as to certain Works.

Works of Joint Authors.

16. (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act

[1] p. 265.

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.[1]

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.[2]

(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.[3]

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous Works.

17. (1) In the case of a literary dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section three of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.[4]

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *primâ facie* proof of the copyright being with the owner of the manuscript.[5]

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 com-

[1] p. 52.
[2] pp. 50, 61.
[3] p. 49.
[4] p. 53.
[5] p. 91, *note* 4.

mencement 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.[1]

Provisions as to Mechanical Instruments.[2]

19. (1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within parts of His Majesty's dominions to which this Act extends records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—

(*a*) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(*b*) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that—

(i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

[1] pp. 55, 120. [2] pp. 154-9.

(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 persons making the same, be two and one-half per cent.; and

(*b*) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent.

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a half-penny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions :—

(*a*) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply :

(*b*) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten :

(*c*) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives :

(*d*) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section :

(*e*) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent

as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that—

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

Provision as to Political Speeches.

20. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.[1]

Provisions as to Photographs.

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.[2]

Provisions as to Designs registrable under 7 Edw. VII. c. 29.

22. (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

[1] p. 129. [2] pp. 49, 55.

(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.[1]

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.[2]

Existing Works.

24. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that—

(*a*) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either—

[1] pp. 164-5. [2] p. 51.

(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 heretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the *London Gazette* and in two London newspapers:

(*b*) where any person has, before the twenty-sixth day of July, nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of section nineteen sub-sections (7) 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.[1]

[1] pp. 53 5.

Application to British Possessions.[1]

Application of Act to British Dominions.

25. (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the *London Gazette* that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differs from those under this Act.

Legislative Powers of Self-governing Dominions.

26. (1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion, that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works

[1] pp. 57-8, 196 9.

(whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first-mentioned dominion, and to works first published in that dominion; but, save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends, may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this subsection, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this subsection, the expression "a dominion to which the Act extends" includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

Power of Legislatures of British Possessions to pass Supplemental Legislation.

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession.

Application to Protectorates.

28. His Majesty may, by Order in Council, extend this Act to any territories under his protection and to Cyprus, and, on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which this Act extends.[1]

[1] pp. 57 n.

PART II.

INTERNATIONAL COPYRIGHT.[1]

Power to extend Act to Foreign Works.

29. (1) His Majesty may, by Order in Council, direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

(*a*) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends;

(*b*) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were British subjects;

(*c*) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly:

Provided that—

(i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I. of this Act;

(ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

(iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order;

(iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

[1] pp. 200-213.

(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.

(2) An Order in Council under this section may extend to all the several countries named or described therein.

Application of Part II. to British Possessions.

30. (1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any order any part of his dominions not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III.

Supplemental Provisions.

Abrogation of Common Law Rights.

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory

enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.[1]

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.

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.[2]

Saving of Compensation to Certain Libraries.

34. There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books:

Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

Interpretation.

35. (1) In this Act, unless the context otherwise requires,—

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph

[1] pp. 35-38. [2] pp. 120-1.

production where the arrangement or acting form or the combination of incidents represented give the work an original character;

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

"Works of sculpture" includes casts and models;

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography;

"Cinematograph" includes any work produced by any process analogous to cinematography;

"Collective work" means—

(*a*) an encyclopædia, dictionary, year book, or similar work;

(*b*) a newspaper, review, magazine, or similar periodical; and

(*c*) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

"Infringing," when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of the provisions of this Act;

"Performance" means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

"Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument;

"Plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies

of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made;

"Lecture" includes address, speech, and sermon;

"Self-governing dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order in Council.[1]

(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.[2]

(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.[2]

Repeal.

36. Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part.

[1] p. 51. [2] p. 50.

Short Title and Commencement.

27. (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 [1]:

(*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 of the Governor.

[1] The actual date was the 1st day of July, 1912.

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 18 of The Copyright Act, 1842.

SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Geo. 2. c. 13.	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. 3. c. 38.	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. 3. c. 53.	The Copyright Act, 1775.	The whole Act.
17 Geo. 3. c. 57.	The Prints Copyright Act, 1777.	The whole Act.
54 Geo. 3. c. 56.	The Sculpture Copyright Act, 1814.	The whole Act.
3 & 4 Will. 4. c. 15.	The Dramatic Copyright Act, 1833.	The whole Act.
5 & 6 Will. 4. c. 65.	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. 4. c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. 4. c. 110.	The Copyright Act, 1836.	The whole Act.
5 & 6 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.
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.

SECOND SCHEDULE—*continued.*

Session and Chapter.	Short Title.	Extent of Repeal.
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. 7. c. 36.	The Musical Copyright Act, 1906.	In section three the words "and which has been registered in accordance with the provisions of the Copyright Act, 1842, or of the International Copyright Act, 1844, which registration may be effected notwithstanding anything in the International Copyright Act, 1886."

THE CUSTOMS LAWS CONSOLIDATION ACT, 1876.[1]

[39 & 40 VICT. c. 36.]

42. The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported and brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

GOODS PROHIBITED TO BE IMPORTED.

Books wherein the copyright shall be first subsisting, first composed, or written or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire.

(The words in italics in Section 42 and also Sections 44, 45, and 152 were repealed by The Copyright Act, 1911.)

[1] pp. 68-9.

THE FINE ARTS COPYRIGHT ACT, 1862.[1]

[25 & 26 Vict. c. 68, ss. 7 & 8.]

Penalties on Fraudulent Productions and Sales.

7. No person shall do or cause to be done any or either of the following acts: that is to say—

First.—No person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram:

Secondly.—No person shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work:

Thirdly.—No person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken:

Fourthly.—Where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work or any copies of such work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Penalties.

Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding ten pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or

[1] pp. 192-3.

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 so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed

Recovery of Pecuniary Penalties.

8. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act, *and pursuant to any Act for the protection of copyright engravings*, may be recovered by the person hereinbefore *and in any such Act as aforesaid*[1] 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 of assoilzieing the defender, to find the complainer liable in expenses, and any judgment so to be pronounced by the Sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

[1] The words in italics were repealed by The Copyright Act, 1911.

THE MUSICAL (SUMMARY PROCEEDINGS) COPYRIGHT ACT, 1902.

[2 Edw. VII. c. 15.]

An Act to Amend the Law relating to Musical Copyright.[1] **[22nd July, 1902.**

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commous, in this present Parliament assembled, and by the authority of the same, as follows:—

Seizure &c. of Pirated Copies.

1. A court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows:—If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, may, by order, authorise a constable to seize such copies without warrant and to bring them before the court, and the court, on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright if he makes application for that delivery.

Power to seize Copies on Hawkers.

2. If any person shall hawk, carry about, sell, or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner.

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 the copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit.

Definitions.

3. "Musical copyright" means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorise another person to do all or any of the following things in respect of a musical work:—

[1] pp. 160-2.

(1) To make copies by writing or otherwise of such musical work.

(2) To abridge such musical work.

(3) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

Short Title and Commencement.

4. This Act may be cited as the Musical (Summary Proceedings) Copyright Act, 1902, and shall come into operation on the 1st day of October, 1902, 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.[1] **[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.

(2) Any constable may take into custody without warrant any person who in any street or public place sells or exposes, offers, or has in his possession for sale any pirated copies of any such musical work as may be specified in any general written authority addressed to the chief officer of police, and signed by the apparent owner of the copyright in such work or his agent thereto authorised in writing, requesting the arrest, at the risk of such owner, of all persons found committing offences under this section in respect to such work, or who offers for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars.

(3) A copy of every written authority addressed to a chief officer of police under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority.

[1] pp. 160 2.

(4) Any person aggrieved by a summary conviction under this section may in England or Ireland appeal to a court of quarter sessions, and in Scotland under and in terms of the Summary Prosecutions Appeals (Scotland) Act, 1875.

Right of Entry by Police for Execution of Act.

2. (1) If a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act is being committed on any premises, the court may grant a search warrant authorising the constable named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Act is being committed.

(2) All copies of any musical work and plates seized under this section shall be brought before a court of summary jurisdiction, and if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies shall be forfeited and destroyed or otherwise dealt with as the court think fit.

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* [1]:

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:

[1] The words in italics were repealed by the Copyright Act, 1911.

The expression "chief officer of police"—

(*a*) with respect to the City of London, means the Commissioner of City Police;

(*b*) elsewhere in England has the same meaning as in the Police Act, 1890;

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

(*d*) In the police district of Dublin metropolis means either of the Commissioners of Police for the said district;

(*e*) elsewhere in Ireland means the District Inspector of the Royal Irish Constabulary:

The expression "court of summary jurisdiction" in Scotland means the sheriff or any magistrate of any royal, parliamentary, or police burgh officiating under the provisions of any local or general police Act.

Short Title.

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

APPENDIX II.

RULES AND REGULATIONS

MADE UNDER

THE COPYRIGHT ACT, 1911.

The Copyright Royalty System (General) Regulations, 1912. [Dated 7th June, 1912.

THE Board of Trade, in pursuance of the powers conferred by Section 3 of the Copyright Act, 1911, hereby make the following Regulations:—

Preliminary.

1. These Regulations may be cited as the Copyright Royalty System (General) Regulations, 1912, and shall come into operation on the 1st day of July, 1912.

Notice.

2. The notice required by Section 3 of the Copyright Act, 1911, shall contain the following particulars:—

(*a*) The name and address of the person intending to reproduce the work;

(*b*) the name of the work which it is intended to reproduce and (if necessary) a description sufficient to identify it;

(*c*) the manner in which it is intended to reproduce the work (*e.g.*, whether by printing, lithography, photography, &c.);

(*d*) the price or prices at which it is intended to publish the work;

(*e*) the earliest date at which any of the copies will be delivered to a purchaser.

3. The notice shall, not less than one month before any copies of the work are delivered to a purchaser, be sent by registered post or published by advertisement as follows:—

(*a*) If the name and an address within the United Kingdom of the owner of the copyright, or his agent for the

receipt of notice, are known or can with reasonable diligence be ascertained, the notice shall be sent to such owner or agent at such address;

(*b*) if such name and address are not known and cannot with reasonable diligence be ascertained the notice shall be advertised in the *London Gazette*; the advertisement in the *London Gazette* shall give the particulars required by paragraphs (*a*) and (*b*) of Regulation 2, and shall also state an address from which a copy of the notice described in Regulation 2 may be obtained.

Payment of Royalties.

4. (*a*) Unless otherwise agreed royalties shall be payable by means of adhesive labels purchased from the owner of the copyright and affixed to the copies of the work.

After the person reproducing the work has given the prescribed notice of his intention to reproduce the work the owner of the copyright shall by writing sent by registered post intimate to him some reasonably convenient place within the United Kingdom from which adhesive labels can be obtained, and on demand in writing and tender of the price shall supply from such place adhesive labels of the required denominations at a price equal to the amount of royalty represented thereby.

Subject to these Regulations, no copy of the work shall be delivered to a purchaser until such label or labels denoting the amount of royalty have been affixed thereto.

(*b*) In cases where royalties are payable by means of adhesive labels if at any time labels of the required denomination are not available either because—

(i) after the expiration of fourteen days from the date of the prescribed notice the owner of the copyright has not duly sent to the person reproducing the work an intimation of some reasonably convenient place within the United Kingdom from which such labels can be obtained; or

(ii) the owner of the copyright refuses or neglects to supply such labels within fourteen days after demand duly made,

copies of the work may be delivered to purchasers without having labels affixed thereto; and the amount of royalties shall be a debt due from the person reproducing the work to the owner of the copyright, and the person reproducing the work shall keep an account of all such copies sold by him.

(c) For the purposes of this Regulation "the date of the prescribed notice" means—

(i) in cases when the notice is required to be sent by registered post, the date when the notice would in ordinary course of post be delivered;

(ii) in cases when the notice is required to be advertised in the *London Gazette*, the date of such advertisement.

(d) Where royalties are by agreement payable in any other mode than by means of adhesive labels the time and frequency of the payment shall be such as are specified in the agreement.

(e) The adhesive label supplied as aforesaid shall be an adhesive paper label, square in shape, the design to be entirely enclosed within a circle and the side of the label not to be greater than ¾ inch in length. The label shall not bear the effigy of the Sovereign or any other person, nor any word, mark, or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting any duty payable to the Government.

Interpretation.

5. In these Regulations the expression "owner of the copyright" has the same meaning as in Section 3 of the Copyright Act, 1911.

Dated this 7th day of June, 1912.

H. LLEWELLYN SMITH,

Secretary to the Board of Trade.

The Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912.

[Dated 7th June, 1912.

THE Board of Trade, in pursuance of the powers conferred by Section 19, Sub-Section 6, of the Copyright Act, 1911, hereby make the following Regulations:—

Preliminary.

1. These Regulations may be cited as the Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, and shall come into operation on the 1st day of July, 1912.

Notice.

2. The notice required by Section 19, Sub-Section 2, of the Copyright Act, 1911, shall contain the following particulars:—

(*a*) The name and address of the person intending to make the contrivances;

(*b*) the name of the musical work which it is intended to reproduce and of the author (if known); and (if necessary) a description sufficient to identify the musical work;

(*c*) the class of contrivance on which it is intended to reproduce the musical work (*e.g.*, whether discs, cylinders, or music rolls);

(*d*) the ordinary retail selling prices of the contrivances, and the amount of the royalty payable on each contrivance in respect of the musical work;

(*e*) the earliest date at which any of the contrivances will be delivered to a purchaser;

(*f*) whether any other work is to be reproduced on the same contrivance with the musical work specified in accordance with paragraph (*b*).

3. The notice shall, not less than ten days before any contrivances on which the musical work is reproduced are delivered to a purchaser, be sent by registered post or published by advertisement as follows:—

(*a*) if the name and an address within the United Kingdom of the owner of the copyright, or his agent for the receipt of notice, are known or can with reasonable diligence be ascertained, the notice shall be sent to such owner or agent at such address;

(*b*) if such name and address are not known and cannot with reasonable diligence be ascertained, the notice shall be advertised in the *London Gazette*; the advertisement in the *London Gazette* shall give the particulars required by paragraphs (*a*) and (*b*) of Regulation 2, and shall also state an address from which a copy of the notice described in Regulation 2 may be obtained. Any number of musical works may be included in the same advertisement.

The notice may be given either before or after the 1st day of July, 1912.

Payment of Royalties.

4. (*a*) Unless otherwise agreed, royalties shall be payable by means of adhesive labels purchased from the owner of the copyright and affixed in the manner provided by these Regulations.

After the person making the contrivances has given the prescribed notice of his intention to make or sell the contrivances, the owner of the copyright shall by writing sent by registered post intimate to him some reasonably convenient place within the United Kingdom from which adhesive labels can be obtained and on demand in writing and tender of the price shall supply from such place adhesive labels of the required denominations at a price equal to the amount of royalty represented thereby.

Subject to these Regulations no contrivance shall be delivered to a purchaser until such label or labels denoting the amount of royalty have been affixed thereto, or in the case of cylinders, to which it is not reasonably practicable to affix the labels, until such label or labels have been affixed to a carton or box enclosing the cylinder.

(*b*) In cases where royalties are payable by means of adhesive labels if at any time labels of the required denominations are not available either because—

(i) after the expiration of five days from the date of the prescribed notice of the intention of the person making the contrivances to make or sell such contrivances the owner of the copyright has not duly sent to the person

making the contrivances an intimation of some reasonably convenient place within the United Kingdom from which such labels can be obtained; or

(ii) the owner of the copyright refuses or neglects to supply such labels within three days after demand duly made,

contrivances may be delivered to purchasers without having labels affixed thereto or to the carton or box enclosing the same; and the amount of royalties shall be a debt due from the person making the contrivances to the owner of the copyright and the person making the contrivances shall keep an account of all such contrivances sold by him.

(*c*) For the purposes of this Regulation "the date of the prescribed notice" means—

(i) in cases where the notice is required to be sent by registered post, the date when the notice would in ordinary course of post be delivered;

(ii) in cases where the notice is required to be advertised in the *London Gazette*, the date of such advertisement.

(*d*) In cases where royalties are payable on contrivances made before the commencement of the Copyright Act, 1911, the person making such contrivances may give notice of his intention to sell them, containing *mutatis mutandis* the same particulars and given in the same manner as is prescribed by these Regulations in the case of the notice required by Section 19, Sub-Section 2, of the Copyright Act, 1911.

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

(*f*) The adhesive label supplied as aforesaid shall be an adhesive paper label, square in shape, the design to be entirely enclosed within a circle and the side of the label not to be greater than ¾ inch in length. The label shall not bear the effigy of the Sovereign or any other person, nor any word, mark, or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting any duty payable to the Government.

Ordinary Retail Selling Price.

5. The ordinary retail selling price of any contrivance shall be calculated at the marked or catalogued selling price of single copies to the public, or, if there is no such marked or catalogued selling price, at the highest price at which single copies are ordinarily sold to the public.

Inquiries.

6. The inquiries referred to in Section 19, Sub-Section 5, of the Copyright Act, 1911, shall be directed to the owner of the copyright by name or (if his name is not known and cannot with reasonable diligence be ascertained) in general terms to "the owner of the copyright" of the musical work in respect of which the inquiries are made, and shall contain—

(*a*) a statement of the name of the musical work in respect of which the inquiries are made and of the author (if known), and (if necessary) a description sufficient to identify it;

(*b*) a statement of the name, address, and occupation of the person making the inquiries;

(*c*) an allegation that a contrivance has previously been made by means of which the musical work may be mechanically performed, with the trade name (if known) and a description of such contrivance;

(*d*) an inquiry whether the contrivance so described was made with the consent or acquiescence of the owner of the copyright.

7. The inquiries shall be sent by registered post or published by advertisement as follows:—

(*a*) if an address within the United Kingdom of the owner of the copyright is known or can with reasonable diligence be ascertained the inquiries shall be sent to such address; or

(*b*) if such address is not known and cannot with reasonable diligence be ascertained the inquiries shall be advertised in the *London Gazette*.

8. The prescribed time for reply to such inquiries shall be:—

(*a*) in cases where the inquiries are required to be sent by registered post seven days after the date when the inquiries would in ordinary course of post be delivered;

(*b*) in cases where the inquiries are required to be advertised in the *London Gazette* seven days after the date of such advertisement.

Interpretation.

9. In these Regulations the expression "owner of the copyright" has the same meaning as in Section 19, Sub-Section 2, of the Copyright Act, 1911.

Dated this 7th day of June, 1912.

H. LLEWELLYN SMITH,
Secretary to the Board of Trade.

The National Library of Wales (Delivery of Books) Regulations 1912.

[Dated 25th June, 1912.

The Board of Trade, in pursuance of Section 15, Sub-Section 5, of the Copyright Act, 1911, hereby make the following Regulations:—

1. These Regulations may be cited as the National Library of Wales (Delivery of Books) Regulations, 1912, and shall come into operation on the 1st day of July, 1912.

2. The books, of which copies are to be delivered to the National Library of Wales in pursuance of Section 15 of the Copyright Act, 1911, shall not include any book of the following classes: viz.—

Books (other than books written wholly or mainly in Welsh or any other Celtic language, or relating wholly or mainly to the antiquities, language, literature, philology, history, religion, arts, crafts, or industries of the Welsh or other Celtic peoples, or relating wholly or mainly to the natural history of Wales) of which:

(i) The number of copies in the published edition does not exceed 300; or

(ii) The number of copies in the published edition does not exceed 400 and the published price of each volume exceeds £5; or

(iii) The number of copies in the published edition does not exceed 600 and the published price of each volume exceeds £10.

3. For the purposes of these regulations the published edition of a book includes all copies of the same work published by the same publisher or his successor in business in a form substantially the same with respect to printing, illustrations, and general condition.

Dated this 25th day of June, 1912.

H. Llewellyn Smith,

Secretary to the Board of Trade.

The Designs Rules, 1912.

[Dated 26th June, 1912.

By virtue of the provisions of the Patents and Designs Act, 1907, and the Copyright Act, 1911, the Board of Trade do hereby make the following Rules:—

Preliminary.

1. These Rules may be cited as the Designs Rules, 1912, and shall come into operation on the 1st day of July, 1912.

Designs Excluded from Protection under Copyright Act, 1911.

2. A design shall be deemed to be used as a model or pattern to be multiplied by any industrial process within the meaning of Section 22 of the Copyright Act, 1911—

(*a*) When the design is reproduced or is intended to be reproduced in more than fifty single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set, as defined by Rule 5 of the Designs Rules, 1908;

(*b*) Where the design is to be applied to (1) printed paper hangings, (2) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces, (3) textile piece goods, or textile goods manufactured or sold in lengths or pieces, (4) lace, not made by hand.

Dated this 26th day of June, 1912.

H. Llewellyn Smith,
Secretary to the Board of Trade.

The Designs Rules, 1908.

5. "Set" means a number of articles of the same general character ordinarily on sale together, or intended to be used together, all bearing the same design with or without modifications not sufficient to alter the character or not substantially affecting the identity thereof.

Where there is any doubt whether given articles do or do not constitute a set, the doubt shall be determined by the Comptroller.

REGULATIONS BY THE COMMISSIONERS OF CUSTOMS AND EXCISE.

Regulations dated the 19th day of June, 1912, made by the Commissioners of Customs and Excise under Section 14 of The Copyright Act, 1911.

The Commissioners of Customs and Excise in pursuance of the powers vested in them by Section 14 of the Copyright Act, 1911, hereby prescribe the following Regulations which are to be observed on and after the 1st day of July, 1912:—

1. The Notice in writing to be given to the Commissioners of Customs and Excise (hereinafter referred to as the said Commissioners) under Section 14 of the Copyright Act, 1911, by the owner of the copyright in any book or other printed work in which copyright subsists under the said Act or his agent who is desirous that copies thereof printed or reprinted out of the United Kingdom shall not be imported into the United Kingdom shall be in the Form No. 1 in the Schedule hereto or as near thereto as circumstances permit.

2. Any notice in regard to any book or other printed work in which copyright subsisted on the 30th day of June, 1912, which was given to and accepted by the said Commissioners on or before that day pursuant to Section 42 of the Customs Consolidation Act, 1876, or Section 1 of the Revenue Act, 1889, shall for a period of twelve months from the 1st day of July, 1912, if the copyright so long subsists be treated as a notice given under Section 14 of the Copyright Act, 1911, unless the notice is withdrawn or superseded or the said Commissioners require a further notice to be given.

3. The notice in writing to be given to the said Commissioners under Section 14 of the Copyright Act, 1911, by the owner of the copyright in any work (other than a book or other printed work) in which copyright subsists under the said Act or his agent who is desirous that copies thereof made out of the United Kingdom shall not be imported into the

United Kingdom, may be either a general notice in the Form No. 2 in the Schedule hereto or as near thereto as circumstances permit or a special notice in the Form No. 3 in the same Schedule relating to a particular importation.

4. Every notice given in pursuance of these Regulations in the Form No. 1 or No. 2 in the Schedule hereto shall be accompanied by a statutory declaration in the Form No. 4 in the same Schedule.

5. Before any article which appears, or is alleged, to be a copy of a work to which a notice applies is detained, or any further proceedings with a view to the forfeiture thereof under the law relating to the Customs are taken, the person who signed the notice whether as owner or agent shall, if required to do so, give to the said Commissioners in writing such further information and evidence, verified if so required by a statutory declaration, as they consider necessary to satisfy them that the article in question is liable to detention and forfeiture.

6. In the case of any detention in consequence of a notice in the Form No. 3 given to the said Commissioners the person who signed the notice whether as owner or agent must if so required deposit with the Collector of Customs and Excise or other Chief Officer of the Customs and Excise at the port or place of detention a sum of money sufficient in the opinion of that officer to cover any expense which may be incurred in the examination required by reason of his notice of the goods detained, and if upon the examination of the goods the said Collector or other Chief Officer is satisfied that there is no ground for their detention, they will be delivered.

7. If any goods are placed under detention in consequence of any notice given in pursuance of these Regulations, the said Commissioners may require the person who signed the notice to give an undertaking in writing to reimburse them all expenses and damages incurred in respect of the detention, and of any proceedings for forfeiture subsequently taken if such an undertaking has not already been given, and may also require him within fourteen days after the detention to enter into a bond with two approved sureties in such form and for such amount as the said Commissioners may require.

8. Any deposit of money previously made will be returned on the completion of the bond.

9. In these Regulations—

"Owner of the copyright" has the same meaning as in Section 14 of the Copyright Act, 1911.

"Book or other printed work" means every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart, or table separately published.

Dated this 19th day of June, 1912.

Signed by Order of the Commissioners of Customs and Excise.

J. P. BYRNE,
E. C. CUNNINGHAM,
Secretaries.

THE SCHEDULE.

FORM No. 1.

NOTICE

Relating to Copyright Books and other Printed Works.

(1) Or works.

To the Commissioners of Customs and Excise.

(2) If notice is given by the owner insert "I am"; if given by an agent insert name of owner and the word "he."

I, of ,
hereby give you notice that copyright in the original work (1) mentioned in the Schedule hereto now subsists under the Copyright Act, 1911, and that (2) the owner of the copyright in the said work (1) and that (3) desirous that copies of the said work (1) printed or reprinted out of the United Kingdom shall not be imported into the United Kingdom.

(3) Or "I am" or "he is."

Dated this day of , 19 .

Signature

(4) If an agent, insert "agent of owner."

(4)

SCHEDULE.

(5) The notice may apply to a number of books or printed works in which case the particulars in the Schedule must be given as respects each book or printed work.

Title of book (5).
Description of printed work, if not a book.
Full name of Author or Authors.
Whether Author or Authors alive, if not, date of death.
When and where (6) book or printed work first published.

(6) It is sufficient to state the country of first publication.

(NOTE.—*Where advantage has been taken of the provisions of the Copyright Act, 1911, as to simultaneous publication, the date and place stated should be those which entitle the work to copyright in the United Kingdom.*)

FORM No. 2.

NOTICE

Relating to Copyright Works other than Books or other Printed Works.

To the Commissioners of Customs and Excise.

I, of ,

(1) If notice is given by the owner, insert "I am"; if given by an agent, insert name of owner and the word "is."

(2) "I am" or "he is."

hereby give you notice that copyright in the original work mentioned in the Schedule hereto now subsists under the Copyright Act, 1911, and that (1) the owner of the copyright in the said work, and that (2) desirous that copies of the said work made out of the United Kingdom shall not be imported into the United Kingdom.

Dated this day of , 191 .

Signature

(3)

(3) If an agent, insert "agent of owner."

SCHEDULE.

Title of work (if any).

Full description of work.

Initials or Marks (if any) usually placed on copies of work.

Full name of Author or Authors.

Whether Author or Authors alive, if not, date of death.

When and where (4) work first published.

(4) It is sufficient to state the *country* of first publication.

(NOTE.—*Where advantage has been taken of the provisions of the Copyright Act, 1911, as to simultaneous publication, the date and place stated should be those which entitle the work to copyright in the United Kingdom.*)

If work not published—

Whether Author British subject or not.

If not a British subject, name of country in which Author was resident, or domiciled at date of the making of the work.

In the case of photographs, phonographic records and music rolls, date of making the original negative or original plate.

FORM No. 3.

NOTICE

Relating to a Particular Importation.

To the Commissioners of Customs and Excise.

(1) or agent for the owner.

I, of ,

(2) Describe the goods, number of packages, marks used, and any other particulars necessary for their identification.

hereby give you notice that I am the owner (1) of the copyright in a certain original work as to which copyright now subsists under the Copyright Act, 1911, and that the undermentioned goods: that is to say, (2) are about to be imported into the * Port of

* or Sub-Port

on or about the day of next in the (3) from .

(3) Describe the ship, and give name or indication.

That such goods are liable to detention and forfeiture as being (4) .

(4) State if the goods are copies of the original work made out of the United Kingdom, or how otherwise the goods are liable to detention and forfeiture.

And I request that the said goods may be detained and dealt with accordingly, and I hereby undertake to reimburse the Commissioners of Customs and Excise all expenses and damages to be incurred in respect of the detention, and of any proceedings for forfeiture which may be subsequently taken.

Dated this day of , 19 .

Signature

(5)

(5) If an agent, insert "agent of owner."

FORM No. 4.

STATUTORY DECLARATION.

I, of ,

do solemnly and sincerely declare that the contents of the Notice hereto annexed are true, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared by the above-named
at this day of , 19 ,
before me

A Commissioner for Oaths.

APPENDIX III.

COPYRIGHT IN GOVERNMENT PUBLICATIONS.

Treasury Minute dated 28th June, 1912.

My Lords read Section 18 of the Copyright Act, 1911 (1 & 2 Geo. V. ch. 46), which enacts that—

> "Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government Department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work."

The above statutory provision renders it necessary to reconsider the Treasury Minute of the 31st day of August, 1887 (presented to the House of Commons No. 335 of 1887), and to define anew the practice to be followed with regard to Crown Copyright.

The Treasury Minute divided Government publications into the following classes:—

1. Reports of Select Committees of the two Houses of Parliament, or of Royal Commissions.
2. Papers required by Statute to be laid before Parliament, *e.g.*, Orders in Council, Rules made by Government Departments, Accounts, Reports of Government Inspectors.
3. Papers laid before Parliament by Command, *e.g.*, Treaties, Diplomatic Correspondence, Reports from Consuls and Secretaries of Legation, Reports of Inquiries into Explosions or Accidents, and other Special Reports made to Government Departments.
4. Acts of Parliament.
5. Official books, *e.g.*, King's Regulations for the Army or Navy.

6. Literary or quasi-literary works, *e.g.*, the Reports of the "Challenger" Expedition, the Rolls Publications, the State Trials, the "Board of Trade Journal."

7. Charts and Ordnance Maps.

A considerable and increasing number of Government works fall into the three last classes above set forth, and My Lords see no reason why such works—often produced at considerable cost—should be reproduced by private enterprise for the benefit of individual publishers. For the future, publications which fall within this description will bear an indication on the title page that the Crown Copyright is reserved. The Controller of the Stationery Office will act on a notification by the Department responsible for the production of the work that it is desired that Crown Copyright should be expressly reserved subject to reference to Their Lordships in case of doubt. Any infringement of copyright in these cases should be brought to the notice of the Controller of the Stationery Office by the heads of departments, so far as works prepared or published by or under their direction are concerned.

The Controller of the Stationery Office will refer to this Board for instructions as to whether any infringement of Crown Copyright shall be made the subject of legal proceedings.

The publications which fall into the first four classes are issued for the use and information of the public, and it is desirable that the knowledge of their contents should be diffused as widely as possible. In the case of these publications no steps will ordinarily be taken to enforce the rights of the Crown in respect of copyright. The rights of the Crown will not, however, lapse, and should exceptional circumstances appear to justify such a course it will be possible to assert them. In such a case, the Department concerned should acquaint the Controller of the Stationery Office as early as possible of the special circumstances which render it desirable to depart from the general rule permitting full and free reproduction of the works in these categories, and the Controller will, subject to the direction of Their Lordships, take such measures as may seem appropriate to enforce the right of the Crown.

Acts of Parliament must not, except when published under the authority of the Government, purport on the face of them to be published by authority.

APPENDIX IV.

INTERNATIONAL COPYRIGHT.

Order in Council extending Copyright Act to Protectorates.

At the Court at Buckingham Palace, the 24th day of June, 1912.

PRESENT,

The King's Most Excellent Majesty.
Lord President.
Earl Beauchamp.
Lord Richard Cavendish.
Viscount Allendale.
Lord Chamberlain.
Sir Henry W. Primrose.
Mr. C. F. G. Masterman.
Sir David Brynmor Jones.
Sir James Henry Dalziel.
Sir Albert Spicer, Bart.

WHEREAS it is, among other things, provided by the Copyright Act, 1911, that His Majesty may, by Order in Council, extend the said Act to any territories under His protection and to Cyprus, and that on the making of any such Order the said Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus were part of His Majesty's dominions to which the said Act extends:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:—

1. The Copyright Act, 1911, shall apply to Cyprus and to the following territories under His Majesty's protection: namely—the Bechuanaland Protectorate, East Africa Protectorate, Gambia Protectorate, Gilbert and Ellice Islands Protectorate, Northern Nigeria Protectorate, Northern Territories of the Gold Coast, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia, Sierra Leone Protectorate, Somaliland Protectorate, Southern Nigeria Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Weihaiwei.

2. In Article 12 of "The Somaliland Order in Council, 1899," the word "Copyright" is hereby revoked and shall be deleted.

ALMERIC FITZROY.

The Berlin Convention of 1908 collated with the Berne Convention of 1886[1] and the Acts of Paris of 1896.

NOTE.—The alterations (other than drafting amendments) embodied in the Revised Convention, as compared with the Berne Convention and the additional Act of Paris, are shown in thick type (column (1)).

The provisions of the texts of 1886 and 1896 which are entirely omitted from the Revised Convention are shown in *italics* (column (2)).

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Acts of Paris and Interpretative Declaration of May 4th, 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 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,	*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, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relating to geography, topography, architecture, or to the sciences in general; finally,

[1] Order of Articles:—1, 4, C. P. 2, 6, C. P. 1, 2, 3, 5, 7, 8, 9, 10, C. P. 3, 11, 12, 13, 14, C. P. 4, 15, 16, C. P. 5, 17, C. P. 5 (cont.), C. P. 6, 18, 19, 21, C. P. 7, 20.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
architecture, sculpture, engraving and lithography; illustrations, *geographical charts*, *plans*, sketches, and plastic works relative to geography, topography, architecture, or science.	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 admitted to the benefit of the provisions of the Berne Convention and of the present additional Act.
Transiations, adaptations, arrangements of music, and other reproductions in an	*Berne Convention.* *Article* 6.—Lawful translations shall be protected as original works. Hence they

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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.	shall enjoy the protection stipulated for in Articles 2 and 3 as regards their unauthorised reproduction in the countries of the Union. *It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.*
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 already existing, or which may hereafter be entered into by them. *It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, within the meaning of the said*

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	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 authorised photograph of a protected work of art shall enjoy legal protection, in all the countries of the Union, within the meaning of the Berne Convention, and of the present additional Act, so long as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between the parties entitled.
	Berne Convention.
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	*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

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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.	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. *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.
The enjoyment and the exercise of these rights shall not be subject to the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights shall be governed exclusively by the laws of the country where protection is claimed.	*Berne Convention.* *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. . . . . . *Interpretative Declaration.* § 1.—With reference to the terms of Article 2, § 2, of the Convention, the protection assured by the aforesaid Acts shall depend solely upon the accomplishment, in the country of origin of the work, of the conditions and formalities which are prescribed by the law of that country. The same shall hold good for the protection of the photographic works mentioned in § 1 B. of the revised closing Protocol.

(1) Revised Convention as signed at Berlin on November 13th, 1908	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
The country of origin of the work shall be considered to be, in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country the laws of which grant the shortest period of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union: the latter country shall be considered exclusively as the country of origin.	*Berne Convention.* *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.
By "published works" must be understood, for the purposes of the present Convention, works copies of which are issued by a publisher. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication.	*Interpretative Declaration.* § 2.—By "works published" must be understood works copies of which are issued by a publisher in one of the countries of the Union. Consequently the representation of a dramatic or dramatico-musical work, the performance of a musical work, and the exhibition of a work of art shall not constitute a publication in the sense of the aforesaid Acts.
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.	

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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.* *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, shall enjoy for such works the protection granted by the Berne Convention and by the present Additional Act.
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	*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.

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
as such provisions are consistent with the domestic laws.	*Additional Act.*
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.	*Article* 2.—Posthumous works shall be included among the works protected.
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 authorising a translation of their works.	*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 authorising the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union. *For works published by instalments, the period of ten years shall not begin to run until the publication of the last instalment of the original work.* *For works composed of several volumes published at intervals as 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.*

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	In the cases provided for by the present Article, the 31st December of the year in which the work was published shall be considered as the date of publication for the purpose of calculating the period of protection.
	Additional Act.
	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 authorising translations of their works during the whole term of the right in the original work. *Nevertheless, the exclusive right of translation shall cease to exist when the author shall not have made use of it within a period of ten years from the time of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is claimed.*
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.	*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*

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
With the exception of serial stories and tales, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.	*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.
The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.	*Additional Act.*
	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 authorisation of the authors or their lawful representatives.
	This applies equally to other articles in newspapers or magazines, whenever the authors or publishers shall have expressly declared in the newspaper or magazine in which they have published such articles that they forbid the reproduction of these. *For magazines it is sufficient if the prohibition is made in a general manner at the beginning of each number.*
	In the absence of prohibition, 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.

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 6th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Berne Convention.
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, 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* 8.—As regards the liberty of extracting portions from literary or artistic works for use in publications destined for education, or having a scientific character, or for chrestomathies, the effect of the legislation of each country of the Union and of special arrangements existing or to be concluded between them is not affected by the present Convention.
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 dramatic-musical works, whether such works be published or not.
Authors of dramatic or dramatico-musical works shall be protected during the existence of their right over the original work against the unauthorised public representation of translations of their works.	Authors of dramatic or dramatico-musical works, or their lawful representatives, shall be protected in like manner during the existence of their exclusive right of translation against the unauthorised public representation of translations of their works.
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.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [Note.—The Interpretative Declaration was not signed by Great Britain.]
Article 12.—The following shall be specially included among the unlawful reproductions to which the present Convention applies: — Unauthorised indirect appropriations of literary or artistic work, such as adaptations, musical arrangements, **transformations of a novel, tale, or piece of poetry, into a dramatic piece, or vice versâ,** &c., when they are only the reproduction of that work, in the same form or in another form, without essential alterations, additions, or abridgments, and do not present the character of a new original work.	*Article* 10.—The following shall be specially included among the unlawful reproductions to which the present Convention applies: — Unauthorised indirect appropriations of a literary or artistic work, known by various names, such as adaptations, arrangements of music, &c., when they are only the reproduction of such a work in the same form or in another form, without essential alterations, additions, or abridgments, and do not in other respects present the character of a new original work. It is understood that, in the application of the present Article, the Courts of the various countries of the Union shall, if occasion arises, take into account the reservations of their respective laws. *Interpretative Declaration.* § 3. The transformation of a novel into a play, or of a play into a novel, shall come within the stipulations of Article 10.
Article 13.—The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can produce them mechanically; (2) the public performance of the said works by means of these instruments.	*Berne Convention.* *Closing Protocol.*—§ 3. It is understood that the manufacture and sale of instruments serving to reproduce mechanically musical airs in which copyright subsists shall not be considered as constituting infringement of musical copyright.

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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 authorising the reproduction and public representation of their works by cinematography.	
Cinematograph productions shall be protected as literary or artistic works if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the	

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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.	
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 anonymous or pseudonymous author.	*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 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,*

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	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 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.	*Berne Convention.* *Article* 13.—It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit by measures of domestic legislation or police the circulation, representation, and exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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.	*Article* 14.—The present Convention, under the reservations and conditions to be determined by 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.
If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country.	
The application of this principle shall take effect according to the stipulations contained in special Conventions existing, or to be concluded, to that effect between countries of the Union. In the absence of such stipulations, the respective countries shall regulate, each in so far as it is concerned, the manner in which the said principle is to be applied.	*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 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.

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Additional Act. *Closing Protocol.*—§ 4. The common agreement provided for in Article 14 of the Convention is concluded as follows :— The application of the Berne Convention and of the present additional Act to works not fallen into the public domain in their country of origin at the time of the coming into force of those Acts, shall take effect according to the stipulations relative thereto contained in special Conventions existing or to be concluded for the purpose. In the absence of such stipulations between countries of the Union, the respective countries shall regulate, each for itself, by domestic law, the manner in which the principle contained in Article 14 is to be applied. *The stipulations of Article* 14 *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.

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Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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 arrangements which answer to the above-mentioned conditions shall remain applicable.	*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 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	*Article* 16.—An International Office shall be established under the name of the "Office

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Intrepretative Declaration was not signed by Great Britain.]
of the International Union for the Protection of Literary and Artistic Works" shall be maintained.	of the International Union for the Protection of Literary and Artistic Works."
That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organisation and supervises its working.	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 organisation of the International Office provided for by Article 16 of the Convention shall be settled by a regulation which shall be drawn up by the Government of the Swiss Confederation.
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	*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

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.	which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.
The International Office will always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.	The International Office shall always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.
The Director of the International Office shall make an annual Report on his Administration, which shall be communicated to all the members of the Union.	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.	*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	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

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Intrepretative Declaration was not signed by Great Britain.]
shall contribute in the proportion of a certain number of units, viz. :—	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 ,,	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.	These coefficients shall be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.
Each country shall declare, at 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	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

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [Note.—The Interpretative Declaration was not signed by Great Britain.]
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.	the Union by Delegates of the said countries.
No alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.	*Closing Protocol.*—§ 5. The Administration of the country where a Conference is to meet shall prepare, with the assistance of the International Office, the work of the said Conference.
	The Director of the International Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote.
	It is understood that no alteration in the present Convention shall be binding on the Union, except by the unanimous consent of the countries composing it.
	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 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.	*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.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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 be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.
Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. It may, nevertheless, contain an indication of the provisions of the Convention of the 9th September, 1886, or of the Additional Act of the 4th May, 1896, which they may judge necessary to substitute, provisionally at least, for the corresponding provisions of the present Convention.	Such accession shall imply 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.	*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.	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.	

(1)	(2)
Revised Convention as signed at Berlin on November 13th, 1908.	Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
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.	
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.	*Article* 21.—The present Convention shall be ratified, and the ratifications exchanged at Berne, within a period of one year at the latest.
Each Contracting Party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès verbal* of the exchange of ratifications signed	*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

(1)

Revised Convention as signed at Berlin on November 13th, 1908.

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 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, &c.

(2)

Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896.

[NOTE.—The Interpretative Declaration was not signed by Great Britain.]

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, 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.

Order in Council adopting Berlin Convention.

At the Court at Buckingham Palace, the 24th day of June, 1912.

PRESENT.

The King's Most Excellent Majesty in Council.

WHEREAS on the 9th day of September, 1886, a Convention with respect to the protection to be given by way of copyright to the authors of literary and artistic works (hereinafter called the Berne Convention) set out in the Second Schedule to this Order was concluded between Her late Majesty Queen Victoria and the foreign countries following: that is to say—Belgium, France, Germany, Hayti, Italy, Spain, Switzerland and Tunis, and on the 5th day of September, 1887, the ratifications of the said Berne Convention were duly exchanged between Her late Majesty Queen Victoria and the aforesaid countries:

And whereas subsequently the foreign countries following: namely—Luxemburg, Monaco, Montenegro, Norway and Sweden, acceded to the said Berne Convention:

And whereas an Additional Act to the said Berne Convention (hereinafter called the Additional Act) set out in the Third Schedule to this Order was agreed upon between Her late Majesty Queen Victoria and the foreign countries following: namely—Belgium, France, Germany, Italy, Luxemburg, Monaco, Montenegro, Spain, Switzerland and Tunis, for the purpose of varying the provisions of the said Berne Convention, and the ratifications of the said Additional Act were, on the 9th day of September, 1897, exchanged between Her late Majesty Queen Victoria and the aforesaid countries:

And whereas subsequently the Republic of Hayti acceded to the said Additional Act, and the foreign countries following: namely—Denmark and the Faröe Islands, the German Protectorates, Japan and Liberia, acceded to the said Berne Convention and the said Additional Act, and the Principality of Montenegro duly denounced the said Berne Convention and the said Additional Act:

And whereas by the Orders in Council mentioned in the Fifth Schedule to this Order and made under the authority of the International Copyright Acts, 1844 to 1886, effect is now given throughout His Majesty's dominions to the said Berne Convention and the said Additional Act:

And whereas a Convention (hereinafter called the Berlin Convention) set out in the First Schedule to this Order was on

the 13th day of November, 1908, agreed upon between His late Majesty King Edward VII. and the foreign countries following: namely—Belgium, Denmark, France, Germany, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Spain. Sweden, Switzerland and Tunis, for the purpose of replacing the said Berne Convention and the said Additional Act:

And whereas it is provided by the said Berlin Convention that the contracting States may make reservations by declaring at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the said Berne Convention and the said Additional Act, and it is further provided by the said Berlin Convention that the said Berne Convention and the said Additional Act shall remain in force in regard to relations with contracting States which do not ratify the said Berlin Convention:

And whereas the said Berlin Convention was ratified by His Majesty on the 14th day of June, 1912, subject to the reservation mentioned in Part I. of the Fourth Schedule to this Order:

And whereas the said Berlin Convention has also been ratified by the foreign countries following: namely—Belgium, France, Germany, Hayti, Japan, Liberia, Luxemburg, Monaco, Norway, Spain, Switzerland and Tunis, subject to the reservations mentioned in Part II. of the Fourth Schedule to this Order:

And whereas the Republic of Portugal has acceded to the said Berlin Convention:

And whereas by the Copyright Act, 1911, the aforesaid International Copyright Acts, 1844 to 1886, are repealed, as from the commencement of the said Copyright Act, 1911, in the parts of His Majesty's dominions to which the said Act extends:

And whereas by the said Copyright Act, 1911, authority is conferred upon His Majesty to extend by Order in Council the protection of the said Act to certain classes of foreign works within any part of His Majesty's dominions, other than self-governing dominions, to which the said Act extends:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered as follows:—

(1) This Order shall extend to the foreign countries following: namely—Belgium, Denmark and the Faröe Islands, France, Germany and the German Protectorates, Hayti, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Portugal, Spain, Sweden, Switzerland and Tunis. And the above countries are in this Order referred to as the foreign countries of the Copyright Union.

(2) The Copyright Act, 1911, including the provisions as to existing works, shall subject to the provisions of the said Act and of this Order apply—

(*a*) to works first published in a foreign country of the Copyright Union, in like manner as if they had been first published within the parts of His Majesty's dominions to which the said Act extends:

(*b*) to literary, dramatic, musical, and artistic works, the authors whereof were at the time of the making of the works subjects or citizens of a foreign country of the Copyright Union, in like manner as if the authors had been British subjects:

(*c*) in respect of residence in a foreign country of the Copyright Union, in like manner as if such residence had been residence in the parts of His Majesty's dominions to which the said Act extends.

Provided that—

(i) Sections 1 (2) (*d*) and 19 of the Copyright Act, 1911, and such other part or parts thereof as confer upon the owner of the copyright in a literary, dramatic, or musical work the exclusive right of making any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed and such other part or parts thereof as confer copyright in any record or perforated roll shall not apply in the case of any work of which the country of origin is Denmark, Italy, or Sweden.

(ii) The term of copyright within the parts of His Majesty's dominions to which this Order applies shall not exceed that conferred by the law of the country of origin of the work.

(iii) The enjoyment of the rights conferred by the Copyright Act, 1911, shall be subject to the accomplishment of the following conditions and formalities: that is to say—

(*a*) In the case of any newspaper article (not being a serial story or tale) of which the country of origin is one of the foreign countries following: namely—Belgium, France, Germany and the German Protectorates, Hayti, Liberia, Luxemburg, Monaco, Portugal, Spain, Switzerland and Tunis, the right to prevent the reproduction of such article (either in the original language or in a translation) in another newspaper with an indication of the source shall be conditional upon reproduction being forbidden by express declaration in some conspicuous part of the newspaper in which the article is published.

(*b*) In the case of any newspaper or magazine article (not being a serial story or tale) of which the country of origin is Denmark, Italy, Norway or Sweden, the right to prevent the reproduction of such article (either in the original language or in a translation) with an indication of the source shall be conditional upon reproduction being forbidden by express declaration in some conspicuous part of the newspaper or magazine in which the article is published.

(*c*) In the case of any literary or dramatic work of which the country of origin is Denmark, Italy, Japan, or Sweden the right after the expiration of ten years from the end of the year in which the work, or in the case of a book published in numbers each number of the work, was first published, to prevent the production, reproduction, performance in public or publication of any translation of the work shall be conditional upon the publication before the expiration of the above-mentioned period and within the parts of His Majesty's dominions to which this Order applies or within any foreign country of the Copyright Union of an authorized translation in the langunge for which protection is claimed of the work or of each number of the work.

(*d*) In the case of any published musical work of which the country of origin is Denmark, Italy, Japan, or Sweden the right to prevent performance in public shall be conditional upon performance in public being forbidden by an express declaration on the title page or commencement of the work.

(*e*) In the case of any work of which the country of origin is Denmark, Italy, or Sweden the entire rights conferred by the Copyright Act, 1911, shall be conditional upon the accomplishment of the conditions and formalities prescribed by law in the country of origin.

(iv) Nothing in the provisions of the Copyright Act, 1911, as applied to existing works, shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of Section 5 of the International Copyright Act, 1886.

(3) Subject to the provisions of Article (2) proviso (i). of this Order where any musical work to which this Order applies has been published before the commencement of the Copyright Act, 1911, but no contrivances by means of which the work may be mechanically performed have before the commencement of this

Order been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Order applies, copyright in the work shall include all rights conferred by the said Act with respect to the making of records, perforated rolls and other contrivances by means of which the work may be mechanically performed.

(4) In this Order the expression "the country of origin" as applied to a work has the same meaning as in the third paragraph of Article 4 of the Berlin Convention.

(5) (*a*) This Order shall apply to all His Majesty's dominions, colonies, and possessions, excepting to those hereinafter named: that is to say—except to

The Dominion of Canada,
The Commonwealth of Australia,
The Dominion of New Zealand,
The Union of South Africa,
Newfoundland.

(*b*) This Order shall also apply to Cyprus, and to the following territories under His Majesty's protection: that is to say—the Bechuanaland Protectorate, East Africa Protectorate, Gambia Protectorate, Gilbert and Ellice Islands Protectorate, Northern Nigeria Protectorate, Northern Territories of the Gold Coast, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia, Sierra Leone Protectorate, Somaliland Protectorate, Southern Nigeria Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Weihaiwei.

(6) The Orders mentioned in the Fifth Schedule to this Order are hereby revoked, as from the date of the commencement of this Order, so far as regards the parts of His Majesty's dominions to which this Order applies:

Provided that neither such revocation nor anything else in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

(7) This Order shall be construed as if it formed part of the Copyright Act, 1911.

(8) This Order shall come into operation in the United Kingdom on the 1st day of July, 1912, and in any other part of His Majesty's dominions to which this Order applies, on the day on which the Copyright Act, 1911, comes into operation in such part; which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly.

ALMERIC FITZROY.

FIRST SCHEDULE.

Berlin Convention.

CONVENTION for the purpose of revising the Convention of Berne of the 9th day of September, 1886, the Additional Article and the Final Protocol attached to the same Convention, and the Additional Act and the Interpretative Declaration of Paris of the 4th day of May, 1896; made on the 13th day of November, 1908, between His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India; His Majesty the German *Emperor, King of Prussia; His Majesty the King* of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of Italy; His Majesty the Emperor of Japan; the President of the Republic of Liberia; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Serene Highness the Prince of Monaco; His Majesty the King of Norway; His Majesty the King of Sweden; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

[The following is an English translation of the Convention, with the omission of the formal beginning and end.][1]

SECOND SCHEDULE.

Berne Convention.

CONVENTION for protecting effectively and in as uniform a manner as possible the rights of authors over their literary and artistic works. Made on the 5th day of September, 1887, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Hayti; *His Majesty the King of Italy; the Federal Council of the* Swiss Confederation; His Highness the Bey of Tunis.

[The following is an English translation of the Convention, with the omission of the formal beginning and end.][2]

THIRD SCHEDULE.

Additional Act of Paris.

[The following is an English translation of the Additional Act with the omission of the formal beginning and end.][3]

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[1] See pp. 275-299. [2] See pp. 275-299. [3] See pp. 275-299.

FOURTH SCHEDULE.

Reservations made to the Berlin Convention.

Country.	Subject.	Provisions remaining in force.
	PART I.	
Great Britain	Retrospective effect	Article 14 and paragraph 4 of the Final Protocol of the Berne Convention, as amended by the Additional Act.
	PART II.	
France -	Works of art applied to industrial purposes	Provisions of Berne Convention and Additional Act.
Tunis -		
Japan -	Translating right	Article 5 of the Berne Convention, as amended by the Additional Act.
	Performing right in musical works	Article 9, paragraph 3, of the Berne Convention.
Norway	Works of architecture	Article 4 of the Berne Convention.
	Newspaper and magazine articles	Article 7 of the Berne Convention.
	Retrospective effect	Article 14 of the Berne Convention.

FIFTH SCHEDULE.

Orders in Council, of the dates named below, for securing the privileges of copyright in His Majesty's dominions to authors of literary and artistic works first produced in the following foreign countries: *namely*—

Date of Order.	Countries to which it extends.
November 28, 1887	Belgium, France, Germany, Hayti, Italy, Spain, Switzerland, and Tunis.
August 10, 1888 -	Luxemburg.
October 15, 1889 -	Monaco.
August 1, 1896 -	Norway.
March 7, 1898 -	Belgium, France, Germany, Italy, Luxemburg, Monaco, Spain, Switzerland, and Tunis.
May 19, 1899	Hayti.
August 8, 1899 -	Japan.
October 9, 1903 -	Denmark and the Faröe Islands.
December 12, 1904	Sweden.
November 28, 1908	Liberia.
March 2, 1909 -	German Protectorates.

Order in Council granting Protection to Austrian Works.

At the Court at Buckingham Palace, the 24th day of June, 1912.

PRESENT,

The King's Most Excellent Majesty in Council.

WHEREAS on the 24th day of April, 1893, a Convention, set out in the First Schedule to this Order, with respect to the protection to be given by way of copyright to the authors of literary and artistic works was concluded between Her late Majesty Queen Victoria and His Majesty the Emperor of Austria, King of Bohemia and Apostolic King of Hungary, and the ratifications of the said Convention were exchanged on the 14th day of April, 1894, between Her late Majesty Queen Victoria and His Majesty the Emperor:

And whereas by the Orders in Council mentioned in the Second Schedule to this Order and made under the authority of the International Copyright Acts, 1844 to 1886, effect was given to the said Convention throughout His Majesty's dominions except in the Dominion of Canada, the Cape, New South Wales and Tasmania:

And whereas by the Copyright Act, 1911, the said International Copyright Acts, 1844 to 1886, are repealed, as from the date of the commencement of the said Copyright Act, 1911, in the parts of His Majesty's dominions to which the said Act extends:

And whereas by the said Copyright Act, 1911, authority is conferred upon His Majesty to extend by Order in Council the protection of the said Act to certain classes of foreign works within any part of His Majesty's dominions, other than self-governing dominions, to which the said Act extends:

And whereas it is expedient to continue the protection granted by the Orders in Council mentioned in the Second Schedule to this Order:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered as follows:—

1. The Copyright Act, 1911, including the provisions as to existing works, shall subject to the provisions of the said Act and of this Order apply—

(*a*) To works first published in the Austro-Hungarian Monarchy in like manner as if they had been first published within the parts of His Majesty's dominions to which the said Act extends;

(*b*) To literary, dramatic, musical and artistic works, the authors whereof were at the time of the making of the work subjects of the Austro-Hungarian Monarchy in like manner as if the authors had been British subjects;

(*c*) In respect of residence in the Austro-Hungarian Monarchy in like manner as if such residence had been residence in the parts of His Majesty's dominions to which the said Act extends.

Provided that—

(i) The term of copyright within the parts of His Majesty's dominions to which this Order applies shall not exceed that conferred by the law of the Austro-Hungarian Monarchy;

(ii) The enjoyment of the rights conferred by the Copyright Act, 1911, shall be subject to the accomplishment of the following conditions and formalities: that is to say—

(*a*) In the case of any literary or dramatic work the right after the expiration of ten years from the end of the year in which the work or in the case of a book published in numbers each number of the work was first published to prevent the production reproduction performance in public or publication of any English translation of the work shall be conditional upon the publication before the expiration of the above-mentioned period of an authorized English translation of the work or of each number of the work;

(*b*) In the case of any work first published in the Austro-Hungarian Monarchy the entire rights conferred by the Copyright Act, 1911, shall be conditional upon the accomplishment of the conditions and formalities prescribed by law in that part of the Monarchy in which the work was first published.

2. In the case of any musical work to which this Order applies and which has been published before the commencement of the Copyright Act, 1911, copyright in the work shall include all rights conferred by the said Act with respect to the making of records, perforated rolls, and other contrivances by means of which the work may be mechanically performed.

3. This Order shall apply to all His Majesty's dominions, colonies, and possessions, excepting to those hereinafter mentioned: that is to say—except to

The Dominion of Canada,
The Commonwealth of Australia,
The Dominion of New Zealand,
The Union of South Africa,
Newfoundland.

4. The Orders mentioned in the Second Schedule to this Order are hereby revoked as from the date of the commencement of the Copyright Act, 1911, so far as regards the parts of His Majesty's dominions to which this Order applies.

Provided that neither such revocation nor anything else in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

5. This Order shall be construed as if it formed part of the Copyright Act, 1911.

6. This Order shall come into operation in the United Kingdom on the 1st day of July, 1912, and in any other part of His Majesty's dominions to which this Order applies, on the day on which the Copyright Act, 1911, comes into operation in such part; which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly.

ALMERIC FITZROY.

FIRST SCHEDULE.

CONVENTION.

Convention for securing the rights of authors, or their legal representatives, over their literary or artistic works; made on the 24th day of April, 1893, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Majesty the Emperor of Austria, King of Bohemia, and Apostolic King of Hungary.

[The following is the English text of the Convention, omitting the formal beginning and end.]

ARTICLE I.

Authors of literary or artistic works and their legal representatives, including publishers, shall enjoy reciprocally in the dominions of the high contracting parties, the advantages which are or may be granted by law there for the protection of works of literature or art.

Consequently, authors of literary or artistic works, which have been first published in the dominions of one of the high contracting parties, as well as their legal representatives, shall have in the dominions of the other high contracting party the same protection and the same legal remedy against all infringement of their rights as if the work had been first published in the country where the infringement may have taken place.

In the same manner, the authors of literary or artistic works, and their legal representatives, who are subjects of one of the high contracting parties, or who reside within its dominions, shall in the dominions of the other contracting party enjoy the same protection and the same legal remedies against all infringements of their rights as though they were subjects of or residents in the State in which the infringement may have taken place.

These advantages shall only be reciprocally guaranteed to authors and their legal representatives when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country shall not exceed that which is granted to authors and their legal representatives in the country where the work was first published.

ARTICLE II.

The right of translation forming part of the copyright, the protection of the right of translation is assured under the conditions laid down by this Convention. If ten years after the expiry of the year in which a work to be protected in Her Majesty's dominions on the basis of this Convention has appeared, no translation in English has been published, the right of translating the work into English shall no longer within those dominions exclusively belong to the author.

In the case of a book published in numbers, the aforesaid period of ten years shall commence at the end of the year in which each number is published.

ARTICLE III.

Authorized translations are protected as original works. They consequently enjoy the full protection granted by this Convention against the unauthorized reproduction of original works.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

ARTICLE IV.

The expression "literary or artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions, with or without words; works of design, painting, sculpture, and engraving, lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture or science, in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE V.

In the British Empire, and in the Kingdoms and States represented in the Austrian Reichsrath, the enjoyment of the rights secured by the present Convention is subject only to the accomplishment of the conditions and formalities prescribed by the law of that State in which the work is first published; and no further formalities or conditions shall be required in the other country.

Consequently, it shall not be necessary that a work which has obtained legal protection in one country should be registered, or copies thereof deposited in the other country, in order that the remedies against infringement may be obtained which are granted in the other country to works first published there.

In the dominions of the Hungarian Crown the enjoyment of these rights is subject, however, to the accomplishment of the conditions and formalities prescribed by the laws and regulations both of Great Britain and of Hungary.

ARTICLE VI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be, consequently, admitted to institute proceedings in respect of the infringement of copyright before the Courts of the other State, it will suffice that their name be indicated on the work in the accustomed manner.

The Tribunals may, however, in cases of doubt, require the production of such further evidence as may be required by the laws of the respective countries.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the legal representative of the anonymous or pseudonymous author, until the latter or his legal representative has declared and proved his rights.

ARTICLE VII.

The provisions of the present Convention cannot in any way derogate from the right of each of the high contracting parties to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, exhibition, or sale of any work or production.

Each of the high contracting parties reserves also its right to prohibit the importation into its own territory of works which, according to its internal laws, or to the stipulations of treaties with other States, are or may be declared to be illicit reproductions.

Article VIII.

The provisions of the present Convention shall be applied to literature or artistic works produced prior to the date of its coming into effect, subject, however, to the limitations prescribed by the following regulations:—

(*a*) In the Austro-Hungarian Monarchy—

Copies completed before the coming into force of the present Convention, the production of which has been hitherto allowed, can also be circulated in future.

In the same manner, appliances for the reproduction of works, such as stereotypes, wood-blocks, and engraved plates of every description, such as lithographers' stones, if their production has not hitherto been prohibited, may continue to be used during a period of four years from the coming into force of the present Convention.

The distribution of such copies, and the use of the said appliances is, however, only permitted if an inventory of the said copies and appliances is taken by the Government in question, in consequence of an application of the interested party, within three months from the coming into force of the present Convention, and if these copies and appliances are marked with a special stamp.

Dramatic and dramatico-musical works, or musical compositions legally performed before the coming into force of the present Convention, can also be performed in the future.

(*b*) In the United Kingdom of Great Britain and Ireland—

The author and publisher of any literary or artistic work first produced before the date at which this Convention comes into effect shall be entitled to all legal remedies against infringement; provided that where any person has, before the date of the publication of the Order in Council putting this Convention into effect, lawfully produced any work in the United Kingdom, any rights or interests arising from or in connection with such production, which are subsisting and valuable at the said date, shall not be diminished or prejudiced.

Article IX.

The provisions of the present Convention shall apply to all the colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named: that is to say—except to India; The Dominion of Canada; Newfoundland; The Cape; Natal; New South Wales; Victoria; Queensland; Tasmania; South Australia; Western Australia; and New Zealand.

Provided always that the provisions of the present Convention shall apply to any of the above-named colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's representative at the Court of His Imperial and Royal Apostolic Majesty within two years from the date of the exchange of ratifications of the present Convention.

ARTICLE X.

The present Convention shall remain in force for ten years from the day on which the ratifications are exchanged; and in case neither of the two high contracting parties shall have given notice twelve months before the expiration of the said period of ten years of their intention of terminating the present Convention, it shall remain in force until the expiration of one year from the day on which either of the high contracting parties shall have given such notice.

Her Britannic Majesty's Government shall also have the right to denounce the Convention in the same manner, on behalf of any of the colonies or foreign possessions mentioned in Article IX. separately.

ARTICLE XI.

The present Convention shall be ratified, and the ratifications shall be exchanged at Vienna as soon as possible. It shall come into effect ten days after its publication in conformity with the forms prescribed by the laws of the high contracting parties respectively.

SECOND SCHEDULE.

ORDERS in Council, of the dates named below, for securing the privileges of copyright in His Majesty's dominions to authors of literary and artistic works first produced in the Austro-Hungarian Monarchy: namely—

April 30th, 1894.

February 2nd, 1895.

May 11th, 1895.

APPENDIX V.

AMERICAN COPYRIGHT.

Extracts from Act of Congress.

[4th May, 1909

Issue of, to Author, Assigns, &c.

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:

Resident; Country affording Reciprocal 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

(*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.

Proclamation.

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.

Affixing Notice of Copyright to Copies &c.

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 21 of this Act.

Certificate of Deposit of Copies.

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 registrar of copyrights shall issue to him the certificate provided for in Section 55 of this Act.

Deposit of Two Copies required.

12. That after copyright has been secured by publication of the work with the notice of copyright as provided in Section 9 of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the registrar 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 15 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 11 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.

Mechanical Work &c. to be done in the United States; Exceptions.

15. That of the printed book or periodical specified in Section 5, Sub-Sections (*a*) and (*b*) of this Act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of type-setting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said books 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.

Affidavits required.

16. That in the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorised to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorised agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall also state 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 of the date of publication.

Ad interim Protection if published Abroad; Deposit of Copy.

21. That in the case of a book published abroad in the English language before publicatiou in this country, the deposit in the copyright office, not later than thirty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an *ad interim* copyright which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of thirty days after such deposit in the copyright office.

Full Term allowed.

22. That whenever within the period of such *ad interim* protection an authorised edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in Section 15 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.

Duration of Term, Twenty-eight Years.

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.

RULES AND REGULATIONS FOR THE REGISTRATION OF CLAIMS TO COPYRIGHT.

(Bulletin No. 15, issued by the Copyright Office.)

Copyright under Act.

1. Copyright under the Act of Congress, entitled "An Act to Amend and Consolidate the Acts Respecting Copyright," approved the 4th day of March, 1909, is ordinarily secured by printing and publishing a copyrightable work with a notice of claim in the form prescribed by the Statute. Registration can only be made *after* such publication, but the Statute expressly provides, in certain cases, for registration of manuscript works.

Who May Secure Copyright.

Persons Entitled to Copyright.

2. The persons entitled by the Act to copyright protection for their works are—

(1) The *author* of the work, if he is:

(*a*) A citizen of the United States, or

(*b*) A resident alien domiciled in the United States at the time of the first publication of his work, or

(*c*) A citizen or subject of any country which grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens. The existence of reciprocal copyright conditions is determined by presidential proclamation.[1]

(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 cannot claim it.

[1] Presidential Copyright Proclamations have been issued securing to the citizens or subjects of the following countries copyright privileges in the United States: Austria, Belgium, Chili, China, Costa Rica, Cuba, Denmark, France, Germany, Great Britain and her Possessions, Guatemala, Honduras, Italy, Japan, Luxemburg, Mexico, Netherlands (Holland) and Possessions, Norway, Portugal, Salvador, Spain, and Switzerland.

(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 cannot 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 the 1st day of July, 1909, which has not been already copyrighted in the United States (Section 7).

Section 5 of the Act divides the works for which copyright may be secured into eleven classes, as follows:

(*a*) *Books.*—This term includes all printed literary works (except dramatic compositions) whether published in the ordinary shape of a book or pamphlet, or printed as a leaflet, card, or single page. The term "book" as used in the law includes tabulated forms of information, frequently called charts; tables of figures showing the results of mathematical computations, such as logarithmic tables; interest, cost, and wage tables, &c., single poems, and the words of a song when printed and published without music; librettos; descriptions of moving pictures or spectacles; encyclopædias; catalogues; directories; gazetteers and similar compilations; circulars or folders containing information in the form of reading matter other than mere lists of articles, names and addresses, and literary contributions to periodicals or newspapers.

Blank Books &c. not Copyrightable.

5. The term "book" cannot be applied to—

Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, diaries or journals, bank deposit and 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; formulæ on boxes, bottles, and other receptacles of articles for sale or meant to accompany such articles.

Advertisements or catalogues which merely set forth the names, prices, and places where articles are for sale.

Prefaces or other introductory matter to works not themselves entitled to copyright protection, such as blank books.

Calendars are not capable of registration as such, but if they contain copyrightable reading matter or pictures they may be registered either as "books" or as "prints" according to the nature of the copyrightable matter.

Periodicals.

6. (*b*) *Periodicals.*—This term includes newspapers, magazines, reviews, and serial publications appearing oftener than once a year; bulletins or proceedings of societies &c. which appear regularly at intervals of less than a year; and, generally, periodical publications which would be registered as second-class matter at the post-office.

Lectures &c.

7. (*c*) *Lectures, sermons, addresses,* or similar productions, prepared for oral delivery.

Dramatic Compositions &c.

8. (*d*) *Dramatic and dramatico-musical compositions,* such as dramas, comedies, operas, operettas, and similar works.

The designation "dramatic composition" does not include the following:—Dances, ballets, or other choregraphic 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 &c.

9. *Dramatico-musical compositions* include principally operas, operettas, and musical comedies, or similar productions which are to be acted as well as sung.

Songs Separately Published.

Ordinary songs, even when intended to be sung from the stage in a dramatic manner, or separately published songs from operas and operettas, should be registered as musical compositions, not dramatico-musical compositions.

Musical Compositions.

10. *(e) Musical compositions,* including other vocal and all instrumental compositions, with or without words.

But when the text is printed alone it should be registered as a "book," not as a "musical composition."

"Adaptations" and "arrangements" may be registered as "new works" under the provisions of Section 6. Mere transpositions into different keys are not expressly provided for in the Copyright Act; but if published with copyright notice and copies are deposited with application, registration will be made.

Maps.

11. *(f) Maps.*—This term includes all cartographical works, such as terrestrial maps, plats, marine charts, star maps, but not diagrams, astrological charts, landscapes, or drawings of imaginary regions which do not have a real existence.

Works of Art.

12. *(g) Works of art.*—This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.) Productions of the industrial arts utilitarian in purpose and character are not subject to copyright registration, even if artistically made or ornamented.

Toys, Games, &c.

No copyright exists in toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles.

Reproductions of Works of Art.

13. *(h) Reproductions of works of art.*—This term refers to such reproductions (engravings, woodcuts, etchings, casts, &c.) as contain in themselves an artistic element distinct from that of the original work of art which has been reproduced.

Drawings or Plastic Works.

14. *(i) Drawings or plastic works of a scientific or technical character.*—This term includes diagrams or models illustrating scientific or technical works, architects' plans, designs for engineering work, &c.

Photographs.

15. (*j*) *Photographs.*—This term covers all positive prints from photographic negatives, including those from moving picture films (the entire series being counted as a single photograph), but not photogravures, half-tones, and other photo-engravings.

Prints and Pictorial Illustrations.

16. (*k*) *Prints and pictorial illustrations.*—This term comprises all printed pictures not included in the various other classes enumerated above.

Articles for Use not Copyrightable.

Articles of utilitarian purpose do not become capable of copyright registration because they consist in part of pictures which in themselves are copyrightable—*e.g.*, puzzles, games, rebuses, badges, buttons, buckles, pins, novelties of every description, or similar articles.

Postal cards 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 colours, decorative borders, and similar designs, or ornamental letters or forms of type are not included in the designation "prints and pictorial illustrations." Trade marks cannot be copyrighted nor registered in the Copyright Office.

How to Secure Registration.

Registrable Works.

17. Copyright registration may be secured for—

(1) Unpublished works.

(2) Published works.

Unpublished Works.

Unpublished works are such as have not at the time of registration been printed or reproduced in copies for sale, or been publicly distributed. They include: (*a*) Lectures, sermons, addresses, or similar productions for oral delivery; (*b*) dramatic and musical compositions; (*c*) photographic prints; (*d*) works of art (paintings, drawings, and sculpture), and (*e*) plastic work.

Registration of Unpublished Works.

In order to secure copyright in such unpublished works, the following steps are necessary:—

18. (1) In the case of lectures, sermons, addresses, and dramatic and musical compositions, deposit one typewritten or manuscript copy of the work.

This copy should be in convenient form, clean and legible, the leaves securely fastened together, and should bear the title of the work corresponding to that given in the application.

The entire work in each case should be deposited. It is not sufficient to deposit a mere outline or epitome, or, in the case of a play, a mere scenario, or a scenario with the synopsis of the dialogue.

Unpublished Photograph.

19. (2) In the case of photographs, deposit one copy of a positive print of the work. (Photo-engravings or photogravures are not photographs within the meaning of this provision.)

Photograph of Work of Art.

20. (3) In the case of works of art, models or designs for works of art, or drawings or plastic works of a scientific or technical character, deposit a photographic reproduction.

In each case the deposited article should be accompanied by an application for registration and a money order for the amount of the statutory fee.

Reproduction of Unpublished Work.

21. Any work which has been registered as an unpublished work, if reproduced in copies for sale or distribution, must be deposited a second time (two copies, accompanied by an application for registration and the statutory fee), in the same manner as is required in the case of works published in the first place.

PUBLISHED WORKS.

Deposit of Copies.

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 enclosed within a circle, thus ©, accompanied with the initials, monogram, mark, or symbol of the copyright proprietor. But in such cases the name itself of the copyright proprietor must appear on some accessible portion of the work, or on the mount of the picture or map, or on the margin, back, or permanent base or pedestal of the work.

Notice upon each Copy.

26. The prescribed notice must be affixed to each copy of the work published or offered for sale in the United States. But no notice is required in the case of foreign books printed abroad seeking *ad interim* protection in the United States, as provided in Section 21 of the Copyright Act.

American Manufacture of Copyright Books.

Works Produced in United States.

27. The following works must be manufactured in the United States in order to secure copyright:—

(*a*) All "books" in the English language and books in any language by a citizen or domiciled resident of the United States must be printed from type set within the limits of the United States, either by hand or by the aid of any kind of type-setting 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.

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 the 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.

Nationality of 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.

APPLICATION FORMS.

31. The Copyright Office has issued the following application forms, which will be furnished on request, and should be used when applying for copyright registration:—

A[1]. Book by citizen or resident of the United States.

A[1]. New ed. New edition of book by citizen or resident of the United States.

A[1] for. Book by citizen or resident of a foreign country, but manufactured in the United States.

A[2]. Edition printed in the United States of a book originally published abroad in the English language.

A[3]. Book by foreign author in foreign language.

A[4]. Ad interim. Book published abroad in the English language.

A[5]. Contribution to a newspaper or periodical.

B[1]. Periodical. For registration of single issue.

B[2]. Periodical. General application and deposit.

C. Lecture, sermon, or address.

D[1]. Published dramatic composition.

D[2]. Dramatic composition not reproduced for sale.

D[3]. Dramatico-musical composition.

E[1]. Published musical composition.

E[2]. Musical composition not reproduced for sale.

F. Published map.

G. Work of art (painting, drawing, or sculpture), or model or design for a work of art.

H. Reproduction of a work of art.

I. Drawing or plastic work of a scientific or technical character.

J¹. Photograph published for sale.

J². Photograph not reproduced for sale.

K. Print or pictorial illustration.

Affidavit of Manufacture.

Affidavit for Book.

32. In the case of books by American authors and all books in the English language the application must be accompanied by an affidavit, showing the following facts:—

(1) That the copies deposited have been printed from type set within the limits of the United States; or from plates made within the limits of the United States from type set therein; or if the text be produced by lithographic process or photo-engraving process, that such process was wholly performed within the limits of the United States. Stating in either case the place and the establishment where such work was done.

(2) That the printing of the text has been performed within the limits of the United States, showing the place and the name of the establishment doing the work.

(3) That the binding of such book has been performed within the limits of the United States, showing the place and the name of the establishment where the work was done. This can be omitted if the work is unbound.

(4) That the completion of the printing of said book was on a stated day, or that the book was published on a given date.

Date of Publication.

Section 62 of the Copyright Act defines the date of publication as "the earliest date when copies of the first authorised edition *were placed on sale, sold, or publicly distributed* by the proprietor of the copyright or under his authority."

Affidavit must be Under Seal.

33. The affidavit may be made before any officer authorised to administer oaths within the United States who can affix his official seal to the instrument.

Errors by Applicants.

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:—

Failure to write in the "venue"—that is, the name of the county and state—and to make sure that the notary's statement agrees.

Reciting a corporation or partnership as affiant. Oaths can be taken only by individuals.

Failure to state in what capacity the affiant takes the oath, whether as claimant, agent of the claimant, or printer. Where a corporation or firm is the claimant, the affiant should swear as agent.

Failure to state the *exact date* of publication or completion of printing. The month alone is insufficient.

Failure to sign the affidavit. The signature should correspond exactly with the name of the affiant stated at the beginning. Corporation or firm names must not appear in this place.

Failure to obtain signature of the notary after swearing to the contents.

Failure to obtain the seal of the notary.

Swearing before an officer not 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).

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.

The entire copy should be sent; sending a mere clipping or a page containing the contribution does not comply with the Statute.

The date of publication of a periodical is not necessarily the date stated on the title-page. The application should state the day on which the issue is "first placed on sale, sold, or publicly distributed," which may be earlier or later than the date printed on the title-page.

Ad Interim Applications (Form A[4]).

Ad Interim Copyright.

38. Where a book in the English language has been printed abroad, an *ad interim* copyright may be secured by depositing in the Copyright Office one complete copy of the foreign edition, with an application containing a request for the reservation and a money order for $1. Such applications should state: (1) Name and nationality of the author; (2) Name and nationality of the copyright claimant; (3) Exact date of original publication abroad.

The deposit must be made within thirty days from publication abroad.

Whenever, within the thirty days' period of *ad interim* protection, an edition manufactured in the United States is published, and two copies are deposited, the copyright claim therein may be registered the same as any other book (Form A[2]).

Mailing Applications and Copies.

Address of Mail Matter.

39. All mail matter intended for the Copyright Office should be addressed to the "Register of Copyrights, Library of Congress, Washington, D.C." No letters dealing with copyright matters should be addressed to individuals in the office.

Copyright matter designed for deposit in the Copyright Office will be transmitted by the postmaster free of charge when requested. The postmaster will also, when requested, give a receipt for matter so delivered to him for transmission.

No franking label is issued by the Copyright Office for this purpose.

Fees.

Copyright Fees.

40. The fee required to be paid for copyright registration is $1, except that in case of photographs it is only 50 cents when no certificate of registration is desired.

Remittances.

All remittances to the Copyright Office should be sent by money order or bank draft. Postage stamps should not be sent for fees or postage. Cheques cannot be accepted unless certified. Coin or currency enclosed in letters 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.

41. When a copyright has been assigned the instrument in writing signed by the proprietor of the copyright may be filed in this office for record within six calendar months after its execution without the limits of the United States or three calendar months within the United States.

After having been recorded the original assignment will be returned to the sender with a sealed certificate of record attached.

Fee for Recording Assignment.

42. The fee for recording and certifying an assignment is $1 up to 300 words; $2 from 300 to 1000 words; and another dollar for each additional thousand words or fraction thereof over three hundred words.

Name of Assignee in Claim.

43. After the assignment has been duly recorded, the assignee may substitute his name for that of the assignor in the copyright notice on the work assigned. Such substitution or transfer of ownership will be indexed in this office upon request, at a cost of 10 cents for each work assigned.

NOTICE OF USER OF MUSICAL COMPOSITIONS.

Notice of User of Music.

44. Whenever the owner of the copyright in a musical composition uses such music in phonographs himself or permits anyone else to do so, he must send a notice of such use by him or by any other person to the Copyright Office to be recorded.

Notice in Absence of License.

45. Whenever any person, in the absence of a license intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce the same mechanically, the Act requires that he shall serve notice of such intention upon the copyright proprietor and must also send a duplicate of such notice to the Copyright Office.

APPLICATION FOR THE RENEWAL OR EXTENSION OF SUBSISTING COPYRIGHTS.

Renewals and Extensions.

46. Applications 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 cannot be recorded in the name of an assignee nor in that of any person not expressly mentioned in Section 24 of the Act.

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.

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The statutory fee for searches is 50 cents for each full hour of time consumed in making such search.

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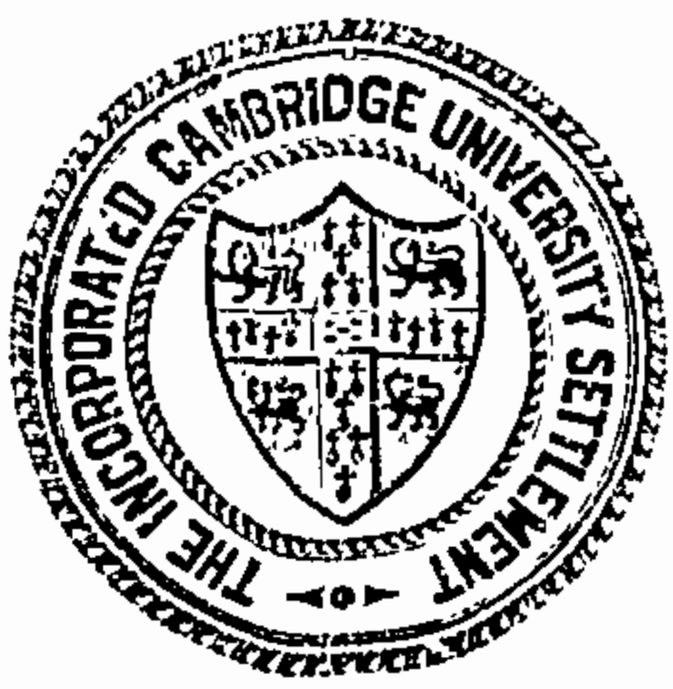
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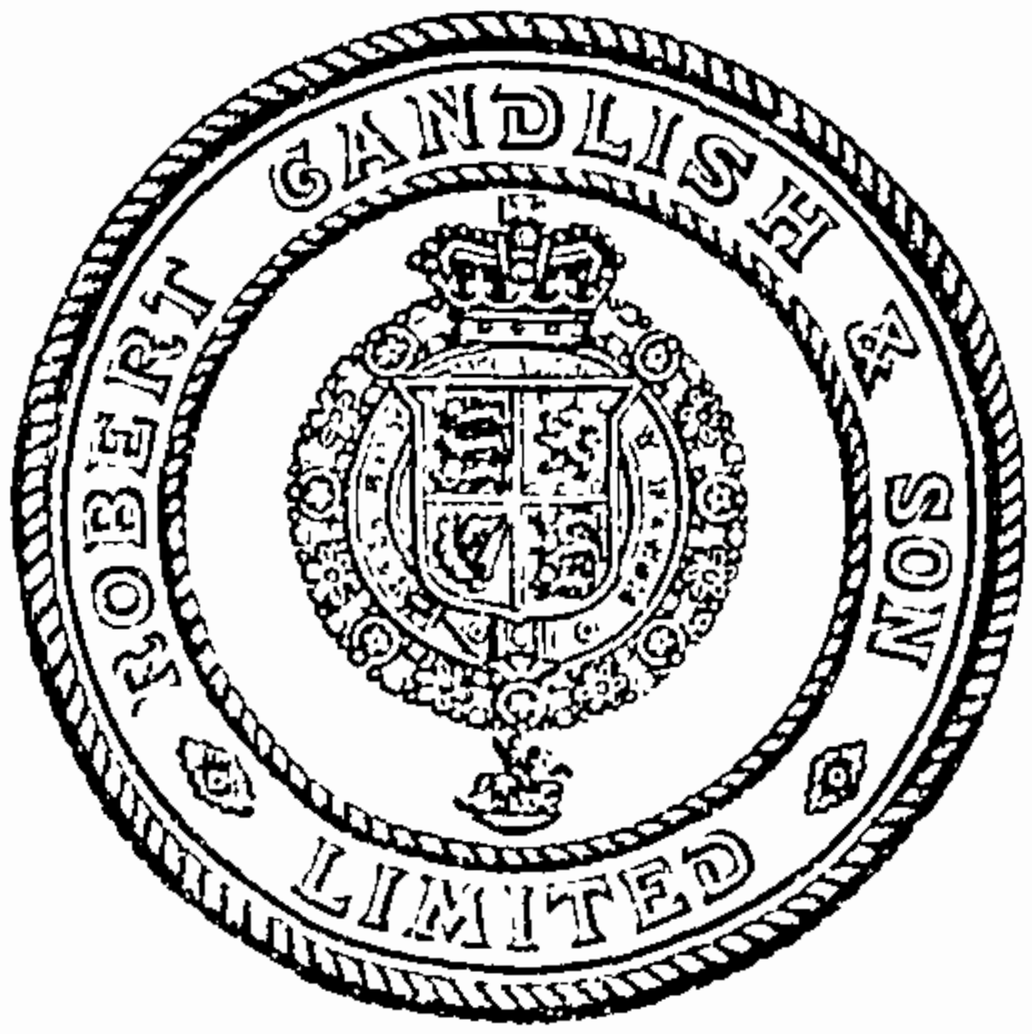
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