THE LAW OF STAGE COPYRIGHT

AT HOME AND ABROAD

"The law allows it."
SHAKESPEARE, *Mer. of Ven.*, iv. 1.

STAGE COPYRIGHT

AT HOME AND ABROAD

BY

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LONDON
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1912

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UK
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WEL

TO

THE RIGHT HON.

RICHARD EVERARD LORD ALVERSTONE

P.C., G.C.M.G., K.B., LL.D., D.C.L., M.A., F.R.S.

THE LORD CHIEF JUSTICE OF ENGLAND

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PREFATORY NOTE

THIS work differs from the ordinary handbook intended chiefly for the use of lawyers. The present aim has been to combine an analysis of the Law of Copyright with an exposition based on a knowledge of the working conditions of the Stage, and thus to furnish authors, managers, artists, and all others affected with at once a comprehensive and a practical guide. While, it is hoped, the whole ground has been covered, special attention has been given to the particular way, in things little as well as big, in which the Copyright needs and perplexities of the different classes of stage-worker tend, a way of which naturally enough not much appreciation is shown in the average treatise. The important bearings of International Copyright, notably as they concern first publication and the position of the translating right, have also not been neglected. Through want of knowledge or faulty procedure valuable rights are often unacquired or forfeited.

Appendix I contains the text of the existing British Statutes relating to Copyright, which, even after the repeal of seventeen Acts, are sufficiently formidable; the text of the various foreign Conventions to which Great Britain is a party, and the Orders in Council relating thereto; and the text of the United States Copyright Law, 1909, and of the Buenos Ayres Convention, 1910.

Appendix II contains draft forms of Agreement, Assignment, License, etc. In preparing Agreement I. the Author has had the valuable assistance of Mr C. Harvard Pierson.

To facilitate reference an extended Index is given.

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PART I

INTRODUCTION

THE coming into force of the Copyright Act, 1911 (1 & 2 Geo. V., ch. 46), dates from July 1, 1912, in the United Kingdom and elsewhere, as set out in sect. 37 (2). For the purposes of the Copyright Union the new law ought to have been ready by July 1, 1910, which was the date fixed for ratifying the Berlin Convention of the preceding year—for, in view of the deficiencies of the subsisting powers, Great Britain could not subscribe fully to the instrument, as she has since done by the ratification of June 14, 1912, which contains only a single reservation. The Copyright Act goes practically the whole length of the Convention, which stipulates that the enjoyment and the exercise of the rights thereunder shall not be subject to the performance of any formality. British authors within the Act have not merely a longer copyright than before; not merely a wider but also a simpler copyright, or rather one that is less a Chinese puzzle to make out. They have also a copyright not so unwieldy and so expensive to enforce in some respects, for summary proceedings for wilful offences can be taken at the Police Court. Unhappily, the aim of bringing copyright within a single statute has not been achieved, as it could have been, greatly to everyone's convenience. Acts relating to music, fine art, etc., have been allowed to remain either unrepealed or only repealed in sections. That would have been unnecessary had each class of copyright property been treated under its own head. But it is an essential weakness of the draughtsmanship of the Act that all classes are dealt with, so to speak, in bulk. They are made to fall under the

The Copyright Act, 1911.

How the Act is framed.

general term of " every original literary, dramatic, musical, and artistic work," and it is impossible to meet on these lines, fully and in the best way, the varying requirements of what are the property-bases of great fields of human activity. It follows that there is a good deal of indirect protection under the Act, as well as faulty protection, and possibly here and there no protection at all. Kinematograph property, for example, is not protected as a thing by itself. In certain circumstances it is protected as a dramatic work, and it may possibly, by adopting certain means, be protected as a literary work; while, as far as it is a photograph, it is protected as an artistic work. Similarly, the lesser subjects of stage copyright—chiefly materials of variety entertainment, such as gag, patter, business, parody, imitation, and the like—have no specific recognition. They are left to fare as best they may under the general term. The day of copyright law at once simple and comprehensive is evidently not yet. The Act will need the always expensive support of case law. The Courts will have, *inter alia*, to define what a dramatic work is and what a literary work is, and also what "in public" is, for the Act does not. Nor does the Act define what it means by "knowingly" in relation to infringement, nor by "reasonable ground" for suspecting the existence of copyright, though the terms are not strangers to the Courts. If a resident manager knows copyright to exist in a piece acted at his theatre, how far must he go to satisfy himself that the visiting manager has authority to perform?

Big simplifying changes.

However, the Act, if it contains much that is intricate, obscure, and defective, does effect some big simplifying changes. No longer need the author or other owner be confused by the old complications arising from the jumble of common law rights, statutory rights, copyright as applied separately and independently to printed publication, and performing right as applied similarly to public representation. For common law rights are abrogated, and the only statutory right is copyright—a simple, all-embracing right that dates from the making of the work.

This broad right, beginning with the work itself, lasts generally speaking for the life of the author and fifty years after.

There is only one thing that can cancel the right. An author forfeits the right if he gives or authorises first publication of the work in a country, including any self-governing British dominion, with which we have not the necessary copyright relations. It will not save him, under the Act, to fall back on our old friend, the "copyright performance." The copyright performance was never of any use under the old law, except that where an unpublished play was otherwise going to be performed for the first time in a non-reciprocal country the performance saved him the home rights. It could not, as far as the Act applies, serve that purpose now. Of course, an author can still give a performance if he chooses, but it will be absolutely without effect under the Act upon his copyright. The Act does not want it from him.

No "copyright performance."

Nor does the Act want registration; in fact, it will not have registration. He cannot register under the Act, which repeals the former statutory provisions in this respect. The Act says to the author: "You have made a certain thing, and on the ground that it is an original thing it belongs to you or your assigns; and all that is required of you is not to publish your work first of all in a non-reciprocal country." "You are a very simplicity 'oman," said Sir Hugh Evans of Mistress Quickly. One can but hope that this cardinal simplicity of the Act will not suffer abuse.

No registration.

It is important to remember that the work may be first performed in any such country without effect on the home rights (subject to an Order in Council), because performance is not publication under the Act. We give up our insular—but logical—position that defined performance as publication, and conform to the Continental usage. At present our self-governing dominions, which have not adopted the Act, nor passed legislation affording reciprocal protection, are not so well-situated. A work performed in a non-recip-

Performance not publication.

rocal foreign country must, not later than the date of the performance, be published (in accordance with the Imperial Acts and Orders in Council still applying to self-governing dominions) in the British dominions or a Unionist country or Austria-Hungary, in order to safeguard the rights in the self-governing dominions. This temporary necessity will pass away as soon as the self-governing dominions come into line with the Act, as no doubt they will in this respect.

The British author is, as far as the Act goes, in a much better position than the foreign author resident in a non-reciprocal country when he made his work. The latter has, roughly, no copyright in the work in this country unless he publishes it within those parts of the British dominions to which the Act applies or in Unionist or other reciprocal countries, and this publication must be not later than fourteen days after publication elsewhere. The work published in these circumstances is protected here, but unpublished it is not; and a public performance would throw it open to anyone who chose to take it. When the revised Bill was introduced in April last year, I ventured to draw attention to this effect of the redrafting of the first subsection of sect. 1. The Berlin Convention is somewhat vague on the point. Article 11 says that the stipulations of the Convention shall apply to the public representation and performance of dramatic and musical works whether published or not; while articles 6 and 8 deal with non-Union authors first publishing in a country of the Union.

Performance no protection.

Much has been done for the home dramatist in protecting him against infringement and piracy—though perhaps not so much as for other classes of author. The dramatist, as owner, possesses the sole right to produce, to reproduce, or to perform in public the work or any substantial part thereof in any material form whatsoever, and in any language. Whether a substantial part includes the title does not appear—apparently it would not—and no separate provision is made for titles. The dramatic work may not without authority be turned into a novel—as also a novel may not

be dramatised. Nor may the dramatic work be mechanically reproduced in any respect—by film, record, or similar contrivance. A musical work has not this sole right of mechanical reproduction. But a mechanical musical contrivance is given copyright in itself.

Term of copyright.

For dramatic works, in common with most other classes of property under the Act, the term of duration is that of life and fifty years. This simplification of our late cumbrous basis provides that the works of an author fall out of copyright at the same time.

Copyright at the making of a work.

But the greatest simplification under the Act has been made in the direction in which it was most necessary. How is the new statutory copyright obtained?[1] By publication, by performance, by obligatory registration? By none of these. Copyright vests automatically in a work from the date of the making. The work is written or otherwise composed, and thereupon copyright subsists in it. Here there is an all-round application of the statutory right that the Act of William IV. gave to dramatic pieces composed but not printed and published.

What the author should do.

With the investitive facts of copyright freed from formality, a precaution that the author or other owner should take against plagiarism is to put his work as speedily as possible in writing or other fixed form, and sign his name on the title-page in the usual way. And the less an oral or pantomimic piece for the stage answers to the description of a dramatic work the greater is the need to set it down or to describe it in literary form. It may then, if original, generally speaking, be regarded as a copyright literary work, vesting in the owner the sole right to produce or reproduce or to convert into a dramatic work, into a film, etc. As additional means of security, the manuscript should be typewritten by a responsible firm, stamped and dated by the firm, and read by one or two persons, whose names should be attached as witnesses. Or the work may be printed, provided that it is not issued to the public for sale unless the American requirements are complied with.

[1] *Apart of course from international considerations.*

New subjects of copyright.

The Act necessarily takes into account the developments of copyright brought about by performances by mechanical instruments, such as the kinematograph machine, the gramophone, the pianola, and the like. At the time when the old laws were framed the nearest approach to modern machines for the reproduction of sound, etc., was the musical box, and that unpretending instrument was not deemed worth troubling about. Indeed, even the Berne Convention of 1886, in its international bearings, gave the musical box a happy immunity in these words:—"It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright shall not be considered as constituting an infringement of musical copyright (F.P. (3))." But the inventions of recent years have changed a negligible quantity into a substantial factor in copyright affairs. The film is everywhere, and the gramophone disc is not much behind. As far as the old statutes were concerned any protection was accidental. The kinematograph film obtained a certain amount of protection as a photograph; and, further, Mr Justice Jelf once expressed the opinion (without, however, ruling on the subject) that it also came within the reach of dramatic copyright to the extent that a film reproducing the action of a copyright play would infringe the performing right. However, the law was extremely unsatisfactory. It is not surprising in the circumstances that it should have been so. The law affecting mechanical music, etc.—affecting, that is, the varied emanations of machines ranging from the gramophone to the barrel-organ—was yet worse. One speaks of the law, but one might almost say the want of law.

The Act, as has been noted already, does not deal with kinematograph works in their own name. On the other hand, records, perforated rolls, and other contrivances by means of which sounds may be mechanically produced, are, while treated generally as musical works, specially provided for under sect. 19.

Improved protection is given to choregraphic works,

performances in dumb show, recitations, lectures, etc. The protection of such works has been very defective hitherto, but it would be inexact to say that they now receive any protection for the first time under statutory law, though the debatable decision in the Appeal Court in Tate *v.* Fullbrook was unfavourable to dramatic pieces not expressed in words; and this view was, however reluctantly, rather emphasised than otherwise by Jelf, J. in Karno *v.* Pathé Frères, in which a kinematograph reproduction of *The Mumming Birds* was in dispute.

A triple purpose achieved

The Act serves the triple purpose of complying with or making possible compliance with the requirements of the Berlin Convention, of amending and consolidating our domestic copyright law, and of defining the positions of our self-governing and other dominions. The lay reader will not find it a statute particularly easy to understand, especially as some of the provisions are neither well expressed nor satisfactory in themselves; but, roughly speaking, the Act is comprehensive, and in conjunction with the Berlin Convention is calculated to give our authors —in countries within the Copyright Union at the least— nearly all that they can reasonably desire.

Some of the following chapters are amplified in parts from articles by the writer in *The Stage Year Book*, 1909–12, by permission of the editor, Mr Lionel Carson, to whom the writer wishes also to make acknowledgment of helpful consideration on various points.

B. W.

16 York Street,
Covent Garden, W.C.
September 1, 1912.

I

THE NEW COPYRIGHT

It may be well to clear the ground by means of a few definitions and a few distinctions, and to note a few points that do not seem altogether clear. What, then, are the investitive facts of copyright?—that is to say, what has the author to do in order to possess and enjoy copyright? As an author, he has, with exceptions, to conceive or arrange a work entitled to copyright, to set it down in a fixed form or to express it by means of acoustic or visual presentation. Assuming that he is an author with a right to protection under the Act, nothing further is required of him, with the exception that he must not give first publication to his work in a country that has not been approved under the provisions of the Act.

Published and unpublished works.

Coming to the words of the Act (sect. 1 (1)), copyright subsists, subject to the provisions of the Act, throughout the parts of His Majesty's dominions to which the Act extends 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; (*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. The benefits of the Act also extend by Orders in Council, with reservations, to those countries with which we have Union or other reciprocal relations.

It will be noted that the doubtful word "original" is used, and also the vague word "making." There is no

definition of either word, and a certain amount of ambiguity is the consequence. Take, for example, the position of an adaptation made from a non-copyright foreign work or a work of which the translating right has, in this country, fallen into the common domain. The adaptation would only be original in those respects in which it was new or distinctive, and would not bar the first work, nor a work independently derived from the first work. Musical arrangements from other musical works are not original works, but the former are capable of copyright. Nor when we come to the Interpretation clauses are we helped much to be told not what a literary work is, but that it includes "maps, charts, plans, tables, and compilations," or that a dramatic work "includes any piece for recitation, choregraphic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any kinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character." From the wording it is not altogether plain whether only "choregraphic work or entertainment in dumb show" needs to be fixed in writing or otherwise, though most probably that is so. If recitation is included, are we to suppose that the expression is used in its narrow "penny reading" sense, or as covering every form of dramatic piece on the oral side? If the latter, every dramatic piece must be fixed "in writing or otherwise"; but sect. 1—developing the statutory right vested by the Act of William IV. in a dramatic piece composed but not printed and published—speaks of "the making of the work." Further questions therefore arise. What is the position of a spoken dramatic piece that is fixed only in the memory of the performer or performers? And may a stage piece, if not a dramatic work—and also if a dramatic work—be a literary work? One assumes that, in certain circumstances, it may, though Mr E. J. Macgillivray, one of our ablest authorities on copyright, expresses the opinion that a published dramatic work

Turns, etc., ballets, dumb-show pieces.

does not rank as a published literary work within the meaning of sect. 2 (1) (iv.). Would a piece of patter, especially if reduced to writing, be a literary work, and as original matter entitled to protection as a literary work?

Dramatic piece under old law.

One assumes that, too. The old law protected anything that was a dramatic piece. But recent decisions gave a very restricted meaning to the term dramatic piece. Under these decisions pieces of the kind of *The Mumming Birds* were not dramatic pieces. An entertainment in dumb show was not a dramatic piece. Moreover, as was decided in Tate *v.* Fullbrook with regard to *Motoring* and *Astronomy*, there were circumstances in which a piece might bear resemblance to another piece and yet not infringe the playright in the latter. In coming to these and similar decisions, the judges had before them the old statutory definition of a dramatic piece—*i.e.* "a dramatic piece shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment." It was a very broad definition, which the Courts seem needlessly to have restricted. The recent decision that such turns as those by Little Tich and Mr Johnson Clark, the ventriloquist, were not stage-plays was given under the definition of a stage-play in the Theatres Act, which is another matter.

The new Act affords in this respect little as a guide by way of actual definition. But ballets and dumb-show pieces become protected as a dramatic work if set down as specified. The fate of the very numerous class of piece such as *The Mumming Birds*, from the point of view of a dramatic work, is open to question. Such pieces seem to have their most direct protection as a literary work, if written down. It is advisable to note, however, that, for the purposes of subsect. (1) of sect. 2, dealing with infringement of copyright, there is no classification of works. "A work" is the bare term used; and while it does not follow that the question whether the work is dramatic or literary is never material, yet in many cases the unqualified term leaves the author with a desirable freedom.

Performance is defined, and so is publication. The former means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such representation made by means of any mechanical instrument. **Performance defined.**

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 public delivery of a lecture, or the public exhibition of an artistic work. There is no stipulation that a selling price must be attached to the copies. **Publication defined.**

Publication must not be colourable only, and must be intended to satisfy the reasonable requirements of the public.

Performance or publication without the consent or acquiescence of the author or other owner of a work is not counted as publication or performance, apart from purposes relating to infringement.

A work is deemed to be published simultaneously in two places if the time between publication in one place and publication in the other does not exceed fourteen days, or such longer period as may be fixed by Order in Council. In other words, to secure first publication under the Act, not more than fourteen days must elapse from publication outside the Act. **Simultaneous publication.**

Ambit of Protection

The measure of protection in a copyright work is far-reaching. The copyright subsisting in an original work is the sole right, as far as the Act runs, to produce or reproduce and to authorise the production or reproduction of the work or any substantial part thereof in public in any material form whatsoever and in any language. Thus one may not, without the authority of the owner, do any of the following :— **Extent of sole right.**

(1) Perform or (in the case of a lecture) deliver the work or any substantial part in public.

(2) If the work is unpublished, publish the work.

(3) In the case of a dramatic work, convert the work into a novel or other non-dramatic work.

(4) In the case of a novel or other non-dramatic work, or of an artistic work, convert the work into a dramatic work, by way of performance in public or otherwise.

(5) In the case of a literary, dramatic, or musical work, make any record, perforated roll, kinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered (sect. 1 (2)).

Protection of novels.

The greatest particular change here, as far as theatrical interests go, is of course the very proper long-delayed recognition of playright in a novel. Hitherto, provided no copies of any of the dialogue were made, a playwright was free to derive a dramatic piece from a published copyright novel. In future he must keep his hands as much off the plot or incidents as off the dialogue of a novel protected under the Act. A foreign novel is also protected—with a reservation as to existing works of which the old translating right has fallen into the common domain—assuming it is first published in any part of the British dominions to which the Act extends, or in any self-governing British dominion granting approved protection, or in any Union country or a country with which we have a special treaty.

Translation and adaptation.

Unauthorised translation and adaptation were, within limits, forbidden under the old law. There is in these respects much improved protection, which runs for the duration of the copyright in the original work. From the international point of view, the matter is put thus as to "unlawful reproductions": Unauthorised indirect appropriations of a literary or artistic work [which includes a dramatic work], such as adaptations, musical arrangements, transformations of a novel, tale, a piece of poetry into a dramatic piece and *vice versâ*, etc., when they are only the reproduction of that work, in the same form or another form, without essential alterations, additions, or abridgements, and have not the character of a new original work.

The 1911 Act contains no such condition as is expressed in the latter part of this sentence, but there are circumstances in which copyright may be obtained in a work that owes something to a preceding work. Any copyright in such work is not of course prejudiced; and where there is no copyright, any other adapter is open to go independently to that work. The only right of the adapter is in his individual treatment or in his new material. As far as any dealing with copyright dramatic or literary works goes, the adapter must now walk very warily indeed, for not only is the dialogue protected, but also the plot or dramatic action, the incidents, mise-en-scène, etc., assuming that they are not of so ordinary and familiar a kind and have not had so non-individual a treatment as to make them mere commonplaces of authors generally—things of which it would be unreasonable to say that anyone had, by the exercise of invention, skill, and judgment, given them a relatively distinctive character.

As to musical works.

In musical works there may be a certain amount of freedom of adaptation. This Act, so chary of definitions, does not say what a musical work is.[1] It needs a jury of musicians, to say nothing of a musician-judge, to decide where one musician is plagiarising from another. A question of mere words is simple, or of the likeness of incident to incident, scene to scene; but melody is an intangible quantity, and musicians have a little way of thinking—or of persuading themselves that they are thinking—unconsciously in the same terms. Hence the question of treatment is, more than anything else, the determining factor, as far as there is a determining factor. The author of musical arrangements, if not the author of the original work, occupies an ambiguous position.

A substantial part.

What is "a substantial part," generally speaking, depends a good deal on the facts in the particular case. The terms of the reference are, however, as appears from sect. 1 (2), very wide. It is not a question of mere

[1] But see definitions, Musical (Summary Proceedings) Copyright Act, 1902, p. 40, *post*.

quantity, but of the valuable nature of the matter taken and of its material bearing on the original work.

Films from plays.

The use of any material part of the dramatic action of a copyright play for the purpose of kinematograph exhibition —a use about which the old law was uncertain—is met by specific prohibition.

Exemptions

Public reading or reciting of extracts from published works permitted.

The exemptions to the foregoing are few. One that has unfortunately been made through an amiable misapprehension of the circumstances seriously affects dramatic and other authors. The reading or recitation in public by one person of any reasonable extract from a published copyright work is not an infringement of copyright. This privilege was obtained in the name of "penny readings," which are supposed to be semi-philanthropic in character. But are there any penny readings now, and even if there are, why should an author be compelled to be a party to their possible philanthropy? The amendment, however, carries the exemption much beyond penny readings. "In public" includes any ordinary place of amusement. Thus any reasonable extract from a copyright play, if published, may apparently be read or recited in public. The question will speedily arise, by the deplorable old way of litigation, as to how far recitation includes ordinary stage rendering. It certainly includes a dramatic handling of the piece; and recitations are often done with scenic accessories. In any case the exemption gives the single-handed entertainer the valuable privilege of extracting choice bits from copyright works. Recitations, and also speeches from plays and books by artists of the type of Mr Bransby Williams, now form regular music-hall turns. Assuming that a play or other dramatic work is published, elocutionists, music-hall artists and entertainers generally are entitled to read or recite, singlehanded, reasonable extracts therefrom, provided reading or recitation does not amount to performance. This exemption, inserted at a late hour in the Bill, possibly causes a certain amount of

complication in relation to sect. 11 (2). Sect. 2 (1) (vi.) says that reading or reciting in these circumstances is an act not constituting an "infringement of copyright." But sect. 11 (2) makes it a penal offence for any person knowingly and for his private profit to cause performance of a copyright work in public without consent, and in this sense performance means any acoustic representation. The intention, however, in adding sect. 2 (1) (vi.) was to permit reasonable extracts in public as described. The sole right conferred by sect. 1 (2) is limited in this respect, and it is unlikely to be held that sect. 11 (2) overrides this exemption. Even assuming that to be so, this subsection says nothing about reasonable extracts or a substantial part, the whole work being in contemplation.

In the case of a published recitation, the full work cannot, in any case, be given without permission, only a reasonable extract. Unpublished works are protected from the use of extracts for purposes of public reading or reciting, and so also are works performed but not published.

Fair dealing permitted.

Copyright is not infringed by any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary.

Works in MS. and publication.

This "fair dealing" applies to an unpublished work as well as one published. There is thus nothing in sect. 2 (1) to prevent a newspaper from, say, summarising the plot of a play performed but not published, or making reasonable quotations from the text thereof. In the case of a play both unperformed and unpublished, this right of summarising is rather disturbing. There seems, on the face of it, nothing to stop a newspaper from giving a summary of a play about to be produced. However, sect. 31, while abrogating the old common-law rights—though a play in MS. had statutory right under the repealed Dramatic Copyright Act of 1833—says that nothing herein "shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence." Thus proceedings can be taken to restrain improper publication, not only in

this respect, but generally concerning works submitted privately for consideration, etc.

Lectures, etc., subject to notice.

A public lecture, address, speech (non-political) may be reported in a newspaper, unless the report is prohibited by conspicuous written or printed notice at the main entrance of the building in which the lecture is given, and also in a position near the speaker. Newspaper summaries cannot be prohibited.

School-book extracts permitted.

Short extracts from published literary works may be included in school-books, if the source or sources of the passages are acknowledged. It will have to be decided whether plays and musical works published in book form come within the meaning of a literary work. If not, this exemption does not affect them. The Berlin Convention, by the way, includes dramatic and musical works within the expression "literary and artistic works."

Titles not copyright.

Titles are not specifically protected. As a title is not likely to be held to be "a substantial part" of a work, the sole right of the owner under the statute to produce or reproduce would not seem to be infringed by using the title, except possibly in the case of a very long and distinctive title requiring an unusual amount of invention. The owner will apparently have to depend on the right of user. The use of a title employed before, or of a colourable imitation, especially—though not necessarily—with the intent to deceive, or with the effect of misleading the public, will be restrained by the Courts if it is an injury to property.

Records, rolls, etc.

There are special provisions as to records, perforated rolls, and other contrivances by means of which sounds may be mechanically produced. These provisions are dealt with under a separate head.

Kinematograph works.

Kinematograph works do not come under these special provisions, which have been exacted by the mechanical sound-instrument makers. The Berlin Conference emphatically rejected the idea of an international system of compulsory royalties. Kinematograph works are also separately considered.

II

DURATION OF COPYRIGHT

Life and fifty years.

APART from certain subjects, broadly, the term for which copyright lasts under the Act is for the life of the author and a period of fifty years after his death. Copyright, however, may be determined by improper first publication elsewhere—as, for example, in the United States.

Compulsory licenses.

After the death of the author the sole right is not absolute. At any time after this death the Judicial Committee of the Privy Council can, if complaint has been made to them, order the owner of a copyright to grant a license to perform a dramatic, musical, or literary work, if previously published or performed, on such terms and conditions as the Committee think fit. Though the wording of the section—4—is not altogether clear, it seems that a license may equally be obtained to publish a work that has been performed but not published. The word "reproduced" is probably used inasmuch as, the work not having been published, "republished" could not be used. The complaint must be made on the ground that the owner has refused to reproduce the work and is consequently withholding it from the public.

Further, at any time after the lapse of twenty-five years, or, in the case of a published work copyright on December 16, 1911, thirty years, from the death of the author, the work may be reproduced for sale, without license, on a ten per cent. royalty, payable to the owner.

Oddly enough, provision is only made for the royalty on the price at which a work is to be republished. Owing

to this omission, a copyright dramatic or musical work cannot be reproduced in this way (without order from the Judicial Committee of the Privy Council on their own terms and conditions) except as a republished book.

Our self-governing dominions, Canada especially, will probably take full advantage of the compulsory license principle. The owner of the copyright will not enjoy a sole right. Subject to royalties, his work will be published or performed without his permission on certain conditions, which will not necessarily be the foregoing. Canada, for example, proposes to employ a system by which, as soon as a work has been published or performed in public, any Canadian resident may apply to the Minister acting under the section in question for a license to reproduce the work.

Board of Trade regulations—

Regulations governing the compulsory license under sect. 3 have been issued by the Board of Trade. The applicant intending to reproduce a work must, in his

(1) Notice.

notice to that effect, state his name and address, the name of the work in question, in what form the work will be reproduced and at what price or prices, and the earliest date the work will be on sale. The notice must, a month before any sale of copies, be sent to the owner, by registered post, if his address can with reasonable diligence be found; and otherwise be advertised (in brief) in the *London Gazette*.

(2) Payment of royalties as agreed.

The parties can agree as to any mode in which royalties shall be paid, and as to time and frequency of payment.

(3) Otherwise adhesive labels.

Failing agreement, adhesive labels, purchased from the owner of the copyright and affixed to the copies of the work, shall be employed. The owner must supply these labels from a reasonably convenient place in the United Kingdom, which he shall name by letter. The money for these labels must be tendered at this address. On demand in writing, labels of the required denominations must thereupon be supplied to a corresponding amount, without extra charge.

If within fourteen days from date of notification, the owner fails to intimate to the aforesaid place, or if within a subsequent fourteen he fails to supply the labels on due

demand, the sale of copies of the work only with labels duly affixed is not compulsory; and the amount of royalties due becomes a debt. An account of all copies sold must be kept.

(4) Character of label.

The adhesive label must be of paper, square in shape, not greater than three-quarter inch in length of side, must not bear any effigy, nor suggest a dutiable Government stamp.

Joint authors.

As regards works of joint authors, copyright lasts 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. References in the Act to the period after the expiration of any specified number of years from the death of the author are construed for purposes of works of joint authorship 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 is the shorter.

In the case of a work of joint authorship it is only necessary that one of the authors should satisfy the conditions conferring copyright. This joint authorship, however, must not be nominal. A work of joint authorship is defined as a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

The interest of a married woman in a work in which she is jointly concerned with her husband is her separate property.

Posthumous works.

A work performed or otherwise produced in public after the death of the author has its subsisting copyright continue for fifty years from the date of first performance or first publication.

This date is reckoned as the starting-point for the twenty-five or thirty years under the royalty proviso to sect. 3.

Last portion of copyright unassignable.

An author who is first owner cannot, except by will, after the date December 16, 1911, dispose of any part of his copyright (including rights in existing works to which he is

entitled under the Act) for a period beyond the expiration of twenty-five years from his death. The remainder of the copyright devolves on his legal personal representatives as part of his estate. The position of joint authors in a work in such circumstances is not clearly provided for.

Modified term.

The duration of copyright affecting photographs and also records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced is limited to fifty years from the making of the original negative or plate.

The duration in the case of a kinematograph film or product is not so clear as it might be. It is referred to in the chapter on Kinematograph Works.

Existing copyrights extended.

The Act has an important bearing on existing copyright works in point of length of protection. There is an extended period of protection. In the case of a work copyright at the time of the Act coming into force, the author or his estate obtains the benefit of the extended period. But the holder of any right or interest granted by the author under the old terms at his option (1) may apply for the right or interest to be continued under the extended period for such consideration as, failing agreement, may be determined by arbitration; or (2) he may, without any re-assignment of right or grant of a similar interest, continue to reproduce or perform the work in like manner as before, subject to the payment, if demanded by the author within three years after the date at which the right would have expired, of such royalties to the author as, failing agreement, may be determined by arbitration.

Position of last holder.

The holder of an assignment or other interest, if he adopts the first course, must give notice to the legal personal representatives of the deceased author not more than one year nor less than six months before the date at which the right would have expired. The notice must be sent by registered post, or, if the representatives cannot with reasonable diligence be found, must be advertised in the *London Gazette* and in two London newspapers.

This extension of copyright existing on July 1, 1912, for the benefit of the author or his estate does not apply when the work forms part of a collective work, such as an encyclopædia, newspaper, or other work in which the works of different authors are incorporated, and where the owner of the right or interest is the proprietor of the collective work. **Collective works in relation thereto.**

It has been stated that a song with music is a collective work, and that the extended copyright in it therefore belongs not to the author or his estate but to the holder of the old right. If, however, a piece of vocal music is a collective work in itself, where is the collective work in which—as sect. 24 (1) (*a*) (ii.) requires—the piece of music is incorporated? It may be regarded, I think, as fairly certain that a piece of vocal music is not a collective work in this sense. Of course, if the piece is published as part of, say, a musical album made up of works by different authors, the extended period of copyright does not go to the author or his estate, but remains with the aforesaid proprietor. **Question of vocal music.**

The definition of a collective work (sect. 35 (1)) is, however, very broad; and the relation of existing works as to the devolving of the extended term of copyright is one that is likely to give rise to a good deal of trouble. Would, for example, the fact that the proprietor of a play had published it with illustrations by an artist make the publication a collective work? If so, it looks as though the extended period of copyright in the play would go to the proprietor, not the author or his estate. But the broad view is that mere additions or adjuncts of this sort to a play do not turn it into a collective work of a kind contemplated by sect. 24 (1) (*a*) (ii.).

There is a stipulation that extended copyright goes to the author or his representatives "in the absence of express agreement," a stipulation that may cause some confusion, inasmuch as any assignment made after the passing of the Act can only affect the first twenty-five years of the period after death.

"Valuable interests."

Any person who, before July 26, 1910, incurred any expenditure or liability for the purpose of or with a view to the reproduction or the performance of a work at a time when the proceeding would, but for the passing of the Act, have been lawful, is, subject to compensation, entitled to exercise his right or interest therein, subsisting and valuable at the date given. If compensation is paid, the person paying it becomes entitled to restrain the reproduction or the performance. The amount of compensation can be arranged by agreement between the parties or by arbitration.

An instance of a valuable interest would be a performing right, lawful at this date, July 26, 1910, in a play dramatised from a novel, or the action taken and expenditure or liability incurred before this date over a play that, but for the extended term under the Act, would have fallen into the common domain.

III

OWNERSHIP AND ASSIGNMENT

Ownership

THE Act is practically uniform on the point that the author is the first owner. **Author first owner.**

But where the work is done in the course of employment under a contract of service, then, in the absence of any agreement to the contrary, the employer becomes, with a few exceptions, the first owner of the copyright. This condition prevails in the case of an engraving, photograph, or portrait; likewise in the case of records, perforated rolls, etc. (which belong in each case to the owner of the original plate); and also in the case where the author is in the employment of another person and the work is made in the course of employment by that person. As regards literary contributions to the periodical Press, the author has a right to restrain publication within certain limits. But a "house-author" turning out plays or other literary work while employed by a manager would, if his engagement was held to be a contract of service, be without copyright; and so would an actor or other performer who, in the course of such employment, added original features to his part or to the entertainment in which he was engaged. A dramatist employed by a manager to write him a play under his direction might be under a contract of service. An author who wrote a play for the periodical Press under a contract of service apparently could not prevent the employer from dealing in the performing rights, nor a story-writer restrain the employer from dramatising the **But not of work done in employment.**

story, provided the employer adhered to the stipulation —which, moreover, may not apply in this case—as to publication, *i.e.* "the issue of copies of the work to the public." The employer owns the copyright, and all that is possibly reserved to the author is a right to restrain the publication of the work otherwise than as part of a newspaper, magazine, or similar periodical.

What is a contract of service.

It becomes a serious matter, therefore, what is or is not a contract of service. In Simmons *v.* Heath Laundry, Cozens-Hardy, M.R., confessed his inability to lay down any complete or satisfactory definition of the term: "The greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the grounds for holding it to be a contract of service; and, similarly, the greater the degree of independence the greater the probability that the services rendered are of the nature of professional services, and that the contract is not one of service." The test seems to be whether the employer holds the substantial power of controlling and supervising the work. It is a nice point whether a dramatic critic, paid at scale rates for regular contributions to his paper, is under a contract of service. Mr G. S. Robertson, who sometimes lets a caustic humour play on the encyclopædic detail of his legal writings, remarks that the value, if any, in a curate's sermons may belong to his vicar under a contract of service. The amiable proposition has, since the date that it was made by Mr Robertson, been disposed of as far as a contract of service goes. The Commissioners under the National Insurance Act, on motion in the Chancery Division, before Mr Justice Parker, on July 26, 1912, raised the point, affecting the vicar of Kirgate and his curate the Rev. F. J. Cutts and the rector of West Hackney and his curate the Rev. R. E. Spencer, whether a contract of service applied. The learned judge held that the position of a curate was that of a person holding an ecclesiastical office and not of a person whose duties and rights were defined by contract at all. There was thus no relationship of master and servant.

A contract of service need not be in writing.

It is not stipulated that an agreement to the contrary shall be in writing. Under the old law a manager employing a dramatist did not *ipso facto* obtain playright in the work done. The playright lay in the author, failing an assignment in writing. In Shepherd *v.* Conquest (in which an author was paid by a manager to adapt a given piece), and in Eaton *v.* Lake (in which the conductor of an orchestra wrote music to a ballet), it was held that the employer had no copyright in the works in question. The position is now greatly modified.

This provision as to work done in employment does not affect the continuance of any right of publication of an essay, article, etc., in a separate form enjoyed by the author at the beginning of the Act by virtue of sect. 18 of the Copyright Act, 1842.

Assignment

Unconditional assignment.

The copyright in a work, as has been seen from the references to sect. 1, subsect. (2) of the Act, embraces a variety of rights. To assign the copyright means to assign the whole of the rights. For example, the dramatist would "pass"—that is, make over as part of the assignment—his kinematograph rights, the composer his sound-contrivance rights, and so on. That was not altogether so under the old law. An assignment of copyright did not pass the playright unless the intention of the parties to that effect was expressly stated in the assignment. Seeing that everything is now conveyed, authors should be the more wary of unconditional assignment. At the same time, the Courts may void an act of unconditional assignment if it can be proved that the assignment does not fairly and fully represent the agreement between the parties, and that the intention was, not to assign the copyright, but to grant a right for a temporary purpose.

Assignment in writing.

Any assignment of copyright must be in writing to be valid. The assignment must be by the owner of the particu-

lar right or his duly authorised agent. The assignment requires to be stamped. It need not be witnessed.

Copyright divisible.

Any part of the copyright may be assigned by the owner, for any particular country, and for any portion of the term belonging to the owner. A dramatic author, for example, could assign his right of translation, his right of printed publication, his kinematograph right, his right to novelise, etc., separately from his right to perform as a play. The Act says vaguely that the owner may assign his copyright "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," but one assumes that he could assign say London rights to A, and provincial rights to B. For "limitations to," "limitations in" is evidently meant.

In the case of an assignment, the assignee becomes the owner of the copyright to the extent of his right and can proceed accordingly.

Use by assignee.

An assignee is under no compulsion to perform, publish or otherwise put a work into future effect unless that is a provision of the assignment.

Alterations by assignee.

An assignee of a copyright cannot be prevented, as a matter of copyright, from using only portions of the work nor from making alterations. But if this treatment is damaging to the reputation of the author, the latter can sue on the ground of libel. Here, again, the author, on assignment, should make his own conditions in these respects.

Joint authors in a work apparently must assign the work or grant licenses jointly.

License preferable to assignment.

In most cases it is preferable, in lieu of assignment, to grant an interest in a right by way of a license. A license in general terms gives no proprietary rights. The owner sues for infringement, not the licensee.

A license is not a sole license unless so drawn. The licenser can grant similar licenses to other parties. A license in general terms is revocable on the giving of reasonable notice by the licenser. All licenses, however, are not

revocable. A license cannot be determined in this way if revoking it would be contrary to its specific terms.

Licenses must be in writing. Writing includes printing or similar reproduction. A license not in writing, however, might have a certain force. Thus, if it could be shown that A, the owner of a play, authorised B, a manager, for a good consideration, to perform the play, then A probably could not proceed against B for duly performing the piece during any period in which the license was unrevoked by A.

A license must be stamped. A witness is not necessary, but it is advisable to have one.

IV

INFRINGEMENT

The sole right.

THE different acts infringing copyright will be gathered from the particulars fully setting out what copyright is under the statute. It is an infringement for an unauthorised person to do any of those things the enjoyment and the exercise of which the statute vests in the owner. The sole right is set out in sect. 1 (2), subject to the exemptions already noted. The subsection runs in full :—

> For the purposes of this Act, " copyright " means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public ; if the work is unpublished, to publish the work or any substantial part thereof ; and shall include the sole right,—
>
> (*a*) to produce, reproduce, perform, or publish any translation of the work ;
>
> (*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work ;
>
> (*c*) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;
>
> (*d*) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, kinematograph film, or other contrivance by

means of which the work may be mechanically performed or delivered,

and to authorise any such acts as aforesaid.

Further, by sect. 2 (2), in relation to indirect infringement :—

Selling, distributing, exhibiting, importing, etc.

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 dominion in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

Possession and conversion of infringing copies.

Sect. 7 relates to the rights of owner against persons possessing or dealing with infringing copies, etc. It says :—

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.

An infringing copy, when applied to any copy of a work, means any copy, including any colourable imitation, made or imported in contravention of the Act.

As to the importation of copies, the word "copies" in sect. 14 is used in a limited sense, not including portions of a work,

Unlawfully imported copies.

or colourable imitations, or derivative works. The section aims at giving the author immediate protection in the United Kingdom (and similarly in a British possession under the Act; see subsect. (7)) against foreign and colonial copies, by which he might be undersold or otherwise interfered with. Such underselling might be brought about, for example, by means of imported copies made under licenses for editions in British possessions, such licenses not covering the United Kingdom. The section says that the owner or his agent must give notice in writing to the Commissioners of Customs and Excise against the importation of such copies into the United Kingdom. They will then be deemed to be goods falling within the prohibitions under sect. 42 of the Customs Consolidation Act of 1876, which says that such goods, unlawfully imported, shall be forfeited and may be destroyed or otherwise disposed of as the Commissioners of Customs direct. Sect. 14 authorises the Commissioners to make regulations as to detention and forfeiture, and these regulations may provide for the recovery of all expenses and damages incurred by detention made on the information of the owner or his agent.

The quotations from the 1911 Act may be left to a considerable extent to speak for themselves. They concern civil proceedings, not necessarily always for infringement of copyright, as under sect. 7, relating to infringing copies, or sect. 14, relating to imported copies, where actions would lie for detinue or for trover.

Permitting use of theatre.

Copyright is also infringed by any person who permits a place of amusement to be used for hire for unauthorised performance. Sect. 2 (3) says:—

> 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.

This subsection applies (subject to the provisions of the Act) to the public performance of any copyright literary, dramatic, musical, or artistic work.

Copyright "presumed."

In an action for infringement, the plaintiff is "presumed" to be the owner, which simplifies the old position. To some extent, it may simplify it at the expense of other persons; but, after all, anyone who, without payment, is making use of another person's work should scarcely grumble if one does not find facilities thrown in one's way.

Name on work.

Though copyright is presumed, the defendant in an action can put in issue both the fact of the copyright and the title of the plaintiff. In that case the name on the copy of the work becomes important. If a name purporting to be that of the author is printed or otherwise indicated on the work in the usual manner (including a written signature in manuscript), the person whose name is so printed or indicated shall, failing proof to the contrary, be presumed to be the author of the work. If no name is so printed or indicated, or if the name 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, then the latter person is presumed to be the owner.

No registration safeguards.

One is not sure whether registration was not, or rather whether a reformed system of registration would not have been better *primâ facie* evidence of ownership. It is easy to put names on works, especially if the works are not printed. It may not be easy but it is possible for an unscrupulous person falsely to allege infringement of a work concocted for the purposes of an action. The proposed optional registration would have been a safeguard all round. Particularly, the question of "innocent infringement" would have been placed on a working basis, as it is not at present. If the particulars of a work were duly registered, then a defendant could not plead innocent infringement. He would be deemed to have had, in the fact of the registered entry, reasonable means of making himself aware that copyright subsisted in the work.

The question of registration was of special importance to owners of musical works. Registration would, as far as concerns them, have taken the place of the old printed notice reserving the public performing rights hitherto necessary on the face of published musical compositions. The Musical Copyright Act, 1882, and the Amending Act of 1888, are repealed; hence there is no further obligation on the owner of a musical work (except in the case of certain foreign countries referred to in Chapter X.) to state on the title page that the performing rights are reserved. This change is made in accordance with a revision contained in the Berlin Convention, which says that "authors shall not be bound in publishing their works to *forbid* the public representation or performance thereof." Much confusion, litigation, and loss will again arise from this loose state of things. Owners will perhaps have less to object to than managers, conductors, singers, pianists, and others, who will not know "where they are." It is not easy to ascertain, in the absence of all notification, what is copyright and what is not. For example, T. W. Robertson's *Caste*, produced in 1867, is free; the same author's *M.P.* just escapes; but his *Birth* and *War* rank for an extended period, ending in 1921. That is because the last-named, still entitled to copyright under the old Act, get the benefit of the fifty years from death of author.

The dilemma in the case of foreign musical works may be imagined, and the old Harry Wall scandals, which led to compulsory notification of copyright on sheet music, will re-appear. The dilemma will be aggravated, too, because the formal notice is still obligatory as concerns Denmark, Italy, Japan, and Sweden.

Reasonable means.

It is true that, as the position is, where (apart from sect. 7, relating to proceedings for the possession of infringing copies of a work, and sect. 14, to imported copies) proceedings are taken the plaintiff will not be entitled to any remedy other than an injunction or interdict in respect of the infringement (and possibly not even to that in the case of indirect acts of infringement by an innocent in-

fringer) if the defendent proves that at the date of the infringement he was not aware and had not reasonable means of making himself aware that copyright subsisted in the work. Further, the costs of all parties are in the absolute discretion of the Court, from which in this respect no appeal would seem to lie. Such provisions may act as a check on frivolous actions and otherwise be something of a protection. But what are "reasonable means"? The question is likely to appeal with special force to those third parties to so many performances, the lessees, as may be seen from sect. 2 (3) already quoted. The responsibility of lessees of places of entertainment is a serious one as regards every form of entertainment presented at their houses.

Remedies

Civil remedies.

For infringement there are not only civil but also summary remedies. As to the former, where copyright in a work has been infringed, the owner of the copyright is, except as otherwise provided by the Act, entitled to remedies by way of injunction or interdict, damages, accounts, and otherwise.

Interim injunction.

In the case of an alleged infringement, the owner of the right may apply for an interim injunction pending the trial of the action. Motions of this kind, however, do not seem to grow in favour with judges; and it is doubtful whether the provisions of the Act will be helpful in this respect. Yet a speedy process, arresting the improper use of, say, a dramatic work, which is often a matter of the moment, is a very necessary facility for authors and managers. The plaintiff must be able to show a strong *primâ facie* case, and he is liable to the defendant in respect of these proceedings if the grant of the injunction is not upheld at the trial of the action.

Action within three years.

Proceedings must be taken within three years of the infringement. Where the action is one for wrongful detention or conversion of copies, this limitation might not apply.

Criminal remedies.

Action in the High Court is a slow and expensive process, and one of the great reforms of the Act is that Police Court proceedings may be taken. Unfortunately, dramatic copyright suffers badly from the way in which its special requirements are subordinated to those of literary copyright in this section. When the 1910 Bill appeared I pointed out the fact—of great importance from the point of view of dramatic authors and theatrical managers—that amongst other deficient provisions there was no specific mention of unauthorised public performance of a play in the list of offences given in the section relating to Summary Remedies. The omission was afterwards dealt with, as follows, in sect. 11 (2) :—

> If any person knowingly makes or has in his possession any plate for making pirated 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, etc.

The provision as to a plate happened to be there already ; and the second clause—the new one—was inserted without regard for congruity. It is of course better to get this specific inclusion of unauthorised performance anyhow than not at all ; but the section is a sad jumble, and may give trouble in the working. That is because, one feels, the section as a whole was originally drawn with a view to copies in print and the like, and while it has full practical point as far as they go, it is very badly framed from the point of view of unprinted plays. Few actual copies are made in the case of a pirated dramatic work, and the difficulty of proving their existence is considerable ; and thus many of the salutary powers of the Act in connection with pirated copies seem to fall to the ground where dramatic works are concerned.

"Causing" performance.

The roughly-interjected clause refers merely to the person who "causes" the performance. Under section 11 (1) (*d*) a person commits an offence if he "knowingly by way of trade exhibits in public any infringing copy."

But an actor playing a part in public would scarcely be "exhibiting" in this sense. Turning back from sect. 11 to sect. 2, one gathers, as already explained, that copyright in a work is infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the public performance of the work without the consent of the owner of the copyright, unless he proves that he acted innocently. This clause, however, is not inserted under the heading of Summary Remedies. It concerns civil proceedings. The distinction here is that in the one case the person who merely provides the place of entertainment for another is affected, whereas in the second the person "causing" the entertainment is aimed at. How far performing is causing is very doubtful. And the causing must be for private profit—which brings in another train of doubtful circumstances.

Making infringing copies.

A person making, letting, selling, or exhibiting any infringing copy for sale or hire, or distributing infringing copies for purposes of trade or prejudicially to the owner, is liable under this section, if he commits the offence knowingly. The definition of an infringing copy has already been given. A portion of a copyright work evidently does not, under this section, amount to an infringing copy. The whole work is in contemplation, or a colourable imitation of it. On this assumption, an adaptation or a dramatisation of a novel is not an infringing copy in this sense (though it would be, no doubt, for civil remedies), nor is a mechanical sound-contrivance made from a musical work, nor a kinematograph work from a play, etc., though a film from a film is an infringing copy, also a plate from a plate.

However, where a person makes an unauthorised copy of a play, or a colourable imitation, knowing the play to be copyright, this subsection—(1)—of sect. 11 places a valuable weapon in the hands of the owner. The play-pirate who for his purposes thus prepares his copy, or deals in a prepared copy or copy in writing or otherwise, is guilty of an offence under this subsection. The subsection does not include specifically a copy of a published play, bought in the

ordinary way, nor a pirated copy of the work that may have come legitimately into the possession of the person using it.

Penalties. The penalty for knowingly and for private profit causing unauthorised performance is on summary conviction a fine not exceeding £50, or, in the case of a second or subsequent offence, either such fine or imprisonment with or without hard labour for a term not exceeding two months.

The penalty for dealing in infringing copies is a fine not exceeding forty shillings for every copy dealt with in contravention of the section, but not exceeding £50 in respect of the same transaction; or in the case of a second or subsequent offence, either such fine or imprisonment with or without hard labour for a term not exceeding two months.

No part of the penalties goes to the copyright owner.

There is a right of appeal from a summary conviction in England or Ireland to a court of quarter sessions, and in Scotland under the Summary Jurisdiction Act.

The summary remedies of the Act apply only to the United Kingdom.

The provisions of the Musical Copyright Acts of 1902 and 1906 further apply to musical works.

V

MUSIC-PIRACY

THE Musical (Summary Proceedings) Copyright Act, 1902, and the Musical Copyright Act, 1906, are not repealed by the Act of 1911, except part of sect. 3 in the 1906 Act relating to registration. It was first sought to incorporate the provisions of these Acts, but they did not lend themselves to the generalising methods adopted in the new Act. The summary powers of these Acts still therefore apply to pirated copies of musical works, apart perhaps from records, perforated music-rolls, and like mechanical contrivances, though the latter are now musical works. The defects of the first Act were made good by the second Act, of which the provisions may briefly be summarised. **Music-piracy.**

Pirated copies mean copies reproduced without the lawful consent of the owner. It is an offence punishable on summary conviction for any person to print, reproduce, sell, expose, or offer for sale any pirated copies, or for anyone to have in his possession any plates for producing pirated copies, unless he proves that he acted innocently. But a person convicted of an offence under the Act for the first time shall, if he proves that the copies of the musical work in question had printed on the title page a name and address purporting to be that of the printer or publisher, not be liable to any penalty, unless it is proved that he knew the copies to be pirated. On conviction an offender is liable to a fine not exceeding £5, and on a second or subsequent conviction to imprisonment with or without hard labour for a term not exceeding two months, or to a fine not exceeding £10. **1906 Act.** **Summary conviction.** **Fine or imprisonment.**

Arrest without warrant.

A constable may, if the chief officer of police has been authorised in writing by the apparent copyright owner or his agent, take into custody without warrant any person who hawks pirated copies in a street or public place, or offers them by personal canvass or by the delivery of circulars, etc. This authorisation, which may be in general terms, is at the risk of the owner.

Entry of suspected premises.

The Act gives a right of entry into premises and seizure of copies and plates by a constable on a search warrant, which a court of summary jurisdiction is empowered to grant if the court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the Act is being committed on the premises. The Court shall order all pirated copies and plates brought before it under these powers to be forfeited and destroyed, or otherwise dealt with.

Appeal.

A right of appeal against a conviction lies in England and Ireland to Quarter Sessions and in Scotland under the Summary Jurisdiction (Scotland) Act, 1908.

Definitions.

"Musical copyright" means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorise another person to do all or any of the following things in respect of a musical work:—(1) To make copies by writing or otherwise of such musical work. (2) To abridge such musical work. (3) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

MECHANICAL CONTRIVANCES

Records, etc., and royalties.

RECORDS, perforated rolls, and other contrivances for the mechanical reproduction of sound are protected as musical works. Hitherto, such contrivances have not only been without statutory copyright in themselves, but have not infringed it in other works. Under these loose, not to say piratical conditions, a great industry has, however unfairly, grown up; and the mechanical instrument-makers, by means of pressure at a critical moment in the fate of the Bill in Parliament, succeeded in establishing their interests, to some extent in defiance of the long-abused claims of musical composers and publishers. As has been noted, the royalty principle, introduced in the United States Copyright Act of 1909, but rejected at the Berlin Conference, has been adopted; and the American Act is also followed in the compulsion that is placed on the owner of a musical work, once he has used or allowed the use of his work for these purposes of reproduction, to permit any other person to make similar use of his work at a prescribed rate of payment. The American royalty was fixed at two cents per contrivance; and these provisions of the statute were not retro-active. In our case there is a minimum royalty of ½d. per contrivance, with varying rates of percentage, calculated at different periods, and for certain periods not calculated at all; and the provisions are made retrospective, not merely as regards the original works from which the contrivances were derived, but also as regards certain of the contrivances, which, piratical in

their origin, are brought into the odour and sanctity of protection. This special treatment of mechanical sound-contrivances is marked by the longest section in the Act—sect. 19—and also the most technical and intricate.

In explaining the section, regard must be had to the fact that the Act recognises and provides for the old conditions as well as the new. Thus, in giving a musical record or similar contrivance copyright as a musical work, protection is accorded to contrivances made before July 1, 1912, as well as to contrivances made after.

Copyright in mechanical contrivances.

First, as to copyright in contrivances as musical works made after July 1, 1912. Sect. 19 (1) says that copyright shall subsist in them in the same way as if they were musical works.

The term of copyright, however, is limited to fifty years from the making of the original plate from which the contrivance was derived, directly or indirectly.

The owner of the original plate at the time when it was made is deemed to be the author of the work. Where the owner is a body corporate, it is sufficient, for purposes of residence, for the firm to have established a place of business anywhere in the British dominions where the Act runs. This residential qualification is important. It entitles foreign firms, if incorporated bodies, to protection for their contrivances under the Act, if in business as stated—a protection that they otherwise would not enjoy if they belonged to countries with which we have no reciprocal relations. The United States, by the way, does not afford a similar protection to British owners, though there may be power, by Order, to afford it under sect. 1 (2) of the United States Copyright Act, 1909.

This protection of records, etc., as copyright works means that one firm cannot, as formerly, reproduce at will the records, etc., of another firm. Firms are, under the royalty system, entitled to make contrivances from the same original sources, but they must go to the sources independently. In other words, a maker, if he wants to produce, under royalty, a record of this piece of music

or that song, cannot take advantage of the work of a preceding maker in obtaining the material or in completing the record.

Copyright in old records.

With regard to contrivances made before July 1, 1912, the first maker—using maker in the sense of owner—of a contrivance reproducing a musical work is the owner, to the exclusion of other makers who reproduced the like contrivance. That is to say, the person who on July 1, 1912, is the owner of the plate from which the original contrivance was made has the copyright; and copies subsequently made by other makers become infringing copies, subject to civil or summary proceedings.

The sub-section creating this right—(8)—does not appear to limit a mechanical contrivance to one derived from a musical work. The right is given, in the way stated, "where a record, perforated roll, or other contrivance by means of which sounds may be mechanically produced has been made before the commencement of this Act."

Modified rights for owners of musical works.

Now as to the position of authors or other owners of copyright musical works in relation to the makers of contrivances. Owners of original musical works have copyright, but it is modified in material respects. In the case of works published before July 1, 1912, contrivances may be made by anyone subject to the payment of royalties. In the case of works not published prior to this date, the authors can restrain mechanical reproduction, provided they have not mechanically reproduced or allowed the mechanical reproduction of the works since July 1, 1912. If they have done so, or as soon as they do so, they cannot restrain mechanical reproduction on payment of royalty.

Works published before July 1, 1912.

First, as to works published before July 1, 1912. It must be noted that the words employed in sect. 19 (7) are "musical works published." We are speaking now, therefore, of works published, not works performed but not published. Any copyright musical work published before July 1, 1912, may be mechanically reproduced by records, perforated rolls, and the like without the consent of the owner of the work.

Royalties payable thereon.

No royalty is payable up to July 1, 1913, if contrivances reproducing the same works have been lawfully made, or placed on sale, prior to July 1, 1910, within the British area of the Act. The royalty afterwards on such works is 2½ per cent.

There is a royalty of 2½ per cent. on other contrivances made from musical works published before July 1, 1912, within the same area.

Alterations or omissions from the original works may be made in the mechanical reproductions.

Works after July 1, 1912.

With regard to musical works not adapted to mechanical instruments prior to July 1, 1912, mechanical reproduction is forbidden until such time as the owner of the copyright in a musical work has made or acquiesced in any such reproduction.

If there has been this reproduction, then the person desiring to make mechanical contrivances from a musical work must give a prescribed notice of his intention to make them. Should the owner not reply in the first place to certain prescribed inquiries, which are set out under the Board of Trade regulations summarised below, the applicant is deemed to possess the consent of the owner.

Alterations in, or omissions from, the musical work can only be made provided they have been made in previous contrivances, or unless the owner agrees thereto; or unless the alterations or omissions are reasonably necessary to the mechanical adaptation of the work. The royalties are:—

Royalties payable thereon.

(*a*) For contrivances sold up to July 1, 1914, 2½ per cent.

(*b*) For contrivances sold after July 1, 1914, 5 per cent.

This royalty is on the ordinary retail selling price of the contrivance, with a minimum of ½d. in respect of each separate copyright work. Fractions of ¼d. are reckoned as ¼d.

As to musical works performed but not published before July 1, 1912, the foregoing conditions—in the absence of any provision in the Act to the contrary—apparently apply, instead of the antecedent provisions set out affecting works published before this date.

Touching the provision respecting alterations and omissions (sect. 19 (2) (ii.)), a musical work is deemed to include any words so closely associated therewith as to form part of the same work, but not to include a contrivance by means of which sounds may be mechanically reproduced.

Dramatic and literary works not affected.

These privileges of mechanical reproduction only affect musical works. Literary and dramatic works are exempt, except as far as subsect. (8) may apply to copyright in mechanical contrivances from works prior to July 1, 1912. But words that form an essential part of a musical work may be reproduced in connection with a mechanical contrivance.

Assignment.

An unconditional assignment of copyright in a literary, dramatic, or musical work under the Act includes the rights of an author as to mechanical reproduction. This fact is one to be borne in mind by authors, especially musical composers.

An assignment of copyright in a musical work, made prior to December 16, 1911, does not carry with it these rights. They are given to the author or his legal personal representatives. Any valuable interests covered by the terms of sect. 24 are subject to the terms and conditions laid down in sect. 19.

Joint-owners and royalties.

A contrivance sometimes reproduces the works of two or more different owners. Where that is so, the royalties payable on the contrivance are to be apportioned by agreement amongst the owners or else determined by arbitration.

Foreign musical works.

Further, as to a musical work under this section—19— where the work is a foreign one, on which copyright is conferred by an Order in Council, the rights in respect of mechanical adaptation are dependent on the provision made in the Order.

Article 13 of the Berlin Convention gives the authors of musical works the exclusive right of authorising mechanical adaptation and mechanical reproduction in public; but any Union country can, within its own area, by domestic legislation, make its own reservations and conditions.

The exclusive right under the Convention is not retro-active. The article also says that unauthorised mechanical adaptations imported into a country where they would not be lawful shall be liable to seizure in that country.

The British position as to mechanical contrivances has already been given fully in this article. This position applies within the area of the Act to copyright in mechanical musical instruments and to the rights of owners of copyright musical works from which no mechanical contrivances have been made prior to July 1, 1912—this position applies to owners of musical works and musical contrivances of foreign countries of the Union, with the exception of Denmark, Italy, and Sweden. But it should be noted that the Berlin Convention does not contain any provision specifically giving international copyright protection to mechanical musical contrivances. However, if a work protected under the Convention were based on a contrivance, the right of that work against unauthorised mechanical adaptation might be maintained.

Board of Trade Regulations

Regulations governing the royalty system for mechanical musical instruments have been issued by the Board of Trade.

Prescribed inquiries.

The prescribed inquiries by the person intending to reproduce a musical work mechanically must be directed to the owner of the copyright (by name, if known). The inquiry-form must state the name, etc., of the musical work in question, the name of the person making the inquiries, an allegation that a contrivance has already been made, and an inquiry if this making was with the consent or acquiescence of the owner.

How made and answered.

The inquiries must be made by registered post, if the address of the owner can with reasonable diligence be found, or otherwise be published by advertisement in the *London Gazette*.

The owner of a work already mechanically reproduced must reply to a letter within seven days of delivery of the

inquiries in ordinary course of post, or to an advertisement within seven days of date of advertisement, which one assumes to be that of the paper. Failing reply within seven days, then—sect. 19 (5)—the owner is deemed to have given his consent to the making, provided that the work has already been mechanically reproduced.

Prescribed notice.

A person intending to reproduce a musical work mechanically must give the owner of the copyright notice to that effect. This notice is not covered by the prescribed inquiries. The applicant must state his name and address, the name, etc., of the musical work, the class of contrivance (*i.e.* whether discs, cylinders, rolls), the ordinary retail selling price, and the amount of royalty payable thereon, the earliest date that the work will be on sale, and whether any other musical work is to be reproduced on the same contrivance.

How made and answered.

The notice must be sent by post, or advertised (in brief), not fewer than ten days before the contrivance is on sale. Any number of musical works may be specified in the same advertisement.

These time-limits apply presumptively only to the United Kingdom, though it is not so stated in the regulations. For other parts of the British dominions within the Act they would be inadequate.

Royalties. By (1) arrangement, (2) adhesive stamps.

The parties can agree as to the mode in which royalties are paid and as to time of payment.

In the absence of agreement, adhesive labels, purchased from the owner of the copyright and affixed to the contrivances, must be employed.

Mode as to adhesive stamps.

The owner must supply these labels from a reasonably convenient place in the United Kingdom, which he must name by letter. The money for these labels must be tendered at this address; and labels of the required denominations must, on demand in writing, then be supplied to a corresponding amount, without extra charge.

If within five days after the date of the notification the owner fails to intimate the aforesaid place, or if within a subsequent three days fails to supply the labels on due

demand, the sale of copies of the work only with labels affixed, denoting the amount of royalty, is not compulsory; and the amount of royalties due becomes a debt. An account of all copies sold must be kept.

Character of adhesive stamp.

The adhesive label must be of paper, square in shape, not greater than three-quarter inch, must not bear any effigy, nor suggest a dutiable Government stamp.

Selling price defined.

The price of a contrivance is calculated at the marked or catalogued selling price of single copies to the public, or, in the absence of this price, at the highest price at which single copies are ordinarily sold to the public.

VII

KINEMATOGRAPH WORKS

NONE of these privileges of compulsory royalty, etc., is enjoyed by kinematograph works, which represent interests far larger than those of mechanical musical instruments. The old law was somewhat dubious and naturally incomplete; and it is extremely unfortunate, seeing how vast an industry has sprung up about moving pictures, that new legislation, with the opportunity before it, should not have made proper and full provision. The Act is content to say that a dramatic work "includes" any kinematograph production where the arrangement or acting form, or the combination of incidents represented, gives the work an original character. One is uncertain how far the term original applies to a horse-race, a procession, a ceremony, and a hundred other happenings to which kinematograph art specially addresses itself. It seems absurd, too, to apply the term "dramatic work" to a film showing scenery or dealing prosaically with an educational subject. The reference employed in the Berlin Convention —"kinematograph productions shall be protected as literary or artistic works"—is much less open to objection, especially as under the Convention these works include dramatic works.

Inadequate protection.

As dramatic work.

The implication is that without this original character the kinematograph product is not protected as a dramatic work. If that is true, there remains the film, which is the substantial part of the work. The film can be protected as a photograph or as a plate directly, one imagines;

As photograph.

or, if not, then through photographs from the film or through the negative. Under United States law, the term " photograph " covers all positive prints from photographic negatives, including those from kinematograph films, the entire series being counted as one photograph.

As literary work.

Or, by placing its incidents, scenery, etc., in writing, the film might obtain indirect protection as a literary work. In this respect the United States law gives protection. Descriptions of moving pictures, of settings for the production of moving pictures, and of spectacles are, when printed and published, " books," and are registered as such at Washington.

As to this form of protection under the Act, sect. 1 (2) (*d*) says that copyright in a literary work includes the sole right to make any kinematograph film. Thus in the case in which a film was not a dramatic work, the owner seemingly would, if necessary, be in a position to proceed as the owner of a literary work in which his sole right to make kinematograph productions had been infringed. A piquant position might arise, assuming that two film-makers produced identical films of, say, a prize-fight, and No. 1 film-maker wrote a close literary account of the fight. Would the Courts regard the kinematograph product of film-maker No. 2 as an infringement of the sole right of film-maker No. 1 in the literary work? One supposes not, as film No. 2 would have been independently derived.

Duration of copyright.

As a dramatic or a literary work—the Act says nothing about a kinematographic production as an artistic work—the copyright is for life and fifty years, and the author is the owner. In the case of a photograph, however, the duration is only fifty years from the making of the original negative, and the owner of the negative at the time is deemed to be the author of the work. There appear to be some elements of confusion here, as to duration and ownership. And as to duration, the elderly owner only gives a limited expectation of copyright to any assignee on the basis of the work being a photograph. Suppose the former makes the photograph, assigns it, and dies, all within a

year. The assignee only has the right, under the proviso to sect. 5 (2), for twenty-five years from the death of the author, and thereafter the copyright devolves on the author's legal personal representatives. This contingency in the case of photographs may not have been taken into account when the proviso was added to the Bill. Alternatively, the proviso may not apply—the proviso to sect. 3 evidently does not to photographs and mechanical sound-contrivances. Neither proviso could very well apply to corporate trading bodies as owners.

A film of which copies were issued to the public would be published. But a kinematograph work simply as a dramatic work, in public representation, would be performed; and performance is not in itself publication.

Protection of foreign (non-Union) works.

First publication within the meaning of the Act is required for published photographs. A place of business on the part of a body corporate within the area of the Act meets the requirement of residence as regards unpublished photographs. In the case of a dramatic work there must, in relation to non-reciprocal countries, be publication within the Act not later than fourteen days from publication elsewhere. Performance does not answer the same purpose. Failing this requirement as to publication, the author, if not a British subject, must have been a resident within the British area of the Act or within certain reciprocal countries at the date of making the work. These considerations do not simplify the ambiguous position of kinematograph works.

Under the Berlin Convention, kinematograph works, if of an original character, as defined in article 14, are protected as literary or artistic works. Further, authors have the exclusive right of kinematograph reproduction for their literary, scientific, or artistic works.

Great Britain has for her part agreed to and ratified this article, but certain other countries have not. Therefore in the Order in Council extending the benefits of the 1911 Act to works of foreign Unionist countries, exemptions are in this respect made in the cases of Denmark, Italy, and

Sweden. The exclusive right of the owner of a literary, dramatic, or musical work to make and authorise kinematograph reproductions, and also the right of the owner of an original kinematograph work to copyright, do not apply to works of which the place of origin is Denmark, Italy, or Sweden. Protection can, however, be obtained by first publication here; or by residence of the author in a Unionist country subscribing to article 14 of the Berlin Convention, during the making.

VIII

VARIETY ART COPYRIGHT

WHEN one comes to the—in one sense—lesser subjects of copyright, one realises how deficient and inexplicit some of the terms of the Act are. In speaking of the lesser subjects of copyright, one has chiefly in mind the materials of variety entertainment, though of course there are other sorts. The variety artist will perhaps be puzzled to know how his turn is protected. It is a fact that under the Act it has not only a longer but a much wider protection than before, but the fact wants a good deal of piecing together. The old law protected anything that was a dramatic piece; it also protected a musical piece amply if the words and music received printed publication. But recent decisions seriously restricted the meaning of the term "dramatic piece." It was held that pieces of the kind of *The Mumming Birds* were not dramatic pieces. An entertainment in dumb-show was not a dramatic piece. Then there was the decision in Tate *v.* Fullbrook, with regard to *Motoring* and *Astronomy*. The Appeal Court held that a piece might bear resemblance to another piece and yet not infringe the playright in the latter. The law, in short, has been extremely loose and inadequate, with a consequence that the piracy and plagiarism in connection with variety entertainments have reached proportions perhaps approached nowhere else. Jokes are filched, patter and gags stolen, business copied. The law has also been very weak on the subject of parodies and imitations. There are numberless per-

Improvement on old law.

formers, especially at minor entertainments, who get the cream of the material of the most popular turns in this way.

The new Act, as has been said, takes no specific account of gag, patter, business, parody, imitation, or the like. But some relief is afforded under the term "dramatic work," which is made to include "any piece for recitation, choregraphic work or entertainment in dumb-show, the scenic arrangement or acting form of which is fixed in writing or otherwise." The meaning to which the term of "dramatic piece" had been narrowed down in the cases mentioned is thus considerably changed. A piece for

Recitation.

recitation does not necessarily require any scenic arrangement or acting form; therefore all recitations need not apparently be fixed in writing or otherwise. But an entertainment in dumb-show must be; a ballet must be. The dumb-show entertainment need not be a play, nor the ballet a dramatic one. Any entertainment in dumb-show, assuming it to be original in character, or not made up of mere commonplaces of knockabout business, without freshness of arrangement, is entitled to protection, if put down in writing, or, say, "fixed" by means of a kinematograph film. The Courts may of course circumscribe this very free definition, holding that the dumb-show must be reasonably consistent with a dramatic work. But, as it stands, the definition says nothing about any dramatic

Dumb-show and dancing.

character or connected interest in the dumb-show. So, too, about the choregraphic work, which is a big name that may also cover any little dance showing invention and skill in its arrangement. Strictly, a choregraphic work is a work representing dancing by signs, as singing is represented by notes, but the intention of the clause is of course to protect the actual dancing performance.

Similarly, if we go to the dictionary, a recitation means delivering to an audience, as a display of elocution, a piece committed to memory. Exactly what recitation means in the Act the Courts will have to decide.

"Business," gag, and patter.

As far as the term "dramatic work" goes, therefore, it is not clear at present that an artist's "business" is

protected as an entertainment in dumb-show, nor that gag or patter is covered by the word "recitation," which is probably used in the ordinary sense.

As a literary work.

But the term "literary work" remains; and under it variety art ought to secure a good deal of fresh protection. The only "interpretation" of literary work that we get in the Act is that the term includes "maps, charts, plans, tables, and compilations," which is not particularly helpful. A piece of patter is conceivably as much a literary work as a table or a chart; and there is even hope on this assumption for original jokes and gags. The maker of a joke—it is not incumbent on him to comply with any formalities, beyond perhaps writing it down, for a literary work, one imagines, is philologically a work expressed in letters—then enjoys amongst other things the sole right to produce or reproduce the work [*i.e.* joke] or any substantial part thereof in any material form whatsoever; to perform the work or any substantial part thereof in public; if the work is unpublished to publish the work, and the sole right . . . to convert it into a dramatic work, if it is a non-dramatic work. One rather trembles for the gaiety of nations, if there should be a close time for jokes to this extent. Seriously, what is important to the variety artist is the fact that a literary work enjoys, in common with a dramatic work, the sole right of performance in public and that this right includes "any acoustic representation," which means anything that can be heard, and also any visual representation—anything that can be seen, though the visual representation is limited to any dramatic action in the work.

Right of performance.

Put in writing.

It follows that where a turn is one that is spoken, the artist should reduce the whole of the spoken matter to writing, and should fully describe in writing all business, scenery, costume, etc., that belong to the turn. A dumb-show turn, whether dramatic, dancing, or acrobatic, should also be set down in detail in writing.

The name and address of author or other owner should appear on the title page. The written matter should be

dated. It is also well to have it typewritten, with the pages stamped with the stamp of the typewriting firm.

Musical works.

A copyright song or other musical work is protected in its original words or music, or both, as the case may be.

Gramophone reproductions.

As far as reproduction on mechanical instruments, such as gramophones, is concerned, an artist owning copyright in a musical work will not be able to restrain reproduction—on royalty—if he has once consented to the adaptation of the work, for sale, to such instrument. The artist, if he does not hold the full copyright, including the mechanical-instrument rights—which go with the copyright if there is no condition to the contrary—cannot prevent the rendering of the work by these instruments.

Scenes and designs.

Stage scenes are protected as artistic works. Designs are also protected, provided they are not used or intended to be used as models or patterns, to be multiplied by an industrial process. In the latter case they come under the Patents and Designs Act, and can be registered thereunder in the way described in the sections from the Act appearing in the Appendix; but this is a matter not greatly affecting variety artists. A costume party is protected in original designs for dresses and *mise-en-scène*. For its title it will have to depend on the right of user. That is to say, if the title is original in its application, the first user can restrain the similar use of it by others if the use is damaging to him in this respect.

Costume party.

Right of user.

Pictures.

A copyright picture may not be reproduced in public by way of *tableaux vivants* or living pictures.

Infringment of a dramatic, musical, or literary work means, amongst other things, taking without authority the work or a substantial or vital part of the work.

A substantial part.

Considerable passages must not be reproduced or colourably imitated. A few passages no doubt may be, if they have no special bearing on the piece. Commonplace business, incidents, gag, and make-up may be reproduced or imitated, if without originality of arrangement, but substantial or material parts of the general dramatic action

or the chief scenes and situations may not be used, provided they possess a reasonable amount of freshness or invention and skill in arrangement.

A parody or burlesque, having invention and skill of its own, is not an infringement of the copyright work on which it is based. There is infringement if an unfair use of material parts of the original work is made, injurious to the latter. **Parodies.**

An imitation of an artist, using substantial portions of his work, if a copyright work, is an infringement, particularly if portions of his words or music are taken. **Imitations.**

Generally speaking, mere trivial, familiar, inconsequent stage material, almost common property, is unlikely to be granted protection as copyright matter by the Courts, unless, by treatment or otherwise, the material has been invested, to a reasonable extent, with qualities that can be said to distinguish the work substantially from the general run.

IX

OVER-SEAS DOMINIONS

List of British dominions.

THE Act extends to the British dominions, colonies, and possessions, with the exception of the self-governing dominions, which have not adopted it, and will probably rely on their own legislation, which, if granting adequate protection, will be accepted under sect. 26, in return for the benefits of the Act in those parts of the dominions to which the Act extends.

Apart from those daughter states, as the self-governing dominions may be called, there are affected the colonies with representative government, crown colonies, protectorates, and those portions of the Indian Empire known as British India.

The dominions beyond the seas include—

EUROPE.

Isle of Man.
Channel Islands.
Cyprus.
Malta and Gozo.
Gibraltar.

ASIA.

Indian Empire.
Ceylon.
Straits Settlements.
Federated Malay States.
Hong Kong.
Wei-hai-wei.
North Borneo.
Brunei.
Sarawak.

AFRICA.[1]

Cape Colony. } South African Union.
Natal. } South African Union.
Transvaal } South African Union.
Orange Free State } South African Union.
Basutoland.
Bechuanaland.
Rhodesia.
Nyasaland Protectorate.
Gambia.
Gold Coast.
Sierra Leone.
Northern Nigeria.
Southern Nigeria.
Somaliland.
East Africa.
Uganda.

[1] The "occupied" Ottoman province of Egypt and the Anglo-Egyptian Sudan are not included here. British and other foreign authors are protected in the Mixed and Consular Courts.

AFRICA—*continued.*

Zanzibar.
Nyasaland.
Mauritius.
Seychelles.
Ascension.
Falkland Islands.
South Georgia.
St Helena.

AMERICA.

Ontario.	Dominion of Canada.
Quebec.	
Nova Scotia.	
New Brunswick.	
Prince Edward Island.	
British Columbia.	
Manitoba.	
Alberta.	
Saskatchewan.	
North-West Territories.	
Newfoundland.	
Jamaica.	
Bahamas.	

AMERICA—*continued.*

Leeward Islands.
Windward Islands.
Barbados.
Trinidad and Tobago.
British Guiana.
British Honduras.
Bermuda.

OCEANIA.

New South Wales.	Commonwealth of Australia
Victoria.	
South Australia.	
Queensland.	
Tasmania.	
Western Australia.	
Commonwealth Territory.	
British New Guinea.	
New Zealand.	
Fiji.	
Papua.	
Pacific Islands.	

Protectorates under the Act.

By an Order in Council, dated June 24, 1912,[1] the Act is extended without reservations to the following territories under Imperial protection:—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 Wei-hai-wei. The Act is also, by the same Order, extended to Cyprus.

All dominions, except self-governing, under the Act.

A further Order [2] of the same date extends the Act to all the British dominions, colonies, and possessions, except the self-governing dominions mentioned therein.

[1] See p. 147, *post.*
[2] See p. 148, *post.*

Existing interests not prejudiced.

The Order does not affect prejudicially any right previously acquired or accrued.

Local modifications.

A British possession under the Act may, by its own laws, vary the provisions as to procedure and as to remedies for infringement, etc., within the possession. It may do so in these respects in relation to all works in which the Act gives copyright that come into the possession. Other modifications of or additions to the Act by the legislature of a possession can apply only to (1) works of residents of the possession at the time of the making; and (2) works first published in the possession.

Power to except a possession.

A possession may, by an Order in Council, be excepted at any time from Part II. of the Act, but any right acquired prior to the Order will not be prejudiced.

Position of self-governing dominions.

The self-governing dominions that have not adopted the Act, and have also not been joined to the Berlin Convention in connection with Great Britain and the remainder of her dominions, are—

The Dominion of Canada.
The Commonwealth of Australia.
The Dominion of New Zealand.
The Union of South Africa.
Newfoundland.

For the time being, therefore, the conditions of the old law apply. The Order [1] says that the necessary repeal of Acts only applies to those dominions to which the 1911 Act extends. The Act itself says that the Acts in question, as far as they are operative in self-governing dominions, shall continue in force until repealed by the dominions respectively concerned. Thus, to this extent, the Act of 1842 (5 & 6 Vict. c. 45) and other Acts, in conjunction with the International Copyright Acts, 1844 to 1886, and Orders in Council thereunder, remain unrepealed. It is a position of considerable complication, aggravated by the fact that Acts passed by legislatures of certain dominions are not without conflict with Imperial law. There are the different periods of duration of copyright under the old

[1] See p. 148, *post*.

law and the new, and vexed questions relating to imported copies, and other matters. With regard to foreign works within the Union, the Berne Convention and the Additional Act of 1896 apply, pending legislation on the part of the self-governing dominions, though there are local Acts that are in some respects at variance with these instruments; and the Austro-Hungarian Treaty does not extend in all cases to the self-governing dominions.

New legislation preparing.

These dominions are, in a somewhat leisurely way, preparing new legislation.

Canadian Copyright Bill.

The Canadian Copyright Bill is a case in point. The text of the Bill removes some recent fears that Canada was about to repudiate not merely international but also Imperial copyright. The Bill provides that the Governor in Council may direct by Order in Council that "the Act shall apply to literary, dramatic, musical, and artistic works, the authors whereof were at the time of the making of the work *bonâ fide* residents in a part of His Majesty's dominions, other than Canada, to which the Order relates, or British subjects resident elsewhere than in Canada." The provisions are complementary to other provisions that say that, except in so far as the protection conferred by the Bill is extended by Order in Council thereunder, copyright shall subsist only in works of which the authors are *bonâ fide* residents of Canada, and of which the copies published in Canada shall have been printed or made in that country.

International copyright is provided for on the same lines—that is, by an Order in Council.

In each case it is stipulated that the Governor in Council shall be satisfied that the part of the British dominions or the foreign country desiring protection under the Bill makes reciprocal provision for the authors of Canadian works. It is true that these powers are permissive in form. The Governor in Council *may*, by Order in Council, grant—not *shall* grant. But this conditional wording arises from the peculiar circumstances of the case. Not one part of the British dominions has to be considered, but various parts, some self-governing; not one foreign

country ; not the countries of the Berlin Convention only, but other countries, and the United States and other American countries especially. The same permissive form is adopted in relation to self-governing dominions and foreign countries in our Copyright Act. With our Act, indeed, the Canadian Bill has a great deal in common. The latter has, in fact, as far as possible, been based on the former. In many places the text is the same.

Compulsory license at any time.

But there are exceptions, and certain of these exceptions are important. There is, in particular, as has been noted, a somewhat disturbing extension of the principle of the compulsory license. This principle is not, as seems generally to be supposed, new to our copyright laws. The Act of 1842 authorised the Judicial Committee of the Privy Council to grant licenses to applicants to publish a copyright book in such manner and subject to such conditions as they thought fit if after the death of the author the book was withheld from the public by the proprietor.

The serious thing about the Canadian Bill is that the compulsory license may come into operation at any time after publication. Any time after performance in public is included ; hence plays are brought in, which seems specially unreasonable, as performance is not held to be publication under the Bill.

After a work has been published or been performed in public, a petition may be presented to the Minister acting under this section by any person interested, alleging that the work has been withheld from the public, or that the price charged for copies of the work or for the right to perform it in public is such that the reasonable requirements of the public are not met, and praying for the grant of a license to reproduce the work or perform it in public. The Minister, if after inquiry he is satisfied that the allegations contained are correct, and if within a reasonable time no remedy is provided by the owner of the copyright, may grant to the petitioner a license to reproduce or to perform the work in public in Canada. The terms as regards price and payment of royalties to the owner of

the copyright in the work, and otherwise, are fixed as the Minister thinks fit.

The only satisfaction here for authors and publishers is that the work will not be reproduced in this way without payment. The Bill, however, shows a bad principle carried to an extreme length.

Licenses and imported copies.

The security of copyright is also hampered by some drastic and unwieldy provisions affecting the importation of copies—made out of Canada—of a work in which copyright subsists under the Bill.

Such copies, except as otherwise provided, may not be imported into Canada, and shall be deemed to be included in Schedule C to the Customs Tariff, and that schedule shall apply accordingly.

In the case of a copyright book published in any part of His Majesty's dominions, other than Canada, the owner of the copyright may grant a license to reproduce in Canada—from movable or other types, or from stereotype plates, or from electroplates, or from lithographic stones, or by any process for facsimile reproduction—an edition or editions of the book designed for sale only in Canada. In the event of that license the Minister can prohibit the importation into Canada, except with the written consent of the licensee, of any copies of the book printed elsewhere.

The Minister may at any time suspend or revoke his prohibition upon importation if it is proved to his satisfaction that (*a*) the license to reproduce in Canada has terminated or expired; or (*b*) the reasonable demand for the book in Canada is not sufficiently met without importation; or (*c*) the book is not being suitably printed or published, etc.

A licensee for his part must supply to any person resident or being in Canada, a copy of any edition of the book on sale and reasonably obtainable in the United Kingdom or other part of the British dominions. In such circumstances he must import and sell this copy to the person applying for it, at the ordinary selling price, with the duty and forwarding charges added.

Thus, in the interests of Canadian printing and publishing, the right of importation by British publishers as regards Canadian copyrights is ingeniously—and surely a little Pharisaically—reduced to a minimum.

This Bill may be taken as a fair indication of the terms which the self-governing dominions will offer as a *quid pro quo* for the benefits of the 1911 Act.

X

INTERNATIONAL COPYRIGHT

The present international grouping.

INTERNATIONAL copyright is variform and complex. The Berlin Conference of 1908 has, in some respects, not improved matters. It was the amiable purpose of the Conference to enlarge the Union, and as far as possible to make uniform the working basis of agreement amongst the signatory countries. Great Britain went with considerable misgivings to the Conference. At the second sitting, on October 15, 1908, in a formal declaration, the late Sir Henry Bergne, speaking for the British Government, said that it must be stated at the outset that "assent by the British delegates to any amendment or to a revised text of the [Berne] Convention does not imply that Great Britain will be able eventually to adhere and give effect to such amendment or revised Convention." It turns out, however, that Great Britain, with perhaps the most difficulties in the way, has—apart from her self-governing dominions--been able to ratify the Berlin Convention with but a single reservation; whereas other countries, with the principal exceptions of Germany, Belgium, Spain, and Portugal, have either ratified with reservations or not ratified at all. The consequence is that—while in the upshot Great Britain has improved her own copyright law, freeing it from some absurd anomalies, making good many deficiencies, and consolidating it—the Union as a whole has now less consistency than it had before. Some countries come completely under the Berlin Convention; some rely jointly on it and the Berne Convention and the Additional Act and Declaration of 1896; and others

remain under the Berne Convention and the Additional Act and Declaration, or the Berne Convention and the Declaration. The States to the Berne Convention numbered 16, of whom 13 have ratified the Berlin Convention; as has also a newcomer, in the republic of Portugal — the latter only out of 21 non-Union States attending the Conference. The Austro-Hungarian Monarchy regulates its international copyright affairs by separate treaties. South American and Central American States are under Conventions of their own, which are not accepted by Great Britain, but are by other countries of the Union. Here, in brief, is the present situation; and like other international politics, it is sufficiently tangled.

Aims of Berlin Conference.

The Berlin Conference, held in October and November 1908, aimed at a revised Convention amongst other things (1) dispensing with formalities, (2) making uniform as far as possible the period of protection; (3) supplementing the subsisting measure of protection in various ways; and (4) revising and clarifying the old text as far as it was employed. Generally the Conference succeeded in these purposes, but as all the Unionist countries have not ratified the Convention, the uniform working that had been hoped for at Berlin is for the present not possible—even amongst the countries adhering to the Convention the period of copyright protection varies—and thus two objects of the Convention are affected, the waiving of formalities and the means of governing the extent of protection.

Countries ratifying the Berlin Convention.

The countries that have ratified the Berlin Convention are—

Belgium.
France.
Germany.
Great Britain (not for self-governing dominions).
Hayti.
Japan.
Liberia.
Luxembourg.
Monaco.

Norway.
Portugal.
Spain.
Switzerland.
Tunis.

Reservations.

The countries that have made reservations in connection with certain articles are—

Great Britain.
France.
Tunis.
Japan.
Norway.

Great Britain: (1) Retrospective effect.

The reservation on the part of Great Britain relates to article 18, in lieu of which the analogous article 14 and paragraph 4 of the Final Protocol of the Berne Convention remain in force for this country. Great Britain perhaps was influenced in not ratifying this article by the protection that we have given to mechanical sound-contrivances, certain of which, though they were in the public domain, have by a retrospective measure been given copyright as musical works.

(2) Right of translation.

It is noteworthy, too, that in the Order in Council of June 24, 1912, relating to the Berlin Convention, it is provided that nothing in the provisions of the Copyright Act 1911 as applied to existing works is construed as reviving any right to prevent the production or the importation of a translation in a case where the right has ceased, by virtue of sect. 5 of the International Copyright Act, 1886, which imposes a limited protection of ten years in the absence of certain conditions. Broadly, a foreign work already open to translation within the area of the Act cannot be reprotected. This provision is in accordance with sect. 29 (1) (vi.) of the Copyright Act, 1911. This subsection specifies translation, but not adaptation, and it is perhaps not absolutely certain that the latter is covered by the section of the 1886 Act.

How the ten-years proviso operated.

This matter of translating right is of particular interest to dramatic authors. According to English law as it was

before the 1911 Act, a foreign Unionist author must, within ten years from the end of the first year of the production of his work, protect his English right of exclusive translation by publishing a translation in that language in a country of the Union. If the translation was in the form of a play, he could protect himself by either performance or printed publication. Public performance of the original work—if a play—in the country of origin counted, in the eyes of the English law, as publication. That is to say, if the piece was first given in a place of public entertainment, the ten years began to run therefrom. Failing to print or perform a translation in English within the ten years, the author lost his exclusive right, and anyone could make an English translation.

In these remarks, however, the translation should be distinguished from the original. For example, a French play not in the common domain, assuming it had been given by its owner in London for the first time on any stage, ranked as an English production, irrespective of the nationality of the author, and was entitled to the protection accorded to a native work. Again, while the French piece was free for translation and performance in accordance with international law—which, however, would not, I think, have affected the exclusive right of translation in Great Britain—after ten years in the circumstances explained, the piece itself still retained its rights in its original form and was duly protected in that form.

Works in the common domain.

Notwithstanding the safeguards of which authors could avail themselves, innumerable works have, in their translating right, fallen into the common domain as far as Great Britain is concerned, especially plays, for a foreign play simply performed in a foreign Unionist country was not covered with us by the Declaration of Paris, to which Great Britain was not a party.

Existing works are works already in existence on July 1, 1912. Thus works in foreign languages first given publication by printing or performance in foreign Unionist

countries prior to January 1, 1902, without the necessary translation by the owner within that date, are free for translation purposes under the 1911 Act.

The question of adaptations.

In Gandillot *v.* Edwardes it was argued for the plaintiff, when in a tight place over the ten-years proviso that, while a translation was governed by the proviso, an adaptation was not. The contention was that the ten-years limit did not operate in the latter case, and the sole right to adapt remained with the author for the full periods of protection allowed by the different countries.

This issue was left undetermined, as the case was settled out of Court. But it seems only logical to suppose that, in speaking of translations in general terms, the intention was to cover the lesser by the greater. Why say that the actual work may, in translation, become free in certain circumstances, yet restrain a foreign adaptation, in which independent skill and invention have been exercised? In the unlikely event of this contention holding good, while translations of works prior to January 1, 1902, would be permissible, as already stated, adaptations would be protected for the same periods as the original works.

This view as to the effect of the old modified translating right in relation to foreign works already in existence on July 1, 1912, is simply an individual one. Our Courts of course have not yet had an opportunity of pronouncing on the subject, nor has it been otherwise discussed. But M. M. R. Comtesse—to whom I am indebted for placing at disposal the facilities of the International Bureau of the Union at Berne—has been good enough to express an opinion on the subject. The accomplished Director of the Bureau, who is eminently versed in the intricacies of international copyright, says:—"Comme vous, nous admettons que la Grande-Bretagne, en adhérant à la Convention de Berne revisée du 13 novembre 1908, conformément à l'ordonnance en conseil du 24 juin 1912, a voulu exclure tout effet rétroactif du nouvel article 8 de ladite Convention (protection complète du droit de traduction, à l'égal du droit de reproduction) par rapport aux œuvres

parues il y a plus dix ans et pour lesquelles aucune traduction autorisée en *anglais* (v. loi du 25 juin 1886, art. 5, no. 2) n'aura été publiée dans ces dix dernières années. Lorsque le droit de traduction reconnu sous l'ancien régime unioniste est perdu à la suite du non usage du droit la langue anglaise dans les dix ans à compter de la fin de l'année de la première production de l'œuvre, ce droit ne renaît plus. Afin de ne laisser aucun doute sur cette restriction la Grande-Bretagne, en adhérant à la Convention de Berne revisée, a formulé la réserve qu-au lieu d'accepter l'article 18 de ladite Convention, le Gouvernement de S. M. B. entend rester lié par l'article 14 de la Convention de Berne de 1886 et le no. 4 Protocole de clôture amendé par l'Acte additionnel de 1896."

Reservations by foreign countries.

Getting back to the reservations made to the Berlin Convention, Norway remains under article 14 of the Berne Convention on the subject of retrospective effect; France and Tunis do so in relation to works of art applied to industrial purposes (article 5 as amended by the Additional Act); Japan does so as to the translating right and also as to notification of performing right on published musical works; and Norway further adheres to the Berne Convention in the cases of newspaper and magazine articles (article 7) and works of architecture (article 4).

Countries not ratifying Berlin Convention.

It will be convenient now to take in the Unionist countries that have not so far ratified the Berlin Convention. They are—

Denmark.[1]
Italy.
Sweden.

Corresponding limited rights:

These countries continue, therefore, as they were—Denmark and Italy under the Berne Convention and Paris Amendments, and Sweden under the Convention and the Declaration. Some of the consequences are seen in the discriminations made against Denmark, Italy, and Sweden in the Order in Council of June 24 last.

Fortunately there is little complication arising from the

[1] Denmark has been waiting for her new copyright law, which came into force in July, 1912.

actual copyright period in those countries, where it is either equal to or over the term of life or fifty years—though of Italy's eighty years after first publication the latter moiety is not absolute in the case of books (including printed plays).

(1) Conditions and formalities.

These three countries, however, in accordance with the basis of the Berne Convention, secure their British rights only if the conditions and formalities prescribed by the country of origin of a work have been accomplished. As a result, the author of a work must, in prosecuting his claims here, prove his title to copyright in the Unionist country of first publication.

(2) New subjects of copyright.

These countries also do not obtain protection for new subjects of copyright, such as mechanical musical contrivances and kinematograph products, nor the improved protection given to other copyright subjects. Thus, the owner of a dramatic, musical, or literary work of which the country of origin is Denmark, Italy, or Sweden has no exclusive British right of making kinematograph products, nor the rights obtaining in respect of mechanical musical contrivances.

(3) Right of translation.

Further, the exclusive right of translation in a dramatic or literary work is subject to the ten-years proviso.

Japanese works are also subject to this proviso, as Japan still adheres to the Berne Convention in this matter.

(4) Notification of performing right.—

In addition, a published musical work having Denmark, Italy, or Sweden as country of origin must expressly forbid performance in public.

Japanese musical works must bear the same notification.

Danish, Italian, Swedish, and Japanese musical works will, therefore, to prevent unauthorised performances within the area of the Act, have to bear this notification.

But note

The absence of the notification from the musical works of other countries must not of course be taken as giving liberty to perform. Such works, if copyright, will be protected without notification. Performers of musical works must be careful not to be misled by this superficially-contradictive state of things.

(5) Newspaper and magazine articles.

In the case of any newspaper or magazine article of which the country of origin is Denmark, Italy, or Sweden, the right to prevent the reproduction of the article (either in the original language or in a translation) with an indication of the source is conditional upon reproduction being forbidden by express declaration in a conspicuous part of the newspaper or magazine in which the article is published.

This stipulation also applies to Norwegian newspaper and magazine articles.

Newspaper articles under Berlin Convention.

There is a somewhat similar stipulation in the case of certain countries under the Berlin Convention. The countries are Belgium, France, Germany and the German Protectorates, Hayti, Liberia, Luxembourg, Monaco, Portugal, Spain, Switzerland, and Tunis.

If, in the case of any newspaper article in one of these countries, reproduction is not expressly forbidden in a conspicuous part of the newspaper, then the article may be printed in another newspaper published within the area of the Act. The source must be indicated.

Dramatic works, serial stories, tales, etc., printed in a newspaper or a magazine do not come under this liberty. They must not be reproduced without the consent of the authors, nor translated, nor adapted unless given the character of original works.

Austria-Hungary

Austria-Hungary, under her treaty with Great Britain, is not subject to the same discriminations as those already mentioned against Denmark, Italy, and Sweden, with the exception that the ten-years proviso applies in the case of the translating right. Austro-Hungarian musical works, kinematograph works, and mechanical-musical contrivances enjoy all rights conferred by the Act, subject to the stipulation that the conditions and formalities of the country of origin have been accomplished.

The terms of copyright for Austro-Hungarian works are, as required by the Act, governed by those conferred by the Austro-Hungarian laws, *i.e.* life and thirty years in Austria, and life and fifty years in Hungary.

Scope of Berlin Convention: (1) Benefits.

With the reservations already made, authors of the foreign countries of the Copyright Union enjoy for their works within the area of the Act—apart from the term of copyright—substantially the same benefits as natives. Our authors enjoy similar benefits in the foreign countries in question. Further, the authors of all the Unionist countries enjoy the rights specially granted by the Convention.

(2) Duration

The term of copyright does not exceed the term conferred by the country of origin of the work. But article 19 says rather cryptically that the provisions of the Convention shall not prevent a claim for the application of any wider provisions that may be made by the legislation of any country in favour of foreigners generally.

Definitions.— (1) Country of origin.

The country of origin is defined as (1), in the case of unpublished works, the country to which the author belongs; and (2), in the case of published works, the country of first publication.

When works are published simultaneously in several countries of the Union, the term is that of the country granting the shortest term. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country is deemed to be exclusively the country of origin.

(2) Published and unpublished works.

By published works are meant, for the purposes of the Berlin Convention, works of which copies have been issued to the public. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture do not constitute publication. Under the Berne Convention and Paris Amendments, published works mean works of which copies have been issued from the press to the public.

Terms in countries of the Union.

The following are the principal terms of copyright in the foreign countries of the Union :—

Life and eighty years—Spain.

Life and fifty years—Belgium, Denmark, France, Luxembourg, Monaco, Norway, Portugal, Sweden (for playright life and thirty years), Tunis.

Life and thirty years—Germany, Japan, Liberia, Switzerland.

Life and that of widow; or life and twenty years in favour of children; or life and ten years in favour of other heirs—Hayti.

Life or forty years first from publication, whichever is the longer; with enjoyment of 5 per cent. royalty for a further forty years. This double term is for books (including printed plays). Playright is for eighty years from first performance or publication—Italy.

How want of uniformity affects procedure.

Uniformity of the term amongst the different countries—or at least that the term shall not fall short of life and fifty years—is necessary for the full purpose of the Berlin Convention. Article 4 sets forth that not merely the means of redress secured to the author to safeguard his rights, but also the extent of protection, shall be governed exclusively by the laws of each country where protection is claimed. Until this uniformity is reached, the term of copyright is regulated by the law of the country where protection is claimed, and, as stated, must not exceed the term fixed in the country of origin of the work. Therefore in a foreign court a plaintiff is obliged to prove the law as to duration of copyright in the country of origin.

For photographic works and the like, posthumous works, anonymous or pseudonymous works, the term of protection is left by the Convention to be regulated by the law of the country where protection is claimed. But the term must not exceed the term fixed in the country of origin.

Improved procedure.

In other respects the Convention simplifies the procedure of the author. He is no longer under the necessity—imposed by the Berne Convention—of producing in a foreign court the evidence required to prove his title to copyright in the Unionist country in which the work was first produced.

Exclusive translating right.

Under the Berlin Convention the exclusive right of making or authorising a translation of a work belongs to the author, and lasts for the whole term of copyright enjoyed by the original work in the country in which protection is claimed. The ten-years stipulation dis-

appears. This provision, in relation to the 1911 Act, comes into force from June 14 last.

Any original work protected under the Berne Convention and Additional Act, and published or performed not earlier than 1902, obtains this new measure of protection with us.

Berlin Convention in force from June 14, 1912.

Up to June 13, 1912, the Berne Convention and the Additional Act remained in force for Great Britain. On June 14, the Berlin Convention came into force instead, except for the self-governing dominions not adopting the Act, which can make their own laws for their respective countries as to the treatment of international copyright.

Countries outside the Union.

The countries outside the Union—not reckoning Austria-Hungary, which has its own treaties—include:

Argentine Republic.
Bolivia.
Brazil.
Bulgaria.
Chili.
China.[1]
Columbia.
Costa Rica.
Cuba.
Dominican Republic.
Ecuador.
Egypt.[1]
Finland.
Greece.
Guatemala.
Holland and Dutch Indies.
Honduras.
Mexico.
Montenegro.
Nicaragua.
Panama.
Paraguay.
Persia.
Peru.

[1] Protection for foreign authors in the Consular Courts.

Roumania.
Russia.
Salvador.
San Marino.
Servia.
Siam.
Turkey.[1]
United States.
Uruguay.
Venezuela.

United States and other American countries.

Of these countries the most important from the point of view of British authors is of course the United States of America, whose case is dealt with in a separate chapter. The Central and the South American States have Conventions of their own.[2] The Conventions are not accepted by Great Britain; and protection can only be secured by complying with the copyright formalities of those States; or in certain cases by assignment or by first publication (that is, issued from the press) in countries—France, for example—that, unlike ourselves, are parties to the Monte Video Convention, as far as the Argentine Republic and Paraguay are concerned, an arrangement that in certain circumstances secures protection in the other countries that are parties to the Convention. There appears to be no protection for unpublished works under the Monte Video Convention, but in some of the countries or States such works in manuscript enjoy common law and other rights.

European and other countries.

The only non-Union States with which we have treaties are those of the Austro-Hungarian Monarchy.

Russia has a copyright term of life and fifty years. She is said to be meditating adhesion to the Union.[3] Holland will join at the end of 1912. The present Dutch law is very niggardly and exacting in the case of playright. Playright in a printed play lasts only ten years, and

[1] Protection for foreign authors in the Consular Courts.

[2] See Buenos Ayres Convention, p. 95 *post*.

[3] Russia has signed a Convention with France, under which a work first published in the latter country is protected in the former, irrespective of the nationality of the author.

the printing must be done in the country. If the play is not printed, playright is for life and thirty years, but the author must be domiciled in Holland. The proposed new law, which now only awaits the approval of the First Chamber, provides a copyright period of life plus fifty years, except for a proviso as to translations. Columbia, with its manuscript copies, and life and eighty years for the period of protection, has a liberal system, the international question apart. Columbia has, like Costa Rica, an odd provision that if a play has not been registered within a year of first performance the work becomes public property for ten years, but will then be restored to the author or his assigns on registration within a year. Ten years is a heavy penalty, but is preferable to total forfeiture. Why, indeed, should an author be penalised in so drastic a manner as forfeiture of rights for faults in procedure or even for first publication in a non-reciprocal country ?

Forfeiture of Rights

First publication outside the Act.

Yet so it is; and the new Act maintains the policy. Thus a home author first publishing his work in a foreign country with which we have no reciprocal copyright relations, or in a self-governing British dominion similarly placed in this respect, loses the British copyright that he already possessed in his unpublished work.

But a home author may have his play performed in a non-reciprocal country without this penalty of loss of rights under the Act. Dramatic authors will be thankful for this latter concession ; but why should our authors of books not enjoy the same immunity ? Why should they be penalised because of the copyright shortcomings of other countries ?

First publication within the Act.

Oddly enough, the Act reverses the position in the case of an author of a non-reciprocal country first publishing here. If he gives his book first publication in this country he is protected (subject, if he is not resident in His Majesty's dominions, to the extreme measure of an Order in Council cutting off a country from any protection under the Act). But his play is not protected unless

given first printed publication within a part of His Majesty's dominions to which the Act extends or in a reciprocal country. The Act and the Order in Council provide that copyright shall subsist in those portions of His Majesty's dominions to which the Act applies and in those countries to which the benefits of the Act are extended, 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 or in one of the countries in question; 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 was resident or domiciled within such parts of His Majesty's dominions or in one of the foreign countries in question; but in no other works, except as otherwise provided.

Well, in this position, the resident of a non-conforming dominion cannot obtain the benefit of first publication—that is, the benefit of copyright—by acting his piece in a part of the British dominions to which the Act extends. Performance is not publication, and the resident in question has no protection under the Act for his unpublished play unless he meets the condition as to making. It may be said that he has the protection as a British subject or as a resident in the dominion in question, but this right is in the circumstances voided by sect. 26 (3).

Temporarily, the resident of a self-governing dominion is protected under the old Imperial law, which holds good for the dominions until they adopt the 1911 Act or repeal the old law as it bears on the respective dominions.

An American Dilemma

Performance no protection.

This stipulation that the author of an unpublished work must, for the purposes of the Act, be a British subject or a resident within the area of the Act or of the international extensions at the time of making is a serious one for playwrights of non-reciprocal foreign countries. The United States is especially concerned. Let us suppose that Mr

Charles Frohman, as he often does, performs in London a play by an American author, who wrote it, say, in New York. It is an unpublished work, and the author is without the specified British qualifications. It must be repeated that no author has common law rights in his unpublished work. He is not entitled to copyright or any similar right except under this Act or other statutory enactment for the time being in force. In the United States the British author performing his unpublished play is protected at common law; or he can file a copy of his work at Washington and come under statutory protection. It seems unreasonable for us not to give to first performance a benefit equivalent to that given to first publication.

A dubious section.

However, this latter benefit is perhaps extended with a certain reluctance, and is contingent. Sect. 23 says that by Order in Council authors who are subjects or citizens of foreign countries, and not resident in His Majesty's dominions, may, if such countries do not accord adequate protection to British authors, be deprived of the benefit derived from the foregoing first publication.

The power given here is in conflict with provisions of the Berlin Convention, adopted by means of the Order in Council of June 24, 1912, which is construed as forming part of the Act. According to article 6 of the Convention, such foreign authors, if they first publish their work in one of the countries of the Union, enjoy in that country the same rights as native authors, as well as in the other countries the rights granted by the Convention. It is true that a signatory State may declare that it desires to remain bound, as regards any specific point, by the provisions of the Conventions which it has previously signed, but even then, article 3 of the Berne Convention, as amended by the Additional Act of 1896, has to be met. Great Britain has made no reservations on the subject of article 6.

It is conceivable that the changed attitude of Great Britain in the treatment of performance may rouse the ire of the United States. Our present relations, as far as they go in copyright, are brought about by the American

proclamation of April 9, 1910, which, subject to the manufacturing provisions, places our authors on the same footing as United States citizens. A country not "proclaimed" is without benefit under the Act of 1909. One imagines, however, that these retaliatory powers will be as little exercised as our own under sect. 23.[1]

American owners must publish.

The way for American dramatic authors to secure British protection for their works is by publication in copies. This publication must be within the area of the British Act or the foreign extensions, and it must take place not later than fourteen days from first American publication.

It seems that, even if there is not American publication, and only American performance, there is no British protection apart from publication of the work according to the Act. Anything performed, from a play to a music-hall turn, is, in its unpublished state, not a copyright work unless by a British subject—and not always then—or by an author resident or domiciled within the area of the Act or of the extensions of the Act[2] at the time of the making of the work.

No manufacturing provisions.

The only thing in these circumstances for the American author of a work, or for an American manager or artist owning the work, is to publish it in copies according to the Act. He will be wise to do so before any performance in public in the United States, or at the latest within fourteen days thereof. It may be a consolation to American owners to know that there are no manufacturing provisions to comply with. It would be cheaper for the American owner to set and print here, were it not that it is a question whether his own law does not compel him to set and print in the States, in the event of publication; and settings here and there would be a double expense.

[1] Assuming an Order in Council were issued extending the residential qualification in like manner as if residence in the United States were residence within the territorial area of the Act, unpublished works, including acted plays, by United States authors, would be protected.

[2] The American author would be protected if he wrote his work while resident in, say, France.

XI

AMERICAN COPYRIGHT

THE Act amending and consolidating the Acts concerning Copyright in the United States came into force on July 1, 1909. The Act is one of much length—naturally so, because of its comprehensive character—and the provisions are set forth in considerable verbal detail; but, as legal enactments go, the statute is fairly plain sailing. The law gives American authors and other owners of copyright works a very large measure of protection. One deficiency is that there is no specific provision for kinematograph pictures.[1] Such pictures ought to have been made one of the separate classes of copyright property enumerated under sect. 5; and, as it is, these subjects of copyright—now often extraordinarily valuable—have to get their protection under cover of subsections dealing with photographs or with books. A kinematograph picture has, if one comes to think of it, no solid existence. It is an ever-varying shadow on a screen; and it would have been wise to have provided for it as a particular subject. The omission to deal with the kinematograph picture specifically is the more notable for the reason that provision is made as to mechanical reproductions of musical works by phonographs, gramophones, pianolas, and the like. The fixed royalty principle was in the 1909 Act in this respect given a novel legislative sanction,

The consolidated law.

[1] However, a Bill, called the Townsend Bill, giving kinematograph pictures a specific copyright, has passed the House of Representatives and is now before Congress.

which our Copyright Act has imitated. But, generally speaking, the American copyright owner is protected in an ample way. The period for the enjoyment of his rights is a maximum of fifty-six years, which works out less favourably than our new period. For infringement the remedies at civil law are considerable, and they carry with them heavy penalties. Wilful infringement for profit is also punishable as a criminal offence. The formalities attendant on taking out copyright are, however, onerous. They include deposit of copies, registration, filing of affidavit, printing of copyright notice on works, etc.—altogether a formidable and needlessly vexatious procedure. Here the law of 1909 consolidated without simplifying. It might with advantage have followed the Berlin example.

The poor foreign author, especially the writer in English, comes badly off. Fortunately, the dramatic author escapes the worst effects of the way in which the United States—a way so regrettable in a great country—regards the obligations of international copyright. In the case of a published book in English the foreign author or owner, if belonging to a "proclaimed" country,[1] has, in order to claim copyright, to meet this requirement:—

> All copies accorded protection under this Act . . . shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States (sect. 15).

But the English dramatist, as long as he keeps from printed copies for sale outside the United States, is saved

[1] Great Britain is one of the "proclaimed" countries under the Presidential proclamation of April 9, 1910.

from these consequences by the definition of American law which says that public performance is not publication. Thus a play, or dramatic composition—as the term is under the American statutes—if in manuscript, or only printed privately and not for sale, is protected at common law. But as soon as it is issued in copies for sale it becomes published in the eye of American law; and, assuming it to be a book or in the same position as a book—a point that may be in doubt, as discussed later—then, if it does not comply with the foregoing "manufacturing provisions" and other conditions of the Act it forfeits all rights—performing as well as printing or other multiplying forms—in the States.

Performance not publication.

This distinction between performance and publication is maintained in the 1909 Act. Sect. 2 says expressly:—

> Nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.

A play performed, but not printed for sale, is an unpublished work. It is in most respects effectually protected at common law. Moreover, certain States—New York, Louisiana, Pennsylvania, Ohio, New Jersey, Massachusetts, etc.—have penal statutes covering the unauthorised performance of plays. These statutes apply to plays that are unpublished works.

Further, the author who does not take out copyright under the statute and lets his play remain at common law has the advantage of perpetual protection. That is to say, there is no time limit to his exclusive right to his work. Under the Copyright Act, on the other hand, he can only enjoy his right—at all events as that of a published work—for a certain number of years.

A valuable concession.

The statute, however, does make concessions in point of statutory copyright to authors or other owners of certain works. Sect. 11 says:—

Copyright may also be had of the works of an author of which copies are not reproduced for sale by the deposit, with claim of copyright, of one complete copy of such work if it be a . . . dramatic or musical composition; of a photographic print if the work be a photograph, or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing.

There is no stipulation that the copy must be in print. As regards a dramatic composition, a typewritten copy or even a manuscript one is all that is needed to fulfil the requirement of the section. It is stipulated that if a work is later on reproduced in copies for sale the copyright proprietor is not exempt from the deposit of two copies at Washington, in accordance with sects. 12 and 13. In other words, the statutory copyright secured in the unpublished work lapses upon irregular publication in this respect.

The provision is chiefly advantageous to dramatic compositions. It is advantageous also as far as the performing rights of songs and other musical compositions go. But such pieces as songs, etc., are often valuable as printed publications for sale, and copyright obtained under sect. 11 forbids anything of this kind. How far a kinematograph work could protect itself under this section is doubtful. The section becomes inoperative so soon as the work is "reproduced in copies for sale." Is the exhibition of a kinematograph work publication within the meaning of American law? It would seem not. But what of the films? Are they, if multiplied and sold, copies for sale? If so, and they are not made within the United States, do they invalidate any protection enjoyed by the kinematograph work either at common law or under the Act? As to mechanical sound-contrivances, the Act relates only in this respect to foreign musical works published and copyrighted after July 1, 1909, and then only when the country of which the author is a citizen or subject grants to citizens of the United States similar rights—a

thing that Great Britain, for sufficient reasons, does not do.

But, in relation to dramatic compositions, the provision contained in sect. 11 is certainly valuable. On the whole, as a manuscript or a typewritten copy is valid, it seems advisable—good as the protection at common law is—for the English owner to avail himself of the provision. He then comes under full statutory protection. The only point that he has to consider is that he may limit his term of protection to the maximum statutory period of fifty-six years, whereas at common law his right endures for ever. It is not certain, however, that he limits his right in this way, for if the fact of filing one copy of his work still leaves it an unpublished work,[1] then, according to sect. 2, "nothing in this Act shall annul or limit" his right at common law. It seems rather an odd and even impossible conjunction of common-law rights and statutory rights. One is inclined to think that as the property becomes a copyright under the Act, the statutory period for copyright is applicable; and sect. 8 is favourable to this view. Sect. 18, dealing with the notice of copyright required by sect. 12, says that "if the [published] work be a printed, literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication." "By publication" is rather ambiguous, seeing that copyright may be had by filing a manuscript copy at Washington.

Filing a MS. copy.

There is also the point of view of English law to be considered. First publication in a non-reciprocal country forfeits the home right to protection. Would filing a manuscript copy at Washington amount to publication? There appears to be no sufficient reason for saying that it would. The deposit of a single copy would not be "the issue of copies of the work to the public," as publication is defined in the 1911 Act.

[1] It was held under a previous Act, repealed in 1909, that filing the title and depositing copies of a book at Washington amounted to publication and that the common law rights in the work in its unpublished form ceased.

Variety art protection.

The words of monologues, duologues, sketches, scenas, songs, etc., if falling within the definition of dramatic or musical compositions can (apart from mechanical sound-contrivances) similarly be protected under this section. This fact should be noted by variety artists.

***Ad interim* copyright.**

A further concession, applicable to English books published for sale, gives the owner of a work an *ad interim* copyright for a maximum period of sixty days. The owner of a book published abroad in the English language before publication in the States must deposit in the Copyright Office, not later than thirty days after the publication abroad, one complete copy, with a request for the reservation of the copyright and a statement of the name and nationality of the author, of the copyright proprietor, and of the date of publication. The owner thereby secures an *ad interim* copyright, which has the force and effect given to copyright by the Act. It lasts for thirty days from the date of deposit.

This copyright is extended to the full statutory term if within the period of the *ad interim* protection an authorised edition of the work is published in the United States, in accordance with the manufacturing provisions.

Is a printed play a book?

In Hervieu *v.* Ogilvie Publishing Company it was held that a dramatic composition or a musical composition published in copies for sale is not a book or the equivalent of a book within the meaning of the manufacturing provisions. How far this decision can be relied on in law seems doubtful, though it has been embodied in the Treasury decisions and is reflected in the Copyright Office regulations. If it cannot be relied on, and an English play is published and sold in ordinary book-form, without publication in the States (within sixty days), in accordance with sects. 12, 15, and 16—that is, set, printed, and bound there—then there is no copyright in the States.

Hervieu *v.* Ogilvie Publishing Co.

This position has, therefore, seeing the issues at stake, very carefully to be considered. The case referred to—Hervieu *v.* J. S. Ogilvie Publishing Company—was heard in the U.S. Circuit Court, New York, on March 23, 1909,

and is to be found fully reported in 169 *Federal Reporter*, p. 978, *et seq*. On the strength of this decision—which followed on a similar decision in Littleton *v*. Ditson (1894), heard in the U.S. Circuit Court, Massachusetts, in which it was held that sheets of vocal music need not comply with the manufacturing provisions, the sheets being exempted as musical compositions—some English publishers of plays do not comply with the American manufacturing provisions.

The action was brought by the well-known French dramatist, Paul Hervieu, against the J. S. Ogilvie Publishing Company, for infringement of the copyright of his play *Le Dédale*. There was no dispute as to the facts, which were contained in a statement agreed to by the attorneys for the respective parties for submission to the Court. The alleged infringement consisted in the publication by the defendant company of a play called *The Labyrinth*, by George Morehead. The preface stated clearly that it was based directly upon *Le Dédale*, and it was agreed in the statement of facts that the publication was an infringement of the plaintiff's copyright, if in law he had such copyright. It was, however, also agreed "that the book was printed from plates made in France or from type set up in France, and not printed from plates made in the United States or from type set up in the United States," and the defendants submitted that this constituted a non-compliance with the law which had the effect of depriving the plantiff of copyright. The law bearing on the matter is contained in sect. 3 of the Chace Act of 1891 which extended the privilege of copyright to subjects of "proclaimed" countries. The section in question provides that a person desiring copyright for a foreign work shall deliver to or deposit with the Librarian of Congress "two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph. . . . provided that in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within

the limits of the United States or from plates made therefrom. . . ."

The judge (District Judge Martin) held that although a dramatic composition printed in book-form was of course a " book " in the ordinary acceptation of that term, it was not a book within the above proviso requiring it to have been printed in the United States. His ground for so holding was that in the enumeration of things to be deposited with the Librarian of Congress, book and dramatic composition are mentioned separately, while in the proviso in question, the word book alone is used. *Ergo*, " dramatic composition " is not within the proviso. " The question here presented," said the learned judge, " is not whether a dramatic composition can ever be regarded as a book, but whether Congress intended, by the Act above quoted, to include dramatic compositions within the terms of the proviso." In his opinion, Congress did not so intend, and as M. Hervieu had duly deposited two copies of his composition with the Librarian, all that the Act required to obtain the copyright had been performed, and M. Hervieu was therefore entitled to judgment in the action.

Decision under old Act.

In the first place, this decision was under an Act repealed by the Act of 1909.

Wording of 1909 Act.

The latter Act now governs the matter. Sect. 12 of the Act sets out that, " after copyright has been secured by publication of the work [with notice of copyright and registration], there shall promptly be deposited [at Washington] two complete copies of the best edition thereof, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in sect. 15 of this Act." It is important to observe that any actual distinction between or separation of dramatic composition and literary composition in sect. 3 of the old Act is not existent here, for the sufficient reason that the term " dramatic composition " is not mentioned at all in sect. 12. It is mentioned in the preceding section, which says that " copyright may be had of the works of an author of which

copies are not reproduced for sale," and here "dramatic composition" is mentioned; but this section—11—has a provision to the effect that the copyright proprietor is not exempt "from the deposit of copies under sect. 12 . . . where the work is later reproduced in copies for sale."

In interpreting the sections concerned, regard must be had to the fact that the manufacturing provisions are inserted in the Act in the interests of copies for sale. American printing interests are not affected by MS. copies, and little by copies not for sale; for, as a manuscript copy of a dramatic composition will—in the absence of publication for sale—secure copyright, there is no inducement to print a dramatic composition for purposes of copyright. But a play printed for sale is open to readers, like any book; and the principle of the manufacturing provisions is that the great American public shall do its reading of copyright works through American setting, printing, and binding. True, the original texts of books not in the English language need not comply with the manufacturing provisions, but of such books the sale is a negligible quantity, which is not the case with published plays.

Definition of "book."

There is no definition of "book" in the Act, but the judge in Hervieu *v.* Ogilvie Printing Company said frankly that in ordinary language a play in book-form is of course a book. Under our law a sheet of letterpress, or of drawings, or of music, even a legal printed form, has been held, if published, to be a book; and so it would be under sect. 15 (7) of the Copyright Act, 1911, relating to compulsory delivery of books to libraries.

The foregoing view, *i.e.* that a broad interpretation of the 1909 Act requires the setting and printing of copies for sale, in the case of a hitherto unpublished play by a British author, to be done in the United States—a view admittedly not generally held—has since been supported by Mr Ligon Johnson, an authority on American copyright, and counsel to the National Association of Theatrical Producing Managers, and by Mr Frank E. Woods, the managing editor of the New York *Dramatic Mirror*. Mr

Woods, in a communication that he has kindly made on the subject, says:—"The differentiation in American law is between copies which are and copies which are not reproduced for sale. Dramatic compositions which are reproduced for sale must comply with the American manufacturing provisions." Mr Johnson concurs in this statement.

Courses open to British authors.

Assuming that the decisions under the repealed statutes can no longer be relied on, a British dramatic author about to print his play has, safely, three courses open to him. One is, by arrangement, to get his work set up in the first place in the United States and have copies for sale printed over there, and then to get the plates sent over for the English edition—which must be published not later than fourteen days from first American publication. A second course is to print for sale here; take out *ad interim* protection at Washington, and within sixty days bring out an American edition, set and printed over there. The third course is to print privately in this country, and in the event of a subsequent issue for sale to have copies made in the States from type set for the purpose. This last course is in its provisional state the less expensive and more advisable. If the piece becomes worth printing for sale here, the additional cost for the American edition is not relatively very great, though at the lowest computation it means mulcting the British author in some pounds. Here, in this country, the expense of play-printing may be made very much what the author or his publisher pleases. Personally, I should like to see a standard price and a very low one. Library editions would be another matter. But a printed play with a price to its copies is not printed for private circulation. A fourth course is simply to print here, file two copies at Washington, and trust to the old decisions. In this case, the author should be careful to register at Washington under form D^1, and not under form A^1.

Procedure for ordinary copyright.

The American manufacturing provisions have been explained. The proprietor of an alien book is of course at

liberty to set and print and bind copies for sale as far as concerns his own country and countries other than the United States, but only copies produced in the States will be protected there. Sects. 15 and 16 are not without some looseness of wording, but it certainly seems that it will not suffice, as formerly, that only the type be set in the States. The whole work as a book must be set, printed, and bound in that country. Two copies must be deposited at Washington not later than thirty days after publication. (In the case of *ad interim* copyright, as explained, a period of thirty days is allowed from the date of deposit; and the deposit of one complete copy of a book published abroad in the English language need not be made at a less period than thirty days from this publication.)

The two copies must 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 work, setting forth that the copies deposited have been printed in accordance with the manufacturing provisions. The affidavit must state also the establishment or establishments in which the type was set or plates made and the printing and binding were done, and the date of the completion of the printing of the book or the date of publication. Any person who knowingly makes a false affidavit is guilty of a misdemeanour, punishable by fine and also by forfeiture of all rights and privileges under copyright.

In addition, a notice of copyright must be affixed to each copy of the work published or offered for sale in the United States by authority of the copyright proprietor, except in the case of a work seeking *ad interim* protection. The notice of copyright must consist either of the word "Copyright" or the abbreviation "Copr.," accompanied by the name of the copyright proprietor on the title-page or page immediately following; and if the work is a dramatic,

musical, or literary work the notice must include also the year in which the copyright was secured by publication.[1]

If the two copies of the American issue are not promptly deposited, the Register of Copyrights may require the proprietor of the copyright to deposit them, and after the demand has been made, in default of the deposit of copies of the work within three months from any part of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright is liable to a fine of one hundred dollars, and the copyright becomes void.

The fee for registration of copyright is one dollar, except in the case of photographs, for which it is 50 cents.

The Act lays down an elaborate system of registration, with periodically-issued catalogues. The catalogues and index volumes are to be admitted in any court as *primâ facie* evidence of the facts stated therein as regards any copyright registration.

No action or proceeding can be maintained for infringement of copyright in any work until the provisions as to deposit of copies and registration of the work have been complied with.

Assignments must be registered.

There is a stringent provision dealing with registration of assignment. Every assignment of copyright must be recorded in the Copyright Office within three calendar months after its execution in the United States, or within six calendar months after its execution without the limits of the United States. Otherwise it will be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

Wide powers.

The powers enjoyed under the Act are, as have been said, of the amplest kind. The copyright owner has the exclusive right :—

(*a*) To print, reprint, publish, copy, and vend the copyrighted work ;

[1] See p. 85 *ante*.

(*b*) To translate the copyrighted work into other languages or dialects, or make any other version therefor, if it be a literary work; to dramatise it if it be a non-dramatic work; to convert it into a novel or other non-dramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(*c*) To deliver or authorise the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

(*d*) To perform or represent the copyrighted work publicly if it be a drama, or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(*e*) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (*a*) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced (sect. 1).

Incidentally it may be pointed out that under (*d*) dramatic pieces are protected from kinematographic piracy, and under (*e*)—to which there is a long addendum—musical works from mechanical reproduction, subject to freedom to reproduce in certain circumstances on payment of a 2 cents royalty for each disc, roll, cylinder, or other reproducing device employed.

Duration of copyright.

Formerly the statutory copyright period, dating from due registration and filing at Washington, ran for twenty-eight years; and the author, if he was living, or his wife or children, if he was dead, might obtain a further term of fourteen years on re-complying with the regulations for original copyrights. The later period of fourteen years has since become one of twenty-eight, making fifty-six years in all. Application for the renewal and extension must be made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright. In default of application for renewal and extension, the copyright in a work ends at twenty-eight years from first publication. The extension under the statute applies to a copyright that was subsisting at July 1, 1909.

Remedies, civil and summary.

The penalties for infringement are, by way of civil action, heavy and various. In the case of dramatic or dramatico-musical or choral or orchestral composition the Court may, in its discretion, allow 100 dollars for the first and 50 dollars for every subsequent infringing performance, provided that the damages shall not exceed 5000 dollars nor be less than 250 dollars, such damages not to be regarded as a penalty.

On the criminal side, any person who wilfully and for profit infringes any copyright work, or knowingly and wilfully aids or abets the infringement, is deemed guilty of a misdemeanour to be punished by imprisonment for a term not exceeding one year, or by a fine of not less than 100 dollars nor more than 1000 dollars, or both, in the discretion of the Court. The power to imprison existed under sect. 4966 of the old law, but not in conjunction with a fine.

THE BUENOS AYRES CONVENTION, 1910

[PAN-AMERICAN CONVENTION]

THE numerous Republics of "the three Americas" are linked up under this pan-American Convention. The Convention was made at Buenos Ayres on August 11, 1910, delegates of twenty of the Republics assembling on the banks of La Plata. Bolivia was the only absentee, she and Argentina being engaged at the time in the favourite little South American pastime of biting thumbs and incidentally firing shots. The United States ratified the Convention on February 15, 1911. The signatory States also include Argentina, Brazil, Chili, Columbia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, and Venezuela.

The text of the Convention, from the official French, will be found in Appendix I. Judging from articles 6 and 7, European countries are shut out from benefit—a fact that is not altogether so in the case of the Monte Video Convention of 1889, made amongst the South American States of Argentina, Bolivia, Paraguay, Peru, and Uruguay, and apparently not affected by the later Convention. Certain European countries—France, Belgium, Italy, Spain—are parties to the Convention, to a limited extent. That is to say, the adhesion has only been accepted by some of the American States (*i.e.* Argentina and Paraguay), and to that extent works published in those European countries are protected under the Monte Video Convention. But the Buenos Ayres Convention is very much a pan-American affair, and there seems to be no power to extend its benefits to countries not belonging to that continent. First publication must take place in America. This condition could be met, however inconveniently; as, for example,

by publication in the United States, followed by publication in accordance with our 1911 Act not later than fourteen days therefrom. A further obstacle is that the enjoyment of the rights under the Convention is only given to "les auteurs ou leurs ayants droit, nationaux ou étrangers domiciliés." It has been decided in the United States that a foreign author not qualified to secure copyright cannot indirectly do so by assignment to an American owner. But "ayants droit"—which may be translated as "persons entitled to"—is a comprehensive term; and it may be that under this clause in art. 6 European works could be protected, if given the necessary first publication. The Convention appears to await the ratification of most of the States in order to become effective.

No copyright in seditious, immoral, or fraudulent works.

WORKS that are blasphemous, seditious, immoral, or fraudulent are not protected at law. There are no words in the 1911 Act to this effect, but the condition has not been a matter of statutory law but of public policy. Some of the decisions go a long way back, and would be unlikely to be delivered now, especially on questions of blasphemy or sedition. Byron, for example, would not be refused an injunction for piracy of his *Cain*, nor Southey for a similar offence against his *Wat Tyler*. As to fraudulent works, a case in point is that of Wright *v.* Tallis. An author named Huish wrote a devotional work, which he falsely ascribed to a popular German writer of the time, C. C. Sturm. It was held by Tindal, C.J., to be incapable of protection as copyright.

How far the *ipse dixit* of the Lord Chamberlain would be accepted, in the case of a censored dramatic work, as evidence of blasphemous, seditious, or immoral qualities in the work, is a mere speculation. One imagines not very far, or indeed not at all. It is the peculiar function of the Lord Chamberlain to extinguish the public performing right in Great Britain in a work of which he does not approve. He has declared a great variety of works to be unfit for public performance, but no one has had the temerity to flood the market with unauthorised *Monna Vannas* or *Blanco Posnets*. It would be interesting for a bold bad pirate to do so, and then pose in Court as, say, an innocent infringer, on the ground that he thought that a work

officially condemned by the Lord Chamberlain as immoral, and consequently shut off from the stage in Great Britain, was non-copyright.

Licensing of stage-plays.

The Lord Chamberlain has no copyright jurisdiction. He derives his powers from the Theatres Act of 1843 (6 & 7 Vict. c. 68), under which he is not only censor of stage-plays for Great Britain, but also a licenser of the theatres within his jurisdiction—capacities that he has lately enlarged by taking official cognisance of stage-plays in music halls and by issuing theatre licenses to the music halls within his jurisdiction in this respect.

All new stage-plays, and all additions to old ones, must be submitted for license to the Lord Chamberlain at least seven clear days before the first performance in any part of Great Britain. Ireland is not affected. In the Regulations issued from the Lord Chamberlain's Office, the words "every building or place of public resort in Great Britain licensed for the performance of stage-plays" appear, instead of "every theatre" as before. This statement marks the new policy by which sketches and other dramatic pieces in the music halls, instead of existing on sufferance, being doubly illegal—as the bulk of them were (1) because without a stage-play license and (2) because played in a building without a theatre license—instead of that condition of things, are taken into the odour and sanctity of the Lord Chamberlain's protection if, in his opinion, moral or not likely to disturb the peace of the community. Practically all music halls now have the double license—the stage-play and the music-and-dancing. All theatres have not the music-and-dancing license to the same extent as the music halls have the stage-play. But a music-hall entertainment is illegal in a theatre unless the house has a music-and-dancing license under the Act of 1751 or other Acts, though it is hard to reconcile this decision with the wording of the former Act, as far as it applies, and particularly hard to see why a theatre under the Lord Chamberlain should require the license in view of the exemption clause in sect. 4 of the 1751 Act.

What is a stage-play?

The definition of a stage-play—the only definition that we now have—is as follows: "In this Act the word stage-play shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage or any part thereof," with a limited exemption for performance at feasts and fairs. It is a very wide definition, and any piece coming under it requires a stage-play license and the building in which the piece is given a theatre license. Ordinary music-hall turns in which there is no dramatic element are not stage-plays. When, on April 16 and May 7, 1912, Little Tich and Mr Johnson Clark were summoned under the Theatres Act at Bow Street, the magistrate decided that the former's well-known songs and the latter's ventriloquial sketch were not stage-plays. Ballets with plots are stage-plays, but not ballets of the *divertissement* order. Most sketches are stage-plays and some monologues, but where the action is not related and the dialogue is in the nature of variable patter, the definition does not apply. They do not need a stage-play license, being thus free from the Censor in the halls. The authority issuing the music-and-dancing license, however, exercises a certain amount of control. The authority has no power to forbid the performance of a turn of this kind, but if the performance is persisted in, the authority can, in the exercise of its discretion, refuse to renew the license under which the place of entertainment is open. The police can also prosecute for indecent performance.

Censorial powers.

No stage-play, old or new, licensed or unlicensed, is free from the Lord Chamberlain's right to prohibit performance within his jurisdiction. Sect. 14 of the Theatres Act says that it "shall be lawful for the Lord Chamberlain for the time being, whenever he shall be of opinion that it is fitting for the preservation of good manners, decorum, or of the public peace so to do, to forbid the acting or presenting any stage-play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, anywhere in Great Britain, or in such theatres as he shall specify, and

either absolutely or for such time as he shall think fit." Patent theatres are not exempt. Performing a play unlicensed or disallowed renders a theatre license—whatever the licensing authority—null and void. In addition, every person who for hire acts or presents or causes the performance of a play unlicensed or disallowed is liable on conviction to a fine not exceeding £50.

Lord Chamberlain retains manuscripts.

The Lord Chamberlain cannot be compelled to return manuscripts of stage-plays sent to him for approval. He is entitled, even if he refuses a license to a stage-play, to retain the manuscript.

Authorities licensing places of amusement.

The Lord Chamberlain issues, in relation to premises, only theatre licenses, and these licenses only to premises within his jurisdiction. This jurisdiction does not include the whole area of London theatres. The authority of the Lord Chamberlain as licenser of theatres is, with some exceptions of minor importance, confined to houses (not being patent theatres, *i.e.* Covent Garden, Drury Lane,[1] the Royal, Bath, and the Royal, Margate, which are exempt from license) within " the Parliamentary boundaries of the cities of London and Westminster and of the boroughs of Finsbury and Marylebone, the Tower Hamlets, Lambeth, and Southwark." Other theatres situated within the county of London fall to the London County Council; and this body also issues the whole of the licenses for other places of amusement so situated, of which the music halls are chief. The County Council also possesses the powers of inspection formerly exercised by the late Metropolitan Board of Works over the various places of amusement in the county, including the Lord Chamberlain's theatres. In the home counties, such as Surrey, Essex, Kent, Middlesex (apart from the areas of jurisdiction of the Lord Chamberlain and the London County Council), and in the provinces (with some minor exceptions at times affecting the Royal boroughs), the powers for issuing all forms of license—theatre, music-and-dancing, music, and kinematograph—belong to the County Councils and the Town Councils of County Boroughs, who may, if

[1] It is doubtful if Drury Lane is strictly a patent theatre.

they prefer, delegate the powers to the Justices. There are, however, exceptions as to music-and-dancing licenses where towns have obtained local Acts of their own, or where towns have adopted Part IV. of the Public Health Acts Amendment Act, 1890. In the latter case the Justices become the authorities for the issue of music-and-dancing licenses.

Powers of closure.

The Lord Chamberlain may order any theatre licensed by him, or any patent theatre, to be closed on account of riot or misbehaviour, and also on "such public occasions as to the Lord Chamberlain shall seem fit" (sect. 8, Theatres Act). Wilful infringement of the rules and regulations made by the Lord Chamberlain causes a license issued by him forthwith to determine and be of no effect.

The Justices may order any theatre licensed by the local authority to be closed on account of riot or of breach of any regulations made by the authority.

Scottish and Irish authorities.

The Burgh Magistrates, or the Magistrates' Committee, are the authority for licensing both theatres and music halls in Scotland.

In Ireland there is no censorship of stage-plays. Theatres in the city and county of Dublin are licensed by Letters Patent from the Lord-Lieutenant, and music halls in Dublin are licensed by the Recorder. Outside the City and County of Dublin, both theatres and music halls are licensed by the Justices.

The performance of dramatic sketches in music halls in Dublin has been successfully resisted by the patentees of the theatres.

Licensing immaterial to copyright.

The fact that a dramatic work is performed without the Lord Chamberlain's license, or that the work is produced in a building not licensed as a theatre, has no effect on the validity of the copyright. This consideration was of more importance when, under the old law, performance was publication.

Library copies of published books—In the United Kingdom.

Not only must a copy of a new stage-play, before first production, be sent to the Lord Chamberlain—a copy of it, and indeed of any theatrical or musical piece issued in printed copies to the public within the United Kingdom, must be delivered to the trustees of the British Museum

not later than one month after publication. The latter is a requirement of the 1911 Act, sect. 15 (1), and it applies to non-copyright as well as copyright books. Copies must also, if demand is made within twelve months of publication, be delivered to the Bodleian Library, Oxford; the University Library, Cambridge; the Advocates' Library, Edinburgh; the Library of Trinity College, Dublin; and (excluding books specified in Board of Trade regulations)[1] the National Library of Wales. The books must be forwarded to the depôt in London named in the demand. Only books when published in the United Kingdom are affected, and not all of them. There is power under sect. 29 (1) (iii.) to make provisions as to books first published in foreign countries, but, in the Orders of June 24, 1912, this power is not exercised. Therefore there appears to be no obligation, in the case of a reciprocal foreign country, where a book has been first published there, for copies of the book, when published in the United Kingdom, to be forwarded to the British Museum and the other libraries. But in the case of any other book published in the United Kingdom, irrespective of the country of origin, the publishers must deliver the copies required by the Act.

Colonial and foreign books.

Penalties.

The penalty for non-delivery is, on summary conviction, a fine not exceeding £5 plus the value of the book.

"Book" defined.

"Book" is defined, for the purposes of this section, as including every part or division of a book, pamphlet, sheet of letterpress, sheet of music, etc.

A play printed for private use and not for sale need not comply with these requirements.

[1] The books, of which copies must be delivered to the National Library of Wales, do not include any book of the following classes:—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.

Lord Chamberlain's Office,
St James's Palace, S.W.

REGULATIONS

1. It is the duty of the Licensee of every building or place of public resort in Great Britain licensed for the performance of stage-plays to send to the Lord Chamberlain, seven days at least before the first acting or presentation thereof, one copy of every new stage-play, and of every new act, scene, or other part added to any old stage-play.

2. Copies of new stage-plays sent for examination and license should be typewritten or clearly and legibly written. They are not returned, but registered and bound in volumes for preservation in the Lord Chamberlain's Department. Changes of title should be notified to the Examiners of stage-plays beforehand.

3. Pantomimes are expressly included in the general designation "stage-plays" under the Act. It is the topical and occasional matter interpolated in pantomimes licensed in former years for other theatres that requires a license.

4. The reading fee (payable by cheque or postal order) is to be paid at the time when a new stage-play is sent to the Lord Chamberlain; and the said period of seven days shall not begin to run until the said fee shall have been paid.

The scale of reading fees, as fixed by the Lord Chamberlain, in accordance with the Act of Parliament, is as follows:—

For every stage-play of 3 or more acts . .	£2, 2s.
For every stage-play of less than 3 acts . .	£1, 1s.

All communications to be addressed to The Lord Chamberlain's Office, St James's Palace.

PERIODS OF COPYRIGHT

TABLE FOR ALL COUNTRIES

Perpetual

Guatemala, Mexico (playright, life and 30 years), Nicaragua, Venezuela.

Duration of Principal Term after Death of Author

5 years . Chili.
7 years . Siam (alternatively 42 years).
10 years . Roumania, Argentina.
20 years . Hayti (life of widow; 10 years for heirs other than children); Peru.
25 years . Salvador.
30 years . Bolivia, Germany (and in any case 10 years from date of first publication); Austria, China, Japan, Liberia, Switzerland, Turkey.
40 years . Greece (playright).
50 years . Belgium, Brazil (playright, 10 years), Costa Rica, Denmark, Ecuador (playright, 25 years), Finland, France, Great Britain, Hungary, Luxembourg, Monaco, Norway, Portugal, Russia, Sweden (playright, 30 years).
80 years . Columbia, Spain.

Duration after First Publication

50 years . Holland and Dutch Indies (and at the least during the life of the author, if he has not ceded the right). This term is for copyright. In a printed play, playright lasts only for 10 years from publication. In a play not printed for publication playright lasts for author's life and 30 years.

Other Systems

28 years . After registration, and a supplement of 28 years to author or heirs on new registration. United States.
40 years . From first publication or life of author if it exceeds this term; and a second (non-exclusive) period of 40 years during which 5 per cent. royalty is payable by users on published price. Playright, 80 years from first performance or first publication. Italy.

PART II

APPENDIX I

STATUTES, ORDERS, AND CONVENTIONS

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THE COPYRIGHT ACT, 1911

NOTE

THE Copyright Act was passed on December 16, 1911, and came into force in the United Kingdom on July 1, 1912, and elsewhere in the British Dominions as fixed in accordance with the terms of sect. 37 (2). The benefits of the Act were extended to reciprocal foreign countries by Orders in Council dated June 24, 1912.

THE COPYRIGHT ACT

[1 & 2 GEO. V., CH. 46]

An Act to amend and consolidate the Law relating to Copyright

PART I

IMPERIAL COPYRIGHT

Rights

1.—(1) SUBJECT to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original, literary, dramatic, musical, and artistic work, if— **Copyright.**

(*a*) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(*b*) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;

but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right,—

(*a*) to produce, reproduce, perform, or publish any translation of the work;[1]

[1] As to reciprocal countries, the sole right of translation is modified (under Orders in Council) in the case of any literary or dramatic work of which the country of origin is Austria-Hungary, Denmark, Italy, Japan, or Sweden.

(*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work ;

(*c*) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;

(*d*) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, kinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,[1]

and to authorise any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

Infringement of copyright.

2.—(1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright : Provided that the following acts shall not constitute an infringement of copyright :—

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary :

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work :

(iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art :

(iv) The publication in a collection, mainly composed of non-copyright matter, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists : Provided that not more than two

[1] As to reciprocal countries, clause (*d*) does not apply (under Order in Council) in the case of a work of which the country of origin is Denmark, Italy, or Sweden.

of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged :

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer ; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries :

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(*a*) sells or lets for hire, or by way of trade exposes or offers for sale or hire ; or

(*b*) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright ; or

(*c*) by way of trade exhibits in public ; or

(*d*) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of His Majesty's dominions in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware and had no reasonable ground for suspecting that the performance would be an infringement of copyright.

Term of copyright.

3. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death [1] :

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

[1] As to reciprocal countries, term of copyright shall not exceed that conferred by law of the country of origin of work.

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 [1] prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Compulsory licenses.

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 license to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit.

Ownership of copyright, etc.

5.—(1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

(*a*) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and

(*b*) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations to the United Kingdom or any self-governing dominion or other part of His Majesty's dominions to which this Act extends, and either for the whole term of the copyright

[1] See p. 139, *post*.

or for any part thereof, and may grant any interest in the right by license, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent :

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the 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 license to publish a work or part of a work as part of a collective work.

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

Civil Remedies

Civil remedies for infringement of copyright.

6.—(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

(*a*) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work ;

(*b*) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.[1]

Rights of owner against persons possessing or dealing with infringing copies, etc.

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, etc.

8. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work.

Restriction on remedies in the case of architecture.

9.—(1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction or interdict to restrain the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

Limitation of actions.

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

Summary Remedies

Penalties for dealing with infringing copies, etc.

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

[1] As to reciprocal countries, sect. 6 (3), modified (under Orders in Council) in the case of any work of which the country of origin is Austria-Hungary, Denmark, Italy, Japan, or Sweden.

(*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 a fine or to imprisonment with or without hard labour for a term not exceeding two months.

(2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding fifty pounds, or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(3) The court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906.[1] **2 Edw. VII. c. 15. 6 Edw. VII. c. 36.**

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

Importation of copies.

14.—(1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that

[1] See p. 157 *et seq.*, *post*.

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 sect. 42 of the 39 & 40 Vict. c. 36. Customs Consolidation Act, 1876, and that section shall apply accordingly.[1]

(2) Before detaining any such copies or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs, the Commissioners of Customs and Excise may require the regulations under this section, whether as to information, conditions, or other matters, to be complied with, and may satisfy themselves in accordance with those regulations that the copies are such as are prohibited by this section to be imported.

(3) The Commissioners of Customs and Excise may make regulations, either general or special, respecting the detention and forfeiture of copies the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) The regulations may apply to copies of all works the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

(6) The foregoing provisions of this section shall have effect as if they were part of the Customs Consolidation Act, 1876: Provided that, notwithstanding anything in that Act, the Isle of Man shall not be treated as part of the United Kingdom for the purposes of this section.

(7) This section shall, with the necessary modifications, apply to the importation into a British possession to which this Act extends of copies of works made out of that possession.

[1] The section in question runs: The goods enumerated and described in the following table of prohibitions and restrictions inward are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted; and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs shall direct.

Delivery of Books to Libraries

Delivery of copies to British Museum and other libraries.

15.—(1) The publisher of every book published in the United Kingdom shall, within one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the British Museum, who shall give a written receipt for it.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depôt in London named in the demand a copy of the book for, or in accordance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin, and subject to the provisions of this section the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) The copy delivered for the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) The books of which copies are to be delivered to the National Library of Wales shall not include books of such classes as may be specified in regulations to be made by the Board of Trade.

(6) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding five pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

Special Provisions as to certain Works

Works of joint authors.

16.—(1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for

a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous works.

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

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

Provisions as to Government publications.

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department,

the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

Provisions as to mechanical instruments.

19.—(1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within the parts of His Majesty's dominions to which this Act extends records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—

(*a*) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(*b*) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that—

(i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(*a*) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent.; and

(*b*) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent.

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a 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 connection with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section :

(*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.[1]

Provision as to political speeches.

20. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

Provisions as to photographs.

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

Provisions as to designs 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.

(2) General rules under sect. 86 of the Patents and Designs Act, 1907, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

Works of foreign authors first published in parts of His Majesty's dominions to which Act extends.

23. If it appears to His Majesty that a foreign country does not give, or has not undertaken to give, adequate protection to the works of British authors, it shall be lawful for His Majesty by Order in Council to direct that such of the provisions of this Act as confer copyright on works first published within the parts of His Majesty's dominions to which this Act extends, shall not apply to works published after the date specified in the Order, the authors whereof are subjects or citizens of such foreign country, and are not resident in His Majesty's dominions, and thereupon those provisions shall not apply to such works.

Existing works.

24.—(1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have

[1] As to reciprocal countries, sect. 19 does not apply in the case of a work of which the country of origin is Denmark, Italy, or Sweden.

subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder :

Provided that—

(*a*) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine ; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either—

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration ; or

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment ;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the *London Gazette* and in two London newspapers :

(*b*) where any person has, before the twenty-sixth day of July nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time

when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2) For the purposes of this section, the expression "author" includes the legal personal representatives of a deceased author.

(3) Subject to the provisions of sect. 19, subsections (7) and (8), and of sect. 33 of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Application to British Possessions

Application of Act to British dominions.

25.—(1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions[1]: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature.

(2) If the Secretary of State certifies by notice published in the *London Gazette* that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall, for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act.

Legislative powers of self-governing dominions.

26.—(1) The Legislature of any self-governing dominion may, at any time, repeal all or any of the enactments relating to copyright passed by Parliament (including this Act) so far as they are operative within that dominion: Provided that no such repeal shall prejudicially affect any legal rights existing at the time of

[1] See p. 148 *et seq.*, *post*.

the repeal, and that, on this Act or any part thereof being so repealed by the Legislature of a self-governing dominion, that dominion shall cease to be a dominion to which this Act extends.

(2) In any self-governing dominion to which this Act does not extend, the enactments repealed by this Act shall, so far as they are operative in that dominion, continue in force until repealed by the Legislature of that dominion.

(3) Where His Majesty in Council is satisfied that the law of a self-governing dominion to which this Act does not extend provides adequate protection within the dominion for the works (whether published or unpublished) of authors who at the time of the making of the work were British subjects resident elsewhere than in that dominion, His Majesty in Council may, for the purpose of giving reciprocal protection, direct that this Act, except such parts (if any) thereof as may be specified in the Order, and subject to any conditions contained therein, shall, within the parts of His Majesty's dominions to which this Act extends, apply to works the authors whereof were, at the time of the making of the work, resident within the first-mentioned dominion. and to works first published in that dominion; but, save as provided by such an Order, works the authors whereof were resident in a dominion to which this Act does not extend shall not, whether they are British subjects or not, be entitled to any protection under this Act except such protection as is by this Act conferred on works first published within the parts of His Majesty's dominions to which this Act extends:

Provided that no such Order shall confer any rights within a self-governing dominion, but the Governor in Council of any self-governing dominion to which this Act extends, may, by Order, confer within that dominion the like rights as His Majesty in Council is, under the foregoing provisions of this subsection, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this subsection, the expression " a dominion to which this Act extends " includes a dominion which is for the purposes of this Act to be treated as if it were a dominion to which this Act extends.

Power of Legislatures of British possessions to pass supplemental legislation.

27. The Legislature of any British possession to which this Act extends may modify or add to any of the provisions of this Act in its application to the possession, but, except so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors whereof were, at the time of the making of the work, resident in the possession, and to works first published in the possession.

Application to protectorates.

28. His Majesty may, by Order in Council,[1] 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] See p. 147, *post*.

PART II

INTERNATIONAL COPYRIGHT

Power to extend Act to foreign works.

29.—(1) His Majesty may, by Order in Council,[1] 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 Act and of the Order, this Act shall apply accordingly:

Provided that—

(i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act;

(ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

(iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order;

(iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

(v) in applying the provision of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country;

[1] See p. 151 *et seq.*, *post*.

(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 sect. 5 of the International Copyright Act, 1886. 49 & 50 Vict. c. 33.

(2) An Order in Council under this section may extend to all the several countries named or described therein.

Application of Part II to British possessions.

30.—(1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like Orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III

Supplemental Provisions

Abrogation of common law rights.

31. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

Provisions as to Orders in Council.

32.—(1) His Majesty in Council may make Orders for altering, revoking, or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every Order in Council made under this Act shall be published in the *London Gazette* and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

Saving of university copyright. 15 Geo. III. c. 53.

33. Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1775, of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act.

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 kinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

"Artistic work" includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

"Work of sculpture" includes casts and models;

"Architectural work of art" means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

"Engravings" include etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs;

"Photograph" includes photo-lithograph and any work produced by any process analogous to photography;

"Kinematograph" includes any work produced by any process analogous to kinematography;

"Collective work" means—

(*a*) an encyclopædia, dictionary, year book, or similar work;

(*b*) a newspaper, review, magazine, or similar periodical ; and

(*c*) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated ;

" Infringing," when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of the provisions of this Act ;

" Performance " means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument ;

" Delivery," in relation to a lecture, includes delivery by means of any mechanical instrument ;

" Plate " includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made ;

" Lecture " includes address, speech, and sermon ;

" Self-governing dominion " means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and Newfoundland.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators, or assigns.

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

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a British subject or a resident within the parts of His Majesty's dominions to which this Act extends.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of His Majesty's dominions to which this Act extends if he is domiciled within any such part.

Repeal.

36. Subject to the provisions of this Act, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule :

Provided that this repeal shall not take effect in any part of His Majesty's dominions until this Act comes into operation in that part.

Short title and commencement.

37.—(1) This Act may be cited as the Copyright Act, 1911.

(2) This Act shall come into operation—

(*a*) in the United Kingdom, on the first day of July nineteen hundred and twelve or such earlier date as may be fixed by Order in Council ;

(*b*) in a self-governing dominion to which this Act extends, at such date as may be fixed by the Legislature of that dominion ;

(*c*) in the Channel Islands, at such date as may be fixed by the States of those islands respectively ;

(*d*) in any other British possession to which this Act extends, on the proclamation thereof within the possession by the Governor.

SCHEDULES

FIRST SCHEDULE Sect. 24.

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.

[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 sect. 18 of the Copyright Act, 1842.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings :—

" Copyright," in the case of a work which, according to the law in force immediately before the commencement of this Act, has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication, or other dealing with the work ;

" Performing right," in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

SECOND SCHEDULE

Sect. 36.

ENACTMENTS REPEALED

Session and Chapter.	Short Title.	Extent of Repeal.
8 Geo. II. c. 13.	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. III. c. 38.	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. III. c. 53	The Copyright Act, 1775.	The whole Act.
17 Geo. III. c. 57.	The Prints Copyright Act, 1777.	The whole Act.
54 Geo. III. c. 56.	The Sculpture Copyright Act, 1814.	The whole Act.
3 & 4 Will. IV. c. 15.	The Dramatic Coypright Act, 1833.	The whole Act.
5 & 6 Will. IV. c. 65.	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. IV. c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. IV. c. 110.	The Copyright Act, 1836.	The whole Act.
5 & 6 Vict. c. 45.	The Copyright Act, 1842.	The whole Act.
7 & 8 Vict. c. 12.	The International Copyright Act, 1844.	The whole Act.
10 & 11 Vict. c. 95.	The Colonial Copyright Act, 1847.	The whole Act.
15 & 16 Vict. c. 12.	The International Copyright Act, 1852.	The whole Act.
25 & 26 Vict. c. 68.	The Fine Arts Copyright Act, 1862.	Sects. 1 to 6. In sect. 8 the words "and pursuant to any Act for the protection of copyright engravings," and "in any such Act as aforesaid." Sects. 9 to 12.
38 & 39 Vict. c. 12.	The International Copyright Act, 1875.	The whole Act.
39 & 40 Vict. c. 36.	The Customs Consolidation Act, 1876.	Sect. 42, from "Books wherein" to "such copyright will expire." Sects. 44, 45, and 152.
45 & 46 Vict. c. 40.	The Copyright (Musical Compositions) Act, 1882.	The whole Act.
49 & 50 Vict. c. 33.	The International Copyright Act, 1886.	The whole Act.
51 & 52 Vict. c. 17.	The Copyright (Musical Compositions) Act, 1888.	The whole Act.

SECOND SCHEDULE—*Continued.*

Session and Chapter.	Short Title.	Extent of Repeal.
52 & 53 Vict. c. 42.	The Revenue Act, 1889.	Sect. 1, from "Books first published" to "as provided in that section."
6 Edw. VII. c. 36.	The Musical Copyright Act, 1906.	In sect. 3 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."

REGULATIONS UNDER THE ACT

(1) COMPULSORY LICENSES

(2) MECHANICAL MUSICAL INSTRUMENTS

(3) LIBRARY BOOKS (WALES)

NOTE

REGULATIONS (I) relate to the publication on a 10 per cent. royalty of a copyright work after the expiration of 25 years; or, in the case of a work in which copyright subsists on December 16, 1911, 30 years, from the death of the author of a published work.

Regulations (II) relate to mechanical musical contrivances. No royalty is payable up to July 1, 1913, if contrivances reproducing published musical works have been lawfully made, or placed on sale, prior to July 1, 1910, within the British area of the Act. The royalty afterwards on such works is 2½ per cent.

There is a royalty of 2½ per cent. on other contrivances made from musical works published before July 1, 1912, within the same area.

With regard to musical works not adapted to mechanical instruments prior to July 1, 1912, mechanical reproduction is forbidden until such time as the owner of the copyright in a musical work has made or acquiesced in any such reproduction. The royalties are—(*a*) for contrivances sold up to July 1, 1914, 2½ per cent.; (*b*) for contrivances sold after July 1, 1914, 5 per cent.

Regulations (III) relate to delivery of books (Wales).

THE COPYRIGHT ROYALTY SYSTEM (GENERAL) REGULATIONS, 1912. DATED JUNE 7, 1912.[1]

THE Board of Trade, in pursuance of the powers conferred by sect. 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 first day of July, 1912.

Notice

(2) The notice required by sect. 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, etc.) ;

(*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 ;

[1] Statutory Rules and Orders, 1912, No. 532.

(*b*) if such name and address are not known and cannot with reasonable diligence be ascertained, the notice shall be advertised in the *London Gazette*; the advertisement in the *London Gazette* shall give the particulars required by paragraphs (*a*) and (*b*) of Regulation (2), and shall also state an address from which a copy of the notice described in Regulation (2) may be obtained.

Payment of Royalties

(4)—(*a*) Unless otherwise agreed royalties shall be payable by means of adhesive labels purchased from the owner of the copyright and affixed to the copies of the work.

After the person reproducing the work has given the prescribed notice of his intention to reproduce the work the owner of the copyright shall by writing sent by registered post intimate to him some reasonably convenient place within the United Kingdom from which adhesive labels can be obtained, and on demand in writing and tender of the price shall supply from such place adhesive labels of the required denominations at a price equal to the amount of royalty represented thereby.

Subject to these Regulations, no copy of the work shall be delivered to a purchaser until such label or labels denoting the amount of royalty have been affixed thereto.

(*b*) In cases when royalties are payable by means of adhesive labels if at any time labels of the required denomination are not available, either because—

(i) after the expiration of 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 $\frac{3}{4}$ inch in length. The label shall not bear the effigy of the Sovereign or any other person, nor any word, mark, or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting any duty payable to the Government.

Interpretation

(6) In these Regulations the expression "owner of the copyright" has the same meaning as in sect. 3 of the Copyright Act, 1911.

The Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912. Dated June 7, 1912.[1]

The Board of Trade, in pursuance of the powers conferred by sect. 19 (6) of the Copyright Act, 1911, hereby make the following regulations :—

Preliminary

(1) These Regulations may be cited as the Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, and shall come into operation on the first day of July, 1912.

Notice

(2) The notice required by sect. 19 (2) of the Copyright Act, 1911, shall contain the following particulars :—

(*a*) The name and address of the person intending to make the contrivances ;

(*b*) the name of the musical work which it is intended to reproduce and of the author (if known) ; and (if necessary) a description sufficient to identify the musical work ;

(*c*) the class of contrivance on which it is intended to reproduce the musical work (*e.g.*, whether discs, cylinders, or music rolls) ;

(*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

[1] Statutory Rules and Orders, 1912, No. 533.

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 first 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 sect. 19 (2) of the Copyright Act, 1911.

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

(*f*) The adhesive label supplied as aforesaid shall be an adhesive paper label, square in shape, the design to be entirely enclosed within a circle and the side of the label not to be greater than $\frac{3}{4}$ inch in length. 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 sect. 19 (5) of the Copyright Act, 1911, shall be directed to the owner of the copyright by name or (if his name is not known and cannot with reasonable diligence be ascertained) in general terms to " the owner of the copyright " of the musical work in respect of which the inquiries are made, and shall contain—

(*a*) a statement of the name of the musical work in respect of which the inquiries are made and of the author (if known), and (if necessary) a description sufficient to identify it;

(*b*) a statement of the name, address, and occupation of the person making the inquiries;

(*c*) an allegation that a contrivance has previously been made by means of which the musical work may be mechanically performed, with the trade name (if known) and a description of such contrivance;

(*d*) an inquiry whether the contrivance so described was made with the consent or acquiescence of the owner of the copyright.

(7) The inquiries shall be sent by registered post or published by advertisement as follows:—

(*a*) if an address within the United Kingdom of the owner of the copyright is known or can with reasonable diligence be ascertained, the inquiries shall be sent to such address; or

(*b*) if such address is not known and cannot with reasonable diligence be ascertained, the inquiries shall be advertised in the *London Gazette*.

(8) The prescribed time for reply to such inquiries shall be:—

(*a*) in cases where the inquiries are required to be sent by registered post, 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 sect. 19 (2) of the Copyright Act, 1911.

(III)

The National Library of Wales (Delivery of Books) Regulations, 1912. Dated June 25, 1912.[1]

The Board of Trade in pursuance of sect. 15 (5) of the Copyright Act, 1911, hereby make the following regulations:—

(1) These Regulations may be cited as the National Library of Wales (Delivery of Books) Regulations, 1912, and shall come into operation on the 1st day of July, 1912.

(2) The books, of which copies have to be delivered to the National Library of Wales in pursuance of sect. 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.

[1] Statutory Rules and Orders, 1912, No. 635.

ORDERS IN COUNCIL EXTENDING THE ACT

I

ORDER IN COUNCIL

RELATING TO

BRITISH PROTECTORATES

At the Court at *Buckingham Palace, June* 24, 1912.

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 Wei-hai-wei.

2. In Article 12 of " The Somaliland Order in Council, 1899," the word " Copyright " is hereby revoked and shall be deleted.

II

ORDER IN COUNCIL

RELATING TO

(*a*) AUSTRIA-HUNGARY

AND

(*b*) BRITISH DOMINIONS

(NOT SELF-GOVERNING)

At the Court at *Buckingham Palace, June* 24, 1912.

WHEREAS on April 24, 1893, a Convention, set out in the First Schedule [1] 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 April 14, 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 Copyrights Act, 1844 to 1868, 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 :

[1] See Austria-Hungary Convention, p. 177, *post*.

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 authorised English translation of the work or of each number of the work ;

(*b*) in the case of any work first published in the Austro-Hungarian Monarchy the entire rights conferred by the Copyright Act, 1911, shall be conditional upon the accomplishment of the conditions and formalities prescribed by law in that part of the Monarchy in which the work was first published.

(2) In the case of any musical work to which this Order applies, and which has been published before the commencement of the Copyright Act, 1911, copyright in the work shall include all rights conferred by the said Act with respect to the making of records, perforated rolls, and other contrivances by means of which the work may be mechanically performed.

(3) This Order shall apply to all His Majesty's dominions, colonies, and possessions, excepting to those hereinafter mentioned; that is to say, except to :—

The Dominion of Canada,
The Commonwealth of Australia,
The Dominion of New Zealand,
The Union of South Africa,
Newfoundland.

(4) The Orders mentioned in the Second Schedule to this Order are hereby revoked as from the date of the commencement of the Copyright Act, 1911, so far as regards the parts of His Majesty's dominions to which this Order applies.[1]

Provided that neither such revocation nor anything else in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

(5) This Order shall be construed as if it formed part of the Copyright Act, 1911.

(6) This Order shall come into operation in the United Kingdom on the first day of July 1912, and in any other part of His Majesty's dominions to which this Order applies, on the day on which the Copyright Act, 1911, comes into operation in such part; which day is in this Order referred to as the commencement of this Order.

[1] Orders dated April 30, 1894; Feb. 2, 1895; and May 11, 1895.

III

ORDER IN COUNCIL

RELATING TO

THE BERLIN CONVENTION

At the Court at *Buckingham Palace, June* 24, 1912.

WHEREAS, etc.

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) Sects. 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, kinematograph 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 authorised translation in the language for which protection is claimed of the work or of each number of the work.

(*d*) In the case of any published musical work of which the country of origin is Denmark, Italy, Japan, or Sweden, the right to prevent performance in public shall be conditional upon performance in public being forbidden by an express declaration on the title-page or commencement of the work.

(*e*) In the case of any work of which the country of origin is Denmark, Italy, or Sweden, the entire rights conferred by the Copyright Act, 1911, shall be conditional upon the accomplishment of the conditions and formalities prescribed by law in the country of origin.

(iv) Nothing in the provisions of the Copyright Act, 1911, as applied to existing works, shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of sect. 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 Wei-hai-wei.

(6) The Orders mentioned in the Fifth Schedule[1] 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 July 1, 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.

[1] Schedule of Orders relating to foreign countries, dated from November 28, 1897, to March 2, 1909. Schedule cited should be Fourth.

MUSICAL COPYRIGHT ACTS

(SUMMARY PROCEEDINGS)

(1) 1902

(2) 1906

NOTE

THE powers under these Acts are, as regards musical works, in addition to those of the Copyright Act, 1911 (sect. 11).

MUSICAL COPYRIGHT ACTS

(1)

2 EDW. VII. CH. 15

An Act to amend the Law relating to Musical Copyright, July 22, 1912.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Seizure, etc., of pirated copies.

1. A court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows : If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, may, by order, authorise a constable to seize such copies without warrant and to bring them before the court, and the court, on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright if he makes application for that delivery.

Power to seize copies on hawkers.

2. If any person shall hawk, carry about, sell, or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner.

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

Definitions.

3. " Musical copyright " means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorise another person to do all or any of the following things in respect of a musical work :—

(1) To make copies by writing or otherwise of such musical work.

(2) To abridge such musical work.

(3) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

Short title and commencement.

4. This Act may be cited as the Musical (Summary Proceedings) Copyright Act, 1902, and shall come into operation on the first day of October one thousand nine hundred and two, and shall apply only to the United Kingdom.

(II)

6 Edw. VII. ch. 36

An Act to amend the Law relating to Musical Copyright, August 4, 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.

(4) Any person aggrieved by a summary conviction under this section may in England or Ireland appeal to a court of quarter sessions, and in Scotland under and in terms of the Summary Prosecutions Appeals (Scotland) Act, 1875. 38 & 39 Vict. c. 62.

Right of entry by police for execution of Act.

2.—(1) If a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act is being committed on any premises, the court may grant a search warrant authorising the constable named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Act is being committed.

(2) All copies of any musical work and plates seized under this section shall be brought before a court of summary jurisdiction, and if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies shall be forfeited and destroyed or otherwise dealt with as the court think fit.

Definitions.

3. In this Act—

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: 5 & 6 Vict. c. 45. 7 & 8 Vict. c. 12.

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 49 & 50 Vict. c. 33.

rolls used for playing mechanical instruments, or records used for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records respectively are made :

The expression " chief officer of police "—

(*a*) with respect to the City of London, means the Commissioner of City Police ;

(*b*) elsewhere in England has the same meaning as in the Police Act, 1890 ;

53 & 54 Vict. c. 45.

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

53 & 54 Vict. c. 67.

(*d*) in the police district of Dublin metropolis means either of the Commissioners of Police for the said district ;

(*e*) elsewhere in Ireland means the District Inspector of the Royal Irish Constabulary :

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.

THE FINE ARTS COPYRIGHT ACT, 1862

NOTE

THE powers under this Act are in addition to those of the Copyright Act, 1911.

THE FINE ARTS COPYRIGHT ACT, 1862

[25 & 26 VICT. CH. 68 [1]]

An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works, July 29, 1862.

WHEREAS by law, as now established, the authors of paintings, drawings, and photographs have no copyright in such their works.[2]

. . . . . .

Penalties on fraudulent production 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,

[1] 59 & 60 Vict. c. 14, by Short Titles Act, 1896.

[2] Sects. 1 to 6 repealed by Copyright Act, 1911.

made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work or any copies of such works so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Penalties. Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding ten pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

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 * * * [1] may be recovered by the person herein before * * * 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.

[1] Passages marked by asterisks repealed by Copyright Act, 1911.

THE PATENTS AND DESIGNS ACT, 1907

NOTE

THE following sections of the Act relate to designs other than those for which the 1911 Act provides. But the latter Act applies to designs capable of being registered under the present Act if they are not used or intended to be used as models or patterns to be multiplied by an industrial process.

THE PATENTS AND DESIGNS ACT, 1907

[7 EDW. VII. CH. 29]

PART II

DESIGNS

Registration of Designs

Application for registration of designs.

49. The comptroller[1] may, on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this Part of this Act.

2. The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(3) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal to the Board of Trade, and the Board shall, after hearing the applicant and the comptroller, if so required, make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(5) A design when registered shall be registered as of the date of the application for registration.

Registration of designs in new classes.

50. Where a design has been registered in one or more classes of goods the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

[1] The Comptroller-General of Patents, Designs, and Trade Marks.

(*a*) on the ground of the design not being a new and original design, by reason only that it was so previously registered; or

(*b*) on the ground of the design having been previously published in the United Kingdom, by reason only that it has been applied to goods of any class in which it was so previously registered.

Certificate of registration.

51.—(1) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

Register of designs.

52.—(1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.

(3) The register of designs shall be *primâ facie* evidence of any matters by this Act directed or authorised to be entered therein.

Copyright in Registered Designs

Copyright on registration.

53.—(1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the comptroller in the prescribed manner, the comptroller shall on payment of the prescribed fee extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the comptroller in the prescribed manner, the comptroller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

Requirements before delivery on sale.

54.—(1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(*a*) (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he

fails to do so the comptroller may erase his name from the register, and thereupon the copyright in the design shall cease ; and

(*b*) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered ; and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(*2*) Where a representation is made to the Board of Trade by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Board may, if they think fit, by rule under this Act dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as they think fit.

Effect of disclosure on copyright.

55.—The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs.

56.—(1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorised in writing by him, or a person authorised by the comptroller or by the court, and furnishing such information as may enable the comptroller to identify the design, and shall not be open to the inspection of any person except in the presence of the comptroller, or of an officer acting under him, and on payment of the prescribed fee ; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof :

Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(*2*) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

Information as to existence of copyright.

57. On the request of any person furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, the comptroller shall inform such person whether the registration still exists in respect of the design, and if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Cancellation of registration of designs used wholly or mainly abroad.

58.—(1) At any time after the registration of a design any person may apply to the comptroller for the cancellation of the registration on the ground that the design is used for manufacture exclusively or mainly outside the United Kingdom, and where such an application is made the provisions of this Act with respect to the revocation of patents worked outside the United Kingdom (including those relating to costs) shall apply with the necessary modifications, except that there shall be no appeal from the decision of the comptroller.

(2) Such ground as aforesaid shall be available by way of a defence to an action for infringement of the copyright in the design.

. . . . . .

Legal Proceedings

Piracy of registered design.

60.—(1) During the existence of copyright in any design it shall not be lawful for any person—

(*a*) For the purposes of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(*b*) Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds, recoverable as a simple contract debt, or if the proprietor elects to bring an action for the recovery of damages for such contravention, and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed one hundred pounds.

61. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention. **Application of certain provisions of the Act as to patents to designs.**

Offences

89.—(1) If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor. **Offences.**

(2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered, he shall be liable for every offence, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding five pounds.

(3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design.

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

. . . . . .

(93) In this Act, unless the text otherwise requires—

"Design" means any design[1] . . . 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] See sect. 22, Copyright Act, 1911, p. 124, *ante*.

" Article " means (as respects designs) any article of manufacture and any substance artificial or natural, or partly artificial and partly natural :

" Copyright " means the exclusive right to apply a design to any article in any class in which the design is registered :

" Proprietor of a new and original design "—

(*a*) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed ; and

(*b*) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired ; and

(*c*) in any other case, means the author of the design ;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person. includes that other person.

CONVENTIONS

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I

THE AUSTRIA-HUNGARY CONVENTION

[WITH GREAT BRITAIN]

NOTE

CONVENTION for securing the rights of authors, or their legal representatives, over their literary or artistic works; made on April 24, 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.

I

THE AUSTRIA-HUNGARY CONVENTION [1]

ARTICLE 1

AUTHORS of literary or artistic works and their legal representatives, including publishers, shall enjoy reciprocally in the dominions of the high contracting parties, the advantages which are or may be granted by law there for the protection of works of literature or art.

Consequently, authors of literary or artistic works, which have been first published in the dominions of one of the high contracting parties, as well as their legal representatives, shall have in the dominions of the other high contracting party the same protection and the same legal remedy against all infringement of their rights as if the work had been first published in the country where the infringement may have taken place.

In the same manner, the authors of literary or artistic works, and their legal representatives, who are subjects of one of the high contracting parties, or who reside within its dominions, shall in the dominions of the other contracting party enjoy the same protection and the same legal remedies against all infringements of their rights as though they were subjects of or residents in the State in which the infringement may have taken place.

These advantages shall only be reciprocally guaranteed to authors and their legal representatives when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country shall not exceed that which is granted to authors and their legal representatives in the country where the work was first published.[2]

ARTICLE 2

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

[1] Schedule 1 to Order in Council relating to Austria-Hungary, etc., p. 149, *ante*.
Modified by Order in Council relating to Austria-Hungary, etc., p. 148, *ante*.

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 3

Authorised translations are protected as original works. They consequently enjoy the full protection granted by this Convention against the unauthorised reproduction of original works.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

ARTICLE 4

The expression "literary or artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions, with or without words; works of design, painting, sculpture, and engraving, lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE 5

In the British Empire, and in the Kingdoms and States represented in the Austrian Reichsrath, the enjoyment of the rights secured by the present Convention is subject only to the accomplishment of the conditions and formalities prescribed by the law of that State in which the work is first published; and no further formalities or conditions shall be required in the other country.

Consequently, it shall not be necessary that a work which has obtained legal protection in one country should be registered, or copies thereof deposited in the other country, in order that the remedies against infringement may be obtained which are granted in the other country to works first published there.

In the dominions of the Hungarian Crown the enjoyment of these rights is subject, however, to the accomplishment of the conditions and formalities prescribed by the laws and regulations both of Great Britain and of Hungary.

Article 6

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be, consequently, admitted to institute proceedings in respect of the infringement of copyright before the Courts of the other State, it will suffice that their name be indicated on the work in the accustomed manner.

The Tribunals may, however, in 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 7

The provisions of the present Convention cannot in any way derogate from the right of each of the high contracting parties to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, exhibition, or sale of any 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 8

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 are, however, only permitted if an inventory of the said copies and appliances is taken by the government in question, in con-

sequence 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 9 [1]

The provisions of the present Convention shall apply to all the colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named; that is to say, except to—India, The Dominion of Canada, Newfoundland, The Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, New Zealand.

Provided always that the provisions of the present Convention shall apply to any of the above-named colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's representative at the Court of His Imperial and Royal Apostolic Majesty within two years from the date of the exchange of ratifications of the present Convention.[1]

ARTICLE 10

The present Convention shall remain in force for ten years from the day on which the ratifications are exchanged; and in case neither of the two high contracting parties shall have given notice twelve months before the expiration of the said period of ten years of their intention of terminating the present Convention, it shall remain in force until the expiration of one year from the day on which either of the high contracting parties shall have given such notice.

Her Britannic Majesty's Government shall also have the right to denounce the Convention in the same manner, on behalf of any of the colonies or foreign possessions mentioned in article 9 separately.

[1] Article 9 modified by Order in Council relating to Austria-Hungary, etc., p. 148, *ante*.

II

THE BERLIN CONVENTION

[REVISED CONVENTION OF BERNE]

NOTE

CONVENTION for the purpose of revising the Convention of Berne of September 9, 1886, the Additional Article and the Final Protocol attached to the same Convention, and the Additional Act and the Interpretative Declaration of Paris of May 4, 1896; made November 13, 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 Luxembourg, 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 President of the Republic of Portugal subsequently adhered for that country.

The Convention was ratified by Great Britain for the British Empire, saving the self-governing dominions, on June 14, 1912.

The Convention has also been ratified by the foreign countries following:—Belgium, France, Germany, Hayti, Japan, Liberia, Luxembourg, Monaco, Norway, Portugal, Spain, Switzerland, and Tunis, subject to the reservations mentioned on p. 192.

The following is an English translation of the Convention, omitting the formal beginning and end.

II

THE BERLIN CONVENTION [1]

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 entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science.

Translations, adaptations, arrangements of music and other reproductions in an altered form of a literary or artistic work, as well as collections of different works, shall be protected as original works without prejudice to the rights of the author of the original work.

The contracting countries shall be bound to make provision for the protection of the above-mentioned works.

Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows.

ARTICLE 3

The present Convention shall apply to photographic works and to works produced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection.

[1] First Schedule to Order in Council relating to the Berlin Convention, p. 151, *ante*.

ARTICLE 4

Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives as well as the rights specially granted by the present Convention.

The enjoyment and the exercise of these rights shall not be subject to the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights, shall be governed exclusively by the laws of the country where protection is claimed.[1]

The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country the laws of which grant the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

By published works must be understood, for the purposes of the present Convention, works copies of which have been issued to the public. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication.

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 the latter country the same rights as native authors.

ARTICLE 6

Authors not being subjects or citizens of one of the countries of the Union, who first publish their works in one of those countries, shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by the present Convention.

ARTICLE 7

The term of protection granted by the present Convention shall include the life of the author and fifty years after his death.

[1] Modified by Order in Council relating to the Berlin Convention in the case of works of which the country of origin is Denmark, Italy, or Sweden.

Nevertheless, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be regulated by the law of the country where protection is claimed, and must not exceed the term fixed in the country of origin of the work. Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their domestic laws.

For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work.

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 these 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.

Article 9

Serial stories, tales, and all other works, whether literary, scientific, or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union, may not be reproduced in the other countries without the consent of the authors.

With the exception of serial stories and tales, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.

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,[1] the effect of the legislation of the countries of the Union and of special Arrangements existing or to be concluded between them is not affected by the present Convention.

[1] A book of useful selections.

Article 11

The stipulations of the present Convention shall apply to the public representation of dramatic or dramatico-musical works, and to the public performance of musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works shall be protected during the existence of their right over the original work against the unauthorised public representation of translations of their works.[1]

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.[2]

Article 12

The following shall be specially included among the unlawful reproductions to which the present Convention applies: Unauthorised indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, tale, or piece of poetry into a dramatic piece and *vice versa*, etc., when they are only the reproduction of that work, in the same form or in another form without essential alterations, additions, or abridgments, and do not present the character of a new original work.

Article 13 [3]

The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can reproduce them mechanically; (2) the public performance of the said works by means of these instruments.

Reservations and conditions relating to the application of this article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.

The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the present Convention.

Adaptations made in virtue of paragraphs 2 and 3 of the present article, and imported without the authority of the interested

[1] Great Britain not bound by the second paragraph in the case of (*a*) translations of existing works of which the translating right has fallen into the common domain, and (*b*) translations for full term where the country of origin of the work is Denmark, Italy, Japan, or Sweden.

[2] In the case of a published musical work of which the country of origin is Denmark, Italy, Japan, or Sweden, notice of prohibition is necessary for the enjoyment of the rights conferred by the Copyright Act, 1911.

[3] Modified in the case of Denmark, Italy, and Sweden.

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 kinematography.

Kinematograph productions shall be protected as literary or artistic works, if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character.

Without prejudice to the rights of the author of the original work the reproduction by kinematography 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 kinematography.

Article 15

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works the publisher, whose name is indicated on the work, shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author.

Article 16

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 17

The provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

Article 18[1]

The present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin through the expiration of the term of protection.

If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country.

The application of this principle shall take effect according to the stipulations contained in special Conventions existing, or to be concluded, to that effect between countries of the Union. In the absence of such stipulations, the respective countries shall regulate, each in so far as it is concerned, the manner in which the said principle is to be applied.

The above provisions shall apply equally in case of new accessions to the Union, and also in the event of the term of protection being extended by the application of article 7.

Article 19

The provisions of the present Convention shall not prevent a claim being made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general.

Article 20

The Governments of the countries of the Union reserve to themselves the right to enter into special arrangements between each other, provided always that such arrangements confer upon authors more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention. The provisions of existing arrangements which answer to the above-mentioned conditions shall remain applicable.

Article 21

The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organisation and suprevises its working.

The official language of the Office shall be French.

[1] With regard to the retrospective effect of this article, Great Britain adopts article 14 and paragraph 4 of the Final Protocol of the Berne Convention as amended by the Additional Act of Paris.

ARTICLE 22

The International Office collects every kind of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and publishes such information. It undertakes the study of questions of general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations, edits a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.

The Director of the International Office shall make an annual Report on his Administration, which shall be communicated to all the members of the Union.

ARTICLE 23

The expenses of the Office of the International Union shall be shared by the contracting States. Until a fresh arrangement be made they cannot exceed the sum of 60,000 francs a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in article 24.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz. :—1st class, 25 units; 2nd class, 20 units; 3rd class, 15 units; 4th class, 10 units; 5th class, 5 units; 6th class, 3 units.

These coefficients are multiplied by the number of countries of each class, and the total product thus obtained gives the number of units by which the total expense is to be divided. The quotient gives the amount of the unit of expense.

Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration prepares the Budget of the Office, superintends its expenditure, makes the necessary advances, and draws up the annual account which shall be communicated to all the other Administrations.

ARTICLE 24

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries. The Administration of the country where a Conference is to meet prepares, with the assistance of the International Office, the programme of the Conference. The Director of the Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote.

No alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

Article 25

States outside the Union which make provision for the legal protection of the rights forming the object of the present Convention may accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. It may, nevertheless, contain an indication of the provisions of the Convention of September 9, 1886, or of the Additional Act of May 4, 1896, which they may judge necessary to substitute, provisionally at least, for the corresponding provisions of the present Convention.

Article 26

Contracting countries shall have the right to accede to the present Convention at any time for their colonies or foreign possessions.

They may do this either by a general Declaration comprising in the accession all their colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Such Declaration shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Article 27

The present Convention shall replace, in regard to the relations between the Contracting States, the Convention of Berne of September 9, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of May 4, 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 July 1, 1910.

Each contracting party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.

ARTICLE 29

The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making 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.

RESERVATIONS MADE TO THE BERLIN CONVENTION [1]

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.

[1] Schedule 5 (erroneously called Schedule 4) in preamble to Order in Council relating to Berlin Convention.

III

(1) THE BERNE CONVENTION

AND

(2) AMENDMENTS OF 1896

(*a*) THE ADDITIONAL ACT OF PARIS, 1896

(*b*) THE DECLARATION OF PARIS, 1896

NOTE

CONVENTION signed on September 9, 1886, and ratified by Great Britain on September 5, 1887. Great Britain ratified the Additional Act of 1896, but not the Declaration of Paris.

The dates on which the foreign countries adhered to the Berne Convention were as follow: September 9, 1886, Belgium, Spain (and Colonies), France (with Algiers and Colonies), Germany (not for Protectorates), Hayti, Italy, Switzerland, Tunis; June 20, 1888, Luxembourg; May 30, 1889, Monaco; April 13, 1896, Norway; July 15, 1899, Japan; July 1, 1903, Denmark; August 1, 1904, Sweden; October 6, 1908, Liberia.

Denmark and Italy continue under the Berne Convention and Paris Amendments, and Sweden continues under the Berne Convention and the Declaration of Paris. Portugal is a party to the Berlin Convention.

The following is an English translation of the Convention, with the omission of the formal beginning and end and of certain articles.

III

(1) THE 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 2

Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives.[1]

The enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and must not exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work shall be considered to be that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them the laws of which grant the shortest term of protection.[1]

For unpublished works the country to which the author belongs shall be considered to be the country of origin of the work.

Article 3[2]

[Place taken by article 1, sect. 2, Additional Act of Paris, *q.v.*]

Article 4

The expression "literary and artistic works" shall include books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture, and engraving; litho-

[1] Modified by Additional Act of Paris, art. 1, p. 203 *post*.

[2] See p. 203 *post*.

graphs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE 5

Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.[1]

For works published in incomplete parts ("livraisons") the period of ten years shall commence from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections ("cahiers") published by literary or scientific societies, or by private persons, each volume, bulletin, or collection shall be, with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present article, and for the calculation of the terms of protection, the 31st December of the year in which the work was published shall be regarded as the date of publication.

ARTICLE 6

Lawful translations shall be protected as original works. They shall consequently enjoy the protection stipulated 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 7[2]

[Place taken by article 1, sect. 4, Additional Act of Paris, *q.v.*]

ARTICLE 8

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the effect of the legislation of the countries of the Union, and of special arrangements existing or to be concluded between them is not affected by the present Convention.

[1] Modified by Additional Act of Paris, art. 1, sect. 3.

[2] See p. 203 *et seq.*, *post.*

ARTICLE 9

The stipulations of article 2 shall apply to the public representation of dramatic or damatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, shall be, during the existence of their exclusive rights of translation, equally protected against the unauthorised public representation of translations of their works.

The stipulations of article 2 shall apply equally to the public performance of unpublished musical works or of published works in which the author has expressly declared on the title page or commencement of the work that he forbids the public performance thereof.

ARTICLE 10

The following shall be specially included amongst the illicit reproductions to which the present Convention applies: unauthorised indirect appropriations of a literary or artistic work, of various kinds, such as adaptations, musical arrangements, etc., when they are only the reproduction of a particular work, in the same form, or in another form, without essential alterations, additions, or abridgments, so as not to present the character of a new original work.

It is agreed that, in the application of the present article, the tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

ARTICLE 11

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in article 2.

ARTICLE 12 [1]

[Place taken by article 1, sect. 5, Additional Act of Paris, *q.v.*]

[1] See p. 204 *post*.

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, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE 14[1]

Under the reserves and conditions to be determined by common agreement, the present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

ARTICLE 15

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

ARTICLE 16

An International Office shall be established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This office, of which the expenses will be borne by the Administrations of all the countries of the Union, shall be placed under the high authority of the Superior Administration of the Swiss Confederation, and shall work under its direction. The functions of this office shall be determined by common accord between the countries of the Union.

ARTICLE 17

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries.

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.

[1] This article, in conjunction with sect. 4 of the Final Protocol, remains in force for Great Britain.

ARTICLE 18

Countries which have not become parties to the present Convention, and which make provision by their domestic law for the protection of the rights forming the object of the present Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

ARTICLE 19

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their colonies or foreign possessions.

They may do this either by a general Declaration comprising in the accession all their colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

ARTICLE 20

The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorised to receive accessions. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

ARTICLE 21

The present Convention shall be ratified, and the ratifications exchanged at Berne within the space of one year at the latest.

Additional Article

The Convention concluded this day shall in no wise affect the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to this Convention.

Final Protocol [1]

[Place of clause 1 taken by sect. 1 of article 2, Additional Act, *q.v.*]

[1] See p. 204 *et seq.*, *post.*

2. As regards article 9, it is agreed that those countries of the Union whose legislation implicitly includes choreographic works amongst dramatico-musical works expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs in which copyright subsists, shall not be considered as constituting an infringement of musical copyright.

[Place of clause 4 taken by sect. 4 of article 2, Additional Act, *q.v.*][1]

[Sects. 5, 6, and 7 of the Final Protocol relate to administerial affairs of the Convention.]

[1] See p. 205 *post.*

(2) PARIS AMENDMENTS, 1896

NOTE

THE Additional Act was signed on May 4, 1896, and ratified on September 9, 1897. The Declaration was ratified (not by Great Britain) on September 9, 1897. Norway and Sweden ratified the Declaration but not the Additional Act.

The following are English translations of the Additional Act and the Declaration of Paris, with the omission of the formal beginnings and ends.

(*a*) THE ADDITIONAL ACT OF PARIS

ARTICLE 1

THE International Convention of September 9, 1886, is modified as follows :—

1. Article 2.—The first paragraph of Article 2 shall run as follows :—

> Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished, or first published in one of those countries, the rights which the respective laws do now or may hereafter grant to natives.

A fifth paragraph is added in these terms :—

> Posthumous works shall be included among those to be protected.

2. Article 3.—Article 3 shall run as follows :—

> Authors not being subjects or citizens of one of the countries of the Union, who first publish or cause to be first published, their literary or artistic works in one of those countries, shall enjoy, in respect of such works, the protection granted by the Berne Convention, and by the present Additional Act.

3. Article 5.—The first paragraph of article 5 shall run as follows :—

> Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published in one of the countries of the Union, a translation in the language for which protection is to be claimed.

4. Article 7.—Article 7 shall run as follows :—

> Serial stories, including tales, published in the newspapers or periodicals of one of the countries of the Union, may not be reproduced, in original or translation, in the other countries,

without the sanction of the authors or of their lawful representatives.

This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or editors shall have expressly declared in the newspaper or periodical itself in which they shall have been published that reproduction is forbidden. In the case of periodicals it shall be sufficient if such prohibition is indicated in general terms at the beginning of each number.

In the absence of prohibition, such articles may be reproduced on condition that the source is indicated.

The prohibition cannot in any case apply to articles of political discussion, to news of the day, or to miscellaneous information.

5. Article 12.—Article 12 shall run as follows :—

Pirated works may be seized by competent authorities of any country of the Union where the original work enjoys legal protection.

The seizure shall take place in accordance with the domestic legislation of each country.

6. Article 20.—The second paragraph of article 20 shall run as follows :—

Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Article 2

The Final Protocol annexed to the Convention of September 9, 1886, is modified as follows :—

1. No. 1.—This clause shall run as follows :—

As regards article 4, it is agreed as follows :—

(A) In countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of the present Additional Act.

(B) Photographic works and works produced by an analogous process shall be admitted to the benefits of these engagements in so far as the domestic laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works.

It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the Berne Convention and by the present Additional Act, for the same period as the principal right of reproduction of the work

itself subsists, and within the limits of private agreements between those who have legal rights.

2. No. 4.[1]—This clause shall run as follows :—

The common agreement contemplated in article 14 *of the Convention is established as follows :—*

The application of the Berne Convention and of the present Additional Act to works which have not fallen into the public domain within the country of origin at the time when these engagements come into force, shall take effect according to the stipulations on this head contained in special Conventions existing, or to be concluded, to this effect.

In the absence of such stipulations between any of the countries of the Union, the respective countries shall regulate, each in so far as it is concerned, by its domestic legislation, the manner in which the principle contained in article 14 *is to be applied.*

The stipulations of article 14 *of the Berne Convention and of the present clause of the Final Protocol shall apply equally to the exclusive right of translation in so far as such right is established by the present Additional Act.*

The above-mentioned temporary stipulations shall apply in case of new accessions to the Union.

Article 3

The countries of the Union which are not parties to the present Additional Act, shall at any time be allowed to accede thereto on their request to that effect. This stipulation shall apply equally to countries which may hereafter accede to the Convention of September 9, 1886. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, who shall in turn communicate it to the other Governments.

Article 4

The present Additional Act shall have the same force and duration as the Convention of September 9, 1886.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of that Convention, as soon as possible, and within the space of one year at the latest.

It shall come into force as regards those countries which shall have ratified it three months after such exchange of ratifications.

[1] This clause, in conjunction with article 14 of the Berne Convention, remains in force for Great Britain.

(*b*) DECLARATION OF PARIS, 1896 [1]

DECLARATIONS interpreting certain provisions of the Convention of Berne of September 9, 1886, and of the Additional Act, signed in Paris May 4, 1896, and ratified September 9, 1897.

1. By the terms of paragraph 2 of article 2 of the Convention, the protection granted by the afore-mentioned Acts depends solely on the accomplishment in the country of origin of the work of the conditions and formalities that may be prescribed by the legislation of that country. The same rule applies to the protection of the photographic works mentioned in No. 1 (*b*) of the modified *protocole de clôture*.

2. By *published* works must be understood works issued from the press to the public in one of the countries of the Union. Consequently, the representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, do not constitute publication in the sense of the afore-mentioned Acts.

3. The adaptation of a novel into a play, or of a play into a novel, comes under the stipulations of article 10. The countries of the Union which are not parties to the present Declaration shall be allowed to accede thereto at any time on their request to that effect. The same rule shall apply to countries which may accede either to the Convention of September 9, 1886, or to this Convention, or to the Additional Act of May 4, 1896. It will be sufficient for this purpose if a notification be addressed in writing to the Swiss Federal Council, who will in turn notify this accession to the other Governments.

The present Declaration shall have the same force and duration as the Acts to which it refers.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the form adopted for those Acts, as soon as possible, and within a year at the latest.

In witness whereof, etc.

[1] The Interpretative Clause, which was not ratified by Great Britain.

IV

THE BUENOS AYRES CONVENTION

[PAN-AMERICAN]

NOTE

THE Buenos Ayres Convention, superseding the pan-American Conventions of Mexico (1902) and Rio de Janeiro (1906), was signed at Buenos Ayres on August 11, 1910. It was ratified by the United States on February 15, 1911. The signatory States are (with the exception of Bolivia) the twenty-one Republics of "the three Americas." They include Argentina, Brazil, Chili, Columbia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, Venezuela.

The Monte Video Convention, it would appear, also remains in force. The States belonging to the latter are Argentina, Bolivia, Paraguay, Peru, and Uruguay. The adherence of Belgium, France, Italy, and Spain to the Monte Video Convention has been accepted by Argentina and Paraguay.

THE BUENOS AYRES CONVENTION

ARTICLE 1

The signatory States recognise and protect the rights of literary and artistic property in conformity with the stipulations of the present Convention.

ARTICLE 2

In the expression "literary and artistic works" are included books, writings, pamphlets of any kind, whatever may be the subject dealt with therein and the number of pages; dramatic or dramatico-musical works, choregraphic works, musical compositions, with or without words, drawings, paintings, sculpture, engravings, photographic, astronomical, or geographical works, maps, sketches, or plastic works relating to geography, geology or topography, architecture or any other science: in fact, any production which can be published by means of the press or by reproduction.

ARTICLE 3

The recognition of copyright obtained in a State, in conformity with its laws, shall carry with it protection in all the other countries, without the necessity of complying with other formalities, provided that the work bears an indication that the copyright has been reserved.

ARTICLE 4

The copyright of a literary or artistic work shall include, for its author or his legal representatives, the exclusive right to dispose of it, to publish, assign, translate or authorise a translation of it, and to reproduce it in any way whatsoever, in its entirety or in part.

ARTICLE 5

The author of a protected work shall be considered, saving proof to the contrary, to be the person whose name or known

pseudonym is indicated thereon ; consequently, the tribunals of the different signatory countries shall admit suits to be brought by the author or his representatives against pirates or infringers.

ARTICLE 6

Authors or their legal representatives, natives or domiciled foreigners, shall enjoy in the signatory countries the rights which the respective laws accord, but not to the extent of exceeding the term of protection granted in the country of origin.

For works comprised in several volumes, which may not have been published all at the same time, also for reports of proceedings, works in parts, or periodicals, the period of copyright for each volume, report, part, or periodical, shall commence from the respective date of publication.

ARTICLE 7

The country of origin shall be considered to be that in which the work was first published in America, and if publication has been effected simultaneously in several of the signatory countries, that one of them in which the law fixes the shortest period of protection.

ARTICLE 8

A work which does not obtain copyright on its first production shall not be able to acquire it for subsequent editions.

ARTICLE 9

Authorised translations are protected as original works. Translators of works in which copyright does not exist, or has expired by effluxion of time, shall be able to obtain, for their translations, the copyright referred to in article 3, but in no way shall they be entitled to oppose the publication of other translations of the same works.

ARTICLE 10

Speeches delivered or read in deliberative assemblies, before tribunals of justice, or at public meetings, may be published in the periodical press without requiring any form of authorisation, and without any limitations beyond the legal provisions existing within the limits of each State on this subject.

ARTICLE 11

Literary, scientific, or artistic works, whatever may be the subject dealt with therein, published in the journals or reviews

of any one country in the Union, may not be reproduced in any of the others without the consent of the authors.

With the exception of the works mentioned, any article appearing in a journal may be reproduced by other journals, if the first-named does not expressly prohibit it, and in every case, when producing an article, the source from which it is taken shall be mentioned.

News, the collection of various facts, which bear only the character of press information, shall not enjoy protection under this Convention.

Article 12

The reproduction of extracts from literary or artistic works in educational publications or in an anthology is not given any copyright, and may, consequently, be freely made in all the signatory countries.

Article 13

Indirect appropriations, unauthorised, from a literary or artistic work, and not bearing the stamp of original works, shall be considered as unauthorised reproductions, coming under the penalties of civil law. The same applies to the reproduction, in any form whatever, of a complete work, or the greater part of it, accompanied by notes or commentaries under the pretext of literary criticism, or amplifying or supplementing the original work.

Article 14

Every work infringing copyright shall be subject to seizure in the signatory countries where the original work is entitled to legal protection, without prejudice to the indemnities or penalties incurred by the infringers, according to the laws of the country where the infringement has been committed.

Article 15

The government of each signatory country shall retain the right to permit, control, or prohibit the circulation, representation or exhibition of works or productions over which the competent authority shall have the right to exercise its action.

Article 16

The present Convention shall come into force in the signatory States which ratify it three months after they have communicated their ratification to the Argentine Government; and shall remain in force amongst them for one year from the date of denunciation.

This declaration shall be addressed to the Argentine Government, and shall affect only the country which makes it.

Made and signed in the city of Buenos Ayres on August 11, 1910, in Spanish, English, Portuguese, and French, and deposited in the ministry of foreign affairs of the Argentine Republic, in order that certified copies be made for transmission to each of the signatory nations through the appropriate diplomatic channels.

THE UNITED STATES COPYRIGHT ACT, 1909

NOTE

THE Act here printed passed both Houses of Congress on March 3, and was signed by the President on March 4, 1909. It came into force on July 1, 1909.

It is "An Act to amend and consolidate the Acts respecting copyright." On July 1, 1909, it took the place of the copyright enactments then in force, including title 60, chapter 3, of the Revised Statutes (1873), and the amendatory Acts of June 18, 1874; August 1, 1882; March 3, 1891; March 3, 1893; March 2, 1895; January 6, 1897; February 19, 1897; March 3, 1897; January 7, 1904; and March 3, 1905.

The "proclaimed" countries (April 9, 1910) enjoying the benefits of the Act, excepting benefits under sect. 1 (*e*) (mechanical musical works), as to which special conditions are imposed, are Austria, Belgium, Chili, China, Costa Rica, Cuba, Denmark, France, Germany (including mechanical contrivances), Great Britain and her possessions, Italy, Japan, Luxembourg, Mexico, Holland and possessions, Norway, Portugal, Salvador, Spain, and Switzerland.

THE UNITED STATES COPYRIGHT ACT, 1909

An Act to amend and consolidate the Acts respecting Copyright

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right :

(*a*) To print, reprint, publish, copy, and vend the copyrighted work ; **Exclusive right to print, publish, and vend.**

(*b*) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatise it if it be a non-dramatic work; to convert it into a novel or other non-dramatic work if it be a drama ; to arrange or adapt it if be a musical work ; to complete, execute, and finish it if it be a model or design for a work of art ; **Exclusive right to translate, dramatise, arrange and adapt, etc.**

(*c*) To deliver or authorise the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production ; **Exclusive right to deliver lectures, sermons, etc.**

(*d*) To perform or represent the copyrighted work publicly if it be a drama, or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof ; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced ; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever ; **To represent dramatic works, or make record, or exhibit, or perform, etc.**

(*e*) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit ; and for the purposes set forth in subsect. (*a*) hereof, to make any arrangement or setting of it or of the melody of it in any system of **To perform music and make arrangement, setting, or record.**

notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided*, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after this Act goes into effect, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: *And provided further, and as a condition of extending the copyright control to such mechanical reproductions*, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit: *And provided further*, That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defence to any suit, action, or proceeding for any infringement of such copyright.

Act not retroactive.

Music by foreign author.

Control of mechanical musical reproduction.

Royalty for use of music on records, etc.

Notice of use of music on records.

License to use music on records.

Failure to pay royalties.

In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand, the court may award taxable costs to the plaintiff, and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to

be due as royalty in accordance with the terms of this Act, not exceeding three times such amount.

The reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs. **Reproduction of music on coin-operated machines.**

2. That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor. **Right at common law or in equity.**

3. That the copyright provided by this Act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this Act. **Component parts of copyrightable work.** **Composite works or periodicals.**

4. That the works for which copyright may be secured under this Act shall include all the writings of an author. **Works protected.**

5. That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs : **Classification of copyright works.**

(*a*) Books, including composite and cyclopædic works, directories, gazetteers, and other compilations ; *Books*, **composite, cyclopædic works; directories, gazetteers, etc.**
(*b*) Periodicals, including newspapers ;
(*c*) Lectures, sermons, addresses, prepared for oral delivery ;
(*d*) Dramatic or dramatico-musical compositions ;
(*e*) Musical compositions ;
(*f*) Maps ;
(*g*) Works of art ; models or designs for works of art ;
(*h*) Reproductions of a work of art ;
(*i*) Drawings or plastic works of a scientific or technical character ;
(*j*) Photographs ;
(*k*) Prints and pictorial illustrations ;

Provided, nevertheless, That the above specifications shall not be held to limit the subject-matter of copyright as defined in sect. 4 of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act. **Classification does not limit copyright.**

6. That compilations or abridgments, adaptations, arrangements, dramatisations, translations, or other versions of works in the public domain, or of copyrighted works, when produced with the consent of the proprietor of the copyright in such work or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act ; but the publication of any such new works shall not affect the force **Compilations, abridgments, dramatisations, translations, new editions.**

Subsisting copyright not affected.

or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

Not subject-matter of copyright; works in public domain; government publications.

7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to the going into effect of this Act, and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however,* That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorise any use or appropriation of such copyright material without the consent of the copyright proprietor.

Copyright to author or proprietor for terms specified in Act.

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:

Foreign authors who may secure copyright protection.

Alien authors domiciled in U.S.

(*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

Authors, when citizens of countries granting reciprocal rights.

(*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.

International agreement.

Presidential 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.

Publication with notice initiates copyright.

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 sect. 21 of this Act.

Registration of copyright.

10. That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in sect. 55 of this Act.

Copyright certificate.

Copyright protection of unpublished works: lectures, dramas, music, etc.

11. That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic or musical composition; of a photographic print if the work be a photograph; or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies under sects. 12 and 13 of this Act where the work is later reproduced in copies for sale.

Deposit of copies after publication.

Two complete copies of best edition.

12. That after copyright has been secured by publication of the work with the notice of copyright as provided in sect. 9 of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in sect. 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 sect. 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.

Periodical contributions.

Work not reproduced in copies for sale.

No action for infringement until deposit of copies.

Failure to deposit copies. Register of copyrights may demand copies.

13. That should the copies called for by sect. 12 of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars, and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void.

Failure to deposit on demand. Fine $100 and retail price of 2 copies, best edition. Forfeiture of copyright.

Postmaster's receipt.

14. That the postmaster to whom are delivered the articles deposited as provided in sects. 11 and 12 of this Act shall, if requested, give a receipt therefor, and shall mail them to their destination without cost to the copyright claimant.

Printed from type set within the United States.

Book in foreign language excepted.

Lithographic or photo-engraving process.

Printing and binding of the book.

Illustrations in a book.

Separate lithographs and photo-engravings.

Books for blind excepted.

Books in foreign languages excepted.

15. That of the printed book or periodical specified in sect. 5, subsects. (*a*) and (*b*) of this Act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country, and illustrate a scientific work or reproduce a work of art; but they shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking *ad interim* protection under this Act.

Affidavit of American manufacture.

Printing and binding of the book.

Establishment where printing was done.

Date of publication.

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 books, 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 the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving process or printing and binding were performed, and the date of the completion of the printing of the book or the date of publication.

False affidavit, a misdemeanour; fine, $1000 and forfeiture of copyright.

17. That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanour, and upon conviction thereof shall be punished by a fine of not more than one thousand

dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited.

Notice of copyright.

18. That the notice of copyright required by sect. 9 of this Act shall consist either of the word "Copyright" or the abbreviation "Copr.," accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsects. (*f*) to (*k*), inclusive, of sect. 5 of this Act, the notice may consist of the letter C enclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four.

Notice on maps, copies of works of art, photographs, and prints.

Notice on accessible portion.

Notice on existing copyright works.

Notice of copyright on book.

19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical, either upon the title-page or upon the first page of text of each separate number, or under the title heading, or if a musical work, either upon its title-page or the first page of music: *Provided*, That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice.

On periodical.

One notice in each volume or periodical.

Omission of notice by accident or mistake.

20. That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred, if the court, in its discretion, shall so direct.

Innocent infringement.

Book published abroad in the English language.

21. That in the case of a book published abroad in the English language before publication in this country, the deposit in the copyright office, not later than thirty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright, and a statement of the name and nationality of the author, and of the copyright proprietor, and of the date of publication of the said book, shall secure to the author or proprietor an *ad interim* copyright, which shall have all the force and effect given to copyright by this Act, and shall

***Ad interim* copyright for 30 days.**

endure until the expiration of thirty days after such deposit in the copyright office.

Extension to full term.

22. That whenever within the period of such *ad interim* protection an authorised edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in sect. 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.

Deposit of copies, filing of affidavit.

Duration of copyright: 1st term, 28 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: *Provided*, That in the case of any posthumous work or of any periodical, cyclopædic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author), or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office, and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any copyrighted work, including a contribution by an individual author to a periodical or to a cyclopædic or other composite work when such contribution has been separately registered, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or, in the absence of a will, his next of kin, shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years, when application for such renewal and extension shall have been made to the copyright office, and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

Posthumous works, periodicals, cyclopædic or composite works.

Renewal term 28 years.

Other copyrighted works, first term 28 years.

Renewal term 28 years; to author, widow, children, heirs, or next of kin.

Notice that renewal term is desired.

Copyright ends in 28 years unless renewed.

Extension of subsisting copyrights.

24. That the copyright subsisting in any work at the time when this Act goes into effect may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or, in the absence of a will, his next of kin, for

a further period such that the entire term shall be equal to that secured by this Act, including the renewal period: *Provided, however*, That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided*, That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term.

Proprietor entitled to renewal for composite work.

Renewal application.

25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States, such person shall be liable:

Infringement of copyright.

(*a*) To an injunction restraining such infringement;

Injunction.

(*b*) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only, and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits, such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in the case of a newspaper reproduction of a copyrighted photograph, such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty:

Damages.

Proving sales.

Newspaper reproduction of photograph; recovery, $50-$200.

Maximum recovery, $5000.

Minimum recovery, $250.

Painting, statue, or sculpture, $10 for every infringing copy.

Other works $1 for every infringing copy.

Lectures, $50 for every infringing delivery.

Dramatic or musical works, $100 for first and $50 for subsequent infringing performance.

Other musical compositions, $10 for every infringing performance.

First. In the case of a painting, statue, or sculpture, ten dollars for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Second. In the case of any work enumerated in sect. 5 of this Act, except a painting, statue, or sculpture, one dollar for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Third. In the case of a lecture, sermon, or address, fifty dollars for every infringing delivery;

Fourth. In the case of dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first, and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance;

Delivering up infringing articles.

(*c*) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright ;

Destruction of infringing copies, etc.

(*d*) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, moulds, matrices, or other means for making such infringing copies as the court may order ;

Infringement by mechanical musical instruments.

(*e*) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorised manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in sect. 1, subsect. (*e*), of this Act : *Provided also*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this Act, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice ; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by sect. 1, subsect. (*e*), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

Injunction may be granted.

Recovery of royalty.

Notice to proprietor of intention to use.

Damages, three times amount provided.

Temporary injunction.

Rules for practice and procedure.

Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States.

Judgment enforcing remedies.

26. That any court given jurisdiction under sect. 34 of this Act may proceed in any action, suit, or proceeding instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided.

Proceedings, injunction, etc., may be united in one action.

27. That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, moulds, matrices, and so forth, aforementioned may be united in one action.

Penalty for wilful infringement.

28. That any person who wilfully and for profit shall infringe any copyright secured by this Act, or who shall knowingly and wilfully aid or abet such infringement, shall be deemed guilty of a misdemeanour, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the court: *Provided, however*, That nothing in this Act shall be so construed as to prevent the performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit.

Oratorios, cantatas, etc., may be performed.

False notice of copyright (penalty for).

29. That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted, shall be guilty of a misdemeanour punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars.

Fraudulent removal of notice; fine $100-$1000.

Issuing, selling, or importing article bearing false notice; fine $100.

Importation prohibited of articles bearing false notice and *piratical* copies.

30. That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

Prohibition of importation of books.

31. That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorised by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in sect. 15 of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of sect. 15 of this Act, shall be, and is hereby, prohibited: *Provided, however*, That except as regards piratical copies, such prohibition shall not apply:

Exceptions to prohibition of importation.

(*a*) To works in raised characters for the use of the blind;

Works for the blind.

(*b*) To a foreign newspaper or magazine, although containing matter copyrighted in the United States, printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorisation;

Foreign newspapers or magazines.

Books in foreign languages of which only translations are copyrighted.

(*c*) To the authorised edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;

Importation of authorised foreign books permitted.

(*d*) To any book published abroad with the authorisation of the author or copyright proprietor, when imported under the circumstances stated in one of the four subdivisions following, that is to say:

For individual use and not for sale.

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

For the use of the United States.

Second. When imported by the authority or for the use of the United States;

For the use of societies, libraries, etc.

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

Libraries purchased *en bloc*.

Fourth. When such books form parts of libraries or collections purchased *en bloc* for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries, and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright, or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

Books brought personally into the United States.

Imported copies not to be used to violate copyright.

Seizure of unlawfully imported copies.

32. That any and all articles prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorised editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export, whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve wilful negligence or fraud.

Copies of authorised books imported may be returned.

Secretary of Treasuryand Postmaster-General to make rules to prevent unlawful importation.

33. That the Secretary of the Treasury and the Postmaster-General are hereby empowered and required to make and enforce such joint rules and regulations as shall prevent the importation into the United States in the mails of articles prohibited importation by this Act, and may require notice to be given to the Treasury Department or Post-Office Department, as the case may be, by copyright proprietors or injured parties, of the actual or contemplated importation of articles prohibited importation by this Act, and which infringe the rights of such copyright proprietors or injured parties.

Jurisdiction of courts in copyright cases.

34. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognisable by the circuit courts of the United States, the district court of any territory, the supreme court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands.

District in which suit may be brought.

35. That civil actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

Injunctions may be granted.

36. That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this Act may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

Certified copy of papers filed.

37. That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

Judgments, etc., may be reviewed on appeal or writ of error.

38. That the orders, judgments, or decrees of any court mentioned in sect. 34 of this Act arising under the copyright laws of the United States may be reviewed on appeal or writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

No criminal proceedings shall be maintained after *three* years.

39. That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

Full costs shall be allowed.

40. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

Copyright distinct from property in material object.

41. That the copyright is distinct from the property in the material object copyrighted, and the sale of conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.

Transfer of any copy of copyrighted work permitted.

Copyright may be assigned, mortgaged, or bequeathed by will.

42. That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

Assignment executed in foreign country to be acknowledged.

43. That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorised by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be *primâ facie* evidence of the execution of the instrument.

Assignments to be recorded.

44. That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States, or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

Register of copyrights to record assignments.

45. That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act, he shall furnish to any person requesting the same a certified copy thereof under the said seal.

Assignee's name may be substituted in copyright notice.

46. That when an assignment of the copyright in a specified book or other work has been recorded, the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act.

Copyright records.

47. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

Register of copyrights and assistant register of copyrights.

48. That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office, and

to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorised by law.

Register of copyrights to deposit and account for fees.

49. That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury, in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received which it has not been possible to apply as copyright fees, or to return to the remitters, and shall also make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

Shall make monthly report of fees.

Bond of register of copyrights.

50. That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury, and with sureties satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

Annual report of register of copyrights.

51. That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act.

Seal of copyright office.

52. That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

Rules for the registration of copyrights.

53. That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorised to make rules and regulations for the registration of claims to copyright as provided by this Act.

Record books.

54. That the register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this Act, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof.

Entry of copyright.

Certificate of registration.

55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain his name and address, the title of the work upon which copyright is claimed, the date of the deposit of the copies of such work, and such marks as to class designation and entry number as shall fully identify

Certificate for book to state receipt of affidavit.

Certificate may be given to any person.

Receipt for copies deposited.

the entry. In the case of a book the certificate shall also state the receipt of the affidavit as provided by sect. 16 of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same, and the said certificate shall be admitted in any court as *primâ facie* evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration.

Index to copyright registrations.

Catalogue of copyright entries

Catalogue cards.

Catalogues and indexes *prima facie* evidence.

56. That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues of copyright entries and the index volumes herein provided for shall be admitted in any court as *prima facie* evidence of the facts stated therein as regards any copyright registration.

Distribution of catalogue of copyright entries.

Subscription price.

57. That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished to all parties desiring them at a price to be determined by the register of copyrights, not exceeding five dollars per annum for the complete catalogue of copyright entries and not exceeding one dollar per annum for the catalogues issued during the year for any one class of subjects. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be

Superintendent of documents to receive subscriptions.

received by the Superintendent of Public Documents, who shall forward the said publications; and the moneys thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time.

Record books, etc. open to inspection.

58. That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection;

and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress.

Copies may be taken of entries in record books.

59. That of the articles deposited in the copyright office under the provisions of the copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

Disposition of copyright deposits.

Preservation of copyright deposits.

60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it.

Disposal of copyright deposits.

Manuscript copies to be preserved.

61. That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright, deposited under the provisions of this Act, one dollar, which sum is to include a certificate of registration under seal: *Provided*, That in the case of photographs the fee shall be fifty cents where a certificate is not demanded. For every additional certificate of registration made, fifty cents. For recording and certifying any instrument of writing for the assignment of copyright, or any such license specified in sect. 1, subsect. (*e*), or for any copy of such assignment or license, duly certified, if not over three hundred words in length, one dollar; if more than three hundred and less than one thousand words in length, two dollars; if more than one thousand words in length, one dollar additional for each one thousand words or fraction thereof over three hundred words. For recording the notice of user or acquiescence specified in sect. 1, subsect. (*e*), twenty-five cents for each notice if not over fifty

Fees.

Fee for registration.

Fee for certificate.

Fee for recording assignment.

Fee for copy of assignment.

Fee for recording notice of user upon mechanical musical instruments.

words, and an additional twenty-five cents for each additional one hundred words. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, one dollar. For recording the extension or renewal of copyright provided for in sects. 23 and 24 of this Act, fifty cents. For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, fifty cents for each full hour of time consumed in making such search: *Provided*, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time.

Fee for comparing copy of assignment.

Fee for recording renewal of copyright.

Fee for recording transfer of proprietorship.

Fee for search.

Only one registration required for work in several volumes.

62. That in the interpretation and construction of this Act "the date of publication" shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorised edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word "author" shall include an employer in the case of works made for hire.

Definitions: "Date of publication." "Author."

63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Repealing clause.

64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

Date of enforcement.

Approved, March 4, 1909.

NOTE TO SECT. 18, PROVISO

The Act of June 18, 1874, provides that the notice of copyright to be inscribed on each copy of a copyrighted work shall consist of the following words:—

"Entered according to Act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington"; or, . . . the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18—, by A. B."

APPENDIX II

FORMS OF AGREEMENT, ASSIGNMENT, LICENSE, ETC.

THE following Forms between Author and Manager for Dramatic and Musical Works have been prepared by the Author with, in the cases of Agreement I. and Forms VI. and IX., the assistance of Mr C. Harvard Pierson, of the Inner Temple, Barrister-at-Law.

I
AGREEMENT FOR WEST END WITH OPTIONS

II
AGREEMENT FOR PROVINCIAL TOUR

III
AGREEMENT FOR UNITED STATES OR BRITISH POSSESSIONS

IV
AGREEMENT FOR A FIT-UP TOUR

V
AGREEMENT FOR ONE-ACT PLAY, SKETCH, SCENA, ETC.

VI
LICENSE FOR SONG OR RECITATION

VII
AGREEMENT TO COMPLETE UNFINISHED PLAY

VIII
AGREEMENT TO TRANSLATE OR ADAPT PLAY

IX
ASSIGNMENT OF COPYRIGHT

X
FORMS UNDER MUSICAL COPYRIGHT (SUMMARY) ACTS

FORMS OF AGREEMENT, ASSIGNMENT, LICENSE, ETC.

Courses open to an author.

In disposing of his work a dramatic author has various courses open to him. He can sell his work right out. He can assign his copyright either for the whole term (less the unassignable period that belongs to his estate) or for any part of the whole term within his possession. He can assign the whole of his rights, which are covered by the word copyright, or he can assign his acting right, while retaining his right to publish, and so on. He can assign a right subject to such limitations of country or parts of a country as he pleases. Further, he may make a grant of interest by way of a license.

License.

The last-named course is the one recommended to the dramatic author and also to the manager. The play of an author may or may not be successful. It is not possible to say before production, and therefore no idea can be formed of the value of the work. In these circumstances, a manager, if he pays a considerable sum for the work—and the monetary potentialities of a play should make the sum relatively considerable — may be a heavy loser, because he may have a valueless work on his hands. But no sum, however considerable—no sum, that is, that any sensible person would be ready to pay down before production—bears any proportion to the earning power of a play that wins a great popularity. In these circumstances, it is best for the author to hold on to and for the manager not to buy a thing that in its provisional state has no calculable values.

The author therefore does not sell his work, nor does he assign the copyright, but he grants a license to perform. In other words, he lets out the acting right upon stated terms. The license may, subject to the performance of the agreement embodying the license, vest the acting right exclusively in a single licensee; but usually that course is not advisable. Yet a manager, risking not only his deposit to the author but the costs of production, may reasonably not be content with a license confined to his immediate purpose, which say is the production of the piece for a run in the West End. He may look for a share in the fortunes of the play elsewhere than at his theatre. Next to the author he has the best claim to this benefit from the play.

With options.

Hence with a license it is only fair to link up an option or options. It may be an option on the acting right for the provinces, whether for the whole area or for the large towns only. Other options are options for the United States of America, for the British self-governing dominions and other possessions, and for foreign countries. It is well to keep the options separate from each other. One option, for example, might be for the United States, Canada, and Newfoundland; another for the Union of South Africa; another for Germany, and so on. It is not suggested that the manager should have options in all these respects under his license, but the different sorts of option are enumerated in order to show how an agreement for a license may be developed.

Time-limit.

In the subjoined Agreements, space is left for a time-limit to be inserted. This limit must of course depend on circumstances, but it is in the interest of the author not in any case to carry it further than five years. In a license to produce in the West End, it has been not unusual for the manager to enjoy a right—assuming that he has fulfilled the conditions of the agreement, an agreement that is otherwise determined—to revive the piece in the West End at any time within five or more years from the original date of production, on the same terms and con-

ditions as heretofore, should he wish to do so. A clause to this effect could, with the necessary modifications, be inserted in an agreement, assuming the term of the license was say two or three years instead of five. An example is given in Agreement I.

Modes of payment.

The mode of payment is either by percentage or fixed royalty. A royalty is not calculated on the best earning capacity of the work, and is generally therefore not so favourable to the author as the manager. Royalties are usual for one-act plays, sketches, songs, and other compositions that form parts of programmes—that is to say, where such pieces are not bought outright. It may be suggested, however, that in the case of music-hall sketches and similar pieces the author shall receive a specified percentage on the gross amount of each contract under which the manager or artist performs. For example, a sketch may be played under a contract for £20 at one hall and for £30 at another, and the percentage would be payable accordingly. The manager or artist might object on the ground that this form of payment obliged him to disclose his terms. On the other hand, he discloses them to his agent, just as the theatrical manager discloses his nightly receipts to the author under the percentage system.

Melodramas are as often as not toured with a royalty payment to the author, which is the rule for plays on tour in towns known as the smalls and the fit-ups.

Percentage on gross receipts.

The rate of percentage varies. An average percentage in town is 5 per cent., rising with the receipts to 10 per cent., and in circumstances of exceptional receipts to 15 per cent. The rate starts sometimes as low down as 3 per cent. But an author able to command his own terms has been known to stipulate that after the receipts have reached a certain point he shall take as much as one-half of the subsequent receipts. The French Society regulates these matters on a strict basis. The rates are by assessment, and the different denominations come into force automatically.

Our own sliding scale may be applied two ways. A

manager may pay, say, 5 per cent. up to gross receipts of £500,[1] and 7½ per cent. of gross receipts between £500 and £750, and so on. Or when the £500 point is reached he may pay 7½ per cent. of the total gross receipts. Suppose imaginary figures are filled in as follow :—The manager to pay 5 per cent. of the receipts up to £500, and when the receipts exceed £500 but do not exceed £750, the manager to pay 5 per cent. of such receipts up to £500, and to pay 7½ per cent. of such receipts exceeding £500 up to £750. But assuming the increased percentage applies to the total gross receipts, then, taking the same imaginary totals and percentages, the author receives 5 per cent. of all receipts up to £500, but immediately the takings reach £501 his percentage is 7½ per cent. of such total receipts. It need scarcely be pointed out that it is of the utmost importance to the author to see that his intentions with regard to percentages are correctly stated. In the Agreements the two methods of calculating percentages are given.

The play kept in performance.

Where the acting rights are let out for a year or more, the duration of the agreement is or should be dependent on the manager's performing the work for not fewer than a given number of weeks in each year. An alternative, which is suggested as in some cases fairer to the manager, is that the determining factor should lie not in the number of the weeks but in the gross amount of the percentages. Thus the rights of the manager would remain in force until the amount of the percentages accruing to the author under the Agreement failed to reach the minimum sum. And from the point of view of the author, a manager might play a piece for the stipulated minimum number of weeks, yet do so at such bad theatres or to such poor business that the author would find the performance of his play in such circumstances unremunerative. A further safeguard for the author would be to combine the two methods by imposing a minimum number of weeks and a minimum gross amount of percentages. An author

[1] Provinces £300 and *pro rata*.

has to bear in mind that he may write one successful play and one only. It seems, unfortunately, to be by no means a rare experience.

Protection for the manager.

It is necessary, in turn, that the manager should be protected in certain respects. It should be a condition of the Agreement that the work has a good copyright, and, perhaps, that the work is not blasphemous, seditious, immoral, libellous or scandalous, or against public policy. It may be said that it is the business of the manager before accepting the work to satisfy himself on these latter points, but often he has not the materials for a judgment completed before him when he makes the deposit-money. The Agreements contain a clause indemnifying the manager; though, speaking in general terms, an indemnity, while honourably binding, would not be legally valid if, at the time it was given, the manager was a conscious party to a wrong-doing. Nor would the indemnity cover criminal proceedings. Then, as to the propriety of a play, the Lord Chamberlain as Censor is a disturbing element. He may veto a play, and the manager is powerless to produce it in Great Britain. While the Censorship remains as constituted, it is necessary to make an Agreement for Great Britain subject to the Lord Chancellor's license and to give the manager a right of recovery of all sums paid to the author in advance in the event of the refusal of the Lord Chamberlain's license.

Publishing the play.

The manager is also in need of protection in other ways. It is incumbent on the author to protect his copyright not only in his own interests but also in the manager's. Under the 1911 Act there are no formalities, but the author must not give his play first publication in a non-reciprocal country. If he so prints his work in copies for sale outside the area of the Act or its foreign extensions, it is open to anyone to perform the work next door to the manager with whom the author has entered into the agreement. Again, if he gives his play first publication here without complying with the formalities of the United States law, the author cannot acquire his rights thereunder. If his work is

unpublished he is protected in the United States at common law, but it is better for him to come under statutory protection, for although he apparently has to sacrifice his perpetual copyright, he simplifies the position for the manager, especially as the United States law is exacting in the matter of registration of assignment, which seems to include a grant of interest such as a license.

In another respect the publication of the play may concern the manager. A popular play, published in cheap printed form, may be read instead of witnessed in performance, especially by persons at a distance from the theatre. The manager, in consequence, can provide in the Agreement that the play shall not be published during the existence of the license. There is the counter-view that the published book may be an advertisement for the play.

Film and record rights.

The author does not include in the acting right the kinematograph right nor the mechanical-contrivance rights. Here again, if the author exercises these rights while the license is running, the interests of the manager may be affected. A manager on tour, for example, does not want his performance to be anticipated by films of the play. It is a thing that has occurred, and the growth of "photo-plays" may make it a contingency seriously to be reckoned with. The objection to mechanical contrivances applies more particularly to musical pieces.

Control of production.

The questions of alterations in the play and of the casting and the rehearsal of the play involve delicate relations between author and manager. In the first respect it seems that the author should reserve to himself the power to have his work performed as it is written and otherwise expressed. The other matters seem more within the province of the manager. These questions depend a good deal on the circumstances of the particular case. There may, as an instance, be a play with an unhappy ending. Where that is so, it might be a wise precaution of the manager to stipulate that, at the request of the manager after the

original production, the author shall supply promptly a happy ending.

The Agreements are drawn in accordance with the fore- Agreements.
going remarks. They have also been drawn with a view to being as adaptable to a particular case as an Agreement on general lines can be. Clauses may be modified as required, or deleted, or transferred from one Form to another. The Agreements do not in all respects follow the existing procedure, which, however, has been carefully considered; and it is hoped that such deviations as have been attempted in form and practice may be found fair to the parties and not impracticable.

It should be added that Mr Cecil Raleigh, Mr Arthur Shirley, Mr Charles Hannan, Mr George King, and Mr Mowbray Marras and others have kindly supplied various particulars of existing contracts.

La Société des Auteurs et Compositeurs Dramatiques

The reference already made to the Société may be extended a little. The organisation is now of long standing. The statutes of the Société go back to Beaumarchais in 1777, what time the author of *Le Barbier de Séville* and *Le Mariage de Figaro* took steps of practical protest against the disabilities and hardships from which dramatic authors of the eighteenth century suffered. The Société was much developed under Scribe in 1829; and to the protection that it was able to afford its members in its new form may no doubt be attributed very largely the ascendency of French drama during the last century. The Société, by fixing the position of the author in the French theatre and defining and securing his economic conditions, made the profession of play-writing one worth a man's following, and therefore likely to attract talents that might easily be diverted to other directions.

Managers under contract.

The Société requires managers to contract with it; and the signatories to the rules of the Société—who are of three classes, sociétaires, stagiaires, and heirs or assigns of authors—enter into an undertaking that their works shall only be performed by such contracting managers. Generally speaking, therefore, the French managers are in the hands of a severely-regulated trade union. A manager who does not contract with the Société has practically the play-supply of France—except the non-copyright drama, which in France is drama that falls into the public domain fifty years from the death of author—shut in his face. He has thus to take the wholè supply of modern drama under the conditions imposed by the Société.

In the first place he has to agree to a fixed scale of payment. In Paris it varies from 15 per cent. of the gross receipts downwards; in the provinces from 10 per cent. to 6 per cent., according to the freshness or the importance of the piece. The Société makes its own assessments. Thus the Comédie Française is assessed at 15 per cent. of its gross receipts; such theatres as the Odéon, Gymnase, Vaudeville, Palais Royal, Variétés, Renaissance, Bouffes, and Folies, at 12 per cent.; as the Porte-Saint-Martin, Ambigu, Déjazet, Gaîté, Châtelet, and Cluny at 10 per cent.; and minor and outlying theatres at 8 per cent. and less. The assessment is sometimes raised or lowered, but the foregoing are the usual rates. In addition, the managers sometimes pay premiums direct to the authors for new plays that are specially desired for production. Moreover, in the case of all plays, the managers have to consent to the issue of author's tickets for a certain number of reserved seats for each performance. The tickets in Paris are sold straight away to the Porcher Agency, which resells them direct to the public. In the provinces the author's tickets become the property of the Société.

Deposits and collections.

A theatre manager has to deposit with the Société a certain sum as part security for author's fees, and also

guarantee a *minimum number* of performances, say one hundred. Though the deposit is made, the author's fees are collected after each performance by the representative of the Société, who has the entrée of the box-office. The manager must deliver to the representative a detailed statement of the gross receipts, countersigned by the box-office keeper. The deposit, as far as the provinces go, is not returnable until the end of the tour, when the manager gets it back on producing the receipts for the fees paid by him in every town visited.

French managers thus have to pay somewhat dearly and also inflexibly for their play-supply; but they get it. In this country, at the West-End theatres, there is a great deal of extravagant paying to a very small number of successful authors, but no full supply; and the treatment of the most vital part of the theatre's economy is the most immethodical.

From the point of view of the authors, the benefits of the Société are substantial, at all events to the great working body. The Société from its position can protect their general interests to the utmost. It secures and collects their fees. It collects them not merely in France. It is said—and the story should be true—that when Sarah Bernhardt gave a performance of *Hamlet* at Stratford-on-Avon, one of the ubiquitous representatives of the Société collected the fees at the theatre for the French adapters of the tragedy, Mm. Eugène Morand and Marcel Schwob.

A provident institution.

The Société also acts as a provident institution. The fully qualified member, *i.e.* the sociétaire, can, if he belongs to this class before he is forty, obtain an annual pension of 12,000 francs at age sixty. He is eligible as sociétaire if he has had five acts from a play or plays performed at an important theatre or theatres, or has earned 30,000 francs in royalties. To the English author the former requirement would be less difficult to satisfy.

The model of the Société would no doubt be regarded as too stringent and exact for English tastes. Yet it has

features that might well be reproduced in a similar body for our stage. As well as the French, there is a strong German organisation; and American authors have their society also. We are late to recognise that it is in the worst interests of the Theatre for play-writing to be left to be a haphazard, shiftless business.

I

AGREEMENT TO PRODUCE A PLAY OR OTHER WORK UNDER LICENSE

MEMORANDUM OF AGREEMENT made this day of , one thousand nine hundred and , BETWEEN
of
hereinafter called the author of the one part, and

of
hereinafter called the manager of the other part.

WHEREAS the author is the author of and the owner of the acting right in a [play [1]] entitled

hereinafter called the [play].

AND WHEREAS the manager is desirous to produce and perform in public the [play].

NOW IT IS HEREBY AGREED as follows :—

1. *Grant of License*

That in consideration of the hereinafter mentioned payments, and subject to the provisions of this Agreement and to the termination clauses hereinafter contained, the author hereby grants to the manager a license to produce and perform the [play] for the period of [weeks, months, or years] from the

[1] Here state the nature of the play or musical work, *e.g.* drama, comedy, farce, opera, comic opera, or musical comedy.

day of , or for so long as the [play] shall be continuously performed at the Theatre, London, or at any other West-End London Theatre, but not including the theatres named in the attached Schedule A.[1]

2. *Production of Play*

The manager shall produce the [play] in the evening at the Theatre, London, or at any other West-End London Theatre as aforesaid, on or before the day of .

3. *Preliminary Performances*

Prior to the production of the play at the Theatre, London, and subject to the payment of the author's percentages as hereinafter provided, the manager shall be at liberty to produce the play at any [one] theatre or hall outside a radius of miles from Charing Cross, for the purpose of preliminary performances, provided such performances do not exceed in number.

4. *Payment by Manager*

The manager shall pay to the author on the signing hereof the sum of £ sterling, the said payment to be on account of the first percentages accruing out of the [play], and the said sum shall in no event be repayable by the author to the manager, except as hereinafter provided; and no further percentages shall be payable until this sum is exhausted according to the terms of this Agreement.

5. *Guarantee by the Author*

The author guarantees to the manager that the [play] is in no way whatever a violation of any subsisting copy-

[1] Those theatres or other West-End houses licensed for stage-plays which the author does not wish included should be marked in Schedule A. For a list of West-End theatres see THE STAGE GUIDE.

right, and that the [play] is not in character [blasphemous, seditious, immoral] libellous or scandalous [or against public policy]; and he agrees to hold harmless and keep indemnified[1] the manager from all suits, claims, and proceedings, damages and costs against the manager, provided the [play] is adjudged to infringe a subsisting copyright, or to be in itself a [blasphemous, seditious, immoral] libellous or scandalous work [or to be a work against public policy].

6. *Refusal of Lord Chamberlain's License*

(1) The refusal of the Lord Chamberlain to grant a stage-play license for the [play] shall forthwith determine this Agreement, and the author shall thereupon refund to the manager all moneys paid on account of percentages, or otherwise paid by the manager to the author in respect of the [play].

(2) The manager will make the necessary application to obtain the license of the Lord Chamberlain for the [play], and will discharge all expenses connected therewith, including the deposit of fees and of copy of the [play] at the office of the Lord Chamberlain.

7. *Production*

The manager will defray all the expenses of the production and the performance of the [play].

The manager will produce the [play] under the personal supervision and to the reasonable satisfaction of the author.

8. *Alterations*

The manager will produce the [play] and cause it to be performed in accordance with the manuscript thereof, and will not alter, add, or delete any words, action, situation, or business of the [play], nor vary the title, without the consent of the author previously obtained in writing.

[1] See p. 239 *ante*.

9. *Selection of Cast and Direction of Rehearsals*

[The intentions of the parties with regard to these matters may be stated in a few simple words.]

10. *Name of Author*

The [play] shall be announced and advertised as written by

11. *Advertisements*

The manager shall duly and sufficiently advertise the [play], and shall cause the author's name to appear with reasonable prominence in all such advertisements of the [play], whether contained in the press, bills, notices, programmes, and in any announcement, throwaway, or mural poster whatsoever.

12. *Percentages and Mode of Payment*

(1) For the Theatre, London, or for any other West-End London Theatre as aforesaid, when the gross receipts of admission money from any and every source whatsoever arising do not exceed £ per week, the manager shall pay to the author per cent. of such gross receipts for each week or part of a week, and when the gross receipts as aforesaid exceed £ per week but do not exceed £ per week, the manager shall pay the author per cent. of such total gross receipts for each week or part of a week.[1]

12. *Alternative Clause*

(1) *During the run of the [play] at the Theatre, London, or at any other West-End London Theatre as aforesaid, the manager shall pay to the author a percentage equal to per cent. of the gross receipts of the said theatre for each week or part of a week up to and including £ .*

And when the gross receipts per week shall exceed £ . but shall not exceed £ , the manager shall pay the author a percentage equal to per cent. of such

[1] The latter part of this clause to be repeated with each increase in the sliding scale.

gross receipts up to and including £ , and shall pay a percentage equal to per cent. of such receipts exceeding £ and up to and including £ .

And when the gross receipts per week or any part thereof shall exceed the sum of £ , the manager shall pay the author in respect of any and every such week instead of the percentages aforesaid a percentage equal to per cent. of the whole gross receipts of the said theatre for such week or part thereof.

(2) During the run of the [play] at the Theatre, London, or at any West-End London Theatre as aforesaid, the manager shall furnish the author every day with a detailed return of the gross receipts of admission money for each and every performance of the [play] and from all sources whatsoever arising.

(3) Whilst the [play] is running at the Theatre, London, or at any West-End London Theatre as aforesaid, the author's percentages for each and every week shall be due on the Monday succeeding such week, and they shall be paid to the author not later than the Wednesday in such succeeding week. And in the event of such percentage being in arrear for two whole weeks in succession, or for any two whole weeks, the author shall be empowered to determine this Agreement on giving days' notice in writing to the manager.

13. *Reduction of Charges for Admission*

The manager shall not at any time reduce the charges for admission to the various seats and parts of the Theatre, London, or of any other London West-End Theatre at any time when the [play] is performed thereat as hereinbefore provided, except with the consent of the author previously obtained in writing.

14. *The Two-Houses-a-Night System*

The manager shall not at any time institute the two-houses-a-night system at the Theatre,

London, or at any other London West-End Theatre, while the [play] is performed thereat as hereinbefore provided, except with the consent of the author previously obtained in writing.

15. *Condensed Version*

The author will not grant a right or license to produce or perform a condensed version of the [play] or any part of the [play] within the limits aforesaid to any other person or persons whomsoever during the period hereinbefore recited.

16. *Subletting*

The manager will not sublet or grant any sub-license to any other person or persons whomsoever of the license hereby granted without the consent of the author previously obtained in writing. The license granted herewith is a personal license to the manager only to produce and perform the [play] himself by means of a company of artists under his supervision and management.

16. *Alternative Clause*

The manager agrees that he will not sublet any portion of his rights of performance of the [play] without the consent in writing of the author previously obtained [such consent not unreasonably to be withheld by the author].

17. *Right of West-End Revival*

[The manager shall, in the event of the [play] running continuously at the Theatre, London, for a period of weeks from the date of its first production, shall, subject to his having at all times duly observed and performed the terms and conditions of the license, have the [sole] right of reviving the [play] upon the terms and conditions of this Agreement at any West-End London Theatre as aforesaid for a period of years from the date of such first production.]

18. *Determination and Penalty*

Provided always and it is hereby agreed and declared as follows :—

(*a*) If the manager shall fail to produce the [play] as aforesaid on or before the day of the sum of £ , hereinbefore referred to and paid by him as deposit on account of percentages, shall be forfeited to the author, and the license contained herein shall cease accordingly, and the manager shall pay to the author the sum of £ by way of damages for breach of this Agreement, and such sum shall be over and above the sum of £ paid by the manager on account of percentages as hereinbefore provided, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

(*b*) And if the manager shall fail to observe or perform any of the other provisions of this Agreement, or shall have a receiving order in bankruptcy made against him, or shall enter into any composition or arrangement with creditors, the author shall be entitled to give to the manager weeks' notice in writing of his intention to revoke the license contained herein, and on the expiration of such notice such license shall cease accordingly, without prejudice to the recovery of any fees due to the author or of any rights that the author may or might have in respect of any breach or breaches of this Agreement.

19. *Options of Manager*

The manager shall have the option of acquiring from the author a license [licenses] to produce and perform the [play] in the hereinafter mentioned English-speaking countries[1] on the terms and conditions[2] herein following and further subject to the terms and conditions of Clauses [5], 7, 8, 9, 10, 11, 15, 16, 22, 23, 24, 25, 26, 27 [28], and 29 of this Agreement :—

I.—*Great Britain and Ireland*

(1) The option, if exercised for the suburbs of London outside a radius of miles from Charing Cross

[1] Strike out sections relating to countries for which options are not given.

[2] For a full Agreement for Provinces, United States of America, etc., see Forms II. and III. pp. 262, 270 *et seq.*, *post*.

and for the provincial cities of Great Britain and Ireland, the Channel Islands and the Isle of Man, shall be declared by notice in writing to be given to the author by registered letter days from and including the original day of production in London as hereinbefore provided, and the manager shall with the said notice pay to the author the sum of £ on account of the percentages undermentioned, and such sum shall in no case be repayable to the manager.

(a) Percentages

When the gross receipts, etc. [insert particulars from Clause 12 (1)].

Alternative Clause—(b) Royalties or Fixed Fees

For first-class theatres, including the suburbs of London, as per Schedule B [1] attached hereto, the royalty to be for each and every performance.

For second-class theatres, as per Schedule C [2] attached hereto, the royalty to be for each and every performance.

For all other theatres and halls in existence at the date of the signing of this Agreement and not specifically mentioned in either of the Schedules attached hereto and marked B and C respectively, the royalty to be for each and every performance.

For all theatres and halls not in existence or in course of erection at the date of the signing hereof, the royalty mutually to be agreed upon between the author and the manager.

(2) *Date of Production under Option.*—If the manager should acquire the acting right of the [play] for the suburbs of London and the provincial cities and towns of Great Britain and Ireland as aforesaid, in accordance with the option hereinbefore recited, he shall produce the [play] in

[1] The Schedule should contain the list of first-class theatres referred to. The list may be compiled from THE STAGE GUIDE.

[2] Schedule C should contain a similar list.

at least one of such suburbs or towns on or before day of , for not fewer than consecutive performances thereafter, and should he fail so to do, all his rights for Great Britain and Ireland as aforesaid in respect of the [play] shall cease, and he shall pay to the author the sum of pounds by way of damages for breach hereof, and such sum shall be over and above the sum of pounds paid by the manager on account of percentages [or royalties] as hereinbefore provided, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

(3) *Duration.*—The rights of the manager acquired for the suburbs of London and the provincial towns and cities of Great Britain and Ireland, by license under the option hereinbefore recited, shall remain in force so long as the [play] shall be performed for a number of weeks not fewer than in any one year, each year to be reckoned as commencing from that day of the month on which such original production took place.

Provided that the total period during which the aforesaid rights may remain in force under the license shall not exceed years from the date of the original production at the Theatre, London.

(4) *Determination.*—If the manager shall fail to observe and comply with these conditions at any time, all his rights for the suburbs of London and the provincial cities and towns of Great Britain and Ireland in respect of the [play] shall cease.

Alternative Clause as to Duration

(3) *The rights of the manager acquired for the suburbs of London and the provincial cities and towns of Great Britain and Ireland under the option hereinbefore recited shall remain in force until such time as the percentages [or royalties] accruing under the Agreement to the author shall amount to less than in any one year, each year to be reckoned as commencing from the day of the month of the first produc-*

tion of the play in the suburbs of London or the provincial cities and towns of Great Britain and Ireland.

Provided that the total period during which the aforesaid rights may remain in force under this option shall not exceed years *from the date of the original production at the* Theatre, London.

II.—*United States of America, Canada, and Newfoundland*

(1) The option, if exercised for the United States of America, the Dominion of Canada, and Newfoundland, shall be declared by notice, etc. [insert particulars from Clause 19, I. (1)].

(*a*) *Percentages*

[Insert particulars from Clause 12 (1).]

Alternative Clause—(*b*) *Royalties or Fixed Fees*

For any theatre in New York, and in first-class cities in the United States of America and the Dominion of Canada, viz. :—Brooklyn, Haarlem, Boston, Philadelphia, Chicago, St Louis, Pittsburg, New Orleans, Baltimore, Washington, San Francisco, Montreal [etc.], the royalty to be for each and every performance.

For the next towns of importance in the United States of America and in Canada (a list to be approved and agreed between the author and the manager) the royalty to be for each and every performance.

For the remainder of towns in the United States of America and in Canada, and for towns in Newfoundland, the royalty to be for each and every performance.

(2) *Date of Production under Option.*—If the manager should acquire the acting right of the [play] for the United States of America, the Dominion of Canada, and Newfoundland, in accordance with the option hereinbefore recited, he shall produce the [play] in at least one of such countries on or before day of

, for not fewer than consecutive performances thereafter, and should he fail so to do, all his rights for the United States, Canada, and Newfoundland in the [play] shall cease, and he shall pay to the author the sum of pounds by way of damages for breach thereof, and such sum shall be over and above the sum of pounds paid by the manager on account of percentages [or royalties] as hereinbefore provided, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

(3) *Duration.*—The rights of the manager acquired for the United States, Canada, and Newfoundland shall remain in force until such time as the percentages [or royalties] accruing to the author by license under this option shall amount to less than in any one year, each year to be reckoned as from that day of the month on which the first production of the play in the United States, Canada, or Newfoundland shall take place. Provided that the total period during which the aforesaid rights under the license may remain in force shall not exceed years from the date of the first performance thereunder.

(4) *Determination.*—If the manager shall fail to observe and comply with these conditions at any time, all his rights for the United States, Canada, and Newfoundland in respect of the [play] shall cease.

(5) *Protection of Copyright.*—If the manager should acquire the acting right of the [play] for the United States of America, in accordance with this option, he shall file at Washington notice of grant of performing right, in accordance with the requirements of the Statute law of the United States of America in force at the date of his acquiring such acting rights.

The author will register the author's claim for copyright at Washington, and will there deposit one copy of the [play] or otherwise in accordance with the requirements of the Statute law of the United States of America in force at the date of such registration.

III.—*Australia and New Zealand*

(1) The option if exercised for the Commonwealth of Australia and the Dominion of New Zealand, etc. [insert particulars from Clause 19, I. (1)].

(*a*) *Percentages*

[Insert particulars from Clause 12 (1).]

Alternative Clause—(*b*) *Royalties or Fixed Fees*

For any theatre in Melbourne and Sydney the royalty to be for each and every performance.

For any theatre in Adelaide, Brisbane, and Perth, the royalty to be for each and every performance.

For all other towns in Australia, including the whole of New Zealand, the royalty to be for each and every performance.

(2) *Date of Production under Option.*—If the manager should acquire the acting rights of the [play] for the Commonwealth of Australia and for New Zealand, in accordance with the option hereinbefore recited, he shall produce the [play] in at least one of such countries on or before day of , for not fewer than consecutive performances, and should he fail so to do, all his rights for the Commonwealth of Australia and for New Zealand in respect of the [play] shall cease, and he shall pay to the author the sum of pounds by way of damages for breach hereof, and such sum shall be over and above the sum of pounds paid by the manager on account of percentages [or royalties] as hereinbefore provided, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

(3) *Duration.*—The rights of the manager acquired for the Commonwealth of Australia and for New Zealand under the option shall remain in force until such time as the percentages [or royalties] accruing to the author

by license under this option shall amount to less than in any one year, each year to be reckoned as commencing from that day of the month on which the first production of the play in the Commonwealth of Australia and New Zealand shall take place. Provided that the total period during which the aforesaid rights under the license may remain in force shall not exceed years from the date of the first performance thereunder.

(4) *Determination.*—If the manager shall fail to observe and comply with these conditions at any time, all his rights for the Commonwealth of Australia and New Zealand in respect of the [play] shall cease.

IV.—*South Africa*

(1) The option if exercised for the Union of South Africa, etc. [insert particulars from Clause 19, I. (1)].

(*a*) *Percentages*

[Insert particulars from Clause 12.]

Alternative Clause—(b) Royalties or Fixed Fees

For any theatre in Cape Town, Johannesburg, and Durban [etc.], the royalty to be for each and every performance.

For any theatre in Kimberley, Pretoria, East London, and Port Elizabeth [etc.], the royalty to be for each and every performance.

For all other towns in South Africa the royalty to be for each and every performance.

(2) *Date of Production under Option.*—If the manager should acquire the acting right of the [play] for the Union of South Africa, in accordance with the option hereinbefore recited, he shall produce the [play] in at least one city or town of South Africa on or before day of , for not fewer than consecutive performances thereafter, and should

he fail so to do, all his rights for South Africa in respect of the [play] shall cease, and he shall pay to the author the sum of pounds by way of damages for breach hereof, and such sum shall be over and above the sum of pounds paid by the manager on account of percentages [or royalties] as hereinbefore provided, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

(3) *Duration.*—The rights of the manager acquired for the Union of South Africa under the option shall remain in force until such time as the percentages or [royalties] accruing to the author by license under this option shall amount to less than in any one year, each year to be reckoned as commencing from that day of the month on which the first production of the play in the Union of South Africa shall take place. Provided that the total period during which the aforesaid rights under the license may remain in force shall not exceed years from the first performance thereunder.

(4) *Determination.*—If the manager shall fail to observe and comply with these conditions at any time, all his rights for the Union of South Africa in respect of the [play] shall cease.

20. *Returns and Payments under Options*

Proper signed box-office returns of the gross receipts shall be rendered nightly to the author, and all percentages [or royalties] paid to the author weekly, provided that in the case of countries outside Great Britain and Ireland reasonable time shall be allowed for forwarding the same to the author in England in the due course of post or other transmission.

21. *Sub-licenses (United States, Australia, etc.)*

The manager shall have power from the date of exercising this option until to grant, notwithstanding anything to the contrary contained in this Agreement, licenses to any other person or persons to

produce and perform or cause to be produced and performed the [play] in any theatre or place of entertainment in [1] , but not elsewhere. Any and every sub-license shall be strictly subject to the terms and conditions of this Agreement.

22. *Translations*

The author reserves to himself the right of translation of the [play] into any and every foreign language.

23. *Book of Words*

(1) The author retains his exclusive right to publish the [play] in book form. All profits arising from the sale of copies of such book in the theatre where the [play] is performed shall, except as otherwise agreed in writing, be equally divided between the author and the manager.

(2) The author will not give the [play] publication in any way that will forfeit the copyright under the Copyright Act, 1911.

24. *Proceedings to Protect License*[2]

The author will allow his name to be used by the manager in any proceedings taken by the manager against third parties to protect the license to perform hereby conferred upon the manager. The manager will bear the entire cost of any such proceedings.

The author will assist the manager to the best of his ability in such proceedings.

25. *Kinematograph and Mechanical-Contrivance Rights*

The author retains his right of kinematographic reproduction of the [play], and of adaptation of the whole or any part of the [play] to mechanical musical instruments, but he agrees not to exercise or sanction or permit the exercise of these rights so long as the [play] is licensed to the manager, without the consent of the manager previously obtained in writing.

[1] Insert here the country or countries to which this clause is meant to apply.

[2] See similar clauses, pp. 268, 273, 274 *post*.

26. *Performances by Amateurs [and at Working Men's Clubs]*

The author reserves to himself the acting right in respect of amateurs [and at working men's clubs].

27. *Manuscripts, Acting Parts, etc.*

All actors' parts, prompt books [conductor's score, band parts, scene plots, property plots, lighting plots and every other manuscript whatsoever] used in the production of the [play] shall, at the determination of this Agreement from any cause whatsoever, become the property of the author, and shall be delivered to him by the manager.

28. *Arbitration*

[*In the event of any dispute or question arising between the author and the manager relative to this Agreement, the same shall be referred to two arbitrators, one to be appointed by either party or their umpire pursuant to the Arbitration Act*, 1889.]

29. *Interpretation*

In this Agreement "theatre" includes any building or place duly licensed for the performance of stage-plays.

"Gross receipts" include any and all receipts in the form of admission money whether from agencies, libraries, box-office, pay-boxes, or elsewhere. Gross receipts do not include receipts from refreshment bars, cloak-rooms, programmes, advertisements, and like sources of revenue.

"License to perform" includes only the right to represent in public the play in words and action, by means of living impersonators of the various characters at each and every performance, and does not include the right to convert the [play] into a novel or other non-dramatic work, nor to publish or authorise any translation thereof, nor to make or authorise any person or persons to make any record, perforated roll, kinematograph film, or other con-

trivance by means of which the [play] may be mechanically performed or delivered.

"Produce" means to perform the [play] with a view to a continuous run in the city or town where such performance first takes place, or to stage the [play] with a view to a tour through the various cities and towns of any country comprised within the terms of this Agreement, and does not apply to any colourable representation of the [play] whatsoever.

"Continuous." The [play] shall be deemed to be played continuously notwithstanding that the theatre where it is being performed is closed for ordinary vacations, decoration, or by order of any competent superior authority, and notwithstanding that the [play] is transferred from the stage of one theatre to another theatre in the same town, always provided that such transfer is effected within an interval of time not exceeding .

This Agreement shall not be deemed to create a partnership between the parties hereto,

As Witness, etc.,

[Signatures of both parties.]

[SCHEDULES.]

II

AGREEMENT FOR A PLAY ON TOUR

MEMORANDUM OF AGREEMENT made this day of in the year BETWEEN of in the County of hereinafter termed the author of the one part, and of in the County of hereinafter termed the manager of the other part, whereby it is MUTUALLY AGREED as follows :—

Grant of a License to Perform

1.—The author, in consideration of the payments hereinafter named, hereby grants and the manager hereby takes on the terms and conditions following a [the sole and exclusive[1]] license to perform the [work[2]] entitled , hereinafter called the [work], on tour in Great Britain and Ireland for a period that shall not in any event exceed years[3] and shall further be subject to the determination clauses hereinafter stated.

Guarantee by the Author

2.—The author guarantees to the manager that the [work] is an original work and is in no way whatever a violation of any copyright belonging to any other person or persons, and that the [work] contains nothing of a [an immoral or] libellous or slanderous character, and he agrees to hold

[1] If sole and exclusive, insert these words.
[2] State kind of dramatic or musical work.
[3] If period is less than a year alter to months.

harmless and keep indemnified the manager from all suits and all manner of claims, proceedings, and expenses that may be taken or incurred against the manager on the ground that the work is such violation of copyright or is in itself [immoral] libellous or slanderous.

Sum in Advance of Fees

3.—The manager agrees to pay to the author on the signing of this Agreement, which shall be taken to be and is the receipt therefor, the sum of , such sum to be reckoned as a payment on account of fees and to be met and satisfied out of the fees first accruing to the author under the terms of payment hereinafter stated.

Alternative Clause

3.—*The manager agrees to pay the author on the signing of this Agreement, which shall be taken to be and is the receipt therefor, the sum of , such sum to be reckoned as a deposit on account of fees. If this Agreement should continue for the full term of years, then months before the end of the last year, the said sum shall first begin to be returnable to the manager out of the fees that may be at that time accruing, and if such fees during the said months do not equal the said sum the balance of the said sum shall, if no fees are in arrear, be paid by the author immediately on the termination of this Agreement. If no fees accrue during the said months, the total amount of the said sum on deposit for fees shall, less any amount due for fees in arrear, be returned to the manager days before the termination of this Agreement.*

Determination Clauses

4.—(1) The manager undertakes to start a tour of the [work] beginning on or before . If he should fail to start the tour as agreed and to continue the tour of the [work] therefrom for a period of not fewer than consecutive weeks, then the sum of paid by the manager to the author shall be forfeited and shall

belong absolutely to the author and be not returnable, and thereupon all rights in and to the performance of the [work] shall be forfeited by the manager and revert to the author.

Provided that if the [work] be refused a license by the Lord Chamberlain or be adjudged an invasion of copyright or a [an immoral] libellous or slanderous work, the manager shall be entitled to the return of the aforesaid sum paid on account of fees, or to so much of it as has not been met and satisfied out of fees accruing to the author.

(2) The license granted under this Agreement is subject to the condition that the manager performs the [work] in accordance with the terms of the Agreement for not fewer than weeks in each and every year during which the Agreement runs, the first year to commence on or before . If the manager does not perform the [work] for the said number of weeks in any one year or in each and every year, this Agreement thereupon becomes null and void, and the rights granted under it revert to the author, without prejudice to the recovery of any sums or fees due to him or to any right or rights that the author may or might have in respect of any breach or breaches of this Agreement.

(3) In the event of a receiving order in bankruptcy being made against the manager or of his entering into any composition or other arrangement with his creditors, then from the date thereof the author shall be entitled to revoke and end the license hereunder forthwith.

(4) If the manager shall at any time fail to fulfil any of the conditions set forth in this Agreement, the author or his authorised agent may, except as otherwise provided herein, thereupon, by registered letter sent addressed to the manager at the address cited at the commencement of this Agreement, give notice terminating this Agreement, and all rights granted by the author to the manager shall thereupon revert to the author, but without prejudice to any right or rights that the author may or might have in respect to any breach or breaches of this Agreement.

Payment of Fees

5.—(1) The manager agrees to pay to the author fees as follow :—

per cent. of the gross receipts up to £ for the week.

per cent. of the total gross receipts for the week when the gross receipts for the week exceed £ but do not exceed £ .

per cent. of the total gross receipts for the week when the gross receipts for the week exceed £ .

Provided that where the [work] is performed by the manager under an engagement to a lessee on Certainty terms, the percentage shall be reckoned on the amount of the manager's contract plus a further per cent. of the said amount.

Alternative Clause

5.—(1) *The manager agrees to pay to the author fees as follow :—*

per cent. of the gross weekly receipts up to £ .

per cent. when the gross weekly receipts exceed £ *on such excess up to* £ .

per cent. when the gross weekly receipts exceed £ *on such excess.*

[or instead of the last clause]

per cent. of the total gross weekly receipts when the weekly receipts exceed £ .

(2) The manager agrees to furnish to the author or to his authorised agent nightly proper box-office returns of the gross daily receipts of the [work], countersigned by the resident manager, and to make on the Tuesday in each week, for the week preceding, payments to the author or to his authorised agent of all moneys due according to the terms of this Agreement. [1]Provided that no such payments shall be made until the sum of £ .

[1] This provision to be deleted if the Alternative Clause 3 is adopted.

paid on account of fees as aforesaid has been met and satisfied in full out of the fees first accruing to the author for the performance of his [work].

(3) The author or his authorised agent may at any reasonable time examine entries relating to the gross receipts of the work.

(4) "Gross receipts" mean any and all receipts in the form of admission money from all sources.

Alternative Clause

5.—(1) *The manager agrees to pay the author a royalty of £ on each and every performance of the [work] given under this Agreement.*

(2) *The royalties for each week or part of a week shall be paid to the author or his authorised agent on the Tuesday in the week following the week in which they accrue.* [1]*Provided that no such royalties shall be payable until the sum of £ paid on account of fees as aforesaid has been met and satisfied in full out of the fees first accruing to the author for the performance of his [work].*

Suburban London Theatres

6.—It is agreed that the manager has the right to play the [work] on the provincial terms at any London Suburban Theatre at which companies on tour are ordinarily received. It is also agreed that this license to perform does not include performance at a West-End London Theatre, except that the theatres named in the attached Schedule shall be deemed suburban theatres for the purposes of this license.

Nature and Extent of License

7.—(1) The author grants only a license to perform the [work] by means of acting by professional actors and actresses on the professional stage. He reserves and retains all the other rights comprehended in his copyright

[1] This provision to be deleted if the Alternative Clause 3 is adopted.

[but he agrees not to exercise or sanction or permit the exercise of his right of kinematographic reproduction or of mechanical musical reproduction so long as this license is in force].

(2) The license is personal to the manager, and is intended to apply exclusively to performances by a company belonging to and under the control of the manager. The manager agrees that he will not sublet any portion of his rights of performance.

Alternative Clause

7.—(2) *The manager agrees that he will not sublet any portion of his rights of performance of the* [*work*] *without the consent in writing of the author previously obtained* [*such consent not unreasonably to be withheld by the author*].

Alterations

8.—The manager shall not in any way whatsoever condense, add to, or otherwise alter the [work] nor vary the title of the [work] without the consent of the author previously obtained in writing [such consent not unreasonably to be withheld].

Production and Performance

9.—(1) The manager will produce and play the [work] with cast, scenery, printing, dresses, properties, etc., to the satisfaction of the author.

(2) The manager shall allow the author to call for, and direct, if he so wishes, rehearsals of the [work], and shall comply with all reasonable requirements that the author shall make at such rehearsals.

(3) The author shall be entitled to object to the employment or engagement of any member or members of the cast [or chorus], and the manager on such objection shall forthwith withdraw such member or members from any future participation in the performance of the [work], provided always such objections are reasonable.

Name of Author

10.—The manager will announce the name of the author on all day-bills, programmes, posters, and also on or in any other advertising matter relating to the [work] as far as shall be possible.

Publication of Work

11.—The author undertakes not to publish the [work] in any country where such publication would invalidate the copyright under the Copyright Act, 1911.

Infringement of Work

12.—If either party has reasonable cause for believing that the copyright in the work has been infringed, he shall give immediate notice to the other party. If the author takes proceedings in respect of the infringement, and if the manager desires to be joined in the action, the latter may give written notice to the author to that effect; and on an undertaking on his part to pay an equal share in the entire cost of the litigation he shall be joined by the author as a party. In such case the author shall diligently prosecute the action, but shall retain control of the proceedings, and may make any reasonable settlement with the defendants in the interests of author and manager, and the damages, if any recovered, shall firstly be applied in payment of costs, and if there is any surplus shall be divided equally between author and manager. If the author, after the infringement has come to his notice, refuses or neglects to take proceedings in respect thereof, the manager shall be entitled to take proceedings, and on giving the author a sufficient and reasonable indemnity against liability for costs shall be entitled to use the author's name as a party to such proceedings. In such case the manager shall retain control of the proceedings, and may make any reasonable settlement in the interests of author and manager, and the damages, if any recovered, shall firstly be applied in payment of costs, and if there is any surplus shall be divided

in the proportion of one-third to the author and two-thirds to the manager.[1]

Script, Actors' Parts, etc.

13.—On the termination of this Agreement from any cause whatsoever, the manager shall immediately give up and send to the author all copies of the play, of all actors' parts, and of all scene and other plots [scores], etc., in the possession of the manager.

14.—This Agreement shall not in any way constitute or be deemed to constitute a partnership between the parties hereto.

IN WITNESS WHEREOF the parties here below-named have set their hands the day and year first above written.

[Signatures of Author and Manager.]

[SCHEDULE.]

[1] In lieu of Clause 12, if it should seem elaborate or oppressive, insert one of the similar clauses from the other Forms.

III

AGREEMENT FOR A LICENSE FOR A PLAY FOR (1) THE UNITED STATES OF AMERICA AND FOR CANADA; (2) THE COMMONWEALTH OF AUSTRALIA; (3) THE UNION OF SOUTH AFRICA, ETC.

MEMORANDUM OF AGREEMENT made this day of in the year BETWEEN of in the County of hereinafter called the author of the one part, and of in the of hereinafter called the manager of the other part.

WHEREAS the author is the author and owner of the original [play] entitled , hereinafter called the [play], and whereas the manager is desirous of producing and performing the said [play] in .

NOW THEREFORE, in consideration of the payments hereinafter named, and subject to the conditions hereinafter contained, it is MUTUALLY AGREED as follows:—

Grant of a License to Perform

1.—The author hereby grants to the manager the sole license to perform the [play] in the , but in no other country, for a period that shall not exceed years from the date of this contract, and this period is further subject to the determination clauses hereinafter stated.

Guarantee by Author

2.—The author guarantees to the manager that the [play] is an original work, and is a copyright work in , and further is in no way whatever a violation of any copyright belonging to any other person or persons, and that the [play] contains nothing of a [an immoral] libellous or slanderous character; and he agrees to hold harmless and keep indemnified the manager from all suits and all manner of claims, proceedings, and expenses that may be taken or incurred against the manager on the ground that the work is such violation or is in itself [immoral or] libellous or slanderous in character.

Sub-licenses by Manager

3.—The author agrees to permit the manager to grant sub-licenses under this license, such sub-licenses to be strictly in accordance with the terms of this Agreement, and to be limited to the territorial area of the license hereunder.

Deposit on Account of Fees

4.—The manager agrees to pay on the signing of this Agreement the sum of £ , which shall be taken and received on account of fees accruing from the performance of the [play]. The manager further agrees that the said sum shall be forfeited to the author and this Agreement shall become null and void in the event of the manager's failing to produce the [play] on or before for not fewer than consecutive performances therefrom, and the manager shall pay the author the sum of £ by way of damages for breach thereof, and such sum shall be over and above the sum of £ paid by the manager on account of fees as hereinbefore provided, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

Determination Clauses

5.—(1) After the due production of the [play] on or before the day named, this license shall continue for a period of years therefrom. Provided that if the manager

shall not in any and every year perform the [play] for a period of weeks under this license or sub-licenses granted by the manager [or in the alternative shall not pay the manager in respect of any and every year in which the [play] shall not have been performed for weeks under this license or sub-licenses granted by the manager, fees amounting to a total of £], then, notwithstanding anything to the contrary in this Agreement, the license hereunder shall forthwith cease, and all rights in the play shall at once revert to the author, but without prejudice to the rights and remedies of the author in respect of any fees that may be in arrear, or of any breach or breaches of the terms and conditions of this Agreement.

(2) If the manager shall at any time fail to fulfil any of the conditions set forth in this Agreement, or if the manager shall become bankrupt, the author or his authorised agent may, except as otherwise provided herein, thereupon, by registered letter sent addressed to the manager at the address cited at the commencement of this Agreement, give notice terminating this Agreement, and all rights granted by the author to the manager shall thereupon revert to the author, but without prejudice to any right or rights that the author may or might have in respect of any breach or breaches of this Agreement.

Payment of Fees

6.—(1) The author agrees that the aforementioned sum of £ shall be met and satisfied out of the fees first accruing to him under these terms of payment. After the aforementioned sum of £ has been fully satisfied in this manner, the manager shall make weekly payments to the author or his authorised agent of all moneys due to the author in accordance with the terms of this Agreement.[1]

(2) The manager agrees to pay to the author or his authorised agent, fees as author's royalties as follow :—

per cent. of the gross weekly receipts from each and every performance of the [play] under this

[1] See Alternative Clause 3 in Form II. p. 263 *ante*.

license or any sub-license up to £ . Should the gross weekly receipts exceed the latter sum, then the manager agrees to pay further per cent. of such excess up to £ ; and per cent. of the excess beyond £ and up to £ . Should the gross weekly receipts exceed £ , then the percentage payable to the author shall be per cent. of the total gross weekly receipts. It is agreed that this sliding scale of percentage applies separately to this license and any sub-license or sub-licenses, and that the gross weekly receipts under license and sub-license or sub-licenses are not to be reckoned together in calculating excess receipts.

(3) The manager agrees to furnish the author or his agent with full weekly statements of the daily box-office returns of the gross receipts of the [play] duly counter-signed, and to make weekly payment of all moneys due to the author according to the terms of this Agreement, and to give the author or his agent access at any time to all accounts relating to the receipts at the theatres where the [play] has been represented in .

(4) The failure of the manager to pay to the author or his agent the fees for any one week, within a period of [days, weeks] from the date of the said fees becoming due shall, except as provided in clause 6 (1), be a breach of the Agreement. The fees for each week shall become due at the end of each week.

(5) "Gross receipts" mean any and all receipts in the form of admission money from all sources.

Proceedings in respect of License

7.—The manager shall have full power as licensee of the author, and if necessary in the name of the author, but not at the expense of the author, to prohibit and prevent, when and as often as the manager thinks proper, the representation or performance of the [play] or any part or parts thereof (during the period that this license is in force) by any person or persons in

, and also in his, the manager's, own name as licensee, or if necessary in the name of the author, but at his, the manager's, own expense, to sue for and recover all penalties and damages incurred by and recovered from any person or persons who shall or may perform or cause to be performed the [play] in , during the said period without previous authority of the manager.

Protection of Copyright

8.—The manager shall comply with all the formalities of the laws of for the due protection of the copyright of the [play] in , and shall and hereby does indemnify the author against all loss and damage caused to the author by neglect of the manager to comply with the said formalities.

Production and Performance

9.—(1) The manager shall allow the author or his agent to call for, and direct, if he or his agent so wishes, rehearsals of the [play], and shall comply with all reasonable requirements that the author or his agent shall make at such rehearsals.

(2) The author shall be entitled to object to the employment or engagement of any member or members of the cast [or chorus], and the manager on such objection shall forthwith withdraw such member or members from any future participation in the performance of the play, provided always such objections are reasonable.

(3) The manager shall not in any way whatsoever condense, add to, or otherwise alter the [play] nor vary the title of the [play] without the consent of the author previously obtained in writing [such consent not unreasonably to be withheld].

Name of Author

10.—The manager will announce the name of the author on all programmes and on all day-bills, posters, and also on or in any other advertising matter relating to the work as far as shall be possible.

Script, Actors' Parts, etc.

11.—On the termination of this Agreement from whatever cause the manager shall forthwith give up and send to the author all his property and all copies of the play, all actors' parts, all scene and other plots [scores], etc., in the possession of the manager.

Interpretation

12.—(1) The author grants only a license to perform the [play] by means of acting by professional actors and actresses on the professional stage. He reserves and retains all the other rights comprehended in his copyright [but he agrees not to exercise or sanction or permit the exercise of any right he may possess in of kinematograph reproduction or of mechanical musical reproduction so long as this license is in force, without the consent of the manager previously obtained in writing].

(2) This Agreement does not in any way constitute a partnership between the parties hereto.

IN WITNESS WHEREOF the said parties to this Agreement have hereunto set their hands this day of .

[Signatures of Author and Manager.]

IV

AGREEMENT FOR LICENSE FOR FIT-UP RIGHTS

MEMORANDUM OF AGREEMENT made this day of BETWEEN of in the County of hereinafter termed the author of the one part, and of in the County of hereinafter termed the manager of the other part, whereby it is MUTUALLY AGREED as follows :—

Grant of License to Perform

The author, in consideration of the payments hereinafter named, hereby grants, and the manager hereby takes on the terms and conditions following a [the sole and exclusive] license for fit-up rights to perform the author's [work] entitled , hereinafter called the [work], in the fit-up towns of Great Britain and Ireland for a period that shall not in any event exceed , and shall further be subject to the determination clauses hereinafter stated.

[Here insert Clauses 2, 3, 4, 5, 7, 8, 9, 10, 11, 13 from Form II., pp. 262-269 *ante*, striking out the alternative clauses not required.]

Interpretation

" Fit-up rights " mean the right to perform the [work] by the medium of acting in towns in which there is no

regular theatre; and it is agreed that where there is any reasonable doubt whether a place of entertainment answers to the description of a regular theatre, the manager shall not perform the [work] therein without the consent of the author previously obtained in writing. [Provided that the towns named in the attached Schedule shall [not] in any circumstances be deemed fit-up towns.]

IN WITNESS WHEREOF the parties here below-named have set their hands the day and year first above written.

[Signatures of Author and Manager.]

[SCHEDULE.]

AGREEMENT FOR A LICENSE FOR A ONE-ACT PLAY, SKETCH, SCENA, ETC., IN GREAT BRITAIN AND IRELAND

MEMORANDUM OF AGREEMENT made this day of BETWEEN of in the County of hereinafter called the author on the one part, and of in the County of hereinafter called the manager on the other part.

WHEREBY it is AGREED between the parties hereto as follows :—

Grant of License to Perform

1.—The author, in consideration of the moneys paid on the signing of this Agreement, for which this Agreement is a receipt, and subject to the performance of the terms and conditions hereinafter contained, hereby grants to the manager a license [the sole and exclusive license] to represent by a company of actors under his control and supervision the [play, sketch, scena], entitled , hereinafter called the [work], in any duly licensed place of public entertainment in Great Britain and Ireland, for a period of years, subject to the determination clauses hereinafter stated.

Author's Fees

2.—(1) The manager shall pay for each and every performance a royalty of £ , payment to be made to the author or his duly authorised agent weekly, on the Tuesday in each week following the week in which the royalties shall have become due. Provided that no royalties shall be payable by the manager to the author or his agent until

the total amount of the sum of £ paid to the manager on the signing of this Agreement on account of royalties shall have been met and satisfied out of the royalties first accruing to the author.[1]

(2) If the work should be performed at a West-End theatre or music hall, the manager shall pay to the author an increased royalty amounting to a total royalty of £ per performance.

Alternative Clause

2.—(1) *The manager shall pay to the author weekly fees equal to an amount of per cent. of the sum paid or agreed to be paid to the manager under each and every contract under which the manager is for the time being performing the [work]. The weekly fees shall be paid to the author or his agent by the manager on the Tuesday following in each and every week in which the said fees shall have fallen due. Provided that no fees shall be payable to the author or his agent by the manager until the total amount of the sum of £ paid by the manager to the author on the signing of this Agreement on account of fees shall have been met and satisfied out of the fees first accruing to the author.*

The manager agrees to give the author access at any time to all contracts under which the manager has performed the [work] or caused or allowed the [work] to be performed.

(2) If the [work] should be performed at a West-End theatre or music hall, the manager shall further pay the author an additional percentage of .

Reservation of Rights

3.—The author reserves and retains his rights for amateur performance, but this license includes the right to perform the [work] at smoking concerts and at performances at working men's clubs.

[Insert Clauses 4 (2), (3), (4), 7, 8, 10, 13, and other suitable clauses from Form II., pp. 262–269 *ante*.]

[Signatures of Author and Manager.]

[1] See Alternative Clause 3, Form II. p. 263 *ante*.

VI

LICENSE TO SING A SONG OR DELIVER A RECITATION IN PUBLIC

I, ,
of ,
in the County of , being the
[composer or author and] owner of the copyright in
a [song[1]] entitled , do
hereby grant to ,
of ,
in the County of
the [sole and exclusive[2]] personal right of singing[3] in public
the said [song] throughout the whole of Great Britain
and Ireland[4] for the period of[5] from
the date hereof, in consideration of the sum of £
paid to me by the said ,
the receipt whereof is hereby acknowledged.

Dated this day of .

[Signature of Grantor.]

To [Name and Address of Licensee.]

[1] Insert nature of song or recitation, *e.g.* ballad, comic song, poem, dramatic monologue, etc.

[2] If not sole and exclusive, strike out these words.

[3] *If reciting, alter accordingly.*

[4] If for a town or towns or certain parts of the United Kingdom only, alter accordingly.

[5] Insert the period for which the license is granted.

VII

AGREEMENT TO COMPLETE AN UNFINISHED PLAY AND TO GRANT A LICENSE

MEMORANDUM OF AGREEMENT made this day of BETWEEN of in the County of hereinafter termed the author of the one part, and of in the County of hereinafter termed the manager of the other part, whereby it is AGREED between the parties hereto as follows :—

(1) The author, having partly written a [play] entitled , hereinafter termed the [play], hereby undertakes, in consideration of the payments hereinafter named, completely to finish and to deliver to the manager on or before the day of , the manuscript of the [play]. And in the event of his not so doing he shall return to the manager in full the sum of £ [paid on account of percentages [or royalties]] and shall further pay to the manager the sum of £ by way of damages for breach hereof, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

And the author hereby grants to the manager, in consideration of the said payments, and subject to the provisions of this Agreement and to the determination clauses hereinafter contained, a license to produce and perform the [play] for the period of

[continue from Clause 1 in Agreement I., inserting the other clauses. A slight alteration will be necessary in lines 4, 5, and 6 in Clause 4].

As Witness, etc.,

[Signatures of both parties.]

[SCHEDULES.]

VIII

AGREEMENT TO TRANSLATE OR ADAPT A PLAY, ETC.

MEMORANDUM OF AGREEMENT made this day of BETWEEN of in the County of hereinafter called the author of the one part, and of in the County of hereinafter called the manager of the other part.

WHEREAS the manager desires the author to translate [adapt] into English for the manager for the purpose of production and performance on the British stage the foreign play entitled by

NOW IT IS HEREBY AGREED as follows :—

The author hereby undertakes, in consideration of the sum of £ paid to him [on account of percentages [or royalties]] by the manager on the signing of this Agreement, to make the said translation [adaptation].

The author shall prepare the said [play] for production, and deliver the same to the manager on or before the day of . And in the event of his not so doing he shall repay in full to the manager the sum of £ [paid on account of percentages [or royalties]], and shall further pay to the manager the sum of £ by way of damages for breach hereof, and it is hereby declared that such damages shall be liquidated and ascertained damages and not a penalty.

As Witness, etc.,

[Signatures of both parties.]

IX

ASSIGNMENT OF COPYRIGHT

THIS INDENTURE is made the day of BETWEEN

of

of

hereinafter called the [author[1]] of the one part, and

of

of

hereinafter called the [manager[2]] of the other part.

WHEREAS the [author] is the [author and] sole owner of the copyright in a [play[3]] entitled and has agreed to assign the same to the [manager].

NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the sum of £ , paid by the [manager] to the [author], the receipt whereof is hereby acknowledged, the [author] as beneficial owner hereby assigns unto the [manager] ALL his copyright in the [play] that is subsisting or may be subsisting now or in the future in all English-speaking countries, to include Great Britain and Ireland, the Channel Islands, the Isle of Man, the Dominion of Canada, Newfoundland, the Commonwealth of Australia, New Zealand, the Union of South Africa, and all other British Possessions and Dependencies whatsoever, the United States of

[1] Or assignor.
[2] Or assignee.
[3] Insert kind of dramatic or musical work.

America [and in France, Germany, Austria, Belgium, Holland, Italy, Spain, Portugal, Norway, Sweden, Switzerland, Russia, or in any and every other country in the world[1]], for the residue of the term or terms thereof, except for the reversionary period belonging to the estate of the author.

And the [author] hereby warrants that the [play] is the original copyright work of [author], and he further warrants that it not to be libellous or slanderous.

And it is hereby declared[2] that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds five hundred pounds.

As Witness, etc.,

[Signature and Seal of Assignor.]

[1] Insert if these foreign rights are included.
[2] Declaration to be inserted if the consideration does not exceed £500.

X

DRAFT FORMS UNDER MUSICAL COPYRIGHT ACTS

(I)

General Written Authority to Chief Officer of Police to Arrest Hawker

To the Chief Officer of Police at .

I, the undersigned, pursuant to sect. 1 (2) of 6 Ed. VII. ch. 36, hereby give you notice that I am the owner [the authorised agent of the owner] of the undermentioned copyright musical works, and request you to secure the arrest, at my risk [at the owner's risk], of any person or persons who in any street or public place in
sells or exposes, offers, or has in his possession for sale any pirated copies of any musical work specified hereunder, or who offers for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars.

[Signature.]

[Schedule of copyright works.]

(II)

Written Authority to Constable to Seize Pirated Copies from Hawker

To be given to Constable

I, the undersigned, give you notice that I am the owner [the authorised agent of the owner] of certain

musical works that this hawker is carrying about, selling, or offering for sale; and pursuant to sect. 2 of 2 Ed. VII. ch. 15, I hereby request you to seize such copies at my own risk [at the owner's risk], and as the Act directs, convey them to the police station.

[Signature.]

Note.—An agent must have the authority of the owner in writing.

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