

Government of Madras.

EDUCATIONAL DEPARTMENT.

Recd.

Regd.

} 1909.

Enclosures

Spare copies

07

G.O., No. 111, 25th February 1909.

Copyright in Books.

Communicating to the Registrar of Books the opinion of the Advocate-General on certain points connected with the registration of — under the Indian Copyright Act XX of 1847.

Government of Madras.

EDUCATIONAL DEPARTMENT.

Recd.

Regd.

} 1909.

Enclosures

Spare copies

G.O., No. 111, 25th February 1909.

Copyright in Books.

Communicating to the Registrar of Books the opinion of the Advocate-General on certain points connected with the registration of — under the Indian Copyright Act XX of 1847.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—the following papers :—

I

Letter—from Rao Bahadur M. RANGACHARYA, M.A., Registrar of Books, Madras.
To—the Secretary to Government, Educational Department (through the Director of Public Instruction).
Dated—the 11th September 1908.
No.—840.

I have the honour to request that Government be pleased to obtain for my guidance the opinion of the Advocate-General on the following two points connected with the registration of copyright in books under the Indian Copyright Act XX of 1847 :—

I. Whether the Registrar of Books can refuse to register the copyright in a book on the ground that objection to his doing so has been taken by a party other than the applicant for such copyright, alleging that the applicant is fraudulently invading his own rights in the publication and is therefore not entitled to be the proprietor of the copyright in question.

II. Whether the practice which at present prevails of inserting such formulae as "Copyright registered", or "Copyright reserved", etc., on the title-page of a book, and then omitting intentionally or otherwise to register the same in the office of the Registrar of Books is not objectionable, in consideration of the fact that the prescribed fee of Rs. 2 for the registration of each such book is not paid to Government by the alleged copyright-holders. The doubt is whether the false entry on the title-page is criminal and punishable under the Indian Penal Code. If not, it is desirable that I am given to know whether there is any legal remedy to prevent this practice.

N. Ref. on Cur. No. 6322, dated 19th September 1908.

Submitted to Government, Educational.

A. G. BOURNE,
Director of Public Instruction.

II

Memorandum—No. 2103-1, Educational, dated 16th October 1908.

The letter from the Registrar of Books, No. 840, dated 11th September 1908, will be forwarded to the Honourable the Advocate-General with the request that he will favour Government with his opinion on the points raised in the Registrar's letter.

(By order.)

C. A. SOUTER,
Ag. Under Secretary to Government.

To the Government Solicitor with the Registrar's letter in original
 (to be returned).

III

Letter—from W. O. DAVID, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Educational Department.
Dated—the 16th February 1909.
No.—119.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 15th February 1909 :—

Opinion.

I am of opinion that the Registrar of Books has no right to refuse to register any book delivered to him under section 9 of Act XXV of 1867. On payment of Rs. 2 to the Registrar registration under this Act has the same effect as an entry in the book of registry kept under the Copyright Act, 1847. (See the last paragraph of section 18 of Act XXV of 1867.) There is no provision in either of these Acts enabling the Registrar of Books to enquire into any objection to registration. The remedy of any person aggrieved by an entry made under colour of the Copyright Act is to apply by motion to the Supreme Court of Calcutta to vary or expunge the wrongful entry in the register.

The registration of the copyright in the name of a wrong person will not, however, take away the right of the person really entitled to the copyright; the entry in the register is only *prima facie* evidence of the proprietorship of the copyright and can be rebutted by other evidence. If the real proprietor of the copyright is sued by the registered proprietor for infringement of the latter's right by publishing the book the former can defend himself on the ground that the registered proprietor was not the author of the book or the real proprietor of the copyright therein.

2. The insertion of the words "Copyright registered" or "Copyright reserved" in the title-page of a book without getting the copyright registered on payment of the fee of Rs. 2 is no doubt morally objectionable, but is not liable to any penalty under the Penal Code. The only Act under which such false description can possibly be dealt with is The Indian Merchandise Marks Act IV of 1889, section 6 of which prescribes a penalty for applying a false trade description to goods. Books have been held to be "goods" within the meaning of the Act, but the definition of "false trade description" requires that the description should be untrue in a *material* respect. Having regard to the case in 31 Madras, 512, it is very doubtful whether the phrase "All rights reserved" or "Copyright registered" could be regarded as untrue in a material respect so as to constitute a false trade description within the meaning of the Act.

P. S. SIVASWAMI AIYAR,
Advocate-General.

Order—No. 111, Educational, dated 25th February 1909.

The Advocate-General's opinion will be communicated to the Registrar of Books with reference to his letter No. 840, dated 11th September 1908.

(True Extract.)

A. BUTTERWORTH,
Ag. Secretary to Government.

To the Registrar of Books (through the Director of Public Instruction),
 with copy of Advocate-General's opinion.

NOTES CONNECTED WITH G.O., No. 111, EDUCATIONAL,
DATED 25TH FEBRUARY 1909.

[SUBJECT.—Question whether the Registrar of Books can refuse to register the copyright in a book on the ground that objection to his doing so has been taken by a party other than the applicant.]

Previous papers.

G.O., No. 429, Educational, dated 15th August 1887.
" " 499 " " 13th September "

From the Director of Public Instruction, dated 19th September 1908, No. 6322.

The Registrar of Books raises the following two questions on the subject of the registration of copyright in books and requests that the opinion of the Advocate-General may be obtained for his guidance:—

"(1) Whether the Registrar of Books can refuse to register the copyright in a book on the ground that objection to his doing so has been taken by a party other than the applicant for such copyright, alleging that the applicant is fraudulently invading his own rights in the publication, and is therefore not entitled to be the proprietor of the copyright in question."

"(2) Whether the practice which at present prevails of inserting such formulæ as "Copyright registered" or "Copyright reserved", etc., on the title page of a book, and then omitting intentionally or otherwise to register the same in the office of the Registrar of Books is not objectionable, in consideration of the fact that the prescribed fee of Rupees (2) two for the registration of each such book is not paid to Government by the alleged copyright holders. The doubt is whether the false entry on the title-page is criminal and punishable under the Indian Penal Code."

2. With regard to the first question, namely, whether the Registrar of Books can refuse to register the copyright in any book, attention is invited to the notes with G.O., No. 429, Educational, dated 15th August 1887, and to the opinion of the Advocate-General in G.O., No. 499, Educational, dated 13th September 1887. In this case the Director of Public Instruction (Mr. Grigg) brought to notice that one T. Subbarayan had brought out a Tamil translation of Mr. Garthwaite's Second Book, the copyright of which belonged to Government, and had applied to the Registrar of Books to have his copyright in the translation registered. The Director of Public Instruction and the Registrar of Books thought that Subbarayan's translation of Mr. Garthwaite's book was an infringement of the Government's copyright and the question was raised as to whether the Registrar can refuse to register the copyright of the translation.

3. The Government Solicitor to whom the matter was referred by the Director of Public Instruction held that the Registrar could not refuse to register registration under any provision of the Indian Copyright Act XX of 1847 or the Press and Registration of Books Act XXV of 1867. The question was then referred to the Advocate-General for opinion as to whether it would be competent for Government to frame a rule under section 20 of the Press and Registration of Books Act XXV of 1867, empowering the Registrar to refuse to register any book which appeared to him to involve an infringement of copyright.

4. The Advocate-General (Mr. Spring Branson) said —

"I am of opinion that it is not competent to Government to frame a rule under section 20 of Act XXV of 1867 empowering the Registrar to refuse to accept for registration any book on the ground of piracy for that would be to give 'the officer keeping the catalogue' quasi judicial powers not contemplated by the Act, or 'necessary or desirable for carrying out the objects of the Act'."

5. It is thus observed that the Registrar of Books cannot refuse to register the copyright of any book, as under the Indian Copyright Act and the Press and Registration of Books Act his duty is simply to register any book that may be tendered for the purpose and he has not to decide before registering that the copyright in the book actually belongs to the applicant. If there is any dispute as to the ownership of the copyright, it must be decided by a court of law. The first question raised by the Registrar has already been raised and considered and he may be informed in the terms of the Advocate-General's opinion quoted above.

6. The second question is whether the Registrar of Books can proceed against the publisher or owner of a book if he prints the word "Copyright registered" on the title page of his book and then omits to have the copyright registered.

7. No ruling on this point can be traced and the question may, it is submitted, be referred to the Advocate-General for opinion.

T.K.—12-10-68.

K. RANGASWAMI AYYANGAR—13-10-08.

Send the whole letter for opinion.

C. A. SOUTER—15-10-08.

The draft memorandum placed below is for approval.

K. RANGASWAMI AYYANGAR—16-10-08.

Issue.

C. A. SOUTER--16-10-08.

[Memorandum No. 2103-1, dated 16th October 1908.]

From the Government Solicitor, dated 16th February 1909, No. 119.

The Advocate-General's opinion may be communicated to the Registrar of Books.
The draft placed below is for approval.

T.K.—20-2-09.

K. RANGASWAMI AIIYANGAR—20-2-09.

For perusal.

C. A. SOUTER—20-2-09.

For perusal.

A. BUTTERWORTH-22-2-09.

Approved.

G. S. F[ORRES]—23-2-09.

[G.O., No. 111, Educational, dated 25th February 1909.]

READ AGAIN G.O., No. _____, dated _____, 190

” ” ” ” ” ” 190

READ ALSO:—

C. No. 2103, From the DDJ, No. 6322, dated 19-9-1908

" " 318, " " Genl. Solicitor, " 119, " 16-2 1909.

[illegible]

ORDER.

P. S.

No. 111, dated 25-2- 1909

The Advocate-General's opinion
will be communicated to the
Registrar of Books with reference to
his letter no 840 dated 11th Sept. 1908.

7.79.
20-20

Chd
90-2-9

aus
27/2

Rev'd. 3.35 P.m.

S. C. W. 2/20
23/3/9

The Registrar of Books thro' the
D.P. I. with A.G.'s opinion

A	B	C
Please send proof in triplicate. The papers have been carefully edited.	Proof returned corrected. Please strike off and send number of copies as indicated.	As the matter is clear manuscript and has been carefully edited, (b) proof need not be sent. Please print and supply number of copies as indicated.
	Type may be released after usual interval at once.	Type may be released after usual interval.
.....Clerk.	Clerk.	Clerk.
.....Supdt.	Supdt.	Supdt.

(b) Three copies of proof of all notes should be sent for approval, except when instructions are given to the contrary.

SPECIAL INSTRUCTIONS.

TO BE FILLED IN BY THE PRESS.

Diary.	Initials of Press official.
Received in Press on.....	1-3-09
First proof furnished on.....	4/3/09
Call for revised proof received on.....	
Revised proof furnished on.....	
Corrected proof received for striking on.....	18/3/09
Final copies supplied on.....	20/3/09

Account of copies.	Complete copies.	Notes.	Issue copies.
Supplied to Secretariat for Record.....	34	15	
" " " Issue.....	5		
For Volumes.....	10		
For E. T.....			
Total ...	55	15	