

Government of Madras.

EDUCATIONAL DEPARTMENT.

Recd.

Regd.

} 1912.

Enclosures

Spare copies

G.O. No. 945, 29th October 1912.

The Copyright Act.

Informing the Government of India that the Madras Government agree with that Government as to the desirability of the introduction of the English Copyright Act into India.

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GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

Read—the following papers:—

I

G.O. Mis. No. 782, Educational, dated 26th August 1912.

Read—the following paper:—

Letter—from the Hon'ble Mr. L. C. PORTER, C.I.E., I.C.S., Secretary to the Government of India (Department of Education—Education).

To—the Secretary to the Government of Madras, Educational Department.

Dated—Simla, the 1st August 1912.

No.—1818.

I am directed to address the Government of Madras regarding the introduction of the English Copyright Act (1 and 2 Geo. V, Chap. 46) into India.

2. The question of amending the Indian Copyright Act, 1847 (XX of 1847), has been considered on several occasions since 1864 on the ground that the Act was defective in several respects, and made no provision among other matters for copyright in public lectures, sculptures, engravings, photographs and works of art. In 1885 indeed a Bill was actually prepared on the subject but legislation was then and has been subsequently postponed in view of the possibility of an amendment of the English Acts on the subject of Copyright.

3. In 1908 a Conference and Convention to which Great Britain was a party was held in Berlin with the object of bringing the domestic laws of all countries concerned into harmony with one another so as to obtain international uniformity of treatment. The ratification of that convention necessarily involved certain changes in the English law. Its provisions were examined by a strong Departmental Committee appointed by the Board of Trade under the presidency of Lord Gorell which came to the unanimous recommendation that the Berlin Convention should be accepted by Great Britain with as few reservations as possible.

4. An Imperial Copyright Conference was subsequently convened in 1910 containing representatives of the self-governing dominions and of the India Office, Colonial Office, etc. It endorsed the recommendations of the Board of Trade Committee and proposed that an Act dealing with the essentials of Imperial Copyright Law should be passed by Parliament and that this Act should be expressed to extend to all British possessions subject to the rights of self-governing dominions and possessions to modify or add to its provisions by legislation under certain conditions. A draft Bill was approved by the Conference and eventually passed into law as the Copyright Act of 1911 (1 and 2 Geo. V, Chap. 46) giving the Legislatures of British possessions the powers referred to above and providing that any alteration of substance will apply only to works the authors of which were at the time of making the work resident in the possession and to works first published in the possession (section 27).

5. The Government of India consider that the introduction of the English Act into India is desirable and pressing, both for Imperial and international as well as for domestic reasons. The main question for decision appears to them to be how far under the powers conferred by section 27 on the Imperial Legislative Council, the provisions of the Act should be modified or added to—

(1) in regard to procedure and remedies generally; and

(2) in their application to works the authors of which were at the time of the making of the work resident in India and to works first published in India (section 27).

In both these matters in particular the Government of India would be glad to be favoured with the views of His Excellency in Council. They are themselves inclined to think that in view of the unanimous recommendation of the Imperial Copyright Conference which laid the greatest stress on the need for uniformity throughout the Empire the provisions of the English Act should be generally adopted. These provisions mark a great advance on the Indian Copyright Act of 1847 on account of the inclusion of a large number of subjects outside books in which copyright can subsist and may perhaps be in advance of the requirements of this country; but apart from certain provisions in regard to mechanical instruments (section 19) and Government publications (section 18), there is no substantial difference in the subjects of copyright between the English Act of 1911 and the Bill of 1885 to amend the Indian Copyright Act (which was circulated with Legislative Department letter No. 1017-1021, dated the 15th June 1885) [a copy of which is now circulated for information] or the provisions of the previous English legislation on the subject.

6. The Government of India desire however to invite the special attention of His Excellency the Governor in Council to two important alterations of principle which have resulted through the ratification of the Berlin Convention but which had no previous existence in either English or Indian legislation. In the first place, there is the abolition of all formalities of registration in respect of copyright. Indeed, the convention is based on this principle. The Gorell Committee strongly condemned these formalities, most nations have abolished them; and as the provisions of section 8 would apply and the onus of proving that he was not aware of copyright would always be on the person infringing it, the necessity of registration seems to be doubtful and the Government of India would be glad if it could be dispensed with.

7. Secondly, the term of copyright has been changed subject to certain provisos from the 42 years prescribed in section 1 of the Indian Copyright Act of 1847 to one of life and 50 years (section 3 of the English Act). The reasons for the alteration are given in pages 15-19 of the Gorell Committee's report. The Imperial Copyright Conference confirmed the change; and as copyright is alleged to have little effect on the question of price and as uniformity is desirable the Government of India are disposed to adopt the alteration.

8. In regard to the various sections of the English Act, the Government of India will content themselves by the following remarks on certain matters which seem to them of special importance:—

Section 1.—Copyright is stated in section 1 (2) to include the sole right to publish any translation of a work. Under section 3 the period of copyright in such work is the usual one, viz., the life of the author plus 50 years. The treatment of translations on a similar footing to original works in regard to the term of copyright may be unobjectionable in European countries and the Colonies where as a rule there is only one language but in a country such as India with widely differing languages and where vernacular translations of English works are not only common but serve the useful purpose of disseminating knowledge, it is possible that some relaxation should be made in the matter on the lines of clause 8 of the Bill of 1885 or at least that translations should be brought under the provisions of section 4 of the English Act in regard to compulsory licences.

Sections 6—10.—The civil remedies provided in these sections appear suitable for adoption.

Section 11.—It would seem necessary to provide for the trial of an offence under the Act only by a magistrate with first-class powers.

Section 14.—The Imperial Copyright Conference were of opinion that provision should be made to stop the importation of pirated copies of a work in which copyright subsists into any part of His Majesty's dominions to which the Imperial Act extends, and the provisions of this section appear to the Government of India to be most necessary.

Section 15.—In view of the provisions of section 9 of the Press and Registration of Books Act, 1867 (XXV of 1867), it seems unnecessary to require further presentation of works under the Copyright Act.

Section 18.—The question of Government copyright is not free from difficulties but there seems to be no reason why the copyright of a work prepared or published under the direction or control of the Government should not belong to Government, e.g., in cases where the publication or translation is at Government expense or where the authors are Government servants. Section 5 of the English Copyright Act already provides that any work done in the ordinary course of employment under a contract of service belongs in the first instance to the employee.

I am also to draw the special attention of Local Governments to sections 19, 20 and 21.

9. I am to request that, as it is desirable to introduce the English Copyright Act into India as soon as possible after it takes effect in the United Kingdom (i.e., July 1st, 1912), this reference may be treated as urgent. A copy of the Act is enclosed.

ENCLOSURE.

COPYRIGHT ACT, 1911.

[1 & 2 Geo. 5. CH. 46.]

ARRANGEMENT OF SECTIONS.

PART I.—IMPERIAL COPYRIGHT.

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Section.

A. D. 1911.

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PART II.—INTERNATIONAL COPYRIGHT.

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SCHEDULES.

CHAPTER 46.

An Act to amend and consolidate the Law relating to Copyright.

[16th December 1911.]

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

PART I.—IMPERIAL COPYRIGHT.

Rights.

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original 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;
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;
- (d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,

and to authorise any such acts as aforesaid.

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

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:—

Infringement of copyright.

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

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- (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, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged;
- (v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries;
- (vi) The reading or recitation in public by one person of any reasonable extract from any published work.
- (2) Copyright in a work shall also be deemed to be infringed by any person who—
- (a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or
 - (b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
 - (c) by way of trade exhibits in public; or
 - (d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends.

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

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

Term of copyright.

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

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Compulsory licences.

4. If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performances 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

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- (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 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.

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.

Civil remedies for infringement of copyright.

(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.

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.

Rights of owner against persons possessing or dealing with infringing copies, 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 not reasonable ground for suspecting that copyright subsisted in the work.

Exemption of innocent infringer from liability to pay damages, etc.

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

Restriction on remedies in the case of architecture.

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(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
 - (c) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
 - (d) by way of trade exhibits in public any infringing copy of any such work; or
 - (e) imports for sale or hire into the United Kingdom any infringing copy of any such work:

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding forty shillings for every copy dealt with in contravention of this section, but not exceeding fifty pounds in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

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

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

2 Edw. 7, c. 15, s. 26.

(4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906.

Appeals to quarter sessions.

12. Any person aggrieved by a summary conviction of an offence under the foregoing provisions of this Act may in England and Ireland appeal to a court of quarter sessions and in Scotland under and in terms of the Summary Jurisdiction (Scotland) Acts.

Extent of provisions as to summary remedies.

13. The provisions of this Act with respect to summary remedies shall extend only to the United Kingdom.

Importation of Copies.

Importation of copies.

14. (1) Copies made out of the United Kingdom of any work in which copyright subsists which if made in the United Kingdom would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Commissioners of Customs and Excise, that he is desirous that such copies should not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be included in the table of prohibitions and restrictions contained in section forty-two of the Customs Consolidation Act, 1876, and that section shall apply accordingly.

39 and 40 Vict., c. 36.

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

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

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

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

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

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

Delivery of Books to Libraries.

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

Delivery of copies to British Museum and other libraries.

(2) He shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some depot 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 encyclopedia, 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.

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.

Works of joint authors.

(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 work.

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

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

Provisions as to Government publications.

18. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any Government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

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 connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section:
- (e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that—

- (i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and
- (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

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.

Provision as to political speeches.

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 photographs.

Provisions as to designs registrable under 7 Edw. 7, c. 29.

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

Existing works.

22. (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

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

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.

24. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that—

- (a) if the author of any work in which any such right as is specified in the first column of the First Schedule to this Act subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either—
- (i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or
- (ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

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

- (b) where any person has, before the twenty-sixth day of July nineteen hundred and ten, taken any action whereby he has incurred any expenditure or liability in connexion with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

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

(3) Subject to the provisions of section nineteen, sub-sections (7) and (8) and of section thirty-three of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Application to British Possessions.

A.D. 1911.

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

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

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

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

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

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

For the purposes of this sub-section, 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.

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.

28. His Majesty may, by Order in Council, extend this Act to any territories under his protection and to Cyprus, and, on the making of any such Order, this Act shall, subject to the provisions of the Order, have effect as if the territories to which it applies or Cyprus, were part of His Majesty's dominions to which this Act extends.

PART II.—INTERNATIONAL COPYRIGHT.

29. (1) His Majesty may, by Order in Council, direct that this Act (except such parts, if any, thereof as may be specified in the Order) shall apply—

- (a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends;

A.D. 1911.

(b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects;

(c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends;

and thereupon, subject to the provisions of this Part of this Act and of the Order, this Act shall apply accordingly:

Provided that—

- (i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act;
- (ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;
- (iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order;
- (iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;
- (v) in applying the provision of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country;
- (vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section five of the International Copyright Act, 1886.

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.

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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.

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.

35. (1) In this Act, unless the context otherwise requires,—

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

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

"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;

"Cinematograph" includes any work produced by any process analogous to cinematography;

"Collective work" means—

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

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

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

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

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

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

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

"Lecture" includes address, speech, and sermon;

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

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

(3) For the purposes of this Act, a work shall be deemed to be first published within the parts of His Majesty's dominions to which this Act extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of His Majesty's dominions as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two

Saving of
University
copyright.
15 Geo. 3.
c. 63.

Saving of compensa-
tion to cer-
tain libraries.

Interpreta-
tion.

A.D. 1911.

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.

EXISTING RIGHTS.

Section 24.

Existing right.	Substituted right.
(a) <i>In the case of Works other than Dramatic and Musical Works.</i>	
Copyright.	Copyright as defined by this Act.*
(b) <i>In the case of Musical and Dramatic Works.</i>	
Both copyright and performing right	Copyright as defined by this Act.*
Copyright, but not performing right	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

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

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

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

* In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under section eighteen of the Copyright Act, 1862.

SECOND SCHEDULE.

A.D. 1911.

Section 36.

ENACTMENTS REPEALED.

Session and chapter.	Short title.	Extent of Repeal.
8 Geo. 2 c. 13	The Engraving Copyright Act, 1734	The whole Act.
7 Geo. 3 c. 38	The Engraving Copyright Act, 1767	Do.
15 Geo. 3 c. 53	The Copyright Act, 1775	Do.
17 Geo. 3 c. 57	The Prints Copyright Act, 1777	Do.
54 Geo. 3 c. 56	The Sculpture Copyright Act, 1814	Do.
3 and 4 Will 4 c. 15	The Dramatic Copyright Act, 1833	Do.
5 and 6 Will 4 c. 65	The Lectures Copyright Act, 1835	Do.
6 and 7 Will 4 c. 59	The Prints and Engravings Copyright (Ireland) Act, 1836	Do.
6 and 7 Will 4 c. 110	The Copyright Act, 1836	Do.
5 and 6 Vict. c. 45	The Copyright Act, 1842	Do.
7 and 8 Vict. c. 12	The International Copyright Act, 1844	Do.
10 and 11 Vict. c. 95	The Colonial Copyright Act, 1847	Do.
15 and 16 Vict. c. 12	The International Copyright Act, 1852	Do.
25 and 26 Vict. c. 68	The Fine Arts Copyright Act, 1862	Sections one to six. In section eight the words "and pursuant to any Act for the protection of copyright engravings," and "and in any such Act as aforesaid."
38 and 39 Vict. c. 12	The International Copyright Act, 1875	Sections nine to twelve.
39 and 40 Vict. c. 36	The Customs Consolidation Act, 1876	The whole Act.
45 and 46 Vict. c. 40	The Copyright (Musical Compositions) Act, 1882	Section forty-two, from "Books wherein," to "such copyright will expire." Sections forty-four, forty-five, and one hundred and fifty-two.
49 and 50 Vict. c. 33	The International Copyright Act, 1886	The whole Act.
51 and 52 Vict. c. 17	The Copyright (Musical Compositions) Act, 1888	Do.
52 and 53 Vict. c. 42	The Revenue Act, 1889	Do.
6 Edw. 7 c. 36	The Musical Copyright Act, 1906	Section one, from "Books first published" to "as provided in that section."
		In section three the words "and which has been registered in accordance with the provisions of the Copyright Act, 1842," or of the International Copyright Act, 1844, "which registration may be effected notwithstanding anything in the International Copyright Act, 1886."

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THE INDIAN COPYRIGHT BILL,
1885.

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THE SCHEDULE—FORMS.

[" Bill " in the references in the margin refers to the Copyright Bill brought in by Lord John Manners in 1879.]

BILL

TO

Amend the law relating to Copyright.

WHEREAS it is expedient to amend the law relating to copyright, it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Indian Copyright Act, 1885.

(2) It shall extend to the whole of British India; and

(3) Shall come into force on the day of 1885.

2. Act XX of 1847 (*An Act for the encouragement of learning in the Territories subject to the Government of the East Indian Company, by defining and providing for the enforcement of the right called Copyright therein*) and the last clause of section 18 of Act XXV of 1867 (*An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books*) are repealed, except as regards the copyright in anything published before the commencement of this Act and the protection and enforcement thereof.

3. Nothing in this Act shall:—

(a) affect the provisions of any Act of Parliament;

[Bill, s. 59.] (b) affect the right of any person to prevent the publication of unpublished matter; or

[Bill, s. 60.] (c) confer any copyright in anything the publication of which is illegal.

[Bill, s. 71. (generally).] 4. In this Act, unless there is something repugnant in the subject or context, the following expressions shall have the following meanings:—

[6 & 6 Vic., c. 45, s. 2.] ["Newspaper" added.] "Book" shall include every volume, part or division of a volume, pamphlet, newspaper, sheet of letter-press, sheet of music, map, chart or plan separately published.

"Painting" shall include a drawing, but shall not include an engraving or a photograph.

"Sculpture" shall mean any original sculpture, model, cast or alto or basso rilievo representing— [5 & 6 Vic., c. 56, s. 1.]

(a) the human figure or any bust or part of the human figure, whether clothed with drapery or otherwise; or

(b) any animal or part of an animal combined with the human figure or otherwise; or

(c) any subject, being matter of invention in sculpture.

"Engraving" shall mean any such print, whether an historical print, or a print of any portrait, conversation, landscape or architecture, or any other print, as a person has either— [7 Geo. III., c. 38, s. 1.]

(a) himself invented, designed, engraved, etched or worked in mezzotinto or chiaro-oscuro; or

(b) caused to be engraved, etched or worked in mezzotinto or chiaro-oscuro from his own design; or

(c) engraved, etched or worked, or caused to be engraved, etched or worked, in mezzotinto or chiaro-oscuro from any printing or sculpture within the meaning of this Act, either ancient or modern;

and shall also include any print, whether coloured or otherwise, taken by lithography or other mechanical process. [16 & 16 Vic., c. 13, s. 14.]

"Copy," in the case of a painting, shall include any repetition, colourable imitation or other multiplication of the painting or of the design thereof, or of any material part thereof, whether by painting, drawing, photography or otherwise.

"Copy," in the case of a sculpture shall mean any model, copy or cast, and include any copy made by painting, drawing, engraving, photography or otherwise subject to this qualification, that any painting, drawing, engraving or photograph of a scene in which the sculpture forms an incident only shall not be deemed to be a copy of the sculpture within the meaning of this section.

"Print," and other expressions relative thereto, when used in respect of a book or composition, shall include any production or multiplication for copies of a book or composition, whether by the process of ordinary printing, by lithography or by any other process.

"Translation" shall mean the translation of a book or composition into a different language from that in which it was first published, and include an abridgment or adaptation of a book or composition in a language different from that in which it was first published.

"Periodical" shall mean any review, magazine or newspaper, or other work published periodically or in a series or in parts, except an encyclopedia and a series of law reports. [New]

"Author" shall include any person deriving title through the author.

"Registrar" shall mean the officer appointed to keep the register under this Act.

[Act XX of 1847, s. 6.]

"High Court" shall mean Her Majesty's High Court of Judicature at Fort William.

"Prescribed" shall mean prescribed by rules made by the Governor General in Council in pursuance of this Act and for the time being in force.

[New.]

"New book" and "new composition" mean respectively a book and a composition not previously published in British India or elsewhere.

Explanations.—For the purposes of this definition—

(1) a translation of a book or composition is a different book or composition;

(2) a second or subsequent edition of a book or composition with additions or alterations or differently arranged may be a different book or composition.

5. There shall be no copyright in any matter published after the commencement of this Act, except such as is conferred by this Act or by some other enactment for the time being in force.

6. (1) Copyright shall be property, may be owned in shares, and shall be capable of assignment and of transmission by operation of law, but shall not be divisible so that a person shall be entitled to it only throughout a part of British India or, except as provided by this Act, during a part of the period for which it endures.

(2) The assignment of a copyright shall not be valid unless it is in writing, and, where the copyright is required to be registered under this Act, is authenticated by a proper entry in the register of copyrights.

(3) For the purpose of determining whether a person is entitled under this Act to copyright in a work published in British India, it shall be immaterial whether he is or is not a British subject or domiciled or resident in British India at the time of the publication.

[Bill, ss. 5 & 26.]

CHAPTER II.

COPYRIGHT IN BOOKS AND LECTURES.

General Provisions relating to Books.

[Bill, s. 6.]

7. (1) Except as provided by this Act, the author of a new book published in British India after the commencement of this Act shall unless a copyright previously existing is infringed by the publication, be entitled to copyright in the book throughout British India.

[New.]

(2) When a book published as aforesaid is divisible into portions, and a person would, if those portions were published as separate books, be entitled under sub-section (1) to

copyright in some of those portions and not in others, he shall be entitled to copyright only in the former portions.

(3) The copyright shall endure for the following terms:—

[Bill, s. 7.
See 5 & 6
Vis., s. 46, s.
3.
Act XX of
1847, s. 10.]

(a) if the book is published in the lifetime and in the true name of the author—for the life of the author, and thirty years after his death;

(b) if the book is published after the death and in the true name of the author—for thirty years from the date of the first publication of the book;

(c) if the book is not published in the true name of the author—for thirty years from the date of the first publication of the book.

8. Every person shall be deemed to infringe the copyright conferred by this Act in a book who, during the term of copyright, and without either the written consent of the proprietor of the copyright or the authority of a license granted under this Act, does any of the following things, namely:—

(a) prints or causes to be printed any abridgment of the book; or

[Bill, s. 3.
Act XX of
1847, s. 7.]

(b) prints or causes to be printed any translation of the book; or

(c) prints or causes to be printed any dramatized version of the book; or

(d) imports or causes to be imported for sale or hire any copy of the book or of any abridgment, translation or dramatized version of the book printed beyond the limits of British India; or

[5 & 6 Vis., s.
46, ss. 15, 17.]

(e) sells, publishes, lets on hire, exposes for sale or hire, or causes to be sold, published, let on hire or exposed for sale or hire, or has in his possession for sale or hire, any copy, abridgment, translation or dramatized version of the book, by the making or importation of which the copyright in the book is infringed; or

(f) does any other act in respect of the book which would be an infringement of a copyright under the law in force before the commencement of this Act:

[New.]

Provided that a person shall not be deemed to infringe the copyright in a book by reason of his having, at any time after the expiration of three years from the first publication of the book, printed, imported, sold, published, let on hire, exposed for sale or hire, or possessed, or caused to be printed, imported, sold, published, let on hire or exposed for sale or hire, a translation of the book into any language, unless within the said period of three years the author of the book or some person by his authority has published in British India a translation of the entire book into that language.

[Bill ss. 9 & 53, s. 6 Vic., c. 46, s. 6. Act XX of 1847, s. 2.]

9. (1) In order to provide against the suppression of books of importance to the public, the High Court may, on complaint that the proprietor of the copyright acquired under this Act in any book has after the death of the author thereof refused to republish or allow the re-publication of the book, and that by reason of this refusal the book is withheld from the public, license the complainant to publish the book in such manner and subject to such conditions as the Court may think fit.

(2) A license under this section shall authorize the licensee to publish the book in accordance with the terms of the license notwithstanding anything in this Act.

(3) The licensee shall register the license in the register under this Act.

(4) On such registration, the licensee shall have the same rights as the proprietor of the copyright in the book, as against all persons including that proprietor, with this qualification, that the license or the registration thereof shall not prevent the issue of the like license to the proprietor or another person.

Registration of Books.

[Bill, s. 11. Act XX of 1847, s. 3.]

10. (1) The Governor General in Council shall establish a register of books for the purposes of this Act, and may, from time to time, for the purpose of keeping the register and performing the duties imposed by this Act in connection therewith, appoint and remove a registrar for the whole of British India, and deputy registrars for any parts of British India, and such number of other officers and servants as he may think necessary.

[Bill, s. 10 (1). Act XX of 1847, s. 14.]

(2) No legal proceedings shall be taken or forfeiture incurred under this Act in respect of any infringement of copyright in a book published in British India after the commencement of this Act until the book has been registered under this Act.

[Bill, s. 10 (2).]

(3) If any such book is not registered under this Act within one month after the date of the first publication, no legal proceedings shall be taken or forfeiture incurred in respect of anything printed in, or imported into, British India before the date of registration, whether it is published, sold or otherwise dealt with before or after that date.

[Bill, s. 12. Act XX of 1847, s. 5.]

11. (1) The proprietor of the copyright in a book published in British India after the commencement of this Act, or a person who has published the book with his consent, may apply for the registration of the book under this Act.

(2) A person applying for the registration of a book shall deliver to the registrar, or, if the book is published in any part of British India for which a deputy registrar is appointed, to the deputy registrar a copy of the book, accompanied by a statement, verified in the prescribed manner, and showing the name, address and calling of the publisher of

the book, the place and date of the first publication of the book, and, except as otherwise provided by this Act, the name, address and calling of the proprietor of the copyright.

(3) If the book is at the time of registration published in the true name of the author, the statement shall also show the true name, address and calling of the author.

[See section 21.]

(4) If the book is not at the time of registration published in the true name of the author, the proprietor of the copyright may, at any time during the author's life and with his consent, deliver to the registrar a statement showing the author's true name, address and calling, and thereupon the copyright in the book shall endure for the same term as if the book had been published in the author's true name.

(5) The statement to be made on registration may be in or to the effect of the form contained in the schedule to this Act, or in or to the effect of such other form as may for the time being be prescribed.

(6) A deputy registrar receiving a statement under sub-section (2) shall, within one week from the receipt thereof, forward a copy thereof certified under his hand to the registrar and the registrar shall, on the receipt of the copy, register the book as if the statement had been originally delivered to him.

[New. Cr. Act XXV of 1867, s. 18, last clause.]

12. (1) Every person shall on payment of the prescribed fee be entitled to inspect the register under this

[Bill, s. 13. Act XX of 1847, s. 3.]

Act at such reasonable times as may be prescribed, and to obtain copies certified in the prescribed manner of any entries therein.

(2) The copies so certified shall be admissible as evidence of matters entered in the register in pursuance of this Act, and shall be *prima facie* proof of those matters.

[Bill, s. 10 (3) s. 13. Act XX of 1847, s. 3. Cr. Act I of 1872, s. 79.]

13. (1) In any of the following cases:—

[Bill, s. 14. Act XX of 1847, s. 6. See s. 6 & s. 45, s. 14.]

- (a) if the name of any person who is not for the time being entitled to the copyright in a book is entered on the register under this Act as proprietor of the copyright in that book; or
- (b) if the registrar refuses to register as proprietor of the copyright in a book the name of any person who is for the time being entitled to the copyright; or
- (c) if any book is entered as the subject of copyright in which there is no copyright;

any person aggrieved may apply in such manner as may be directed by rules made by the High Court in this behalf for an order of the High Court that the register may be rectified; and the Court may either refuse the application, or if satisfied of the justice of the case, make an order for the rectification of the register and may award compensation to the person aggrieved.

(2) The Court may in any proceeding under this section decide any question whether there is or is not copyright in a book, any

question relating to the right of any person who is a party to the proceeding to have his name entered on the register, or to have the name of any other person removed from the register, and any other question that it may be necessary or expedient to decide for the rectification of the register.

(3) Where an order is made rectifying the register, the Court shall, by its order, direct that due notice of the rectification be given to the registrar.

[Bill, s. 16.
Act XX of
1847, s. 5.]

14. (1) Where the copyright in a book is required to be registered under this act, an assignment of the copyright, or a transmission thereof by operation of law, shall not be valid unless it is registered under this Act in the prescribed manner; except that the executors, administrators or other legal representatives of a deceased proprietor of copyright may dispose of the copyright without being themselves registered.

(2) No notice of any trust, expressed, implied or constructive, shall be entered in the register or be receivable by or through the registrar or a deputy registrar, except that caveats against any assignment of a copyright may, if it is so prescribed, be received and entered in the prescribed manner.

15. Sections 10 to 14 (both inclusive) shall apply to a portion of a book as if it were an entire book.

[Bill, s. 16.]

16. The Governor General in Council may, from time to time, make rules as to the registration of copyrights, as to the fees to be charged for registration or inspection of the register, or for copies or extracts therefrom, as to caveats and notices, as to the inspection of the register, and as to any matter authorized by this Act to be prescribed, and generally for carrying into effect this Act.

Special Provisions as to particular Descriptions of Books.

[Bill, s. 19.
s. 6 Vic., c.
45, s. 18.
Act XX of
1847, s. 10.]

17. When the proprietor of any periodical, with the permission of the author of any new composition, has after the commencement of this Act published the composition in his periodical in British India,—

(a) the proprietor of the periodical shall be entitled to copyright in the composition throughout British India for a period of three years from the date of the publication, but shall not publish it separately without the consent of the author;

(b) during the said period of three years the author may register the composition under this Act as if it were a book, and thereon shall be entitled subject to the rights of the proprietor of the periodical, to prevent the

publication of or other infringement of the copyright in the composition as if he were the owner of the copyright therein;

(c) on the expiration of the said period of three years, the author shall become entitled to copyright in the composition, and the copyright shall endure until the same date, as if the composition had been a book published separately by him when it was first published in the periodical:

Provided that—

1st.—If the proprietor of the periodical has before the publication of the composition relinquished in writing all claim to the copyright therein, the copyright shall on the publication belong to the author, and endure until the same date, as if the composition were a book; and

2ndly.—If the author has before the publication of the composition relinquished in writing all claim to the copyright therein, the copyright shall on the publication belong to the proprietor of the periodical, and shall endure for thirty years from the date of the publication and no longer.

18. (1) When the author of any new book [Bill, s. 19] published on terms that any person to publish copyright shall belong to the same otherwise than in a periodical on the terms that the copyright in the book or composition shall belong to that person, and that person publishes the book or composition in British India after the commencement of this Act in accordance with the permission, the copyright throughout British India shall belong to him and shall endure for thirty years from the date of the publication and no longer.

(2) In the following cases it shall be presumed, for the purposes of this section, until the contrary is proved, that the permission to publish has been given on the terms that the copyright is to belong to the person to whom the permission is given, namely:—

(a) when the permission is given for a valuable consideration;

(b) when the permission is given with a view to the publication of a composition in an encyclopædia or other works comprising the compositions of different authors.

19. When, in any case not provided for by [New.] Compositions of several either of the two last authors published in one foregoing sections, book and not otherwise new compositions by provided for several authors are published after the commencement of this Act in one book in British India, each author shall be entitled to copyright in his composition throughout British India for the same time as if his composition were a book.

[Bill, s. 19(d)
5 & 6 Vie., c.
46 s. 19,
Act XX of
1847 s. 11.] 20. The proprietor of any periodical or series of law reports, periodicals, law reports and encyclopædias may register the same under this Act in the prescribed manner, so however that it shall not be necessary to register separately every number thereof.

[New.] 21. (1) The proprietor of any periodical, Registration of works encyclopædia or other containing compositions by work containing compositions by different authors. positions by different authors may, if he thinks fit, register the same under this Act in the prescribed manner, but without registering the names of the persons entitled to the copyright in the several compositions contained therein; and such registration shall, for the purposes of section 10, endure for the benefit of every person entitled to the copyright in any such composition as if his name had been registered as proprietor thereof.

(2) When any work is registered in the manner permitted by this section, a person entitled to the copyright in a composition published therein may register the composition separately under this Act as if it were a book.

[New.] 22. When under the foregoing provisions of this Act any person is entitled to copyright in a composition, the provisions of this Act shall, except as otherwise provided by this Act, apply as if the composition were a book.

[Bill, s. 20
(1).] 23. Notwithstanding anything in the foregoing provisions of this Act, no person shall be deemed to have copyright in such portions of a newspaper as are chiefly intended to furnish news or comments on news.

Lectures.

[Bill, s. 21,
See 5 & 6
Wm. IV, c.
65.] 24. (1) The author of a lecture, other than a lecture delivered in a university, public school, college or public foundations, or by any person in virtue of or according to any charity shall be entitled to copyright in the lecture; and this Act shall apply as if the lecture were a book, with the following modifications and additions:—

- (a) the first delivery of the lecture shall be deemed to be the first publication thereof;
- (b) while the lecture has not been printed and published by the author, if any person, during the term of copyright, and without the written consent of the proprietor of the copyright, delivers the lecture, he shall be deemed to infringe the copyright therein;
- (c) it shall not be requisite to register under this Act the copyright in a lecture which is not printed and published by the author.

(2) But nothing in this section shall prevent the proprietor of a newspaper from publishing a report of the lecture in the ordinary current edition of the newspaper, unless the author, before or at the time of the delivery of the lecture, gives notice that he prohibits such a report.

CHAPTER III.

FINE ARTS.

Paintings.

25. (1) The author of an original painting published in British India after the commencement of this Act shall be entitled to copyright therein throughout British India. [Bill, s. 25.
See 25 & 26
Vis., c. 68, s.
1.]

(2) Provided that there shall be no copyright in a painting unless the painting, and every copy thereof made with the author's consent before the painting is published, bears the author's name and the date of the execution of the painting.

26. Copyright in a painting shall endure for Term of the copyright in the following terms:— [Bill, s. 26.]

- (a) if the painting is published in the lifetime of the author, for the life of the author and thirty years after his death;
- (b) if the painting is published after the death of the author, until the expiration of thirty years from the date of his death.

27. Every person shall be deemed to infringe the copyright in a painting who, during the term of copyright, does without the written consent of the proprietor of the copyright any of the following things, namely:— [Bill, s. 27.]

- (a) makes or causes to be made any copy of the painting; or
- (b) imports or causes to be imported for sale or exhibition any copy of the painting made beyond the limits of British India; or
- (c) sells, publishes, exposes for sale or exhibits, or causes to be sold, published, exposed for sale or exhibited, or has in his possession for sale or exhibition any copy of the painting made or imported in infringement of copyright.

28. Where a painting is sold or is executed on the order of any person for valuable consideration, the copyright therein shall vest in the purchaser or person on whose order it is executed, unless the author reserves it by written agreement. [Bill, s. 28.
See 25 and 26
Vis., c. 68, s.
1, 11.]

29. Where the copyright in a painting is reserved by agreement,— [Bill, s. 29.]

- (1) the author shall not, without the consent of the owner for the time being of the painting, execute or authorise any person to

execute any copy thereof, and the owner shall have the same right of preventing the execution of any such copy as if he were the proprietor of the copyright;

(2) if the copyright is infringed, the owner of the painting shall be entitled to take the same proceedings in respect of the infringement as if he were the proprietor of the copyright;

(3) provided that, if the infringement is by any person other than the author, the owner, before he takes any legal proceedings in respect thereof, shall give to the proprietor of the copyright notice of the infringement, and of his intention to take proceedings in case the proprietor fails to do so, and shall give the proprietor an opportunity of taking proceedings to prevent the infringement;

(4) the proprietor of the copyright shall, or, if he fails after notice from the owner of the painting, then that owner may, register the copyright in the painting by delivering to the registrar or deputy registrar a statement, verified in the prescribed manner, showing the nature and subject of the painting, the name, address and calling of the author, of the proprietor of the copyright, and of the owner of the painting, and the date of and parties to the agreement;

(5) the statement may be in or to the effect of the form contained in the schedule to this Act, or in or to the effect of such other form as may for the time being be prescribed;

(6) until the copyright is registered, no legal proceedings shall be taken or forfeiture incurred in respect of any infringement of copyright in the painting;

(7) unless the copyright is registered within one month after the date of the agreement, no legal proceedings shall be taken or forfeiture incurred in respect of any copy made or imported before the date of registration, whether any such copy is sold, exhibited or otherwise dealt with before or after that date.

[Bill, s. 30.
See 35 and 36
Vis., c. 68, s.
2.]

30. Nothing in this Act shall prejudice the right of a person to copy or use any painting in which there is no copyright, or to represent any scene or object notwithstanding that there may be copyright in some representation of that scene or object.

[Bill, s. 31.]

31. Nothing in this Act shall prevent a person who has sold a painting from selling or using any models, casts, sketches or studies made by him for the purpose of making the painting, so that he does not repeat or colourably imitate the design of the painting.

Sculptures.

[Bill, s. 32.
See 34 Geo.
III, s.]

32. (1) The provisions of this Act with respect to paintings shall apply to sculptures as if they were herein re-enacted with the substitution of "sculpture" for "painting".

(2) The author of a copy of a sculpture in which there is no copyright, or which was copied with the consent in writing of the

proprietor of the copyright, shall be entitled to the same copyright as if his copy were an original sculpture.

Engravings and Photographs.

33. The provisions of this Act with respect to paintings shall apply to engravings as if they were herein re-enacted with the substitution of "engraving" for "painting"; subject as follows:—

[Bill, s. 33.
See 8 Geo. II,
c. 12; 17 Geo.
III, c. 38, 17
Geo. III, c.
67.

- (a) the provisions of this Act as to the name of the author and date of execution shall not apply, but there shall be no copyright in an engraving unless the name of the author is printed thereon;
- (b) the copyright in an engraving shall belong to the proprietor of the plate, stone or other instrument by means of which copies of the engraving are produced;
- (c) where the engraving is made on the order of any person for a valuable consideration, the proprietor of the copyright shall not be entitled to sell, expose for sale or exhibit any copy of the engraving without the consent of that person, and that person shall have the same right of preventing the selling, exposing for sale or exhibition of any copy of the engraving and, if the copyright is infringed, of taking proceedings in respect of the infringement, as if he were the proprietor of the copyright.

34. The provisions of this Act with respect to painting shall apply to photographs as if they were herein re-enacted with the substitution of "photograph" for "painting"; subject as follows:—

[Bill, s. 34.
35 & 36 Geo.
c. 68, s. 1.]

- (a) the provisions of this Act as to the name of the author and date of execution shall not apply;
- (b) the copyright in a photograph shall endure for thirty years from the date of the publication of the photograph, and no longer;
- (c) the copyright in a photograph shall belong to the proprietor of the negative from which the photograph is printed;
- (d) where the photograph has been made on the order of any person for a valuable consideration, the proprietor of the copyright shall not be entitled to sell, expose for sale or exhibit any copy of the photograph without the consent of that person, and that person shall have the same right of preventing the selling, exposing for sale or exhibition of any copy of the photograph and, if the copyright is infringed, of taking proceedings in respect of the infringement, as if he were the proprietor of the copyright.

35. The provisions of this Act with respect to the registration of engravings and photographs shall apply to the registration of the copyright in books

[Bill, s. 35.]

copyright in engravings and photographs as if they were herein re-enacted with the substitution of "engraving" or "photograph" as the case requires, for "book," except that, where an engraving or photograph has not a distinctive title, there shall be substituted for the title in the statement required on registration a short description of the nature and subject of the work.

General provisions as to Works of Art.

[Bill, s. 36.
26 & 26 Vic.,
c. 68, s. 7.]

Penalty on fraudulent
production and sale of
works of art.

36. (1) Every person who commits any of the following offences, that is to say :—

- (a) fraudulently signs or otherwise affixes, or causes to be signed or affixed, on or to any painting, sculpture, engraving, photograph or negative of a photograph any name, initials or monogram; or
- (b) fraudulently sells, publishes, exhibits, offers for sale or exposes for sale or exhibition any painting, sculpture, engraving, photograph or negative of a photograph having thereon the name, initials or monogram of a person who did not make the painting, sculpture, engraving, photograph or negative; or
- (c) fraudulently sells, publishes, exhibits, offers for sale or exposes for sale or exhibition any painting, sculpture, engraving, photograph or negative of a photograph as having been made by the author of the original work of which it is a copy or imitation; or
- (d) where a painting, sculpture, engraving, photograph or negative of a photograph has been sold and subsequently altered during the life of the author and without his consent, knowingly sells, publishes or offers for sale the work so altered, or any copy thereof, as, or as a copy of, the unaltered work of the author,

shall be punished with fine which may extend to one hundred rupees and double the full price, if any, at which any such paintings, sculptures, engravings, photographs or negatives have been sold or offered for sale, and this fine shall be paid to the person aggrieved.

(2) Every work which has the name, initials or monogram of any person so fraudulently signed thereon or affixed thereto, or which being spurious or altered, is so fraudulently or falsely ascribed to any person, shall be forfeited to that person, or his assigns or legal representatives.

(3) Provided that no penalty shall be incurred under this section unless the person whose name, initials or monogram is or are used, or to whom a spurious or altered work is ascribed, is alive at the time when the offence was committed, or was alive within twenty years before that time.

37. Where an engraving or photograph is, with the consent of the author, first published as part of a book containing letter-press, it shall, for the purposes of this Act, be deemed part of the book, and not an engraving or photograph; and the copyright in the engraving or photograph shall belong to the proprietor of the copyright in the book.

CHAPTER IV.

NEWSPAPER TELEGRAMS.

38. (1) Where a telegram from any place outside British India is sent, either directly or through a news agency, to any person for publication in a newspaper, and is published in that newspaper with the particulars hereinafter specified, within twenty-four hours after its receipt by the person to whom it is so sent, no person shall, within twenty-four hours from its publication in that newspaper, and without the consent of the proprietor of that newspaper, print and publish the telegram, or the substance thereof, or any extract therefrom, unless he can prove that the information so published by him was obtained otherwise than directly or indirectly from that newspaper, or from another newspaper to which the same telegram had been supplied by the same agency.

(2) Every telegram to which this section applies shall be headed "Protected Telegrams," and shall state the day and hour of its receipt and the day and hour of its publication.

(3) The days and hours so specified shall be presumed to be correct until the contrary is proved.

(4) If any person contravenes this section, he shall be liable to a fine which may extend to two hundred rupees.

CHAPTER V.

SUPPLEMENTAL.

39. (1) Every copy of a book, painting, sculpture, engraving or photograph imported for sale or hire in infringement of copyright shall be forfeited to the Crown, and may be seized and destroyed by any officer of Customs.

(2) Every copy of a book, painting, sculpture, engraving or photograph made in British India in infringement of copyright shall be forfeited to the proprietor of the copyright.

(3) Where any copy of a subject of copyright is under this Act forfeited to the proprietor of the copyright, then, without prejudice to any other remedy,—

- (a) the District Magistrate or a Presidency Magistrate may order any such copy to be delivered to the proprietor of the copyright;

(b) if any person in any street or highway, or elsewhere than at his own house, shop or place of business, hawks or offers, or keeps for sale, hire or distribution, any such copy, it may be seized by any police-officer above the rank of constable under the orders of the proprietor of the copy-right or of any person authorized by him, and forthwith taken before the District Magistrate or a Presidency Magistrate with a view of obtaining an order for its delivery to the proprietor of the copyright;

(c) the exportation of any such copy is hereby prohibited, and this prohibition shall be enforced in the same manner as any like prohibition is enforced under the laws relating to sea customs for the time being in force.

40. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission for which any punishment or penalty is provided by this Act, or from being liable under that other law to any other or higher punishment or penalty:

Provided that a person shall not be tried twice for the same offence.

THE SCHEDULE.

(See sections 11 and 29.)

FORMS.

A

Form of Statement for Registration.

I, A. B., of _____, request the registration of the following book:—

Title of Book.	Name, Address and Calling of Author.	Name, Address and Calling of Publisher.	Name, Address and Calling of Proprietor of Copyright.	Place and date of first Publication.

I hereby declare that the above particulars are true.

(Signed) A.B.

Dated _____ day of 18 ____.

Note.—Where the thing registered has not a distinctive title, a short description of its nature and subject must be entered in the first column, and the heading of that column altered accordingly.

B

Form of Statement for Registration of Copyright in Painting when reserved on sale.

I, A. B., of _____, request registration of the copyright in the following painting:—

Short Description of Nature and Subject of Work.	Name, Address and Calling of Author.	Name, Address and Calling of Proprietor of Copyright.	Name, Address and Calling of Owner of Painting.	Date of, and Parties to, Agreement reserving the Copyright to the Author.

I hereby declare that I am the proprietor of the copyright in [or the owner of] the above painting; and that the above particulars are true.

(Signed) A. B.

Dated _____ day of _____ 19 ____.

Note.—If the applicant for registration so desires, a sketch, outline or photograph of the work may be registered.

The agreement must be produced to the registrar or deputy registrar, and, if so prescribed, delivered to him.

Appendix A 24.

STATEMENT OF OBJECTS AND REASONS.

1. So long ago as the year 1864 the Government of India were urged to take steps for the improvement and extension of the copyright law, as contained in Act XX of 1847, and a Bill was drawn in that year with the object of carrying out one of the recommendations which had been made, namely, that facilities should be given for the protection of copyright in pictures, engravings, prints and other similar productions.

2. It was not, however, till the year 1876 that the question was systematically taken up. In that year the Government formulated proposals for amending Act XX of 1847, first, by extending the author's privilege to translations into the Native languages, subject to a provision similar to that contained in the Statute 15 & 16 Vic., cap. 12, section 8, which makes the exclusive privilege of translation conditional on the publication, within a given period, of a translation sanctioned by the author; and, secondly, by providing for the protection of copyright in lectures, paintings, sculptures, engravings and photographs. It was also proposed to amend the law (Act XIII of 1872) providing for the protection of patterns and designs, which had been found defective in practice, and to incorporate it in the new law.

3. These proposals were circulated to the several Local Governments and received their general support. They were then in the year 1877 communicated to the Secretary of State; but the proposed legislation was deferred at his suggestion pending the completion of the labours of the Royal Commission, which was then sitting to consider amendments in the Imperial law of copyright.

4. The necessity for an amendment of the law was again brought to the notice of the Government of India in the years 1882 and 1883 in connection with a difficulty experienced by the Government of Madras in asserting a copyright in certain educational works published under its authority, and with memorials submitted by certain Art Associations in Calcutta and Poona, praying for the enactment of provisions which would enable them to register the copyright in their productions in this country, the present law (25 & 26 Vic., cap. 68) admitting of registration in London only. The whole subject was again taken into consideration, and it was decided to re-enact Act XX of 1847, making such amendments as experience has shown to be necessary, particularly in regard to copyright belonging to the Government and to corporations, and copyright in translations, and at the same time providing for copyright in—

- public lectures after delivery;
- sculptures and casts;
- engravings and lithographs; and
- drawings, paintings and photographs.

The proposal formerly entertained of incorporating in an amended form the law relating to patterns and designs (Act XIII of 1872) was abandoned, as it was thought that the balance of practical convenience was in favour of following the precedent of English legislation and treating this subject, as it has hitherto been treated here, in connection with patents. It was therefore decided to deal with the amendment of this branch of the law in the Bill for amending Act XV of 1859, which is being separately considered by the Government of India.

These proposals have been approved by the Secretary of State, and the present Bill is designed to carry them into effect.

5. The Bill is based chiefly on the corresponding provisions of the Bill which was brought in by Lord John Manners in the year 1879, and which was intended to give effect to the recommendations of the Copyright Commission (1878).

In explaining its provisions it will be convenient to begin with the subject of books and other printed matter, which stands first in order, and moreover possesses the widest interest.

6. It will be observed that the portions of the Bill dealing with this subject are confined in their operation to matter published after the commencement of the Act. All rights in regard to unpublished matter, as, for example, unpublished letters, which have at times given rise to interesting controversies are [section 3 (b)] left untouched, and, as regards matter published before the commencement of the Act, the present law (Act XX of 1847 and the last clause of section 18 of Act XXV of 1867) is kept alive (section 2).

7. It is probable that section 5, which provides that there shall be no copyright in published matter except such as is conferred by express enactment, simply declares the existing state of the law (see the preamble to Act XX of 1847 and Article 4 of Sir James Stephen's Digest annexed to the Report of the Copyright Commission); but it has been thought safest to preclude all doubt on a point which has on more than one occasion given rise to troublesome discussions.

8. Section 6 (nature of copyright) provides, among other matters, that the British Indian copyright, though it may be owned in shares, cannot be divided so that, a person shall be entitled to it only throughout a part of the territory over which it holds good or for a part only of the time for which it endures. The former branch of the rule is in accordance with the view taken by Lord St. Leonards in *Jeffreys v. Boosey* "Nothing," he there says, "could be more absurd or inconvenient than that this abstract right should be divided, as if it were real property, into lots, and that one lot should be sold to one man and another lot to a different man. It is impossible to tell what the inconvenience would be. You might have a separate transfer of the right of publication in every county in the kingdom." These remarks were not intended to apply directly to the point touched by the second branch of the proposed rule; and it is believed that, though some doubt has been felt on the point (which appears never to have been judicially decided), the Registrar in England acts on the view that copyright is assignable for a limited period; but it is to be apprehended that complications similar to those of which Lord St. Leonards spoke as likely to arise from divisions with reference to local area would be likely to arise also from divisions with reference to duration. It is important to prevent the accrual of complications in a right of this description, and it is believed that all that is needed for practical purposes can be effected by means of contracts and licenses without any actual dismemberment of the copyright itself.

9. The last sub-section of section 6, which provides that an author shall be entitled to copyright whether he is or is not a British subject or resident or domiciled in British India at the time of publication, has been introduced, following Lord John Manners' Bill to prevent the possibility of any such question as arose in certain well-known English cases on this point. It may be doubted, however, whether there is any necessity to provide expressly for the matter in the present Bill.

10. The section of the Bill (7) which confers copyright in books is limited to "new books" (that is to books not previously published in British India or elsewhere) which are published in British India after the new law comes into force; and the right is limited, as having regard to the limited powers of the Governor-General's Council it must necessarily be, to British India.

It would, of course, be possible to provide, somewhat as in Lord John Manners' Bill for the protection in British India of books first published in other parts of Her Majesty's dominions, but it seems unnecessary to do so. Parliament itself protects in all British possessions abroad (including British India) books published in the United Kingdom; and books published in the Colonies are, it is believed, rarely heard of in this country.

It seems likewise unnecessary to provide any protection at present for books published beyond the limits of Her Majesty's dominions and re-published in British India.

11. A question arises on sub-section (1) of section 7, which is indicated by the words shown in italics, namely, whether it ought to be a condition of the acquisition of copyright in a book that the book should not in any way infringe another copyright recognized by the law. X, for example, publishes a book which is new within the meaning of the Bill, but it is a translation or abridgment of a work previously published by Y, or its contents can be shown on examination to have been borrowed to such an extent from Y's work that Y would,

if he were so minded, be in a position to take proceedings for the infringement of his copyright against X. This being so, Z publishes a book which would involve an infringement of X's copyright, supposing such copyright to exist, and X takes proceedings against him. Is Z to be allowed to defend himself on the ground that X's work, being an infringement of Y's copyright, cannot itself be the subject of copyright? The question appears to have rarely arisen in England, and then only in cases in which separable portions of the works concerned had been copied (see, for example, *Cary v. Faden*, 5 Ves. 23); but, as the Bill makes a translation or an abridgment an infringement of copyright, it is likely to be of more importance here and to present itself under a somewhat different form.

12. The second sub-section of section 7 is intended to meet the case of a book part only of which is original, for example, a classical text, in which no copyright could be acquired, published with original notes in which a copyright would be claimable.

13. The rules in sub-section (3) of section 7, fixing the duration of the copyright in a book are taken from Lord John Manners' Bill, and involve a considerable change in the existing law. In the ordinary case of a book published in the true name of the author during his life, the term of the copyright will run on to thirty years after his death, instead of only to seven years as at present.

14. Clauses (a) to (f) of section 8, specifying the various modes in which the copyright in a book may be infringed, are taken from Lord John Manners' Bill, but it is apprehended that these clauses would not exhaust the subject. There are many ways of using another's work which must be treated as an infringement of copyright, and which would not fall under any of those headings; and, as it seems hopeless to define those ways, the only practicable mode of dealing with the matter appears to be to add a clause (g) treating as an infringement "any other act in respect of the book which would be an infringement of a copyright under the law in force before the commencement of this Act."

15. The only other matter which it appears necessary to notice in connection with this section is one which is of growing interest in this country, namely, the question of copyright in connection with translations. That a translation is, as laid down in section 4 of the Bill, a new work, and is, if lawfully made entitled to copyright as such appears, as the law now stands, open to no doubt; but the further question whether any one is at liberty to publish a translation of a book in which there is a subsisting copyright is one which appears never to have been decided in England. In this country, however, where translations are commonly made of works which are the subject of copyright here, it has been more than once brought to the notice of the Government.

Prima facie it seems clear that an author should have the exclusive right of translating his work, and, though the matter is not referred to by the Copyright Commission in dealing with the subject of home copyright probably because it is rarely of much practical importance in that connection in England, a clause was inserted in Lord John Manners' Bill making the translating of a book an infringement of the home copyright. In connection with international copyright the exclusive right of the author to translate his work is fully recognised.

The only doubt that appears to have been suggested in this country as to the expediency of recognizing this right arose with reference to the right to make vernacular translations from English works, it having been argued that, if the copyright of the author of the English work were to comprise an exclusive right of translation, it might stand in the way of translations being made, and might thus interfere with diffusion of knowledge.

The answer to any such argument seems to be that in the case of many English works published in this country (and it is with such works only we are here concerned) the author must lose a large share of the benefit of his labours unless the right of translation is reserved to him, that his translation is likely to be better than any one else's, and that we can easily make his exclusive right of translation subject, as under the international copyright law, to the condition that he shall publish a translation of his work within a fixed period.

Section 8 has been framed so as to give effect to these views—the body of the section providing that the publication, etc., of a translation shall be an infringement of the copyright, and the proviso barring the operation of the section in this respect if the author himself does not publish a translation in British India within a certain period (three years is suggested in the Bill) from the first publication of the book.

16. Act XX of 1847 contains a section (2) giving power to grant a license for the publication of a book already published in order to prevent its being withheld from the public. Section 9 of the Bill contains corresponding provisions, but the power is now given to the High Court instead of to the Governor-General in Council, and the details have been re-cast on the lines of Lord John Manners' Bill.

17. Sections 10 to 16 of the Bill, substitute for the existing system of registration of copyright a system based on the scheme of Lord John Manners' Bill.

The first important alteration is in section 10 (3). By the existing law an owner of copyright may register when he pleases, and, though no proceedings for infringement can be

maintained before registration, proceedings can be maintained after registration for an infringement antecedent to registration. This may be productive of hardship in cases where registration is deferred and a person, supposing that the owner does not mean to assert his right, publishes or imports some work which involves an infringement of the copyright. The owner may then register and institute proceedings against him in respect of an act for which he can hardly be deemed worthy of blame.

On the other hand, if it were to be enacted that no proceedings should be instituted in respect of anything done before registration, it might in some cases be possible for an unscrupulous person to publish with impunity a large number of copies of the work before the owner of the copyright could arrange to register it.

The Copyright Commission, having pointed out the similar difficulties arising in England, wrote as follows:—

"We therefore recommend that proprietors of copyright should not be entitled to maintain any proceedings in respect of anything made or done before registration, nor in respect of any dealings subsequent to registration with things so made or done before registration. But, as this provision might in some cases operate harshly, we think it should not apply if registration is effected within a limited time, say, one month after publication."

Section 10 (3) substantially gives effect to this recommendation.

18. The Bill provides for the appointment not only of a registrar at the central office, but also of deputy registrars for such local areas as the Governor-General in Council may think fit.

It seems necessary in order to admit of the maintenance of something similar to the local system of registering copyright which is established under section 18 of Act XXV of 1867, and has in some places almost superseded registration under the principal Act. The deputy registrar, who will, it is presumed, ordinarily be the person whose duty it is to keep up the catalogue prescribed by that section, will receive from the person desiring to have a book registered for the purposes of the copyright law the copy of the book and the verified statement which he is required by the Bill to submit, and will within a week transmit the statement to the registrar for incorporation in the register at the central office. The single and complete central register, which is an essential feature of the system, can thus be maintained without sacrificing in any way the convenience of the public. Subsequent dealings with the register, such as rectifications of the entries in it and the registration of assignments, must no doubt take place at the central office, but for a long time to come they will be of comparatively rare occurrence.

19. The provisions of Chapter II, which have up to this been referred to, proceed for the most part as if the only case to be dealt with were the simple one of a book written by a single author and published by him under such circumstances that there is nothing to interfere with his acquisition of the full copyright. But other more complicated cases remain to be provided for. The commonest case is that of a "periodical," the proprietor of which publishes in each of his volumes or parts the compositions of several authors; but there are other cases (for example, that of an encyclopædia or a series of law reports) in which the compositions of several persons are published in a single volume; and there are, moreover, occasionally cases in which one person employs another to write an entire book, the intention being that the copyright shall belong to the employer.

20. The most important of these cases are provided for in section (10) of Act XX of 1847, based on the 18th section of the 5 and 6 Vic., c. 45, but in a manner which is not altogether satisfactory as regards either substance or form.

The existing state of the law and the suggestions made by the Copyright Commission will be seen from the following extract from the Commission's Report:—

"One other point relating to the term of copyright remains, to which we wish to call attention. It has been provided that in the case of encyclopædias, reviews, magazines, periodical works and works published in a series of books or parts, for which various persons are employed by the proprietor to write articles,—if the articles are written and paid for on the terms that the copyright therein shall belong to the proprietor of the work, the same rights shall belong to him as to the author of a book, except in one particular, in which particular a difference is made between essays, articles or portions of reviews, magazines or other periodical works of a like nature and articles in encyclopædias. In the case of the former (but not of encyclopædias) a right of separate publication of the articles reverts to the author after 28 years for the remainder of the period of copyright, and during the 28 years the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns. Authors can, however, by contract reserve to themselves during the 28 years a right of separate publication of the articles they write, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical. We think some modification in this provision is required as regards the time when the right of separate publication should revert to the authors of the articles, and that three years should be substituted for twenty-eight.

"It has been pointed out to us that under the existing law the author of an article in a magazine or periodical cannot, until the right of separate publication reverts to him, take proceedings to prevent piracy of his work; so that, unless the proprietor of the magazine or periodical be willing to take such proceedings (which may very likely not be the case when the right of the author is about to revive), the result would practically be to deprive the author of the benefit of the right reserved to him. We recommend, therefore, that, during the period before the right of separate publication reverts to the author, he should be entitled, as well as the proprietor of the magazine or periodical, to prevent an unauthorised separate publication."

21. It is on the lines thus indicated that the most important section of this portion of the Bill, namely, section 17, relating to compositions published in periodicals, has been drawn.

"Periodical" is defined in section 4 of the Bill as meaning "any review, magazine or newspaper, or other work published periodically or in a series or in parts, except an encyclopædia and a series of law reports;" and subject to a special provision regarding newspapers, to be presently noticed, the provisions of section 17 of the Bill apply to all works included in that definition.

The general rules laid down are—

- (a) that the proprietor of the periodical shall be entitled to copyright in each composition published in it for three years from the date of publication, but shall not publish it separately without the consent of the author;
- (b) that during that period of three years the author may register the composition, and, if he does so, shall be entitled, subject to the rights of the proprietor of the periodical, to take steps to protect the copyright in the composition as if he were the owner of it; and
- (c) that on the expiration of the three years the copyright in the composition shall pass to the author and endure until the same date as if the author had himself published the composition as a separate book.

These general rules, however, may be modified by writing between the parties in either of two ways; that is to say, the proprietor of the periodical may by writing relinquish his claim to the copyright, in which event the copyright in the composition will from the moment of publication belong to the author; or the author may similarly relinquish his claim in favour of the proprietor of the periodical, in which event the copyright of the latter will endure for thirty years from the date of publication.

22. It is perhaps superfluous to observe that here, and in the cases to be next noticed, it is open to the parties to make any terms they think fit by way of contract or license. It is only with the vesting of the ownership of the copyright that the rules now in question are concerned.

23. Section 18 deals with the case of a new book or composition which the author allows to be published by another person otherwise than in a periodical on the terms that the copyright in it shall belong to that other person. It provides that in such a case the copyright shall belong to that other person and shall endure for thirty years, and further enacts that the publication shall, until the contrary is proved, be presumed to have taken place on the terms referred to if the author's permission to publish has been given for valuable consideration, or has been given with a view to publication in any encyclopædia or other work comprising the publications of different authors. It is believed that the presumption is in both cases a fair and reasonable one, and that it will at times save a publisher from being vexatiously put to the proof of something regarding which there may be no reasonable ground of doubt, and which, nevertheless, it might involve a considerable expenditure of time and money to prove.

24. Section 19 is intended to cover such cases of compositions of several authors published in one book as are not covered by the preceding sections. It will apply, for example, if authors allow their compositions to be published in an encyclopædia, but on the terms that the copyright shall belong to them, and in the case, which occasionally occurs, of the authors of a number of essays having a common tendency joining to publish them in a single volume. It simply gives to each author the copyright in his composition as if it had been published as a separate book.

25. Section 21 is new. It is intended to meet cases in which the proprietor of a periodical, encyclopædia or other work containing the compositions of different authors is not the proprietor of the copyright of all those compositions. In some such cases the registration of the ownership of the copyright might be difficult, and in the case of a periodical or such like, if the registration of the ownership of the copyright was imperative, the simple method of registration provided by section 20 would be inapplicable. It is therefore left optional to the proprietors of such works to register them without naming the owner of the copyright; and as an entry of a work in the copyright register, even if it does not contain the name of the owner of the copyright, is a sufficient warning to all persons to abstain from piracy, it is provided that an entry made under this section shall, for the purposes of section 10 (*see supra*, paragraph 17), endure for the benefit of each person entitled to the copyright of a composition contained in the work as if his name had been registered as proprietor thereof.

It is, however, further provided that when any work is registered in the manner permitted by this section the owner of the copyright of any composition published in it may register his composition separately as if it were a book.

26. It has been already stated that newspapers are treated as periodicals subject to certain qualification. That qualification which is taken from Lord John Manners' Bill, will be found in section 23, and its effect is to prevent such portions of a newspaper as are chiefly intended to furnish news or comments on news becoming the subject of copyright. This is in substantial accordance with the recommendation of the Copyright Commission, who, in the 88th paragraph of their Report, suggest that any future legislation should define "what parts of a newspaper may be considered copyright by distinguishing between announcements of facts and communications of a literary character."

27. Section 24 of the Bill deals with copyright in lectures. It is copied from Lord John Manners' Bill and runs as follows:—

"24. (1) The author of a lecture, other than a lecture delivered in a university, public school, college or public foundation, or by any person in virtue of or according to any charity, shall be entitled to copyright in the lecture; and this Act shall apply as if the lecture were a book, with the following modifications and additions:—

"(a) the first delivery of the lecture shall be deemed to be the first publication thereof;

"(b) while the lecture has not been printed and published by the author, if any person during the term of copyright, and without the written consent of the proprietor of the copyright, delivers the lecture, he shall be deemed to infringe the copyright therein;

"(c) it shall not be requisite to register under this Act the copyright in a lecture which is not printed and published by the author.

"(2) But nothing in this section shall prevent the proprietor of a newspaper from publishing a report of the lecture in the ordinary current edition of a newspaper, unless the author, before or at the time of the delivery of the lecture, gives notice that he prohibits such a report."

28. As already stated, the Indian Statute-book contains no provisions regarding copyright in lectures, and, as the subject is new in this country, it seems desirable to reproduce here the remarks and suggestions of the Copyright Commission, which will afford a sufficient explanation of the provisions of the section. In the 82nd to 87th paragraphs of their Report they write as follows:—

"Lectures are peculiar in their character and differ from books, inasmuch as, though they are made public by delivery, they have not necessarily a visible form capable of being copied. Nevertheless, it has been thought right by the legislature in recent years to afford them the protection of copyright, and, considering the valuable character of many lectures, it is our opinion that such protection should not only be continued, subject to certain changes in the law, but extended. Although lectures are not always capable of being copied, because not reduced to writing, many lectures written for the purpose of delivery are not published, and many are written that the matter of them may be preserved, or that they may be capable of delivery in the same form on other occasions. Moreover, lectures, though not put in writing by the author, may be taken down in shorthand, and thus published or re-delivered by other persons. The present Act of Parliament, which gives copyright in lectures, seems only to contemplate one kind of copyright, namely, that of printed publication, whereas it is obvious that for their entire protection lectures require copyright of two kinds, the one to protect them from printed publication by unauthorised persons, the other to protect them from re-delivery.

"The present law is that the author of any lecture, or his assignee, may reserve to himself the sole right of publishing it, by giving two days' notice of the intended delivery to two Justices of the Peace living within five miles from the place where the lecture is to be delivered unless the lecture is delivered in any university, public school or college, or on any public foundation or by any person in virtue of or according to any gift, endowment or foundation, in which cases no copyright is given on any condition. If any person obtains a copy of a protected lecture by taking it down, and publishes it without the leave of the author, or sells copies, he is to forfeit the copies and 1d. for every sheet found in his custody. This law is designed merely to prevent unauthorised publication of lectures by printing, but, as has been observed, it does not prohibit unauthorised re-delivery.

"We think that the author's copyright should extend to prevent re-delivery of a lecture without leave as well as publication by printing, though this prohibition as to re-delivery should not extend to lectures which have been printed and published. We also recommend that the term of copyright in lectures should be the same as in books, namely, the life of the author and 30 years after his death.

"In the course of our inquiry it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will become unlawful

It does not seem to us desirable that this practice should be prevented, but on the other hand, the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control so as to prevent such publication if he wishes to do so; and we therefore suggest that, though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless before or at the time when the lecture is delivered he gives notice that he prohibits reporting.

"By the present law, as above stated, a condition is imposed of giving notice to two Justices. Without entering into the origin of this provision we find that it is little known and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest that this provision should be omitted from any future law.

"We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere, wherein no statutory copyright can be acquired.

29. The provisions of Chapter III of the Bill, relating to copyright in works of art, follow closely those of Lord John Manners' Bill, the only important difference being that their application will be restricted to works "published" in British India after the Bill comes into operation. The protection of the copyright in works of art "published" elsewhere, it is believed, be best left, as the protection of the copyright in books published elsewhere has been, to be dealt with by Parliament.

30. Sections 28 and 29 of the Bill deal with the question of the ownership of the copyright in a painting which has been sold by the artist or executed by him on the order of any person for valuable consideration—a question which the Copyright Commissioners observe (paragraph 101) was the most difficult of those which came under their consideration with relation to fine arts.

Section 28 provides that the copyright in such a painting shall vest in the purchaser or person on whose order it is executed, unless the artist reserves it by a written agreement; while section 29 provides that when the artist so reserves the copyright, he shall not be entitled without the consent of the owner of the painting to make copies of it, and gives the owner of the painting certain remedies against infringements of the copyright by third persons in the event of the owner of the copyright failing to proceed against them.

These provisions are applied also to sculptures (see section 32).

31. The case of photographs and engravings, on the other hand, stands on a different footing. The Copyright Commission, referring to the case of the photographs, say—

"120. But the point upon which we feel difficulty is, whether the copyright should be assimilated to that in paintings and pass to a purchaser, or whether it should remain with the photographer. When photographs are taken with a view to copies being sold in large numbers, it is practically impossible that the copyright in the negative should pass to each purchaser of a copy, and it must remain with the photographer, or cease to exist. On the other hand, the same reasons exist for vesting the copyright of portraits in the purchaser or person for whom they are taken, as in the case of a painting. Indeed, considering the facility of multiplying copies, and the tendency among photographers to exhibit the portraits of distinguished persons in shop windows, it may be thought that there is even greater reason for giving the persons whose portraits are taken the control over the multiplication of copies than there is in the case of painting. It therefore becomes a question whether it is not necessary to make that distinction between photographs that are portraits and those that are not, and between photographs taken on commission and those taken otherwise, which we have deprecated in the case of paintings.

"121. We suggest that the copyright in a photograph should belong to the proprietor of the negative; but, in the case of photographs taken on commission, we recommend that no copies be sold or exhibited without the sanction of the person who ordered them."

As regards engravings, their remarks are as follows:—

"122. The same questions arise with respect to engravings, lithographs, prints and similar works. These arts, like photography, may be employed for the purpose of issuing a large number of copies of a picture, or merely for the purpose of executing a commission and printing a few copies, of a portrait for instance, for private distribution by the person giving a commission among his friends. We think, therefore, that, so far as regards the transfer and vesting of the copyright, these arts should be placed upon the same basis as photography."

The suggestions contained in these paragraphs are substantially adopted in sections 33 and 34 of the Bill.

32. As regards the cases in which copyright is recognised in sculpture and the extent of the right, two novel provisions have been introduced into the Bill, the nature of which and the reasons for them will be best explained in the words of the Copyright Commissioners:—

"As to sculpture," they say in paragraphs 97 to 100 of their report, "we have had to consider by what acts the sculptor's copyright ought to be deemed to have been infringed. Sculpture may be copied in various ways, not only by sculpture and casting, but by engraving,

drawing and photography; and since the rise of photography the copying of sculpture by that means has become a considerable business. The question has therefore been brought before us whether copying by other means than sculpture or casting ought not to be considered piracy.

"98. A material item in the consideration of this question is the injury likely to be inflicted on the sculptor. The principal witness on this point, Mr. Woolner, R. A., though he thought that the photographing of sculpture would probably operate rather as an advertisement in the sculptor's favour than to his detriment, expressed a wish that the law should give a sculptor protection against copying by means of drawing or engraving, and he was of opinion that incorrect copying by drawing or engraving might be very prejudicial to the sculptor's reputation. But besides this there is the question whether a sculptor ought not to be entitled to any profit to be made by allowing his works to be photographed or otherwise copied.

"99. Upon the whole we are disposed to think that every form of copy, whether by sculpture, modelling, photography, drawing, engraving or otherwise, should be included in the protection of copyright. It might be provided that the copying of a scene in which a piece of sculpture happened to form an object should not be deemed an infringement unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture.

"100. It was also suggested that copyists of antique works ought to be protected by copyright so far as their own copies are concerned. Many persons spend months in copying ancient statues, and the copies become as valuable to the sculptors as if they were original works. It may be doubted whether the case does not already fall within the Sculpture Act; but we recommend that such doubts should be removed, and that sculptors who copy from statues in which no copyright exists should have copyright in their own copies. Such copyright should not, of course, extend to prevent other persons making copies of the original works."

The recommendation made in the first three paragraphs quoted will be found to be carried out by the definition of copy in the case of a sculpture (section 4 of the Bill) and that made in the last paragraph by section 32, sub-section (2).

33. The term for which the copyright in works of art endures has, in accordance with the recommendations of the Commissioners, been made the same as for books, namely, the life of the artist and 30 years after his death, except in the case of photographs, when it is limited to 30 years from the date of publication.

34. Section 31 of the Bill, which is new will be best explained by the following remarks of the Commissioners, to the suggestions contained in which it is intended to give effect:—

"123. Before leaving the subject of the fine arts," they say, "we wish to notice one other matter as to which artists say the law is disadvantageous to them. Before an artist paints a picture, he frequently finds it necessary to make a number of sketches or studies, which, grouped together, make up the picture in its finished state. These works may be studies expressly made for the picture about to be painted, or they may be sketches which have been made at various times, and kept as materials for future pictures. If, after a picture is so composed, the copyright is sold, the artists are afraid that they are prevented from again using or selling the same studies and sketches, as they have been advised that such user or sale would be an infringement of the copyright they have sold.

"124. It may be doubted whether this fear is well founded; but as the use of such studies and sketches as we have described could not, in our opinion, result in any real injury to the copyright owner, who has copies of them in his picture in a more or less altered shape, and combined with other independent work, we think the doubt should be removed, and that the author of any work or fine art, even though he may have parted with the copyright therein, should be allowed to sell or use again his *bona fide* sketches and studies for such works and compositions, provided that he does not repeat or colourably imitate the design of the original work. We may observe that a provision to this effect was inserted in the Copyright Bill which was introduced by Lord Westbury in 1869."

35. As regards the registration of the copyright in works of art, the following are the remarks of the Commissioners:—

"156. For the sake of uniformity, we are of opinion that it is desirable that the law of registration should, as far as possible, be the same for works of fine art as for books, music and the drama.

"157. It has, however, been strongly urged upon us that compulsory registration in the case of paintings and drawings is practically impossible; and it would seem that the same arguments that are used against compulsory registration in the case of paintings and drawings apply equally to sculpture. This is no doubt a great difficulty in the way of compulsory registration of paintings and drawings. This arises from the fact that the class of pictures to be registered cannot be limited, and that if copyright in an important work is only to be secured by registration, copyright in the smallest sketch or study could only be preserved by the same means. Some difficulty also arises from the fact that paintings, drawings and sketches are so frequently subjected to alteration that it would be almost impossible to say when a work is finished so as to be capable of registration as a completed work.

"158. On those grounds, therefore, we recommend that registration of paintings and drawings should not be insisted on so long as the property in the picture and the copyright are vested in the same person, but that if the copyright be separated by agreement from the property in the picture, there should be compulsory registration, and that the register should show:

- (a) the date of the agreement;
- (b) the names of the parties thereto;
- (c) The names and places of abode of the artist and of the person in whom the copyright is vested;
- (d) a short description of the nature and subject of the work, and, if the person registering so desires, a sketch outline or photograph of the work in addition thereto.

"159. With regard to such works as engravings, prints and photographs, there would not be the same difficulty, and we think that they should be subject to compulsory registration in the same way as books."

The suggestions made in these paragraphs have been adopted in the Bill.

36. Section 36 of the Bill, which provides for the punishment of the fraudulent production and sale of works of art, is based upon the 7th section of the 25 and 26 Vic. c. 68, but is generalized so as to apply to all works of art dealt with by the Bill.

It is probable that many of the offences punishable under this section would be punishable under the Indian Penal Code; but it has been thought safest to reproduce the provisions of the English Act in their integrity.

37. Section 37 provides that, when an engraving or photograph is published in a book, it shall be treated as a part of the book, and not as a separate work, the copyright in it following the copyright in the book.

38. Section 38 relates to newspaper telegrams. Its provisions are novel in this country, but a precedent for them is to be found in the legislation of some of the British Colonies. It has been represented to the Government of India that telegraphic messages obtained at great expense from foreign countries, either directly or through such agencies as that of Reuters, are copied with impunity by other newspapers, and that this form of piracy materially discourages honest journalistic enterprise. Under these circumstances, it is proposed to give newspaper telegrams protection against being copied during a period of twenty-four hours from the date of their publication, provided they are published within twenty-four hours from their receipt.

39. Section 39, which provides for the forfeiture of copies of books and works of art imported for sale or hire or produced in infringement of copyright, is based upon the provisions of existing English Acts extended and modified in accordance with the recommendations of the Copyright Commission and the provisions of Lord John Manners' Bill.

Order—Mis. No. 782, Educational, dated 26th August 1912.

The letter from the Government of India regarding the introduction of the English Copyright Act (1 and 2 Geo. V, Chapter 46) into India will be referred to the Honourable the Judges of the High Court, the Senate of the Madras University, the Director of Public Instruction and the Registrar of Books for very early remarks. Special attention is invited to paragraph 9 of India's letter.

(True Extract.)

L. DAVIDSON,
Ag. Secretary to Government.

To the Honourable the Judges of the High Court (with C.L.).
" Senate of the Madras University.
" Director of Public Instruction.
" Registrar of Books (through the Director of Public Instruction).

II

Telegram—from the Secretary to the Government of India, Department of Education.

To—the Secretary to the Government of Madras, Educational Department.
Dated—Simla, the 21st September 1912.

No.—10 Books.

Government of India will be glad to receive as soon as possible Governor in Council's opinion regarding introduction of Copyright Act, 1911, into India asked for in this Department letter number 1818, dated 1st August 1912. Secretary of State is pressing for reply.

III

Telegram—from the Secretary to Government, Educational Department.

To the ^{Judicature, Madras,}
Registrar, University of Madras.

Dated—the 24th September 1912.

No.—44.

Government will be glad to receive as soon as possible Honourable ^{Judges} ^{Senates} opinion regarding introduction English Copyright Act, 1911, into India asked for in this Department's Order 782, dated 26th August last. Secretary of State presses for early reply.

IV

Telegram—from the Secretary to Government, Educational Department.

To the Director of Public Instruction, Madras,
the Registrar of Books, Madras.

Dated—Madras, the 24th September 1912.

No.—45.

Please expedite your reply to G.O. No. 782, Educational, dated 26th August last, regarding introduction English Copyright Act, 1911, into India. Secretary of State presses for early reply.

V

Telegram—from the Registrar, University of Madras.

To—the Secretary to Government, Educational Department.

Dated—Madras, the 25th September 1912.

English Copyright Act was considered by Syndicate last meeting. Further consideration deferred till October first. Syndicate's opinion will be sent after that meeting.

VI

Letter—from the Hon'ble Mr. A. G. BOURNE, D.Sc., F.R.S., C.I.E., Director of Public Instruction, Madras.

To—the Secretary to Government, Educational Department.

Dated—the 25th September 1912.

No.—Ref. on Cur. 6968.

With reference to G.O. No. 782, Mis., Educational, dated 26th August 1912, referring to the Registrar of Books and to the Director, for remarks, a letter from the Government of India, regarding the introduction of the English Copyright Act (1 and 2 Geo. V., Chapter 46) into India, I have the honour to submit, in original, the Registrar's reply No. 1718, dated 9th September 1912, and to state that I agree in general with the opinion expressed therein, but I am not sure that the above officer has correctly apprehended the views of the Government of India on the subject of registration. I conceive that it is not intended in India to dispense with the compulsory registration of books but merely not to make such registration the means of acquiring copyright. If this be so, his objection falls to the ground since the fact of registration would, I suppose, be evidence in India, and so far as it went, of copyright; nor do I think that any special provisions are necessary for the protection of editors. If I understand the Registrar rightly, he wishes that the text of an edition of an ancient work as amended by an editor should be copyright for a short term. This might be justifiable in the case of a work printed for the first time, but I should greatly doubt if the editor's work would be in real need of such protection. In the case of works already in print of which the text has been built up by the labour of a succession of scholars, it does not appear justifiable to grant copyright to any particular edition.

VII

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 9th September 1912.

No.—1718.

With reference to G.O. No. 782, Mis., Educational, dated 26th August 1912, referring to me for remarks the letter of the Government of India regarding the introduction of the English Copyright Act (1 and 2 Geo. V., Chap. 46) into India, I have the honour to submit that the above Act appears to be more than sufficiently comprehensive in relation to existing Indian conditions, and that its introduction will prove beneficial in encouraging the growth of culture and the development of art.

2. However, it seems to me to be doubtful whether Indian conditions are ripe enough at present for doing away with the formalities of registration altogether. It appears to be desirable to give scope for registration; but it should be made wholly optional, so that, while the fact of one's not having registered his copyright in his work, need not mean that no such copyright at all exists, the optionally adopted registration may secure for one his copyright in such a manner as to make it *prima facie* incontestable. As yet in this country authorship seems to stand in need of this kind of protection. It must be noted, however, that in extending such optionally sought protection to authorship, the difficulty of the registering officer having to satisfy himself as far as possible that the applicant for a copyright is really entitled to be the owner thereof is certain to arise; and provision must be made to meet this difficulty in a fairly satisfactory way. Otherwise, the proposed optional registration will tend to give no valuable protection to authorship. Moreover, in the matter of copyright the relation of Indian Native States to British India as well as of British India to Native States has to be defined and made clear. It is a point regarding which the existing law seems to have been long known to be defective; and optional registration may be made the means of removing the defect by allowing works published in Native States to be registered in British India and by having it declared that copyright registered in British India holds good in all the Native States. In regard to such authors, whether in British India or in Native States, as do not register their copyright, care must be taken to see that non-registration does not act as a bar for the establishment of their rights in their works in accordance with the ordinary processes of the law as it obtains from time to time.

3. It is indeed well worth considering how far it is desirable in the existing circumstance of India to include in copyright the sole right to publish translations of works protected by copyright. As pointed out by the Secretary to the Government of India in paragraph 5 of his letter referred to above, it is necessary, to give greater freedom in this country for the publication of translations of works having copyright. Bringing translations under the provisions of section 4 of the English Act in regard to compulsory licenses will not probably meet all the requirements adequately, as under that section compulsory licenses can be obtained only after the death of the author. Clause 8 of the Government of India Bill of 1885 provides that, after the expiration of three years from the first publication of a work, to publish a translation thereof is no infringement of copyright unless the author's own translation has been published before. Three years appears to be too small a period for an author to be able to make out whether his work deserves to be translated and to bring out there-after the translation. Therefore this period of three years may be raised to five if not seven years.

4. Another point, to which the present condition and quantity of unpublished literature in India compels attention, is the desirability of providing copyright protection to the work of editing the writings of ancient and medieval Indian authors with the aid of old manuscripts. Much work of this kind awaits to be done; and it cannot be denied that the labour and thought involved in it are often quite as much as in the production of works taken to be original for the purpose of copyright. It is obviously undesirable to make the copyright of editing-work extend over the same period as the copyright of authors in their works. Even in regard to such

ancient and medieval works, scholars must be left free to bring out newer and better editions with the aid of other manuscripts than those used in bringing out the already published edition or editions. Otherwise, editing work may be protected by copyright for a period of not more than ten years. It goes without saying that, in the notes, comments and criticisms issued by an editor, he has his copyright as their author.

5. It is good to remove all uncertainty regarding the question of Government copyright, and to vest in the Government the copyright of works prepared or published under the direction or control of the Government. If special cases arise, wherein the Government find it desirable to vest the copyright in any work in any employee of theirs, they may do so by assigning it accordingly.

VIII

Letter—from H. D. C. REILLY, Esq., I.C.S., Registrar, High Court, Madras.
To—the Secretary to Government, Educational Department.
Dated—the 24th September 1912.
No.—R.O.C. 2530.

With reference to G.O. Mis. No. 782, Educational, dated 26th August 1912, I am directed to state that the Hon'ble the Chief Justice and the Judges do not wish to offer any observations on the letter from the Government of India regarding the introduction of the English Copyright Act into India.

IX

Telegram—from the Secretary to the Government of India, Department of Education.
To—the Secretary to the Government of Madras, Educational Department.
Dated—Simla, the 1st October 1912.
No.—31-Books.

Continuation my telegrams 10th/21st September. Following telegram received from Secretary of State : begins—Please refer to my telegram of 20th July, Copyright. I understand that since passing of Copyright Act of 1911 registration office at Stationers Hall has been closed, that it is therefore no longer possible to register publications under Copyright Act of 1842 and that consequently there is at present only one remedy against pirating in India of any new work published in United Kingdom. It is therefore very desirable to decide without delay whether Act of 1911 may be proclaimed to be in operation in India—ends.

X

Letter—from F. DEWARNEY, Esq., B.A., LL.B., Registrar, University of Madras.
To—the Secretary to Government, Educational Department.
Dated—Senate House, the 3rd October 1912.
No.—3759.

With reference to G.O. Mis. No. 782, dated 26th August 1912, referring to the Senate of the Madras University a letter from the Government of India regarding the introduction of the English Copyright Act into India, I have the honour to state that this letter and the annexures thereto have been under consideration by the Syndicate. I am directed to ask the attention of Government to Chapter II, section 24 (1) of the Indian Copyright Bill, 1885, and to state that in the opinion of the Syndicate, college and university lecturers should be entitled to the copyright in their lectures.

With the above exception the Syndicate has no remarks to offer on the proposals of the Government of India.

Order—No. 945, Educational, dated 29th October 1912.

The Government of India will be addressed.

(True Extract.)

L. DAVIDSON,
Ag. Secretary to Government

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

No. 946.

From

THE HON'BLE MR. L. DAVIDSON, I.C.S.,

Acting Secretary to the Government of Madras,

Educational Department,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

DEPARTMENT OF EDUCATION.

Dated Fort St. George, the 29th October 1912

SIR,

With reference to your letter No. 1818, Education, dated 1st August 1912, I am directed to state that His Excellency the Governor in Council agrees with the Government of India as to the desirability of the introduction of the English Copyright Act (1 and 2 Geo. V, Chapter 46) into India and concurs generally in the views expressed in your letter as to the modifications which should be introduced in the provisions of the Act on its application to India. He desires in particular to record his specific approval of the proposal to abolish the formalities of registration in respect of copyright. While realizing the desirability of extending protection to the publication of translations, he considers that in the special circumstances of this country some relaxation is necessary and to that end would advocate the introduction of provisions similar to those contained in clause 8 of the Indian Copyright Bill of 1885. He would also urge on the Government of India the desirability of extending the application of the English Act to Native States under section 28.

I have the honour to be,

Sir,

Your most obedient servant,

L. DAVIDSON,
Ag. Secretary to Government

NOTES CONNECTED WITH G.O. Nos. 945-46, EDUCATIONAL, DATED
29TH OCTOBER 1912.

[SUBJECT.—*Introduction of the English Copyright Act into India.*]

I

From the Government of India, dated 1st August 1912, No. 1818.

The Parliament has passed the Copyright Act, 1911 (1 and 2. Geog. 5, Ch. 46), which, by section 25 thereof, is applicable to all His Majesty's dominions. Under section 27 the legislature of any British dominion may modify or add to any of the provisions of the Act (i) in regard to the procedure and remedies generally and (ii) in their application to works the authors of which were resident in the dominion and to works first published therein. In respect of this provision, the Government of India request an expression of the opinion of the local Government as to what modifications and additions are necessary. The Government of India are generally of opinion that the introduction of the English Act is desirable and pressing. The important alterations introduced by the English enactment are—

- (i) the inclusion of a large number of subjects such as lectures, sculptures, engravings, photographs, etc., outside books in which copyright can subsist ;
- (ii) the abolition of all formalities of registration in respect of copyright ;
- (iii) the extension of the term of copyright from 42 years to one of life and 50 years ;
- (iv) the prohibition of translation of works by others ;
- (v) the prohibition of the importation of pirated copies of works ; and
- (vi) the devolution in the crown of copyright in Government publications.

2. A few of these were already anticipated in the Bill prepared by the Government of India in 1885 and circulated to local Governments for opinion, *e.g.*, the extension of copyright privileges to objects other than books. The opinions of the High Court, the Advocate-General, the Senate, the Director of Public Instruction, and certain specified gentlemen were then taken and forwarded to the Government of India with an expression of general concurrence in the provisions of that Bill.

3. The Government of India do not now suggest that the opinion of these officers should be obtained. They desire only to have the opinion of the Governor in Council. The other course will be apparently involve delay. But the question is a very important one and it is submitted that before it is considered by Government, the letter from India may be referred for very early remarks at least to the Director of Public Instruction and the Registrar of Books, who is concerned with the working of the Indian Copyright Act, 1847.

4. A draft reference is submitted for approval.

5. The Gorell Committee's report and the proceedings or report of the Imperial Copyright Conference specially referred to in paragraph 7 of India's letter are not available in the Secretariat library either at Ootacamund or Madras.

T.K.—21-8-12.

C. RAMANUJA CHARI—21-8-12.

The reference proposed is clearly a necessary preliminary; but before it issues His Excellency's orders should be taken as to whether any one else should be consulted. I think not.

L. DAVIDSON—22-8-12.

I think we should certainly consult the High Court and Senate of the University. The delay will not be of much consequence. Ask for very early replies.

M. H[AMMICK]—23-8-12.

A revised draft is submitted for approval.

T.K.—25-8-12.

C. RAMANUJA CHARI—25-8-12.

L. DAVIDSON—26-8-12.

[G.O. No. 782, Educational, dated 26th August 1912.]

II

From the Director of Public Instruction, dated 25th September 1912, R.O. No. 6958/12.

From the High Court, dated 24th September 1912, R.O. No. 2530/12.

From the Government of India, dated 1st October 1912, No. 31.

From the University of Madras, dated 3rd October 1912, No. 3759.

Please see G.O. No. 782, Educational, dated 26th August 1912, and the notes therewith. The Director of Public Instruction, the Registrar of Books, the University of Madras and the Honourable the Judges of the High Court, to whom the letter from the Government of India regarding the introduction into India of the English Copyright Act was referred, have all replied now. The Honourable the Judges of the High Court do not wish to make any observations, but the remaining three have offered some remarks on a few points. The important alterations introduced by the English enactment are summarized in paragraph 1 of the note with the G.O. No. 782, Educational, dated 26th August 1912.

2. *Introduction of the English Copyright Act.*—The Registrar of Books considers that the introduction of the English Act into India will prove beneficial. The Director agrees with him. The Syndicate is also apparently in favour of the proposal. The Act seems to be a great improvement on the existing Indian Copyright Act of 1847, which was long ago found to be deficient in many respects—*vide* Statement of Objects and Reasons to the Bill of 1885. The Government may agree to the introduction of the English Act into India.

3. *Abolition of the formality of registration.*—The Government of India call attention to this important modification and observe that as under section 3 of the Act the onus of proving that he was not aware of copyright would always lie on the person infringing it, the necessity of registration seems to be doubtful. They express the hope that the formality of registration might be dispensed with in India. The Registrar of Books doubts whether Indian conditions are ripe enough to do away with registration altogether and suggests that registration may be made at least optional, so that such registration may secure for the author a *prima facie* incontestable copyright. He suggests that provision should at the same time be made to enable the registering officer to satisfy himself that the applicant for the copyright is really entitled to it. The Director of Public Instruction apprehends that the Registrar of Books is not correct in his interpretation of the Act. The Director considers that the Registrar is confusing himself with the compulsory registration of books, which it is not intended to dispense with and that such registration will still be evidence in India of copyright.

4. The present position in this matter is as follows:—

Section 18 of the Press and Registration of Books Act XXV of 1867 requires the registration of all printed or lithographed books delivered under section 9 of the Act. The payment of a sum of Rs. 2 to the officer entrusted with the duty of registration amounts to an entry in the book of registry under the Copyright Act, 1847. This registration of copyright is not compulsory; it only serves as a *prima facie* evidence of the proprietorship of copyright and can be rebutted by other

* Of the Indian Copyright Act XX of 1847, evidence (section 3*). It is not conclusive evidence of the ownership of copyright. The Registrar has only to comply with the request of applicants for registration without questioning their right to do so. Accordingly there is nothing in the existing Act to prevent any number of persons registering the copyright of a single book in their names; the real proprietor of the copyright can establish his right as against these persons only by resorting to the Supreme Court—*vide* the Advocate-General's opinion on page 3 of G.O. No. 111, Educational, dated 25th February 1909, and G.O. No. 245, Educational, dated 27th April 1909. Registration at present besides being *prima facie* proof of proprietorship of copyright, gives such registered owner the privilege of suing and proceeding in respect of infringement under the provisions of the Act. The proviso to section 14 clearly says that the absence of registration does not affect the copyright or the right to sue. The Registrar seems to be under an erroneous impression that it is his duty to ascertain that an applicant for registration is entitled to be the owner of the copyright. There will thus obviously be no tangible advantage to be derived by any optional registration. During the first quarter of 1912, out of a total of 1,050 publications registered, only 151 were registered for copyright.

Pages 2 of G.O. No. 402, Educational, dated 10th May 1912.

The question whether registration under section 18 of the Press and Registration of Books Act, 1867, will be admitted as evidence of copyright is one for the decision of courts.

5. On the other hand irrespective of the question whether registration of copyright carries with it any legal privileges, the mere publication in official gazette as is now done of the names of the registered owners of copyright may serve in a measure as a preventive against infringement. The Government of India have not put forward any arguments against registration, besides stating that the Berlin Convention and the Gorell Committee have condemned it and other nations have abolished it. As the necessity for the retention of registration is not however very strong, this Government may agree to its abolition altogether. In that case section 18 of the Press and Registration of Books Act, 1867, will require amendment.

6. In this connection the Registrar of Books states that in the matter of copyright the relation of Indian Native States to British India as well as of British India to Native States has to be defined and made clear by providing for the registration in British India of books published in Native States. This will, it is submitted, be unnecessary, if the formalities of registration are abolished as proposed above. It may be noted that, under section 28, the Act may be extended by order in Council to any territories under His Majesty's protection.

7. *Copyright in lectures.*—The University invites the attention of Government to section 24 (1) of the Indian Copyright Bill of 1885 and states that College and university lectures should be entitled to copyright in their lectures. Section 24 (1) of the Bill expressly excluded from its scope lectures delivered in a university, public school, college or public foundation—please see portions marked in paragraph 28 of the Statement of Objects and Reasons. But as already observed the English Act now confers copyright in lectures [section 1 (2)] and no exception is made as regards lectures delivered in colleges and universities—Please see also sections 2 (1) (v) and 20 of the new Act. What is required by the university seems to be already provided by the Act.

Yes: Except that apparently a lecture may be re-delivered [section 1 (3)] without infringing copyright.

L. DAVIDSON—11-10-12.

8. *Copyright in translations.*—The Government of India draw attention to the provision in the Act conferring absolute copyright in translations and observe that as in India vernacular translations of English works serve the useful purpose of disseminating knowledge, some relaxation may be necessary on the lines either—

(i) of clause 8 of the Bill of 1885, which provided that after the expiration of three years from the first publication of a work, to publish a translation thereof was no infringement of copyright unless the author's own translation had been published before, or

(ii) at least of section 4 of the new English Act, which provides for the issue of compulsory licenses after the death of the author, if the owner of the copyright refuses permission to republish.

The Registrar of Books observes that the second alternative will not meet all requirements adequately as compulsory licenses can be obtained only after the death of the author. But he considers that the three years allowed for the publication of a translation is too small a period for the author to decide whether his work should be translated and to bring out thereafter a translation and suggests that the period may be extended to five or seven years. The views of the Registrar seem sound. Five years may perhaps be agreed to by the Government.

9. *Copyright in editions of old manuscript work.*—The Registrar of Books suggests that editing works of this character might be protected for a period of ten years, as much work of this character has yet to be done in India and as the labour and thought involved in such work are often quite as much as in original works. The Director of Public Instruction does not think that any such special provision as that suggested by the Registrar of Books is necessary, though he admits that such protection might be needed in the case of a work printed for the first time. While a protection given under the statute, though for a limited period, will serve as an incentive to persons to undertake such work, it may deter other persons from bringing out an improved or correct edition of the work. On the whole it seems better to adopt the Director of Public Instruction's view.

10. *Copyright in Government publications.*—Section 18 secures to Government the copyright in a work proposed and published under its direction or control and thus settles a vexed question. The Registrar of Books is in favour of it and notes that in special cases wherein the Government find it desirable to vest the copyright in any work in any of their employees, they can formally assign the copyright.

11. The other sections of the Act are commented on by the Government of India and call for no further remarks. It is for consideration whether the Government of India may be informed that this Government agree with them to the introduction of the Act and in their remarks in their letter of the 1st August last and that in respect of copyright in translations, the provisions of the Act may be relaxed and a protection for a period of five years may be given as suggested in paragraph 8 *supra*.

T.K.—8-10-12.

C. RAMANUJA CHARI—11-10-12.

It is submitted—

(a) that general concurrence may be expressed on the views of the Government of India,

(b) that the abolition of registration may be expressly approved,

(c) that as regards translations we may advocate the application of clause 8 of the Bill of 1885 without extending the privileged period to five years, since it is *prima facie* undesirable to bar the Indian public from direct knowledge of works of public importance for any longer period than three years, and

(d) that the application of the Act to Native States under section 28 may be urged.

L. DAVIDSON—11-10-12.

I agree. I don't desire to add anything. It is a subject on which I know very little. Take care and don't print the last sentence of the High Court's letter in the proceedings.

Mind this.

L. DAVIDSON—25-10-12.

M. H[AMMICK]—11-10-12.

Draft please.

T. E. MOIR—14-10-12.

A draft is submitted for approval.

T.K.—15-10-12.

It does not seem necessary to forward to the Government of India the letters of the Registrar of Books, the Director of Public Instruction and the Syndicate. The Government of India want only the views of the Local Government. Further a transmission of the former should be followed by a discussion of these views in the letter to India, as several of them have not been accepted by Government.

C. RAMANUJA CHARI—24-10-12.

L. DAVIDSON—25-10-12.

[G.O. Nos. 945-46, Educational, dated 29th October 1912.]

G.O.No.782 Edl., dated 26-8-1912. *Print in full. 168*

C.No.2820,	from the D.P.I.,	No.3968,	dated 25--9-1912.
C.No.2837,	from the High Court,	No.2530,	dated 24--9-1912.
C.No.2870,	from the Govt. of India,	No. 31,	dated 1-10-1912.
C.No.2896,	from the University of		
	Madras	No.3759,	dated 3-10-1912.

ORDER: n^o 945 d 29.10.1912
P.S.

The Government of India will
be addressed.

*T.A.
K.P.M.
C.A.
M.M.*

LETTER: n^o 946 d 29.10.1912

To

The Secy. to the Govt. of India,
Department of Education

Sir,

With reference to your letter No. 1818, Education, dated 1st August 1912 I am directed to state that His Excellency the Governor in Council agrees with the Government of India as to the desirability of the introduction of ~~the~~ the English Copyright Act (1 and 2 Geo.V Chap.46) into India and concurs generally in the views expressed in ~~y~~ your letter as to the modifications ~~to~~ ^{which should} be introduced in the provisions of ~~the~~ ^{the} Act ~~in~~ ^{on} its application to India. ~~His Excellency the Governor in Council~~ ^{also} is also in entire favour ~~of~~ ^{the} abolition of the formalities of registration in respect of copyright. While realizing the desirability of extending ~~the~~

*inf. 782
26.8.12 (P)*

He desires in particular to record his specific approval of the proposal to abolish

30 478

protection ~~by copyright~~ to the publica-
 tion of translations of works, he ~~agrees~~
~~agrees~~ that in view of the special cir-
 cumstances of this country some relaxa-
 tion ^{is necessary and that end must} ~~should be made so as to give grant~~
~~greater freedom in the matter~~. He would
~~prefer to~~ advocate the introduction ~~for~~
 this purpose of provisions similar to
 those contained in clause 8 of the Indian
 Copyright Bill of 1885. He would also
 urge on the Government of India the
 desirability of extending the application
 of the English Act to Native States in
 India under section 28 thereof. ~~The~~
~~existing Act has long remained defective~~
 in this respect.

I have etc.

J
25-7-02B
25-7-02C
25-7-02Section in MS
referred to
specify in
Act 13
M

25

A
Please send proof in triplicate. The papers have been carefully edited.

B
Proof returned corrected. Please strike off and send number of copies as indicated.

C
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.

874/11.12
..... Clerk.

..... Clerk.

..... Clerk.

76/11.12
..... 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.....	14/12/26
First proof furnished on.....	14/12/26
Call for revised proof received on.....	
Revised proof furnished on.....	
Corrected proof received for striking on.....	17/12/26
Final copies supplied on.....	21/1/27

Account of copies.	Complete copies.	Notes.	Issue copies.
Supplied to Secretariat for Record.....	35		
" " " Issue.....	45		
For Volumes.....	10		
For E. T.....			
Total ...	90		