

Government of Madras.

EDUCATIONAL DEPARTMENT.

Recd.

Regd.

} 1914.

Enclosures

Spare copies

G.O. No. 1150, 4th December 1913.

English Copyright Act, 1911.

Communicating to the Government of India the views of this Government on the draft Bill to modify and add to the provisions of the —.

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GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ—the following papers:—

I.

Letter—from the Hon'ble Sir W. H. H. VINCENT, *Kt.*, Secretary to the Government of India, Legislative Department.

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

Dated—Simla, the 25th September 1913.

No.—3357-3370.

I am directed to forward herewith 40 copies of the papers noted on the margin, and to request that the Governor in Council will favour the Government of India in this Department with an expression of his opinion on the provisions of the Bill and with the opinions of the Honourable the Judges of the High Court and of such selected officers and other persons as the Governor in Council may think fit to consult on the subject.

2. I am also to request that the Bill and Statement may be published in the *Fort St. George Gazette* in English and in such other languages as the Governor in Council may deem proper, and that the dates of such publication may be communicated in your reply.

3. The reply to this letter should be sent in by the 1st December 1913.

ENCLOSURES.

THE INDIAN COPYRIGHT BILL, 1913.

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A Bill to modify and add to the provisions of the Copyright Act, 1911.

WHEREAS it is expedient to modify and add to the provisions of the Copyright Act, 1911, in its application to British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- Short title and extent.
1. (1) This Act may be called the Indian Copyright Act, 1913.
 - (2) It extends to the whole of British India including British Baluchistan and the Sonthal Parganas.

Definitions. 2. In this Act unless there is anything repugnant in the subject or context,—

- (1) "the Copyright Act" means the Act of Parliament entitled the Copyright Act, 1911: and
- (2) words and expressions defined in the Copyright Act have the same meanings as in that Act.

CHAPTER II.

CONSTRUCTION AND MODIFICATION OF THE COPYRIGHT ACT.

Application of Copyright Act to British India with adaptations. 3. In the application to British India of the Copyright Act (a copy of which Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, is set out in the First Schedule), the following modifications shall be made, namely:—

- (1) the powers of the Board of Trade under section 3 shall, in the case of works first published in British India, be exercised by the Governor General in Council;
- (2) the reference in section 4 to the Judicial Committee of the Privy Council shall, in the case of works first published in British India, be construed as a reference to the Governor General in Council;
- (3) the powers of the Board of Trade under section 19 shall, as regards records, perforated rolls and other contrivances, the original plate of which was made in British India, be exercised by the Governor General in Council; and the confirmation of Parliament shall not be necessary to the exercise of any of these powers;
- (4) the references in section 19, sub-section (4), and in section 24, sub-section (1), proviso (a), sub-clause (ii), to arbitration shall be read as references to arbitration in accordance with the law for the time being in force in that part of British India in which the dispute occurs;

Cf. s. 2, Act XX of 1847.

7 Edw. VII,
Cap. 29.
7 Edw. VII.
Cap. 29.

(5) as regards works, the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, the reference in section 22 to the Patents and Designs Act, 1907, shall be construed as a reference to the Indian Patents and Designs Act, 1911, and the reference in the said section to section 86 of the Patents and Designs Act, 1907, shall be construed as a reference to section 77 of the Indian Patents and Designs Act, 1911;

(6) as regards works first published in British India, the reference in section 24, sub-section (1), proviso (a), to the London Gazette and two London newspapers shall be construed as a reference to the Gazette of India and two newspapers published in British India; and the reference in proviso (b) of the same sub-section of the same section, to the 26th day of July 1910, shall as regards works, the authors whereof were at the time of the making of the works resident in British India, and as regards works first published in British India, be construed as a reference to the 30th day of October 1912.

Modification of copyright as regards translation of works first published in British India. 4. In the case of works first published in British India, copyright shall, as regards translation rights, be subject to this limitation that it shall only include the sole right to produce, reproduce, perform or publish a translation of the work for a period of five years from the date of the first publication of the work:

Provided that if, after the expiry of the said period, any person produces, reproduces, performs or publishes a translation of the work, the copyright in such work shall be deemed to be infringed unless such person has given written notice to the author thereof of his intention, and unless a period of two years has elapsed from the giving of such notice.

5. In the application of the Copyright Act to musical works the authors whereof were at the time of the making of the works resident in British India, or to musical works first published in British India, the term "musical work" shall, save as otherwise expressly provided by the Copyright Act, mean "any combination of melody and harmony, or either of them, which has been reduced to writing."

6. (1) Copies made out of British India of any work in which copyright subsists which if made in British India would infringe copyright, and as to which the owner of the copyright gives notice in writing by himself or his agent to the Chief Customs officer, as defined in the Sea Customs Act, 1878, that he is desirous that such copies should not be imported into British India, shall not be so imported; and shall, subject to the provisions of this section, be deemed to be prohibited imports within the meaning of section 18 of the Sea Customs Act, 1878.

(2) Before detaining any such copies, or taking any further proceedings with a view to the confiscation thereof, such Chief Customs officer, or any other officer appointed by the Local Government in this behalf, may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself, in accordance with these regulations, that the copies are such as are prohibited by this section to be imported.

(3) The Governor-General in Council may, by notification in the Gazette of India, make regulations, either general or special, respecting the detention and confiscation of copies, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and confiscation; 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) Such regulations may apply to copies of all works, the importation of copies of which is prohibited by this section, or different regulations may be made respecting different classes of such works.

(5) The regulations may provide for the informant re-imbursing the Secretary of State for India in Council 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 that notices given under the Copyright Act to the Commissioners of Customs and Excise of the United Kingdom, and communicated by that authority to any authority in British India, shall be deemed to have been given by the owner to the said Chief Customs officer.

(6) This section shall have effect as the necessary modification of section 14 of the Copyright Act.

CHAPTER III.

SUMMARY REMEDIES.

Offences in respect of infringing copies.

7. 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 British India any infringing copy of any such work;
- he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction.

Cf. 11 (1),
Copyright
Act, 1911.

8. 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 punishable with fine which may extend to five hundred rupees.

9. If any person, after having been previously convicted of an offence punishable under section 7 or section 8 is subsequently convicted of an offence punishable under either of these sections, he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

10. 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.

11. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

12. The provisions of this Chapter shall not apply to any case to which section 9 of the Copyright Act regarding the restrictions on remedies in the case of a work of architecture applies.

CHAPTER IV.

MISCELLANEOUS.

Courts having civil jurisdiction regarding infringement of copyright.

13. Every suit or other civil proceeding regarding infringement of copyright shall be instituted in the High Court.

14. No suit or other civil proceeding instituted after the 30th of October 1912, regarding infringement of copyright in any book, the author whereof was at the time of making the book resident in British India, or of any book first published in British India, shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of the Indian Copyright Act, 1847.

15. The enactments mentioned in the Second Schedule are hereby repealed to the extent specified in the fourth column thereof.

THE FIRST SCHEDULE.

PORTIONS OF THE COPYRIGHT ACT APPLICABLE TO BRITISH INDIA.

(See section 3.)

COPYRIGHT ACT, 1911.

[1 & 2 Geo. 5, Ch. 46.]

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An act to amend and consolidate the Law relating to copyright.

[16TH DECEMBER 1911.]

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

PART I.

IMPERIAL COPYRIGHT.

Rights.

1. (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if—
 - (a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and
 - (b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as aforesaid;
 but in no other works, except so far as the protection conferred by this Act is extended by Orders in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.
- (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:—

- (i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary;
 - (ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work;
 - (iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art;
 - (iv) The publication in a collection, mainly composed of non-copyright matter, *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.

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 10 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.

4. If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the Judicial Committee of the Privy Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a license to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Judicial Committee may think fit.

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

Provided that—

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

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

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

(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.

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.

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

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

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

Limitation of actions.	*	*	*	*	*	*
	*	*	*	*	*	*
	*	*	*	*	*	*

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.

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

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

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

(5) The regulations may provide for the informant reimbursing the Commissioners of Customs and Excise all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent in 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.

(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 encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

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

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

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

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

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains addition or alterations either in the letter-press 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.

(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.

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 3 of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

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

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.

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 assignees, 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.

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 extends if it has established a place of business within such parts.

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 intend 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 interest arising from or in connexion with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

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

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

Application to British Possessions.

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 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.

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

- (a) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends;
- (b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects;
- (c) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends;

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

Provided that—

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

(2) An Order in Council under this section may extend to all the several countries named or described therein. 49 & 50 Vict., c. 33.

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.

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.

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.

15 Geo. 3,
c. 53.

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

34. There shall continue to be charged on, and paid out of, the consolidated Fund of the United Kingdom such annual compensation as was immediately before the commencement of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books:

Provided that this compensation shall not be paid to a library in any year, unless the Treasury are satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

Interpretation.

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

“Literary work” includes maps, charts, plans, tables, and compilations;

“Dramatic work” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph 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 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.

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.

Existing Right.	Substituted Right.	Section 24.
(a) In the case of Works other than Dramatic and Musical Works.		
Copyright	Copyright as defined by this Act.*	
(b) In the case of Musical and Dramatic Works.		
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.	

* In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under section eighteen of the Copyright Act, 1842.

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

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

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

SECOND SCHEDULE.

Enactments Repealed.

Section 36.

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

THE SECOND SCHEDULE.

Repeal of Enactments.

(See section 15.)

Year.	No.	Short Title.	Extent of Repeal.
1847 ..	XX ..	The Indian Copyright Act, 1847 ..	So much as has not already been repealed.
1867 ..	XXV ..	The Press and Registration of Books Act, 1867 ..	In section 18 the following words, namely:—"Every registration under this section shall, upon the payment of the sum of two rupees to the office keeping the said Catalogue, be deemed to be an entry in the Book of Registry kept under Act No. XX of 1847 (for the encouragement of learning in the territories subject to the government of the East India Company, by the defining and providing for the enforcement of the right called copyright therein); and the provisions contained in that Act as to the said Book of Registry shall apply <i>mutatis mutandis</i> to the said Catalogue."
1878 ..	VIII ..	The Sea Customs Act, 1878 ..	Clause (x) of section 18.

STATEMENT OF OBJECTS AND REASONS.

THE question of the amendment of the Indian Copyright Act (XX of 1847) has been considered on several occasions since 1864 on the ground that the Act was incomplete and did not provide, among other matters, for the protection of copyright in Photographs, translations, newspaper telegrams, etc. Legislation, however, has been postponed in view of the possibility of an amendment of the English Acts on the subject of copyright.

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 and the ratification of that Convention involved certain changes in the English law. Its provisions were examined by a strong departmental committee appointed by the Board of Trade which came to the unanimous conclusion that the Berlin Convention should be accepted by Great Britain with as few reservations as possible.

An Imperial Copyright Conference was subsequently convened in 1910 containing representations of the self-governing dominions and of the India Office, Colonial Office, etc. It endorsed the recommendation of the Board of Trade Committee and recommended that an Act dealing with the essentials of Imperial Copyright Law should be passed by the Imperial 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 in certain cases affecting only procedure and remedies.

A Draft Bill was approved by the Conference and eventually passed into law as the Copyright Act, 1911 (1 and 2 Geo. 5, Ch. 46), which came into operation in the United Kingdom on 1st July 1912.

The important changes in the Act are—

- (i) The abolition of the formality of registration of copyright.
- (ii) The extension of the term of copyright from 42 years to one of life and 40 years subject to certain conditions.
- (iii) The extension of the scope of copyright.
- (iv) The substitution of one Act for several on the subject of copyright.

The Government of India considered that the early introduction of the Act into India was desirable both for Imperial and International as well as domestic reasons and consulted Local Governments in regard to the modifications and additions referred to in section 27 of the Act that might be necessary to suit the special conditions of India. In view, however, of difficulties that were experienced in England through the non-proclamation in India of the Act of 1911 and having regard to the serious hardship and loss which might thereby be inflicted on English Authors, the Act was brought into force in India by proclamation in the *Gazette of India* on the 31st October 1912 under section 37 (2) (d) of the Act, the question of modifications or additions being postponed for subsequent consideration on receipt of the views of Local Governments. These are in substantial agreement with those of the Government of India who propose by virtue of the powers conferred by section 27 of the Act of 1911 to pass the Draft Bill which embodies the modifications in and additions to the Act which are considered desirable, together with certain formal and necessary alterations due to the difference between English and Indian administration and procedure.

It will be observed that the changes proposed are as few as possible in view of the desirability of securing that uniformity throughout the Empire which was advocated by the Imperial Copyright Conference of 1910.

Clause 3.—This contains purely formal modifications necessary for the application of the Act of 1911 to British India.

Clause 4.—Under sections 1-3 of the Act of 1911 the term for which copyright subsists in translations is the life of the author and a period of fifty years after his death.

The special linguistic conditions of India render desirable a substantial relaxation of the above provision. The languages spoken in India are so numerous and differ so widely that the conditions which prevail cannot be compared with those in most European countries and vernacular translations from English and from one vernacular to another are not only common but serve the useful purpose of disseminating knowledge. It is proposed, therefore, that translations of works first published in British India should be permitted after the expiry of five years from the date of first publication, provided that two years' notice of the intention to publish a translation has been given to the author.

This proposal is considered to be a sufficient safeguard of and a reasonable compromise between rights of the author and those of the public.

Clause 5.—The provisions of section 19 of the Act of 1911 are new, and in view of the peculiar conditions of Indian music objections have been urged against the application of this section *in toto* to Indian works. It is pointed out that it is impossible in most cases to identify the original composer or author and that the majority of Indian melodies have not been written in staff notation except through the medium of the phonograph and are subject to infinite variety of notation and tune. If, under these circumstances, section 19 is adopted with its retro-active principle there may be fictitious claims of ownership in musical works and much confusion and undesirable litigation. To make it clear that in order to fall within the definition of "musical work" music must have been graphically represented it is proposed to adopt *mutatis mutandis* the definition of the term "musical work" contained in the English Musical Copyright Act, 1902, *viz.*, "musical work means any combination of melody and harmony or either of them printed, reduced to writing."

Clause 6.—Section 18 (a) of the Sea Customs Act, 1878, prohibits importation in the case of books alone, the copyright whereof subsists in India. In view of the extension of the Act of 1911, to works other than books and the difference in procedure it is proposed to repeal this section and enact the appropriate provisions as the necessary modifications referred to in section 14 (7) of the Act of 1911.

Clauses 7-12.—The provisions of section 11 of the Act of 1911 have been in the main adopted. Imprisonment, however, will in all cases be simple, and offences will be triable by a Magistrate of the first class only. It is proposed to convert the amount of English fines on the basis of £1 = Rs. 10 in accordance with the usual practice and to insert a clause exempting the case of infringement by the construction of a building from the operation of summary remedies, thus giving effect to the similar exemption provided by section 9 of the English Act.

Clause 13.—On account of the technicalities of the subject of copyright, and of the greater finality that such a tribunal will afford, it has been considered advisable to give jurisdiction to High Courts only in all suits or civil proceedings regarding infringement of copyright.

Clause 14.—This clause which is self-explanatory has been added in view of a recent decision in *Evans vs. Morris* reported in the Law Journal of 29th March 1913.

30th July 1913.

HARCOURT BUTLER.
1150, Edl. —5

Extract from the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, and 9 Edw. VII, c. 4).

The Council met at Viceregal Lodge, Simla, on Tuesday, the 9th September 1913.

THE INDIAN COPYRIGHT BILL, 1913.

The Hon'ble Sir HARCOURT BUTLER moved for leave to introduce a Bill to modify and add to the provisions of the Copyright Act, 1911. He said:—"My Lord, the amendment of the Indian Copyright Act (XX of 1847) so as to bring it into conformity with modern requirements has long been considered necessary. As, however, the question of the amendment of the English Copyright Acts has been simultaneously under consideration, and as in a matter of this kind it is obviously desirable to secure conformity within the Empire, so far as is compatible with local conditions, it was thought better to await Imperial legislation on the subject.

"The circumstances leading up to the passing of the Copyright Act of 1911, which came into operation in the United Kingdom on July 1st, 1912, are detailed in the Statement of Objects and Reasons.

"The Copyright Act, 1911, is the most important Copyright Act ever passed in England. It repeals seventeen Acts absolutely, and considerable portions of other Acts, and is intended so far as possible to form a Code of Copyright Law.

"The chief changes effected in previously existing English law were—

(1) It gives copyright generally during the life of an author and for fifty years after his death, instead of for 42 years, or during life and for seven years after death, whichever might be the longer period.

(2) It simplifies the procedure for protection of lectures and speeches.

(3) It prevents an infringement of a musical composer's rights by mechanical instruments such as pianolas and gramophones, and gives copyright in certain cases to gramophone discs and pianola rolls.

(4) It also protects architectural works, including any building or structure, having an artistic character, or any model of such building or structure in respect of such character or design; but processes or methods of construction are not so protected.

"The deficiencies in the Indian Copyright law, as embodied in the Indian Copyright Act, XX of 1847, which, for instance, contained no provision for copyright in translations, photographs, sculpture and works of art generally, are made good.

"Another important matter of principle involved in the Act is the abolition of the formality of the registration of copyright. This is in accordance with the provisions of the Berne Convention, and with the practice of most nations. The onus of proving that he is not aware of copyright is now thrown on the person infringing it, and the necessity of registration is now done away with. Summary remedies for infringement are also provided.

"The Act was brought into force in India by proclamation in the *Gazette of India* on the 31st October 1912 under section 37 (2) (d) of the Act, in view of difficulties that were experienced in England through the non-proclamation in India of the Act of 1911, and having regard to the serious hardships and loss which might thereby be inflicted on English authors.

"Under section 27 of the Act the Legislature of any British possession to which the Act extends is given power to modify or add to the provisions of the Act, but, except in so far as such modifications and additions relate to procedure and remedies, they shall apply only to works the authors of which were at the time of the making of the work resident in the possession, and to works first published in the possession.

"We propose as few modifications as are possible in view of the desirability of securing that uniformity throughout the Empire, which was advocated by the Imperial Copyright Conference of 1910.

"In addition to purely formal changes, we propose a material relaxation with regard to translations. This is, in our opinion, necessary in view of the special linguistic conditions of India, of the variety of languages spoken, and of the useful part played by translations in disseminating knowledge. We propose therefore that translations of works first published in India should be permitted after the expiry of five years, from date of first publication, but only on the condition that two years' notice of the intention to publish a translation has been given to the author. By this means we hope adequately to safeguard the rights of the author and those of the public.

"The provisions of section 19 of the English Act, containing provisions as to mechanical instruments, are new and unsuited, if adopted *in toto* to the conditions of India. The majority of Indian melodies have not been published (*i.e.*, written in staff notation) except through the medium of the phonograph. It is impossible in many cases to identify the original composer or author, and the melodies are subject to great variety of notation and tune. In order to make it clear that in order to fall within the definition of 'musical work' music must have been graphically represented, it is proposed to adopt *mutatis mutandis* the definition of the term

'musical work' contained in the English Musical Copyright Act, 1902, *viz.*, 'musical work means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.'

"The provision restricting jurisdiction to High Courts only in all civil proceedings regarding infringement of copyright is thought desirable in view of the technicalities of the subject and the greater finality that such a tribunal will afford."

The Hon'ble Rai Sri RAM BAHADUR said:—"My Lord, with Your Excellency's permission I beg to say a few words in support of the motion made by the Honourable Member in charge of Education.

"As the provisions of the Bill are not known to us except the brief outline given by the Honourable Member in his speech just delivered, no detailed observations can be made on them at this stage. But I welcome the Bill as many of the defects and shortcomings of the Indian Copyright Act (Act XX of 1847) will be removed now. That Act has now become an antiquated piece of legislation—it was passed nearly two-thirds of a century ago.

"In my experience of copyright cases, the Act of 1847 has been found wanting in several respects and many of its provisions required modification and improvement.

"The law of copyright was found so unsatisfactory in Great Britain and other European countries that an international Convention was held in Berlin in 1908 to adopt common bases for the maintenance of the Copyright Union. That Convention was followed by an Imperial Copyright Conference held in 1910, under the Chairmanship of Mr. Buxton, the President of the Board of Trade. The object of this Conference was to place the law of copyright upon an intelligent and systematic footing. The various self-governing colonies were represented at that Conference, but no representative was taken from the Indian Empire to take part in its deliberations. The result of the Report of the Conference was the passing of the Copyright Act of 1911 by the British Parliament. The self-governing dominions were given a choice to accept the provisions of the Act or not, but its operation was extended to all other parts of the British Empire, including India.

"Several new matters, such as architecture and works of artistic craftsmanship, have been added in the Act of 1911 for copyright protection—the inclusion of architecture being the most important innovation. My Lord, innovations of this character are not suitable to this country.

"Another fundamental change is the abolition of all formalities in the matter of registration. There is also an alteration in the duration of copyright. The last named changes, we hope, will be conducive to the production of more numerous and a better class of original works in India.

"The Bill which is being introduced, we hope, will make such possible additions and alterations as to render the provisions of the English Act of 1911 more suitable to the conditions of this country.

"With these remarks, I support the motion before the Council."

The motion was put and agreed to.

The Hon'ble Sir HARCOURT BUTLER introduced the Bill and moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the *Gazette of India* in English, and in the local official gazettes in English and in such other languages as Local Governments think fit.

The motion was put and agreed to.

II

Memorandum No. 3017-1, Educational, dated 18th October 1913.

Copies of the draft of the Indian Copyright Bill with Statement of Objects and Reasons will be forwarded to the Honourable the Advocate-General, the Senate of the University of Madras, the Director of Public Instruction, the Superintendent, Government Press, the Registrar of Books and to the gentlemen marginally noted, with the request that they will favour Government with their opinions on the provisions of the Bill by the 10th November next.

Messrs. Higginbotham & Co.
" Addison & Co.
" Mr. C. F. Napier.
Dr. S. Swaminathan, Bar-at-Law.

W. FRANCIS,
Ag. Secretary to Government.

To the Government Solicitor.
" the Registrar, Madras University.
" the Director of Public Instruction.
" the Superintendent, Government Press.
" the Registrar of Books.
" Messrs. Higginbotham & Co.
" Addison & Co.
" Dr. S. Swaminathan, Bar-at-Law.
" Mr. C. F. Napier, Government Pleader.
" the Legislative Department.

III

Letter—from the Hon'ble Mr. W. FRANCIS, I.C.S., Acting Secretary to Government, Educational Department.

To—the Honourable the Chief Justice of the High Court of Judicature at Madras.

Dated—the 18th October 1913.

No.—3017-2.

I am directed to forward a copy of a letter from the Government of India with its enclosures regarding a draft Bill to modify and add to the provisions of the Copyright Act, 1911, and to request that the Honourable the Judges will be so good as to favour the Government with their opinion on the provisions of the Bill by the 10th November next.

IV

Memorandum No. 3017-3, Educational, dated 13th November 1913.

The Government Solicitor is requested to state when a reply to Memorandum No. 3017-1, Educational, dated 18th October 1913, regarding the Indian Copyright Bill may be expected by Government.

(By Order.)

C. S. ANANTARAMA AYYAR,
Under Secretary to Government.

To the Government Solicitor,
Messrs. Addison & Co.

V

Letter—from the Hon'ble Mr. W. FRANCIS, I.C.S., Acting Secretary to Government, Educational Department.

To—the Honourable the Chief Justice of the High Court of Judicature at Madras.

Dated—the 13th November 1913.

No.—3017-4, Edl.

I am directed to invite your kind attention to my letter No. 3017-2, Educational, dated 18th October 1913, and to enquire when the opinion of the Honourable the Judges on the draft Bill to modify and add to the provisions of the Copyright Act, 1911, may be expected.

VI

Letter—from C. F. NAPIER, Esq., Government Pleader, Madras.

To—the Secretary to Government, Educational Department.

Dated—the 31st October 1913.

No.—2091.

In returning the Indian Copyright Bill, 1913, I have the honour to invite attention to section 10 of the English Act in the schedule limiting the period within which actions for infringement can be commenced and to point out that it leaves in doubt whether the provisions of the Limitation Act, 1908, apply to these actions or not. This doubt is perpetually arising in connection with special periods of limitation in special Acts and the decisions of the High Courts differ widely in the application of a well-known principle to the Act under consideration. It is most desirable that the legislature should decide this question and not the courts. It is an important matter too. On the one side are the rights of the minor heir of a person owning the copyright: on the other the hardship to a publisher of having a suit brought against him ten years after publication alleged to be an infringement.

VII

Letter—from Dr. S. SWAMINADHAN, Bar.-at-Law, Acting Principal, Madras Law College.

To—the Secretary to Government, Educational Department.

Dated—the 6th November 1913.

No.—892.

Adverting to your Memorandum No. 3017-1, Educational, dated 18th October 1913, I have the honour to forward my opinion on the provisions of the Indian Copyright Bill.

Section 13.—In the case of authors residing out of British India or of works published out of British India, I consider it proper that the High Court should have exclusive jurisdiction in respect of suits or other civil proceedings, but as regards works the authors whereof were at the time of making of the works resident in British India and in the case of works first published in British India, the exclusive jurisdiction of the High Court is likely to cause unnecessary hardship. If copyright law is technical, the same may be said of several other branches of law which District Judges and Subordinate Judges presiding over mufassal courts of original civil jurisdiction have now to administer and the complaint is never heard that these officers are unequal to the task of having to deal with questions of company law, marine insurance, maritime average, religious and charitable trusts, or probate and matrimonial proceedings. As regards finality, an appeal would lie from the decision of the District Judge to the High Court and possibly a further appeal to His Majesty in Council in the same way in which an appeal would lie under section 15 of the Letters Patent of the High Court (or any other corresponding provision of law) from the decision of a single Judge to a Division Bench and possibly from the appellate judgment to the Privy Council. It is difficult therefore to see in what respects a decision of the High Court on the Original Side has greater finality than a similar decision arrived at in a District Court. The legal equipment of the superior civil judiciary in the mufassal and the qualifications of legal practitioners there are rapidly improving and in exceptional cases legal assistance from the Sudder station can easily be obtained. On the other hand, the system of double agency prevailing on the Original Side of the Chartered High Courts and the practice prevailing on the Original Side of the Chartered High Courts are little understood by people in the mufassal and the expense of carrying on a contentious legal proceeding in the High Court would be prohibitive to several injured parties, especially where vernacular literature is concerned. Moreover, chapter III of the Bill confers on First-class Magistrates jurisdiction to decide whether a publication complained of is an infringing copy or not. I do not see why District Judges should not in civil proceedings have jurisdiction to decide the same point, subject of course to the safeguards of an appeal to the High Court. In exceptional cases, for proper cause the High Court may exercise its power under article 13 of its Letters Patent or section 24 (1) (b) (i) of the Civil Procedure Code and withdraw suits from the District Court to its own file. I am therefore of opinion that as regards works first published in British India and works the authors whereof were at the time of the making of the work resident in British India, the highest court of original civil jurisdiction of the district where the cause of action arose should have jurisdiction to entertain a civil suit or other legal proceeding under the Act; and, subject to the orders of the High Court, the District Judge may also be empowered to transfer such cases for trial to any subordinate judge exercising unlimited original civil jurisdiction.

Chapter III.—In my opinion, the heading of the chapter "Summary Remedies" though taken from the English statute is open to objection as applied to this country. It would be better if the chapter is headed "Criminal Prosecutions for infringement of copyright." The present heading would suggest the procedure prescribed by chapter XXII or by chapter XX of the Code of Criminal Procedure is the appropriate procedure to be followed in criminal prosecutions. Having regard to the fact that the law is of a highly technical nature and the decision of the question whether the copy complained against is really an infringing copy, is a difficult one of mixed law and fact, provision has been made in section 11 of the Bill that only Presidency Magistrates or magistrates of the first class have power to take cognizance of an offence under the Act. It is true the punishments proposed to be inflicted for the

offences do not bring these offences within the definition of "a warrant case" as defined in section 4 (1) (w) of the Criminal Procedure Code but having regard to the importance of, and difficulty attendant upon, the proceedings in the Criminal Court, I am of opinion that the provisions of chapter XXI of the Criminal Procedure Code should be applied by courts trying offences under chapter III and provision should be made for appeals from convictions in all cases quite irrespective of the provisions of sections 411 and 413 of the Code of Criminal Procedure (*vide* section 12 of the English statute which allows an appeal to quarter sessions in all cases of conviction). The trial as a warrant case would ensure that, in the event of an appeal to the High Court or Sessions Court, the appellate tribunal has ample material to hear and decide the appeal. Again, under the provisions of schedule II of the Code of Criminal Procedure an offence falling under chapter III as it now stands would not be compoundable. In my opinion, the legislature might well allow the parties the privilege of compounding such offences.

As regards the other provisions of the Bill, I am in entire agreement and have therefore no remarks to make.

VIII

Letter—from M.R.Ry. Rao Bahadur M. RANGACHARYA, M.A., Registrar of Books.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 5th November 1913.
No.—Dis. 143.

With reference to your Memorandum No. 3017-1, Educational, dated 18th October 1913, calling for my opinion on the provisions contained in the draft of the Indian Copyright Bill, I have the honour to state that those provisions appear to me to be desirable, and have no further remarks to offer.

IX

Office-note—from T. FISHER, Esq., I.S.O., Superintendent, Government Press.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 10th November 1913.
No.—19450.

In reply to Memorandum No. 3017-1, Educational, dated 18th October 1913, the Superintendent, Government Press, submits that the provision in section 15 (2) of the English Copyright Act, 1911, to the effect that five copies of a work in addition to the one supplied for the British Museum shall be supplied gratis if demand is made within twelve months, is likely to cause considerable inconvenience. In cases of special works or periodical publications or of limited issues, it is possible that five copies will not be in stock when the demand is made and the publisher will be put to the expense of a reprint, or in the alternative he will have to reserve five copies of every work (no matter how costly it may be) on the chance that such copies may be asked for. With some Government publications too the reserve for sale is under ten copies. It is submitted that the period within which a demand may be made might be reduced to six months. A calendar year is the period now prescribed by Act XXV of 1867, but the number of additional copies that may be demanded is only two.

2. The time allowed for the delivery of a work after publication under section 15(1) or after demand [section 15(2)] ought to be increased to two months to allow for delays in shipping, etc., to place Indian publishers more on an equal footing with those in England. There will be no time under the proposed Act even to send the works by parcel post, and it is usual for firms to send supplies to England periodically in large consignments.

3. It is desirable also that the English Act should be modified to allow the publications to be delivered to a central depot in each of the Presidency towns in India instead of in London, such depot to be responsible for forwarding the publications to the librarians concerned in accord with present practice, otherwise Indian publishers will be handicapped in this respect compared with those in England, unless the libraries concerned pay the cost of transmission.

4. One of the most important changes is that the publisher and not the printer is responsible for the delivery of the copies required and with Government publications not placed on sale this will mean that the departments concerned will have to stock the five copies in case they are asked for. It is not clear whether the printer will have to supply a copy as at present under Act XXV of 1867.

X

Letter—from the Hon'ble Sir ALFRED GIBBS BOURNE, D.Sc., F.R.S., K.C.I.R.,
 Director of Public Instruction.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 11th November 1913.
No.—Ref. on Cur. 9518/13.

With reference to Memorandum No. 3017-1, Educational, dated 18th October 1913, forwarding for remarks a copy of the draft of the Indian Copyright Bill, I have the honour to state that I have no remarks to offer.

XI

Letter—from W. H. JAMES, Esq., B.Sc., Acting Registrar, University of Madras.
To—the Secretary to Government, Educational Department.
Dated—Senate House, the 11th November 1913.
No.—5037.

With reference to your Memorandum No. 3017-1, Educational, dated 18th October 1913, forwarding copy of the draft of the Indian Copyright Bill and requesting the Syndicate to favour Government with its opinion thereon, I have the honour, by direction, to inform you that the Syndicate has no observations to make on the provisions of the Bill.

XII

Letter—from Messrs. HIGGINBOTHAM & Co. (Limited).
To—the Secretary to Government, Educational Department.
Dated—the 10th November 1913.

With reference to your Memorandum No. 3017-1, Educational, dated 18th October 1913, forwarding for remarks the draft Indian Copyright Act, we have the honour to say that, with the exception of the points mentioned below, we consider the proposals of Government quite satisfactory to the publishing trade of India. We have dealt with the matter only from the standpoint of publishers of books and have no remarks to offer on those portions of the draft Act which apply to copyright in photographs, dramatic works, etc.

2. The Indian Act is intended only to make applicable to India the provisions of the Imperial Act and does not in any way alter or abrogate the general principles embodied in the Act of the Imperial Parliament, but we take it these also are submitted for criticism.

3. The proposals of the Government of India in regard to the translation of English books into the Indian vernaculars are supplementary to the Imperial Act and seem to us to differ materially from the principles embodied in that Act, inasmuch as they trespass on the rights of the owners of copyright without making any compensation. We are of opinion that a provision should be embodied in section (iv) requiring the payment of royalty to the owner of the copyright by the person publishing a vernacular translation, in the same way as is provided in section 3 of the English Act when publication by other than the owner of the copyright is made after 25 and before 50 years after the death of the author. While it may be right as a matter of public policy to throw open to vernacular readers standard copyright works in the English language, which the owner of the copyright does not himself desire to publish in the vernaculars, we cannot conceive any principle of justice on which this should be done without compensation to the owner. The publication of such a work in any vernacular would undoubtedly affect the sale of the English

edition of such work and would be a competitive publication in respect to the large class of buyers who can read both in English and the vernacular. The clause as it stands introduces a new principle into Indian legislation and is a serious menace to publishers of English works.

4. The provisions of the English Act in regard to delivery of books to libraries are apparently adopted without any clause adapting them to books published in India. The present law on the subject requires the delivery of books to be made to the Registrar of Books who acts on behalf of the British Museum and other institutions. In the absence of any clause modifying the provisions of the English Act, it is presumed to be the intention of Government to throw on the Indian publisher the duty of forwarding books direct to London for the British Museum and other institutions. It appears to us to be desirable to retain the agency of the Registrar of Books—if that office is to be continued—for the purpose of receiving and forwarding to the libraries concerned the copies of books published in India.

5. If it is intended to supersede by the new Act the existing law on the subject of registration of books and to abolish the office of Registrar of Books, a clause repealing the provisions of the Press and Registration of Books Act XXV of 1867 would appear to be necessary. In this case we suggest that delivery of books for distribution to English libraries should be made to the Secretariats of local Governments, or in the alternative a longer time than one month from publication should be allowed for making such delivery in London and payment should be made to the publisher to cover the cost of transmission of books to London.

6. In any event we are of opinion that a modifying clause in the Indian Act in regard to this section is necessary, inasmuch as the English Act is different in important respects from the existing law and amounts to a new imposition on the Indian publisher. In India the duty of forwarding copies of books published is cast on the printer, while the English law places it, where it properly belongs, on the publisher. The number of copies "commandeered" by Government is also increased from three to six and the public institutions to which they are to be sent are different in some cases from those on whose behalf the present levy is made.

7. We are of opinion that after the copy for the British Museum, all copies required for public purposes should be paid for by Government at the published price of the book. What is a reasonable and right procedure in the case of the national repository of British productions is indefensible in the case of other institutions of a more or less public nature, as the principle might be indefinitely extended both in regard to the articles on which a public levy is made and the institutions on whose behalf it is made. We think, therefore, that in adopting this provision of the Imperial Act, the Indian Government should safeguard the interests of Indian publishers in the direction indicated.

8. If the present proposals are to stand, we consider that a shorter period than twelve months should be fixed within which the demand for copies for libraries may be made. It is a hardship on the Indian publisher to be compelled to keep for one year copies of a book which may not eventually be required and the sale of which may be lost in the meanwhile.

XIII

Letter—from W. O. DAVID, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Educational Department.
Dated—the 15th November 1913.
No.—1222.

ABSTRACT.—Forwarding the following opinion of the Honourable the Advocate-General:—

OPINION.

I have no remarks to offer on the Indian Copyright Bill, which appears to treat the subject adequately.

MADRAS,
 12th November 1913.

F. H. M. CORBET,
 Advocate-General.

XIV

Letter—from A. DAVIES, Esq., Deputy Registrar, High Court, Appellate Side.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 17th November 1913.
No.—Dis. 1708.

In reply to your letter No. 3017-2, dated 18th October 1913, forwarding "a draft Bill to modify and add to the provisions of the Copyright Act, 1911," for the opinion of the Honourable the Judges of the High Court thereon, I am directed to send you herewith copies of the minutes of the Hon'ble Mr. Justice Oldfield and the Hon'ble Mr. Justice Spencer and to state that the Hon'ble the Chief Justice and the other Judges have no observations to make.

ENCLOSURE.

The Hon'ble Mr. Justice Oldfield.—The restriction of civil jurisdiction to High Courts seems to me inadvisable. Many publications, original and translated, by which copyright may be infringed, will very probably be petty and have only a local circulation, *e.g.*, the less creditable class of educational publications. It will be a hardship to insist on a trial before the High Court and serve no good object. District Courts have jurisdiction at present and may continue to have it.

2. It is a pity that Government should not take power to make rules corresponding with section 15 of the English Act. The Library of the Madras University is being formed, and probably something similar is happening or has happened in other Presidencies. It is advisable that such institutions should be able to start the function of a comprehensive collection of Indian works as soon as they have practical facilities for doing so.

The Hon'ble Mr. Justice Spencer.—Instead of having the English Act incorporated in the first schedule of the Indian Act, and making the Indian Act contain only such modifications as may be required in India, it would be better and easier for ascertaining what the law in India is, if the English Act were rewritten, incorporating in the body of it such alterations and modifications as the conditions of this country may require.

2. *Clause 5 of the Bill.*—It would be better to adopt word for word the definition of the term "musical work" contained in the English Musical Copyright Act, so as to include works printed or otherwise graphically produced or reproduced. In a suit based on an alleged infringement of copyright of a work on Indian Music, which I tried as District Judge of Trichinopoly, the musical notes were printed in the form of Tamil characters.

3. If the only words which appear in the text of the Act are "any combination of melody and harmony, or either of them, which has been reduced to writing," it will be open to the parties to raise a contention that the Act does not apply to works which have been printed.

Order—No. 1150, Educational, dated 4th December 1913.

The following letter will be addressed to the Government of India.

(True Extract.)

W. FRANCIS,
 Ag. Secretary to Government.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

No. 1151.

From

THE HON'BLE MR. W. FRANCIS, I.C.S.,

Acting Secretary to the Government of Madras,

Educational Department,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

LEGISLATIVE DEPARTMENT.

Dated Fort St. George, the 4th December 1913.

SIR,

I am directed to reply to your letter No. 3357-3370, dated 25th September 1913, requesting the opinion of His Excellency the Governor in Council and of the Honourable the Judges of the High Court and of other selected officers and persons on the draft Bill to modify and add to the provisions of the English Copyright Act, 1911.

2. With reference to paragraph 2 of the letter under reply, I am to state that the Bill was published in English and the vernaculars in the *Fort St. George Gazette* on the following dates:—

English—30th September 1913.

Tamil—25th November 1913.

Telugu ,,

Canarese ,,

Malayalam ,,

The dates of publication in Hindustani and Uriya will be communicated later.

3. His Excellency the Governor in Council considers that the modifications in, and the additions to, the Copyright Act which the Bill proposes are on the whole very suitable. I am, however, to make the following suggestions upon certain provisions of the Bill which might be altered with advantage.

4. *Clause 3 (4).*—The arbitration mentioned in proviso (a) sub-clause (i) and in proviso (b) to section 24 of the Copyright Act may also be included in this clause.

Clause 4.—It may be considered whether a provision may not be made in this clause requiring the payment of a royalty to the owner of the copyright by the person publishing a vernacular translation in the same way that section 3 of the English Act provides for the payment of a royalty when a work is published during the term of its copyright by any person other than the owner of the copyright.

Chapter III.—The heading of this chapter, viz., "Summary remedies," might be altered into "Criminal prosecutions for infringement of copyright" so as to avoid the suggestion that copyright prosecutions should always be tried summarily. Offences falling under this chapter might be made compoundable and a provision inserted allowing for appeals from convictions in all cases. The law is of a technical nature and the question for decision in particular cases may well be a difficult point of mixed law and fact.

Clause 13.—This clause restricts civil jurisdiction to the High Courts, whereas cases of infringement of copyright may often be of a petty character which would be heard in the districts by district and subordinate judges with more convenience and less expense. All first-class magistrates are empowered under chapter III to try offences against copyright and it may be argued that sub-judges and district judges are competent to try civil suits connected with the subject. They already deal with many technical suits such as marine insurance, probate and matrimonial proceedings, etc.

5. Lastly I am to commend to the attention of the Government of India the suggestion made by the local Government Pleader that the Legislative should specifically declare whether the provisions of the Indian Limitation Act of 1908 apply to actions for infringement taken under the Copyright Act or not.

6. I am to forward as an annexure to this letter the minutes recorded by two of the Honourable the Judges of the High Court together with the opinions of the other officers and persons consulted.

I have the honour to be,

Sir,

Your most obedient servant,

W. FRANCIS,

Ag. Secretary to Government.

[Annexure]

ANNEXURE.

Letter—from C. F. NAPIER, Esq., Government Pleader, Madras.

To—the Secretary to Government, Educational Department.

Dated—the 31st October 1913.

No.—2091.

In returning the Indian Copyright Bill, 1913, I have the honour to invite attention to section 10 of the English Act in the schedule limiting the period within which actions for infringement can be commenced and to point out that it leaves in doubt whether the provisions of the Limitation Act, 1908, apply to these actions or not. This doubt is perpetually arising in connection with special periods of limitation in special Acts and the decisions of the High Courts differ widely in the application of a well-known principle to the Act under consideration. It is most desirable that the legislature should decide this question and not the courts. It is an important matter too. On the one side are the rights of the minor heir of a person owning the copyright: on the other the hardship to a publisher of having a suit brought against him ten years after publication alleged to be an infringement.

Letter—from Dr. S. SWAMINADHAN, Bar-at-Law, Acting Principal, Madras Law College.

To—the Secretary to Government, Educational Department.

Dated—the 6th November 1913.

No.—892.

Adverting to your Memorandum No. 3017-1, Educational, dated 18th October 1913, I have the honour to forward my opinion on the provisions of the Indian Copyright Bill.

Section 13.—In the case of authors residing out of British India or of works published out of British India, I consider it proper that the High Court should have exclusive jurisdiction in respect of suits or other civil proceedings, but as regards works the authors whereof were at the time of making of the works resident in British India and in the case of works first published in British India, the exclusive jurisdiction of the High Court is likely to cause unnecessary hardship. If copyright law is technical, the same may be said of several other branches of law which District Judges and Subordinate Judges presiding over mufassal courts of original civil jurisdiction have now to administer and the complaint is never heard that these officers are unequal to the task of having to deal with questions of company law, marine insurance, maritime average, religious and charitable trusts, or probate and matrimonial proceedings. As regards finality, an appeal would lie from the decision of the District Judge to the High Court and possibly a further appeal to His Majesty in Council in the same way in which an appeal would lie under section 15 of the Letters Patent of the High Court (or any other corresponding provision of law) from the decision of a single Judge to a Division Bench and possibly from the appellate judgment to the Privy Council. It is difficult therefore to see in what respects a decision of the High Court on the Original Side has greater finality than a similar decision arrived at in a District Court. The legal equipment of the superior civil judiciary in the mufassal and the qualifications of legal practitioners there are rapidly improving and in exceptional cases legal assistance from the Sudder station can easily be obtained. On the other hand, the system of double agency prevailing on the Original Side of the Chartered High Courts and the practice prevailing on the Original Side of the Chartered High Courts are little understood by people in the mufassal and the expense of carrying on a contentious legal proceeding in the High Court would be prohibitive to several injured parties, especially where vernacular literature is concerned. Moreover, chapter III of the Bill confers on First-class Magistrates jurisdiction to decide whether a publication complained of is an infringing copy or not. I do not see why District Judges should not in civil proceedings have jurisdiction to decide the same point, subject of course to the safeguards of an appeal to the High Court. In exceptional cases, for proper cause the High Court

may exercise its power under article 13 of its Letters Patent or section 24 (1) (b) (i) of the Civil Procedure Code and withdraw suits from the District Court to its own file. I am therefore of opinion that as regards works first published in British India and works the authors whereof were at the time of the making of the work resident in British India, the highest court of original civil jurisdiction of the district where the cause of action arose should have jurisdiction to entertain a civil suit or other legal proceeding under the Act; and, subject to the orders of the High Court, the District Judge may also be empowered to transfer such cases for trial to any subordinate judge exercising unlimited original civil jurisdiction.

Chapter III.—In my opinion, the heading of the chapter "Summary Remedies" though taken from the English statute is open to objection as applied to this country. It would be better if the chapter is headed "Criminal Prosecutions for infringement of copyright." The present heading would suggest the procedure prescribed by chapter XXII or by chapter XX of the Code of Criminal Procedure is the appropriate procedure to be followed in criminal prosecutions. Having regard to the fact that the law is of a highly technical nature and the decision of the question whether the copy complained against is really an infringing copy, is a difficult one of mixed law and fact, provision has been made in section 11 of the Bill that only Presidency Magistrates or magistrates of the first class have power to take cognizance of an offence under the Act. It is true the punishments proposed to be inflicted for the offences do not bring these offences within the definition of "a warrant case" as defined in section 4 (1) (w) of the Criminal Procedure Code but having regard to the importance of, and difficulty attendant upon, the proceedings in the Criminal Court, I am of opinion that the provisions of chapter XXI of the Criminal Procedure Code should be applied by courts trying offences under chapter III and provision should be made for appeals from convictions in all cases quite irrespective of the provisions of sections 411 and 413 of the Code of Criminal Procedure (*vide* section 12 of the English statute which allows an appeal to quarter sessions in all cases of conviction). The trial as a warrant case would ensure that, in the event of an appeal to the High Court or Sessions Court, the appellate tribunal has ample material to hear and decide the appeal. Again, under the provisions of schedule II of the Code of Criminal Procedure an offence falling under chapter III as it now stands would not be compoundable. In my opinion, the legislature might well allow the parties the privilege of compounding such offences.

As regards the other provisions of the Bill, I am in entire agreement and have therefore no remarks to make.

Letter—from M.R.Ry. Rao Bahadur M. RANGACHARYA, M.A., Registrar of Books.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 5th November 1913.
No.—Dis. 143.

With reference to your Memorandum No. 3017-1, Educational, dated 18th October 1913, calling for my opinion on the provisions contained in the draft of the Indian Copyright Bill, I have the honour to state that those provisions appear to me to be desirable, and have no further remarks to offer.

Office-note—from T. FISHER, Esq., I.S.O., Superintendent, Government Press.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 10th November 1913.
No.—19450.

In reply to Memorandum No. 3017-1, Educational, dated 18th October 1913, the Superintendent, Government Press, submits that the provision in section 15 (2) of the English Copyright Act, 1911, to the effect that five copies of a work in addition to the one supplied for the British Museum shall be supplied gratis if demand is made within twelve months, is likely to cause considerable inconvenience. In cases of special works or periodical publications or of limited issues, it is possible that five copies will not be in stock when the demand is made and the publisher will be put to the expense of a reprint, or in the alternative he will have to reserve five copies of

every work (no matter how costly it may be) on the chance that such copies may be asked for. With some Government publications too the reserve for sale is under ten copies. It is submitted that the period within which a demand may be made might be reduced to six months. A calendar year is the period now prescribed by Act XXV of 1867, but the number of additional copies that may be demanded is only two.

2. The time allowed for the delivery of a work after publication under section 15(1) or after demand [section 15(2)] ought to be increased to two months to allow for delays in shipping, etc., to place Indian publishers more on an equal footing with those in England. There will be no time under the proposed Act even to send the works by parcel post, and it is usual for firms to send supplies to England periodically in large consignments.

3. It is desirable also that the English Act should be modified to allow the publications to be delivered to a central depot in each of the Presidency towns in India instead of in London, such depot to be responsible for forwarding the publications to the librarians concerned in accord with present practice, otherwise Indian publishers will be handicapped in this respect compared with those in England, unless the libraries concerned pay the cost of transmission.

4. One of the most important changes is that the publisher and not the printer is responsible for the delivery of the copies required and with Government publications not placed on sale this will mean that the departments concerned will have to stock the five copies in case they are asked for. It is not clear whether the printer will have to supply a copy as at present under Act XXV of 1867.

Letter—from the Hon'ble Sir ALFRED GIBBS BOURNE, D.Sc., F.R.S., K.C.L.E.,
 Director of Public Instruction.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 11th November 1913.
No.—Ref. on Cur. 9518/13.

With reference to Memorandum No. 3017-1, Educational, dated 18th October 1913, forwarding for remarks a copy of the draft of the Indian Copyright Bill, I have the honour to state that I have no remarks to offer.

Letter—from W. H. JAMES, Esq., B.Sc., Acting Registrar, University of Madras.
To—the Secretary to Government, Educational Department.
Dated—Senate House, the 11th November 1913.
No.—5037.

With reference to your Memorandum No. 3017-1, Educational, dated 18th October 1913, forwarding copy of the draft of the Indian Copyright Bill and requesting the Syndicate to favour Government with its opinion thereon, I have the honour, by direction, to inform you that the Syndicate has no observations to make on the provisions of the Bill.

Letter—from Messrs. HIGGINBOTHAM & Co. (Limited).
To—the Secretary to Government, Educational Department.
Dated—the 10th November 1913.

With reference to your Memorandum No. 3017-1, Educational, dated 18th October 1913, forwarding for remarks the draft Indian Copyright Act, we have the honour to say that, with the exception of the points mentioned below, we consider the proposals of Government quite satisfactory to the publishing trade of India. We have dealt with the matter only from the standpoint of publishers of books and have no remarks to offer on those portions of the draft Act which apply to copyright in photographs, dramatic works, etc.

2. The Indian Act is intended only to make applicable to India the provisions of the Imperial Act and does not in any way alter or abrogate the general principles embodied in the Act of the Imperial Parliament, but we take it these also are submitted for criticism.

3. The proposals of the Government of India in regard to the translation of English books into the Indian vernaculars are supplementary to the Imperial Act and seem to us to differ materially from the principles embodied in that Act, inasmuch as they trespass on the rights of the owners of copyright without making any compensation. We are of opinion that a provision should be embodied in section (iv) requiring the payment of royalty to the owner of the copyright by the person publishing a vernacular translation, in the same way as is provided in section 3 of the English Act when publication by other than the owner of the copyright is made after 25 and before 50 years after the death of the author. While it may be right as a matter of public policy to throw open to vernacular readers standard copyright works in the English language, which the owner of the copyright does not himself desire to publish in the vernaculars, we cannot conceive any principle of justice on which this should be done without compensation to the owner. The publication of such a work in any vernacular would undoubtedly affect the sale of the English edition of such work and would be a competitive publication in respect to the large class of buyers who can read both in English and the vernacular. The clause as it stands introduces a new principle into Indian legislation and is a serious menace to publishers of English works.

4. The provisions of the English Act in regard to delivery of books to libraries are apparently adopted without any clause adapting them to books published in India. The present law on the subject requires the delivery of books to be made to the Registrar of Books who acts on behalf of the British Museum and other institutions. In the absence of any clause modifying the provisions of the English Act, it is presumed to be the intention of Government to throw on the Indian publisher the duty of forwarding books direct to London for the British Museum and other institutions. It appears to us to be desirable to retain the agency of the Registrar of Books—if that office is to be continued—for the purpose of receiving and forwarding to the libraries concerned the copies of books published in India.

5. If it is intended to supersede by the new Act the existing law on the subject of registration of books and to abolish the office of Registrar of Books, a clause repealing the provisions of the Press and Registration of Books Act XXV of 1867 would appear to be necessary. In this case we suggest that delivery of books for distribution to English libraries should be made to the Secretariats of local Governments, or in the alternative a longer time than one month from publication should be allowed for making such delivery in London and payment should be made to the publisher to cover the cost of transmission of books to London.

6. In any event we are of opinion that a modifying clause in the Indian Act in regard to this section is necessary, inasmuch as the English Act is different in important respects from the existing law and amounts to a new imposition on the Indian publisher. In India the duty of forwarding copies of books published is cast on the printer, while the English law places it, where it properly belongs, on the publisher. The number of copies "commandeered" by Government is also increased from three to six and the public institutions to which they are to be sent are different in some cases from those on whose behalf the present levy is made.

7. We are of opinion that after the copy for the British Museum, all copies required for public purposes should be paid for by Government at the published price of the book. What is a reasonable and right procedure in the case of the national repository of British productions is indefensible in the case of other institutions of a more or less public nature, as the principle might be indefinitely extended both in regard to the articles on which a public levy is made and the institutions on whose behalf it is made. We think, therefore, that in adopting this provision of the Imperial Act, the Indian Government should safeguard the interests of Indian publishers in the direction indicated.

8. If the present proposals are to stand, we consider that a shorter period than twelve months should be fixed within which the demand for copies for libraries may be made. It is a hardship on the Indian publisher to be compelled to keep for one year copies of a book which may not eventually be required and the sale of which may be lost in the meanwhile.

Letter—from W. O. DAVID, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Educational Department.
Dated—the 15th November 1913.
No.—1222.

ABSTRACT.—Forwarding the following opinion of the Honourable the Advocate-General:—

OPINION.

I have no remarks to offer on the Indian Copyright Bill, which appears to treat the subject adequately.

MADRAS,
12th November 1913.

F. H. M. CORBET,
Advocate-General.

Letter—from A. DAVIES, Esq., Deputy Registrar, High Court, Appellate Side.
To—the Secretary to Government, Educational Department.
Dated—Madras, the 17th November 1913.
No.—Dis. 1708.

In reply to your letter No. 3017-2, dated 18th October 1913, forwarding "a draft Bill to modify and add to the provisions of the Copyright Act, 1911," for the opinion of the Honourable the Judges of the High Court thereon, I am directed to send you herewith copies of the minutes of the Hon'ble Mr. Justice Oldfield and the Hon'ble Mr. Justice Spencer and to state that the Hon'ble the Chief Justice and the other Judges have no observations to make.

ENCLOSURE.

The Hon'ble Mr. Justice Oldfield.—The restriction of civil jurisdiction to High Courts seems to me inadvisable. Many publications, original and translated, by which copyright may be infringed, will very probably be petty and have only a local circulation, e.g., the less creditable class of educational publications. It will be a hardship to insist on a trial before the High Court and serve no good object. District Courts have jurisdiction at present and may continue to have it.

2. It is a pity that Government should not take power to make rules corresponding with section 15 of the English Act. The Library of the Madras University is being formed, and probably something similar is happening or has happened in other Presidencies. It is advisable that such institutions should be able to start the function of a comprehensive collection of Indian works as soon as they have practical facilities for doing so.

The Hon'ble Mr. Justice Spencer.—Instead of having the English Act incorporated in the first schedule of the Indian Act, and making the Indian Act contain only such modifications as may be required in India, it would be better and easier for ascertaining what the law in India is, if the English Act were rewritten, incorporating in the body of it such alterations and modifications as the conditions of this country may require.

2. *Clause 5 of the Bill.*—It would be better to adopt word for word the definition of the term "musical work" contained in the English Musical Copyright Act, so as to include works printed or otherwise graphically produced or reproduced. In a suit based on an alleged infringement of copyright of a work on Indian Music, which I tried as District Judge of Trichinopoly, the musical notes were printed in the form of Tamil characters.

3. If the only words which appear in the text of the Act are "any combination of melody and harmony, or either of them, which has been reduced to writing," it will be open to the parties to raise a contention that the Act does not apply to works which have been printed.

EDUCATIONAL DEPARTMENT.

NOTES CONNECTED WITH G.O. Nos. 1150-51, EDUCATIONAL,
DATED 4TH DECEMBER 1913.

[SUBJECT.—A Bill to add to and modify the provisions of the English
Copyright Act, 1911.]

LEGISLATIVE DEPARTMENT.

*From the Secretary to the Government of India, Legislative Department, dated 25th
September 1913, No. 3357-3370, forwarding copies of the Indian Copyright Bill,
1913, with Statement of Objects and Reasons and Extract from the Proceedings
of the Council.*

A copy of the Bill and statement has been sent to the Press for publication in
the *Fort St. George Gazette* in English and publication was made on 30th September
1913.

As regards the vernaculars in which the Bill may be translated, Educational,
G.O. No. 73, dated 2nd October 1906. which is the administrative department
concerned, may be asked for advice.

The request contained in the first paragraph of the Government of India's letter
is also for Educational to take action upon. Submitted, the current may be sent to
Educational accordingly.

A.P.A.—4-10-13.

C. R. VIJAYARAGHAVA CHARI—4-10-13.

C. S. ANANTARAMA AYYAR—7-10-13.

To the Educational Department.

EDUCATIONAL DEPARTMENT.

As the proposed Indian Copyright Bill is an important measure, it is submitted
that the Bill may be translated into all the vernaculars of the Presidency including
W. FRANCIS. Hindustani and Uriya. Legislative may
be informed accordingly.

2. When the draft Bill prepared by the Government of India in 1885 was
circulated to this Government for opinion, the opinions of the High Court, the
Advocate-General, the Senate of the Madras University, the Director of Public
Instruction and the firms and persons noted in the margin were taken. Again,
when the question of the introduction of the English Copyright Act was under
consideration, the Judges of the High Court, the Senate, the Director of Public
Instruction, and the Registrar of Books were consulted. Submitted that the
opinion of following may perhaps be now invited :—

1. Messrs. Higginbotham & Co.
2. „ Addison & Co.
3. The Superintendent, Government Press.
4. E. B. Powell, Bar-at-Law (the Acting Gov-
ernment Pleader).
5. R. B. Mitchell, Esq. (Professor, Law
College).

Page 43 of G.O. No. 945, Educational, dated
29th October 1912.

- (1) High Court.
- (2) The Advocate-General.
- (3) The Senate.
- (4) The Director of Public Instruction.
- (5) The Registrar of Books.
- (6) The Superintendent, Government Press.
- (7) Mr. C. F. Napier, Government Pleader.
- (8) Messrs. Higginbotham & Co.
- (9) „ Addison & Co.
- (10) Dr. S. Swaminathan.

3. As the Government of India want a reply by the 1st of December 1913, the officers and others consulted may be requested to send in their replies by the 10th November 1913 at the latest.

Approved. | 4. A draft memorandum and a letter
W. FRANCIS—18-10-13. | are submitted for approval.

E.A.V.—14-10-13.

C. RAMANUJACHARI—16-10-13.

From the Government Pleader, dated 31st October 1913, No. 2091.

From Dr. S. Swaminadhan, dated 6th November 1913, No. 892.

From the Registrar of Books, dated 5th November 1913, No. 143.

From the Superintendent, Government Press, dated 10th November 1913, No. 19450.

„ Director of Public Instruction „ 11th „ „ „ 9518.

From the Syndicate, Madras University, dated 11th November 1913, No. 5037.

Of those consulted on the Bill, replies are yet due from—

(i) The Honourable the Judges of the High Court.

(ii) The Honourable the Advocate-General.

* Reply since received.

(iii) * Messrs. Higginbotham & Co.

(iv) Messrs. Addison & Co.

2. Draft reminders are submitted for approval.

E.A.V.—12-11-13.

C. RAMANUJACHARI—13-11-13.

C. S. ANANTARAMA AYYAR—13-11-13.

From Messrs. Higginbotham & Co., dated 13th November 1913.

[Memorandum No. 3017-3, Educational, dated 13th November 1913.]

[Letter No. 3017-4, Educational, dated 13th November 1913.]

From Messrs. Addison & Co., dated 14th November 1913.

From the Government Solicitor, dated 12th November 1913, No. 283.

From the Deputy Registrar, High Court, Appellate Side, dated 17th November 1913, Dis. No. 1708.

Replies have now been received from all those consulted on the Bill, except Messrs. Addison & Co. The Director of Public Instruction, the Registrar of Books, the Syndicate of the University of Madras, the Advocate-General and the Judges of the High Court, except the Hon'ble Mr. Justice Oldfield and the Hon'ble Mr. Justice Spencer have no remarks to make on the provisions of the Bill. The observations made by the Hon'ble Mr. Justice Oldfield, the Hon'ble Mr. Justice Spencer, Mr. C. F. Napier, Dr. S. Swaminathan, the Superintendent, Government Press, and Messrs. Higginbotham & Co. are summarized and given below under the individual clauses concerned.

2. *Clause 3.*—This contains purely formal modifications necessary for the application of the British Copyright Act of 1911 to India. None of the officers or gentlemen consulted has any observation to make on this. In sub-clause (4) of this there appears however to be a small omission. It states that the references to arbitration in section 19, sub-section (4) and in section 24, sub-section (1), proviso (a), sub-clause (ii) of the English Act shall be read as reference to arbitration in

accordance with the law for the time being in force in India. In section 24, sub-section (1) of the English Act, arbitration is referred to both in proviso (a) and in

Don't assume that it is an oversight but suggest that the arbitration referred to in these places may also be included in clause 3 (4).

W. FRANCIS.

proviso (b) and in sub-clauses (i) and (ii) of proviso (a). The omission to mention proviso (b) and sub-clause (i) of proviso (a) in clause 3 (4) of the Bill seems to be due to an oversight and may be brought to the notice of the Government of India.

3. *Clause 4.*—This clause modifies the copyright subsisting in translation to suit the special conditions of India. The Government of India consider that the linguistic conditions of India are different

Statement of Objects and Reasons.

from those in most European countries and that translation from English and from one vernacular to another in India serve the useful purpose of disseminating knowledge. This clause accordingly permits translation of works first published in India to be made after the expiry of five years from the date of first publication, provided that two years' notice of the intention to publish a translation has been given to the author. Messrs. Higginbotham & Co. consider that this provision trespasses on the rights of the owners of copyright without making them any compensation and suggest that a provision might be embodied in it requiring the payment of royalty to the owner of the copyright by the person publishing a vernacular translation in the same way as section 3 of the English Act provides for the payment of royalty when a work is published during the term of its copyright by any person

W. FRANCIS.

other than the owner of a copyright. This suggestion appears to be a good one

and it is for consideration whether it may be recommended to the Government of India. No royalty need be paid in regard to a work which the owner of the copyright does not himself desire to publish in vernacular.

W. FRANCIS.

4. *Clause 5.*—This clause defines the term "musical work" to mean "any combination of melody and harmony or either of them which has been reduced to writing". Hon'ble Mr. Justice Spencer suggests that it would be better to adopt word for word the definition of the term "musical work" contained in the English Copyright Act so as to include works printed or otherwise graphically produced or reproduced. He points out that if the term were to be defined as in the Bill it would be open to the parties to contend that the Act does not apply to works which have been printed and he instances that in a suit for infringement of copyright in a work on Indian music tried by him at Trichinopoly the musical note was

But a work can't be printed until it has been reduced to writing. I don't think there's much in the suggestion.

W. FRANCIS.

printed in Tamil characters. Submitted that this may be recommended to the Government of India. The English Musical Copyright Act (1902) defines the term as "any combination of melody and harmony or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced."

Section 3 of the Act.

5. *Chapter III.*—Dr. Swaminathan points out that it would be better to change the heading of this chapter from "summary remedies" to "criminal prosecutions for infringement of copyright". He states that the present heading would suggest that the procedure prescribed by chapter XXII or chapter XX of the Code of Criminal Procedure is the appropriate procedure to be followed in criminal prosecutions. But, having regard to the fact that the law is of a highly technical nature and that the question for decision is a difficult one of mixed law and fact, he is of opinion that the provisions of chapter XXI of the Code of Criminal Procedure should be applied by courts trying offences under this chapter and that provision should be made for appeals from convictions in all cases. He further points out that, under the provisions of schedule II of the Criminal Procedure Code an offence falling under

this chapter, as it now stands, would not be compoundable and that the privilege, of compounding such offences might well be allowed. These suggestions seem worthy of consideration and may be recommended to the Government of India.

W. FRANCIS—26-11-12.

6. *Clause 13.*—This clause provides that every civil proceeding regarding infringement of copyright shall be instituted in the High Court. In the Statement of Objects and Reasons it is noted that this provision is made on account of the technicalities of the subject of copyright and of the greater finality that such a tribunal would afford. Dr. Swaminathan and Mr. Justice Oldfield note that this provision is likely to cause unnecessary hardship and recommend that mufassal courts may safely be empowered to try such cases. Mr. Justice Oldfield states that District Courts have jurisdiction in the matter at present; and may continue to have it. Dr. Swaminathan states that if copyright law is technical, the same may be said of other branches of law which District and Subordinate Judges have at present to administer such as Company Law, Marine Insurance, Maritime Average, Religious and Charitable Trust or Probate and matrimonial proceedings and that when first-class magistrates are empowered to try cases of infringement of copyright, there is no reason why District and Subordinate Judges should not be given the same power. As regards the greater finality of the decision of the High Court referred to in the Statement of Objects and Reasons, Dr. Swaminathan points out that an appeal lies from the decision of a single judge of the High Court to a division bench and possibly from the appellate judgment to the Privy Council in the same way as from the decision of a District Judge. In the light of these remarks and in view of the greater cost attendant on the institution of proceedings in the High Court, it is for consideration whether it may not be recommended to the Government of India that civil proceedings regarding infringement of copyright may be made triable by District and Subordinate Judges.

Yes.

W. FRANCIS—26-11-13.

7. *Limitation.*—Mr. Napier invites attention to section 10 of the English Act which limits the period within which action for infringement can be commenced to three years and points out that it leaves in doubt whether the provisions of the Limitation Act, 1908 apply to these actions or not. He states that this doubt perpetually arises in connection with special periods of limitation in special Acts and that the decisions of the High Court have not been uniform. He therefore suggests that the legislature should decide the point. Submitted that the attention of the Government of India may be drawn to this point.

W. FRANCIS—26-11-13.

8. *Delivery of books.*—The Superintendent, Government Press, and Messrs. Higginbotham & Co. assume that the provision of section 15 of the English Act in regard to the delivery of books to the British Museum and other libraries in the United Kingdom has been adopted without any alteration and suggest various modifications. They have, it is submitted, failed to note that this section applies only to books published in the United Kingdom and that clause 3 of the draft Bill excludes all such provisions of the English Act as are expressly restricted to the United Kingdom. The modifications suggested by these persons need not therefore be considered. In this connection, Mr. Justice Oldfield suggests that Government should take power to make rules corresponding with section 15 of the English Act so that the library of the Madras University and similar libraries in other provinces may be enabled to obtain on demand a copy of any book published in British India in order

The out-put of note-worthy books in India is at present so infinitesimal that I doubt if this is worth arranging for.

W. FRANCIS—26-11-13.

9. Lastly, the Hon'ble Mr. Justice Spencer suggests that instead of the English Act being incorporated in the first schedule of the Indian Act, and making the Indian Act contain only such modifications as may be required in India, it would be

better and easier for ascertaining what the law in India is, if the English Act were rewritten, incorporating in the body of it such alterations and modifications as the

They would never agree to it, I think.

W. FRANCIS—26-11-13.

conditions of this country may require. The attention of the Government of India may perhaps be drawn to this.

E.A.V.—25-11-13.

T. KANAKASUNDARAM PILLAI—25-11-13.

Please draft as above but avoid being too positive about the wisdom of the various suggestions approved and give them rather as suggestions received than as the matured conclusions of Government.

W. FRANCIS—26-11-13.

A draft letter to the Government of India is submitted for approval.

E.A.V.—27-11-13.

T. KANAKASUNDARAM PILLAI—27-11-13.

Approved.

W. FRANCIS—28-11-13.

[G.O. Nos. 1150-51, Educational, dated 4th December 1913.]

Order P.S. No. 1150 of 4-12-13
The following letter will be addressed to the Govt. of India.

7/11
27-11-13
LETTER.

No. 1151 of 4-12-13.

To

The Secretary to the Govt. of India,
Legislative Department.

Sir,

I am directed to reply to your letter No. 3357-3370 dated 25th September 1913 requesting the opinion of His Excellency the Governor in Council and of the Hon'ble the Judges of the High Court and of other -- selected officers and persons on the draft Bill to modify and add to the provisions of the English Copyright Act, 1911.

2. With reference to paragraph 2 of the letter under reply, I am to state that the Bill was published in English and the vernaculars in the Fort St. George Gazette on the following dates:-

English.	30-9-1913.
Tamil.	} 25-11-13.
Telugu.	
Canarese.	
Malayalam.	

The dates of publication in Hindustani and Uriya will be communicated later.

3. His Excellency the Governor in Council considers that the modifications in and the additions to the Copyright Act which the Bill proposes are on the whole very suitable. I am however to make the following

Recd 7/11
1-12-

Depd with 14080.
6.12.13

61 438

following suggestions upon certain provisions of the Bill which ~~to~~ ^{might} be ~~defective or~~ ^{can} be altered with advantage.

4. Clause 3(4). ~~Now the arbitration~~
The arbitration mentioned in proviso (a) sub-clause (i) and in proviso (b) to section 24 of the -- Copyright Act may also be included in this clause.

Clause 4. ~~It may be considered~~
~~It may be considered~~ whether a provision may not be made in this clause requiring the payment of ^a royalty to the owner of the copyright by the person publishing a vernacular translation in the same way ^{as} section 3 of the English Act provides for the payment of ^a royalty when a work is published during the term of its copyright by any person other than the owner of the copyright.

Chapter III. The heading of this chapter, viz., "Summary ^{Remedies} ~~proceedings~~", does not appear to be suitable and, ^{the} ~~the~~ Governor in Council considers that it might well be altered into "Criminal" "prosecutions for infringement of" "copyright". He is also of opinion that offences falling under this chapter ^{might} ~~should~~ be made compoundable and ~~that~~ ^{inserted allowing} a provision ~~should be made~~ for appeals from convictions in all cases in view of the fact that the law is of a highly technical nature and ~~that~~ the question for

So as to avoid the
suggestion that copyright
prosecutions should
always be tried summarily

Chasse

& it may be argued
 that ~~civil suits~~
~~are needed~~ Subj'ds
 & Govt. judges are competent
 to try civil suits
 connected with the
 subj'ct. There already
 deal with many technical
 suits such as divorce
 insurance probate &
 matrimonial proceedings, etc.

7.74.
27-11-13

6. I am to forward as an annexure to this letter the minutes recorded by two of the Hon'ble the Judges of the High Court together with the opinions of the other officers and persons consulted.

1172 Public
16.11.11

E. & L.
42.
1,500 8-08.

ORDINARY.

PRESS SLIP.

PREFERENCE.

Very URGENT (a).

EDUCATIONAL
LEGISLATIVE DEPARTMENT.

Current No. 2017, dated 190

G.O., No. 11, dated 190

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SPECIAL INSTRUCTIONS.

Copyright Act, 1911

Communicating to the Govt. of India. the view of this Govt. on the proposed of the draft bill to to add to it modify the and add to the front cover of the

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