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Educational (1904) Department.

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G.O., No. 321

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INDEXED.

ORIGINAL

[Despatch Abstract.]

Registration of Copyright.

Referring Nawab Aziz Jung Bahadur of Faridabad to the reply given him by the Registrar of Books, as regards registering the Copyright in his books printed in the Dominions.

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Government {1904} of Madras.

EDUCATIONAL.

Recd. } 1904. *Enclosures*

Regd. } *Spare copies*

ORIGINAL

G.O., No. 321, 30th May 1904.

N. F.

MAY.

Registration of Copyright.

Referring Nawab Aziz Jang Bahadur of Hyderabad to the reply given him by the Registrar of Books as regards registering the copyright in books printed in the Nizam's Dominions.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

Read—again the following paper :—

G.O., No. 206, Educational, dated 29th March 1904.

Read—the following paper :—

From Nawab AZÍZ JANG Bahadur, Pensioned First Talukdar of His Highness the Nizam's Government, to the Secretary to the Government of Madras, Educational Department, dated Aziz Bagh, City Hyderabad, Deccan, 14th February 1904.

I beg to state that I intend getting registered certain books composed by me which have been printed in His Highness the Nizam's Dominions and are about to be published. I have got them registered in His Highness the Nizam's Government.

2. My object is that the copyright should also be protected likewise throughout the whole of British India, with this intent, I had been to Madras ; but, the Registrar of Books in that Presidency refused to register my books because they have been printed in His Highness the Nizam's Dominions and not in Madras Presidency.

3. I desired to obtain my object by getting them registered in the British Residency at Hyderabad, but the Political office of the Residency replied that such registrations are not in vogue in the Residency.

4. As directed by the Registrar of Madras I now feel the necessity of looking to you for the purpose, forwarding herewith copy of the reply given to me on the subject by the said Registrar and I draw your attention to the resolutions of the Madras Government No. 60, dated 27th January 1888, and No. 11, dated 13th January 1888, Educational Department, which clearly affirm that registration obtained in one State will do in others respecting the protection of copyright. Then, I beg to know whether, in sense of the resolutions alluded to above, I may rest satisfied that registration obtained in His Highness the Nizam's Government will stand good throughout British India ; if not, I hope you will kindly issue orders to the effect that my book, a copy of which is herewith sent together with the schedule, be duly registered in Madras.

5. I herewith attach postage labels of Rs. 3, I mean Rs. 2 as registration fee and Re. 1 for a registered reply to me.

The form of my book is herewith.

Enclosures.

Schedule No. I of Act XX of 1847.

Author's name.	Residence.	Name of the book.	Subject.	Where printed.	Where will be published.	Number of pages.	In what year will be published.
1	2	3	4	5	6	7	8
Nawab Aziz Jang Bahadur.	Aziz Bagh, City Hyderabad, Deccan.	Sikh-i-dekan.	A history of the Native account keeping system.	In His Highness the Nizam's Dominions.	Throughout the whole of British India.	180	1904

Extract from a letter of the Registrar of Books, Madras, dated 25th January 1904, No. 17.

In reply to your letter of the 19th instant, I have the honour to inform you of the existence of orders of the Madras Government concerning the International union for the protection of literary and artistic works. But, if you want to make sure of the protection of copyright in your work in the British territory, you may get your book registered in the Home Department under Act XX of 1847 transmitting your applications to the Secretary to that Department with a copy of the work and a fee of Rs. 2 (two) and Schedule No. I duly filled up in the form subjoined to that Act and that will protect your proprietorship of copyright against all infringement in British India ; but which no local Registrar of Books can do.

Letter—No. 206, Educational, dated 29th March 1904, to the Honourable the Resident at Hyderabad.

Nawab Azíz Jang Bahadur, a pensioned Talukdar of Hyderabad, has written in Hindustani a history of the system of Native account keeping and appears to have obtained the copyright in it registered in His Highness the Nizam's Dominions. He now desires to effect registration in British India and has submitted an application to this Government for it. I am directed to enquire what is the law, if any, in His Highness the Nizam's Dominions as regards the registration of copyright. If His Highness' Government has passed any copyright regulation I am to request that you will be so good as to forward a copy of it.

A. G. CARDEW,
Ag. Secretary to Government.

Read—also the following paper :—

From Lieutenant-Colonel Sir DAVID BARR, K.C.S.I., Resident at Hyderabad, to the Secretary to the Government of Madras, Educational Department, dated Hyderabad Residency, 28th April 1904, No. 3045.

With reference to your letter No. 206, Educational, dated 29th March 1904, regarding the application to the Government of Madras of Nawab Azíz Jang for the registration of the copyright of his Hindustani history of the system of Native account keeping, I have the honour to forward herewith, as requested, a copy of the resolution of His Highness' Government No. 41/17-J. of 1890, containing the rules in force in His Highness' Government on the subject of the registration of "copyright".

Enclosure.

Extract from the Proceedings of the Government of His Highness the Nizam in the Home Department (Miscellaneous), dated Hyderabad, 24th June 1890 (16th Amardad 1299), No. 41/17 J., of 1890 A.D. (1299 F.).

Read—

Correspondence between the Political and Financial Secretary and Mr. Muhammad Alí, Proprietor and Editor of the *Mokanin-i-Deccan*, relative to the reservation of rights of publication and translation of certain compilations.

Correspondence between the Political and Financial Secretary and the High Court on the same subject.

Rubkar from the Political and Financial Secretary, to the Home Secretary, No. 143, dated 5th Farwardi 1299.

Letter from the Home Secretary, to the Legal Adviser to Government, No. 361, dated 26th December 1889 (21st Bahman 1299).

Observations—

The right to publish a compilation of the standing orders of the Revenue department was reserved to the compiler, Mr. Ahmad Abd-ul Azíz, by a notification in the *Jarida*, dated 14th Dhye 1297 fasli. On the 28th Thir 1297 fasli, Mr. Muhammad Alí, Proprietor and Editor,

of the *Mokanin-i-Deccan*, applied for similar protection against the publication or translation of several Government orders compiled by him and published in book form. Nawab Intesar Jang Bahadur, the Officiating Political and Financial Secretary, pointed out that the right of publishing or of translating the whole or any part of the compilations could not be reserved as they consisted of Government circulars which had to be made public. The High Court having been referred to pointed out that it was inadvisable to pass orders on solitary applications of this nature, but that a general rule touching copyright should be framed. The High Court being unable to devote to this subject the time required, the matter was referred to the Secretary to Government in the Home department who called upon the Legal Adviser to Government to frame a set of rules to define and admit of the enforcement of "Copyright". Mr. Hormasjee N. Vakeel has now submitted a set of rules based on those obtaining in British India.

Order—Whereas it is desirable for the encouragement of learning in the territories of His Highness the Nizam that some rules should be provided, having the force of law, which shall define and admit of the enforcement of the right known as "Copyright" and that the said right shall be capable of easy enforcement in every part of the said territories, His Excellency the Minister is pleased to approve of and sanction the introduction of the following rules, with effect from the first day of Shahriwar Fasli 1299.

Interpretation of rules.

1. In the construction of these rules the word "*book*" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter press, sheet of music, map, chart or plan separately published.

The words "*Dramatic piece*" shall be construed to mean and include every tragedy, comedy, play, opera, farce or other science, musical or dramatic entertainment.

The word "*Copyright*" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied.

The words "*Personal representative*" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration.

The word "*Assigns*" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest or by operation of law or otherwise.

That whenever in these rules, in describing any person, matter or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing respectively, unless there shall be something in the subject or context repugnant to such construction.

Duration of copyright in book published in author's lifetime.

2. The copyright in every book published in the life-time of its author within the said territories after the passing of these rules, shall endure for the natural life of such author, and for the future term of seven years commencing at the time of his death and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the publication of such book the copyright shall in that case endure for such period of forty-two years, and that the copyright in every book published after the death of its author and after the passing of these rules shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript, from which such book shall be first published, and his assigns.

Power to license re-publication when copyright proprietor refuses.

3. An whereas it is expedient to provide against the suppression of books of importance to the public it is provided that it shall be lawful for the Prime Minister to His Highness the Nizam, on complaint made to him that the proprietor of the copyright in any book published after the passing of these rules within the said territories has, after the death of its author, refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner and subject to such conditions as the Minister may think fit, and it shall be lawful for such complainant to publish such book according to such license.

Registry of copyright, assignment, and licenses.

4. A book of registry, wherein may be registered as hereinafter provided the proprietorship in the copyright of books and assignments thereof, and licenses affecting such copyright, shall be kept in the office of the Secretary to the Government of His Highness the Nizam in the Home Department, and shall at all convenient times be open to the inspection of any person

Inspection.

on payment of eight annas for every entry which shall be searched for or inspected in the said

book. Such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book certified under his hand, to any person requiring the same on payment to him of the sum of Rs. 2 and such copies so certified shall be received in evidence in all courts and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence.

Giving copies.

Copyright proprietor's right to make entries in registry.

5. It shall be lawful for the proprietor of copyright in any book published after the passing of these rules to make entry in the registry book of the title of such book, the time of the first publication, and the name and place of abode of the publisher thereof and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright in the form in that behalf given in the schedule to these rules annexed upon payment of the sum of Rs. 2 to the said Secretary.

Fee.

Assignment of copyright by entry in registry.

It shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof in the form given in that behalf in the said schedule on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

Application by person aggrieved by entry in registry for order to vary or expunge it.

6. If any person shall deem himself aggrieved by any entry made under colour of these rules in the said book of registry, it shall be lawful for such person to apply by motion to the High Court of Hyderabad, or, if the Court shall not be then sitting, to any Judge of such Court sitting in Chambers, for an order that such entry may be expunged or varied upon any such application to the said Court, or to a Judge as aforesaid, such Court or Judge shall make such order for expunging, varying or confirming such entry either with or without costs, as to such Court or Judge shall seem just, and the said Secretary shall, on the production to him of any such order for expunging or varying any such entry expunge or vary, the same according to the requisitions of such order.

Liability for infringement of copyright.

7. If any person shall, after the passing of these rules, print or cause to be printed either for sale or exportation, any book in which there shall be subsisting copyright without the consent in writing of the proprietor thereof, or shall have in his possession for sale or hire any such book so unlawfully printed without such consent as aforesaid, such offender, if he shall have so offended within the local limits of the jurisdiction of the High Court, shall be liable to a special action on the case in such Court, and, if he shall have so offended in any other part of the territories of His Highness the Nizam, to a suit in the Zilla or District Court within the jurisdiction of which he shall have so offended, which shall and may be prosecuted in the same mannr in which any other action of damages may be brought and prosecuted there, and if he shall have so offended in any such last-mentioned part of the territories in which there is no Zilla or District Court, to a suit in the highest local court exercising original civil jurisdiction in such part of the said territories.

Notice to be given by defendant to plaintiff in suit for infringing copyright.

8. In any suit or action brought in the High Court under the provisions of these rules against any person for printing any such book for sale, hire or exportation, or for selling, publishing, or exposing to sale or hire, or causing to be sold, published or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action, and if the nature or his defence be that the plaintiff in such action is not the author or first publisher of the book in which he shall by such action claim copyright or is not the proprietor of the copy right therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book and the time when and the place where such book was first published, otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copy right therein than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time and place of publication with the title, time and place specified in such notice.

Particulars to be stated in notice when right of plaintiff is denied.

Effect of omission.

9. In any such suit or action as last aforesaid, brought in any Zilla or District Court or other local Court as aforesaid, the defendant shall state in his answer all such matters as he means to rely on and which by the last preceding rule the defendant in any suit or action brought in the High Court is required to give notice of in writing, otherwise such defendant shall be subject to the same consequences for any omission in his answer as a defendant is made subject to by the last preceding rule for any omission in his notice.

Particulars to be stated in defendant's answer to suits.

Effect of omission.

10. When any publisher or other person shall, within the said territories before or at the time of the passing of these rules, have projected, conducted and carried on, or shall, hereafter project, conduct or carry on, or be the proprietor of any encyclopœdia, review, magazine, periodical work or work published in a series of books or parts or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles or portions thereof for publication in or as part of the same, and such work, volumes, parts, essays, articles or portions shall have been, or shall hereafter, be composed under such employment on the terms that copyright therein shall belong to such proprietor, projector, publisher or conductor, and paid for by such proprietor, projector, publisher or conductor, the copyright in every such encyclopœdia, review, magazine, periodical work and work published in a series of books or parts, and in every volume, part, essay, article and portion so composed and paid for, shall be the property of such proprietor, projector, publisher or conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by these rules; except only that in the case of essays, articles or portions forming part of and first published in reviews, magazines or other periodical works of a like nature after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by these rules.

Copyright in encyclopœdia, review, etc.

Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher or conductor shall not publish any such essay, article or portion separately or singly without the consent previously obtained of the author thereof or his assigns.

Consent of author to publication singly.

Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or shall be so employed as aforesaid to publish any such his composition in a separate form who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right, but every author reserving, retaining or having such right shall be entitled to the copyright in such composition when published in a separate form according to these rules without prejudice to the right of such proprietor, projector, publisher or conductor as aforesaid.

Employé's right to publish separately.

11. The proprietor of the copyright in any encyclopœdia, review, magazine, periodical work or other work published in a series of books or parts, shall be entitled to all the benefits of the registration in the office of the Secretary to the Government of His Highness the Nizam, in the Home Department under these rules, on entering in the said book of registry the title of such encyclopœdia, review, periodical work or other work published in a series of books or parts, the time of the first publication of the first volume, number or part thereof, or of the first volume number or part first published after the passing of these rules in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof and of the publisher thereof when such publisher shall not also be the proprietor thereof.

Rights of proprietor of copyright on making entry in registry.

12. All copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof.

Proprietorship of copies of book illegally printed.

13. If the case be within the jurisdiction of the High Court, such registered proprietor shall be entitled to sue for and recover such copies or damages for the detention thereof in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover, and if the case be within the jurisdiction of any Zilla or District Court or other local Court as aforesaid, the registered proprietor shall be entitled to sue for and recover such copies or damages for the detention or conversion thereof, in such form as is in use in the said Zilla, District or other local Courts for the recovery of specific personal property or damages for the detention or conversion thereof.

Right of copyright proprietor to sue for and recover copies or damages.

14. If any action or suit shall be commenced or brought in the High Court against any person or persons whomsoever for doing or causing to be done anything in pursuance of these rules, the defendant or defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant or the plaintiff shall become non-suited or discontinue his action, then the defendant, shall have and recover his full costs for which he shall have the same remedy as a defendant in any case by law hath in the said last-mentioned Courts.

Plea by defendant, and special evidence in action for things done under rules.

Defendant to have full cost if successful.

15. All indictments, informations and other criminal proceedings for any offence which shall be committed against these rules, shall be brought, sued and commenced within twelve calendar months next after such offence is committed, or else the same shall be void and of none effect.

Limitation of criminal proceedings for breach of rules.

(By order.)

MEHDI HASSAN,
FATHEH NAWAZ JUNG,
Home Secretary.

Copy forwarded to—

The Secretary to the High Court for information and guidance, and for communication to all subordinate Courts.
,, Political and Financial Secretary.
,, Superintendent of the Government Press for publication in the *Jarida*.

Schedule.

No. 1.

Original Entry of Proprietorship of copy-right of a Book.

Time of making the entry.	Title of book.	Name of the publisher and place of publication.	Name and place of abode of the proprietor of the copy-right.	Date of first publication.

Schedule.

No. 2.

Form of Entry of Assignment of copy-right in any Book previously registered.

Date of entry.	Title of book.	Assignor of the copy-right.	Assignee of the copy-right.
	[Set out the title of the book and refer to the page of the registry book in which the original entry of the copy-right thereof is made.]		

Order—No. 321, Educational, dated 30th May 1904.

Nawab Aziz Jung Bahadur is referred to the reply, dated 25th January 1904, sent to his application by the Registrar of Books at Madras. With regard to the legal question which he raises, the Government of Madras decline to give any opinion.

(True Extract.)

H. D. TAYLOR,
Ag. Secretary to Government.

To Nawab Aziz Jung Bahadur.

Erd. K. Murugasam.

Educational Department.

NOTES CONNECTED WITH G.O., No. 321, EDUCATIONAL, DATED 30th MAY 1904.

[Subject.—*Registration of Copyright.*]

From Nawab Aziz Jung Bahadur, dated 14th February 1904.

Nawab Aziz Jung Bahadur, a pensioned Talukdar of the Nizam's Government, has written in Hindustani a history of the system of Native account-keeping and had the copyright in the book registered in that State. With a view to protect this copyright in British territory he applied to the Registrar of Books, Madras, for having it registered in Madras also. The Registrar replied that he could not register a book printed and published outside British India, and suggested that application might be made to the Home Department—(he might have added "of the Government of India"). Nawab Aziz Jung has accordingly now forwarded the book to the Secretary to the Government of Madras, "Home Department." He wants to know whether the registration already effected in the Nizam's Dominions holds good in British India also under the terms of the International Copyright Convention of 1887 (G.O., No. 60, Educational, dated 27th January 1888). If not, he desires registration to be effected in Madras also.

2. Under the convention of 1887 the copyright in books printed and registered in one of the States included in the convention is protected only in the countries of the copyright union, of which the Nizam's Dominions is not one. The registration in Hyderabad will not therefore protect the copyright in the book in British India. As to registration in Madras, the Press and Registration of Books Act, 1867, does not provide for the registration of a book printed outside British India.

3. A question similar to the present one was raised in 1883 when S. Radhakrishna Aiyar of the Pudukkóttai College enquired of the Registrar of Books whether his "Text-book on Arithmetic", which was printed and published in the Pudukkóttai State, should be registered in Madras for the protection of the copyright in it in British India. As there was no provision in the Press and Registration of Books Act, 1867, for the registry of books printed in Native States, the matter was referred to Government by the Registrar. The Government simply forwarded this correspondence to the Government of India for consideration as the question of copyright was then engaging the attention of that Government—*vide* G.O., Nos. 666, 667, Educational, dated 3rd October 1883. The Government of India in reply stated that the point would be considered when the Indian Copyright Act, 1847, came under amendment—*vide* their letter No. 174, dated 26th January 1884, in G.O., No. 62, Educational, dated 6th February 1884.

4. In June 1885 the Government of India forwarded, for remarks, a draft Bill to amend the Indian Copyright Act, 1847. In this, however, no provision was made for the protection in British India of copyright in works published in Native States. This omission in the draft Bill was noticed by the Registrar of Books, but Dr. Duncan, then Acting Director of Public Instruction, observed that the point was one which perhaps could hardly be dealt with in that Bill, and that there ought to be a separate Copyright Act to deal with such cases. The opinions of this Government and of those consulted

in regard to the draft Copyright Bill were forwarded to the Government of India in September 1885—*vide* letter No. 2341, Judicial, dated 4th September 1885. Nothing further is officially known about this amending Bill, but the late Mr. Pringle who was in Calcutta subsequently said that after a deal of correspondence and note-writing, the matter had been dropped.

5. In these circumstances Nawab Aziz Jung may be informed that there is no provision of law for the registration of his book in British India.

P. T. THARYAN—26-2-04.

The book has been registered in Hyderabad. If there is any law of registration of books in Hyderabad, the book is already protected throughout His Majesty's dominions * and in a large number of foreign countries by the International Copyright Acts, 1844—1886. If there is no such law the author cannot, it is true, register his book in British India (because the British Indian law only applies to books published in British India); but if I have read section 8 of the International Copyright Act, 1886, rightly, he is at liberty to register the book in the United Kingdom, and he will then have the same rights as if the book had been published in the United Kingdom. Put up Hyderabad Regulations please, if we have them.

* The procedure here would be under section 54 of the Specific Relief Act (permanent injunctions) and section 492 of the Criminal Procedure Code (temporary injunctions).

A. GALLETTI.

Statutes relating to India, volume II, page 816

A. GALLETTI—29-2-04.

No copy of the Hyderabad regulations is available here or in the Connemara Library, but Nawab Aziz Jung says that he has registered the copyright in his book in Hyderabad. It seems therefore that there is a copyright regulation in that state.

P.T.T.—29-2-04.

The author may be told that under our law only books published in British India can be registered in British India, but that if his book has been registered in Hyderabad under any law in force in Hyderabad, his copyright is protected in British India by a provision of the International Copyright Acts, 1844 to 1886.

A.G.—1-3-04.

On the information available in these papers, Mr. Galletti's note appears to me to be correct.

A. G. CARDEW—18-3-04.

I do not follow the Under Secretary in considering that section 8, 49 and 50 Vic., cap. 33, has application. Will he explain?

J. T[HOMSON]—22-3-04.

International Copyright Act, 1886, section 8. The Copyright Acts shall . . . apply to literary work first produced in a British possession in like manner as they apply to a work first produced in the United Kingdom.

Statutes relating to India, volume II, page 816.

2. Section 1 (2) and schedule 2 thereto: The Copyright Act, 1847, is included among "the Copyright Acts."

Hyderabad is a British possession †

"First produced" = "published".

Therefore section 11 of the Copyright Act, 1847 [beginning "a book of registry"], and section 13, *ibid* [beginning "it shall be lawful"] apply to literary work published in Hyderabad in like manner as they apply to a work published in the United Kingdom. Provided that the law of Hyderabad does not provide for the registration of such copyright [*ex hypothesi* it does not provide].

† It is a separate possession because it is not under the same legislature as British India.

A.G.

Statutes relating to India, volume I, page 199.

3. This assumes that the drafter of section 8 knew what he was about and that a strict construction of it is possible. But I am not sure that this isn't rather a large assumption, and that section 8 isn't a vicious example of legislation by reference gone wrong: *i.e.*, that it fails by attempting to incorporate provisions which were not meant for or adapted to incorporation; and a court might hold that it fails.

4. The Advocate-General might be asked to advise; but probably there is no decided case. As far as I know, the only British Colony which has not a law of copyright of its own is Tasmania.

We don't know that there is no law of copyright in Hyderabad.

5. If the author hasn't yet published the book, *i.e.* (1) offered it for sale to the public (2) offered it gratuitously to the public in Hyderabad, he can first publish in England by making a present of one copy to any book-seller with a request that it should be sold or given away to the public, and then there will be no doubt that he can apply for registry at Stationer's hall [If he were an alien, it might perhaps be doubtful; but he is apparently a British subject *].

* It doesn't matter if he isn't so long as he is resident in British dominions and owes a "temporary allegiance" to His Majesty

6. If there is no law in Hyderabad and if he doesn't register at Stationer's hall, he will still be protected, but will have to register before he can sue (section 24 of the Act of 1847 ?).

A. GALLETTI—23-3-04.

Section 11 of the Statute 49 and 50 Vic., c. 33, defines a British possession as including "any part of Her Majesty's dominions exclusive of the United Kingdom". In the Interpretation Statute—52 and 53 Vic., c. 63, section 18, "British India" and "India" are defined, and it seems fairly clear from those definitions that Hyderabad is not a part of British India or of His Majesty's dominions, and is not, therefore a British possession.

2. Hyderabad is therefore a foreign country for the purposes of Statute 49 and 50 Vic., c. 33.

3. There is, therefore, a flaw in the Assistant Secretary's argument, and no Order in Council under section 2 of the Statute seems to have been made in respect to Hyderabad.

A. G. CARDEW—24-3-04.

Respectfully submitted that the Interpretation Act leaves it doubtful whether non-British India is or is not in the "dominions of His Majesty [which is the expression of the International Copyright Acts †] and that if Hyderabad is (1) in the dominions of His Majesty and (2) makes its owns laws it is (1) a possession, and (2) a separate possession.

† Act of 1886, section 11.

2. I admit that for purposes of Municipal law Hyderabad is not British territory and a native of Hyderabad is not a British subject. My contention is that in respect of International copyright, Hyderabad is British territory and a native of Hyderabad is a British subject, and is subject to every prohibition and penalty and enjoys every right given by the International Copyright Acts or any Order in Council issued under them. This follows from the nature of the subject-matter of the Acts. In all its international relations Hyderabad is as much a part of the British dominions as Hampstead and if an Englishman in Hyderabad pirates a French book, I do not believe that any British Court would allow him to plead that Hyderabad was not in the dominions of His Majesty and that the Act does not apply to the case. For purposes of International copyright no fine distinctions are possible; Hyderabad must either be Foreign or British; it can't be anything intermediate. If our protected States were foreign countries within the meaning of the International Copyright Acts, would not the benefits of the Acts have been extended to them at once by Order in Council? ‡ And the difficulty about an Order in Council treating Hyderabad as Foreign and its inhabitants as aliens would be this: that there would be a conflict with the Foreign

‡ Under section 2 of the Act of 1886.

Jurisdiction Act, 1890, which gives our Courts, say in Zanzibar, jurisdiction over "subjects of the several princes and States in India". If a Frenchman in Zanzibar sued a native of Hyderabad under the International Copyright Acts, the native would produce our hypothetical Order in Council under the International Copyright Acts and say: "See, I am a foreigner for purposes of copyright, an alien; I must be sued in the Courts of my own nation of Hyderabad; it must be proved that I have done something actionable under the copyright law of my own nation of Hyderabad"; while the Frenchman would produce the East Africa Order in Council and the Foreign Jurisdiction Act and say: "No, he is not an alien, he is a British protected subject, he is obviously wrong in saying that this Court has no jurisdiction over him, he is amenable to British law and I can recover from him under the Copyright Acts.

3. A Frenchman can't sue another Frenchman for breach of copyright in the British Court of Zanzibar; but he can sue a British subject there; and my contention is that the Frenchman would be entitled to treat a native of Hyderabad as a British subject in any place in which there is a British Court for him to appeal to; *i.e.*, as far as the International Copyright Act is concerned, he is a British subject and Hyderabad is a British possession; but on reconsideration, I think I was wrong about section 8 of the Act of 1886. I still believe that that section, if it admits of strict construction, would protect a native of Hyderabad against international piracy and would permit him to register at Stationer's Hall, if there is no law of registry in Hyderabad; for no foreign tribunal and no English tribunal having foreign jurisdiction would deny that Hyderabad is a British possession. But a British Indian Court might say: We are not concerned with international copyright; we are only concerned with the municipal law of England and with internal copyright within our own territories; this fellow from Hyderabad, which is not subject to the English municipal law, has registered at Stationer's Hall; but that registration only protects him against foreigners and not against Englishmen; the International Copyright Act does not modify the English municipal law in respect of copyright, as laid down in the Copyright Acts, namely that publication must be in the United Kingdom. Section 8 is a bad section and might be held to mean what I at first thought; for that is what I still think it would mean if taken absolutely literally and if it is granted that in the International Copyright Acts British possession includes the Native States of India.

I don't follow. See section 8 of 49 and 50 Vic., c. 33.

A.G.C.

A. GALLETTI—25-3-04.

I must leave it to the Honourable Member to decide on the rather doubtful and difficult points raised in the Assistant Secretary's notes. Sir C. Ilbert's book on the Government of India is put up, and may be of some service. On page 269, Sir C. Ilbert says: "The territories of the Native States are not part of the dominions of the Queen, but their subjects are for international purposes in the same position as British subjects". On pages 461-462, he has some remarks on the position of protected Native States. If a subject of the Hyderabad State pirated a copyright book published in a country belonging to the copyright union, he would, according to Sir C. Ilbert, be held to be "in the position of a British subject": and we should have to prevent such piracy being carried on in Hyderabad. On this showing, Hyderabad is not a foreign country within the meaning of the Copyright Act, 1886, and then, it seems to follow that it is a British possession — though the wording of section 11 "Her Majesty's dominions" is awkward. If we thus arrive at the conclusion that Hyderabad is a British possession, section 8 of the Statute of 1886 applies.

A. G. CARDEW—25-3-04.

Ask the British Resident for information as to copyright law in Hyderabad and then submit the case to the Advocate-General.

J. T[HOMSON]—27-3-04.

Please draft reference to Resident accordingly.

A.G.C.—28-3-04.

The draft placed below is submitted for approval.

P. T. THARYAN—29-3-04.

A.G.—29-3-04.

[G.O., No. 206, Educational, dated 29th March 1904.]

From the Honourable the Resident at Hyderabad, dated 28th April 1904, No. 3045.

In accordance with the orders of the Hon'ble Mr. Thomson, dated 27th March 1904, the Resident at Hyderabad was asked to state what was the law, if any, in His Highness the Nizam's dominions as regards the registration of copyright and, in case His Highness' Government had passed any copyright regulation, to forward a copy of it. The Resident now forwards a copy of the Resolution of His Highness' Government containing the rules in force in His Highness' dominions on the subject. A draft reference to the Advocate-General is submitted for approval.

P.T.T.—10-5-04.

The whole file may go u.o. to the Advocate-General? He will want the copy of the Hyderabad rules in the current file, and the legal points were discussed at length in the notes to 206.

A.G.—11-5-04.

Is it not usual for a specific reference stating the points at issue to be made to the Advocate-General in such cases? Are there any precedents for sending an entire file with notes to him u.o.? No doubt the notes and discussion in connection with G.O., No. 206, dated 29th March 1904, will be of use and assistance in directing the Advocate-General's attention to doubtful points. A B

2. It is observed that the preamble to the Hyderabad rules refers only to the territories of His Highness the Nizam and the enforcement of copyright in every part of the said territories; so also paragraphs 2 and 3 of the rules. It is doubtful whether, having been passed specifically with reference to Hyderabad, the rules can be deemed capable of extension to areas outside those territories, whether Hyderabad be deemed "a British possession" or not. Please put up International Copyright Act, 1886, and India Acts of 1847 and 1867, also Sir C. Ilbert's book. C

H. D. TAYLOR—12-5-04.

A Submitted that this is the usual course.

B But exceptions are sometimes made. Please see the un-official reference at page 4 of the notes in G.O., No. 1618 M., dated 31st October 1903.

C The Copyright Act, 1886, the India Acts of 1847 and 1867 and Sir C. Ilbert's book are submitted.

P. T. THARYAN—13-5-04.

Submitted that the question is not whether the Hyderabad rules having the force of law apply outside Hyderabad; [which would be both constitutionally impossible as Hyderabad possesses only a limited internal sovereignty and no external sovereignty at all, its subjects abroad being dealt with under the Foreign Jurisdiction Act and is also specially barred by clause (4) of section 8 of the International Copyright Act, 1886]; but whether section 8 of the International Copyright Act, 1886, makes all the series of English Copyright Acts apply to Hyderabad in respect (*a*) of suits in which one of the parties is an alien and one a subject of Hyderabad and (*b*) of suits in which one of the parties is a British subject (in the sense in which that term does not include a subject of Hyderabad) and one a subject of Hyderabad—

G. S. F[ORBES].

(1) If Hyderabad is not a British possession within the meaning of section 8, section 8 did not apply anything.

(2) If it is a British possession within the meaning of section 8, the natural construction of section 8 is that it applied the English Copyright Acts both to suits (*a*) and to suits (*b*).

No. I don't think any Act of the English Parliament would so intend it.

G.S.F.

(3) It seemed to me, looking at the international objects of the Act, that the legislature really only meant to apply them by means of section 8 to suits (*a*) * ; Mr. Cardew, however, did not agree and thought that if section 8 applied them at all, it applied them both to (*a*) and (*b*).

* And not in Hyderabad but only to subjects of Hyderabad abroad.

A. Galletti.

We have now ascertained that there is a public book of registry in Hyderabad, so that the English Copyright Acts don't apply in respect of registry ; the question now reduces to whether they apply in respect of suits.

H.D.T.

2. The practical question here is whether a suit under class (*b*) could be brought in British India. Possibly this question might be decided without considering whether section 8 of the International Copyright Act, 1886, made anything apply. I draw attention to the definition of British dominion in section 2 of the Copyright Act, 1847. "All parts of the East Indies" is a wide term. If this is held to include Hyderabad, section 15 of the same Act applies, and the Hyderabad man could bring a suit in British India. I should be inclined to think, however, that "all parts of the East Indies" must be construed as "all parts of the British East Indies" : for section 15 makes an offender liable to a special action in a court, and I don't think Parliament ever intended to make British subjects liable to an action for breach of copyright in the courts of a Native State.

Yes.

H.D.T.—21-5-04

A. Galletti—13-5-04.

We are not bound to advise the applicant on the legal aspect of the case. He can obtain counsel's opinion himself, and if unfavourable can make a definite and not a conditional application for registry, when the question as to whether registry could be effected could have been determined. It seems that all this discussion as to the legal aspect of the effect of registry in Hyderabad was unnecessary.

2. The reference to the Advocate-General is put up for approval with reference to the Hon'ble Mr. Thomson's order on page 4 *supra*. It has been ascertained that there is a law of copyright and registry in Hyderabad, wherein the book under reference has been registered. The application is to protect the copyright. The petitioner asks for information as to whether the registry in Hyderabad will protect his book in British India and, if not, requests that it may be registered in Madras.

What has this Government got to do with "British India" as a whole! It would be a matter for the Home Department.

G. S. F[orbes].

3. It is not necessary to give Nawab Aziz Jung Bahadur any reply as to the legal aspect of the case. He can himself obtain legal advice, and the only question necessary to decide is whether the book having been published in Hyderabad can be registered in Madras.

The Registrar has given him an order.

G.S.F.

4. The question as to the necessity for registration is, however, also raised in the reference to the Advocate-General, though the opinion of the Advocate-General need not be communicated to the applicant.

H. D. Taylor—21-5-04.

In the first place if any advice should be given it should be given by the Government of India and not by this Government who have very meagre means of investigating or coming to a right opinion on a question which affects a Native State and "British India".

2. In the second place our opinion as a Government on an abstruse question of this kind is of no legal value whatever, and we should therefore simply tell him that he must act on such legal advice as he may see fit to take. The Registrar has given him an order on his application ; and so far as we are concerned nothing more is needed.

3. In any case it is the Home Department of the Government of India and not this Government that have to do with the matter.

4. Please draft for approval.

G. S. F[orbes]—23-5-04.

Please draft accordingly.

H.D.T.—24-5-04.

Submitted.

A. Galletti—24-5-04.

A draft is submitted for approval. As the reference to the Advocate-General was directed by the Hon'ble Mr. Thomson, should this go to His Excellency the Governor for information after approval by the Honourable Member ?

H.D.T.—25-5-04.

The reference to the Advocate-General was ordered by the Member in charge : but on further consideration it does not seem now necessary to make it. The Registrar of Books has given the applicant an answer to his application which refers him to the Home Department. Let the applicant go there or take legal advice. The draft is not quite what I intended it and I have revised it.

Then let His Excellency see.

G.S.F.—25-5-04.

Submitted to His Excellency the Governor.

H.D.T.—27-5-04.

Seen.

J. T[homson]—28-5-04.

Issue

H.D.T.—30-5-04.

[G.O., No. 321, Educational, dated 30th May 1904.]

3,840—12-2-03.

1

10

Educational

Revenue (1904) Department.

819
CURRENT No. 25-63

From

[*Name*]

[*Designation*] Honble the Resident at

[*Station*] Hyderabad

L.R.
Can you kindly put up a draft reference to the Advocate General - Please see this orders in G.O. No 206 dt 29-3-04. PS 6/5/4

No. 3045 *Received* 190

Dated 28-4- 1904

Enclosures 1 *Registered* 4-5- 190

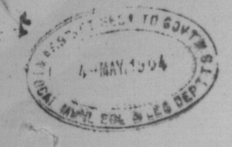
SUBJECT.

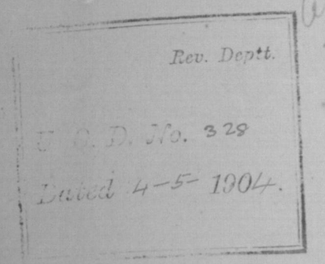
Forwarding a copy of the resolution of H.H the Nizam's Govt. containing the rules in force in Hyderabad territory on the Subject of the registration of "Copy right"

BACK PAPERS.

FURTHER PAPERS.

REVENUE DEPARTMENT.





Ed: u.o.no. 1169
4-5-04

To Under Secy,

It is understood that the Resident's letter is a reply to a reference made in the Education Dept: It may be transferred to Mail Dept: u.o.

Rel. 3.5.04. Educat. u.o.

4.5.04.

[E. / 3]

1,000—5-12-02.

3 EDUCATIONAL DEPARTMENT.

12

118

READ AGAIN G.O., No. 206, dated 29 — 3 — 1904

" " " " , " 190 .

READ ~~ALSO~~:

C. No. 299, From ~~the~~ Nawab Aziz Yung Bahadur, No. , dated 14th Feb 1904.

" " , " " , " 190 .

" " , " , " ~~the Govt~~ declines to give any opinion ~~and~~ , " 190 .

Despatches receiving the awards' Letter dt 14-2-04 in Q. 1 other order - infull - Hthen printwith notes.

PPJ 30/3/04

ORDER No. 324, dated 30 — 3 — 1904.

28.3.04

AP.

I referred to the reply dated 25 Jan 1904 sent to his application by the Registrar of Books at Madras. With regard to the legal question which he raises the applicant should take such legal opinion as he may be advised.

G.T.T.

26/3

Despd with 3 Rs in Stamps. 2/6/04

To Nawab Aziz Yung Bahadur with Rs 3 in stamps. 27.4.04

[ask Cash Keeper in madras]

Nawab Aziz Yung Bahadur is ~~informed that the Govt cannot order the registering of his book at Madras~~ informed that ~~with reference to the question put by him "whether registration obtained in H.H. the Nizam's Government will stand good throughout British India", he is informed that the Govt are not aware of the existence of any precedents in the matter and he must act on such~~ legal advice as he may see fit to take.

M 24.5.4 1702 25-5-04

4 P3

Educational Departt

G.O. No 321 Edl dt 30th May 1904

G.O. only I presume was communicated.

W.D.T
9-8-04

U.C. I think G.O. only went to Nawab Azeez Jung Bahadur & that too in Manuscript. Were the Stamps sent by the Nawab returned ? Please put up the Original with reply.

PJ
8/8/14

The G.O. only was despatched to the Nawab in Mss together with three rupees worth of Stamps. Please see despatch instruction in the original of the G.O.

P.

T.R.
10.8.04

Submitted to the Secretary.

PJ 11/8/14

st copy sent to Press.

turned for signature.

espatched in print.

NUMBER OF COPIES REQUIRED. { Order complete. / Letter only. / Order complete with Letter. } 40

AD AGAIN G.O., No. 190 . DATED

URGENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT.

LETTER OF GOVERNMENT.

STATEMENT W[illegible] DITTO.

APERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.

12

Print-written

N.B.—
A = Print in full.
B = Not to be printed.
P = Print abstract only.
Q = Print heading only.