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Educational (1905) Department.

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G.O., No. 87

DATED 15. 2. 05

ORIGINAL

N. 1

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INDEXED

[Despatch Abstract.]

Copy right

Communicating to the D.O. the opinion
of the Honble the Advocate General
on the subject of the reassignment
of — in books.

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Government {1905} of Madras. EDUCATIONAL.

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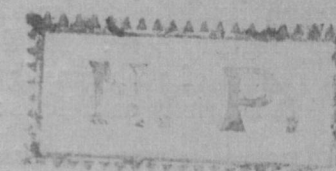
1905.

Enclosures

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ORIGINAL

G.O., No. 87, 15th February 1905.



FEBRUARY.

Copyright.

Communicating to the Director of Public Instruction the opinion of the Honourable the Advocate-General on the subject of the reassignment of — in books.

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

READ--the following papers :—

From Diwan Bahadur V. KRISHNAMA CHARIYAR, Registrar of Books, to the Director of Public Instruction, dated Madras, 22nd December 1904, No. 449.

I have the honour to forward herewith the correspondence * in original between the Government Solicitor and myself on a question raised by Messrs. Parry & Co.'s Solicitors, Messrs. King & Josselyn, of reassigning the copyright they purchased in Mr. R. A. Nelson's book on the Indian Penal Code.

2. This book was originally registered on the 28th September 1900 and copyrighted in the author's name under section 18 of Act XXV of 1867 under which this office was created, and worked so far as copyright registration is concerned on the basis of section 5 of Act XX of 1847. Next on the 5th October of the same year Mr. Nelson applied to me for assignment of his copyright to Messrs. Parry & Co. Apprehending a difficulty like the present, although I complied with Mr. Nelson's application by making the prescribed entry of such assignment in my catalogue, I took the advice of the late Director of Public Instruction as to the form in which the certificate should be worded. The copy of this form thus advisedly worded is annexed for reference. By this transaction the book became the property of Messrs. Parry & Co. to be dealt with like any other commercial article.

3. Now that firm applies through its Solicitors for the registration of reassignment of this proprietary right in my registry book. My doubt as to the expediency of complying with the request in respect of such reassignment is explained in my letter to the Government Solicitor. It is briefly as follows :—

(1) Whether there is no difference between an *assignment* of copyright once registered and a *reassignment* which latter term does not occur either in the Copyright Act of 1847 or in the schedule attached to it. The difference in the amount of fee payable for an entry in my office is only Rs. 2, whereas the amount charged under the transfer of Property Act for such reassignment may be tenfold or hundredfold.

(2) Whether the compliance with Messrs. Parry & Co.'s request might not be creating a precedent for the evasion of the provisions of the Registration and Stamp Acts directly relating to transfer of property and entailing a pecuniary loss on Government, if such reassignments take place in my office any number of times during the period for which copyright in a book endures.

4. The Government Solicitor whose advice I sought last week refers me to section 14 of the Copyright Act which relates to suits or legal proceedings for infringement of copyright. I do not see what bearing that section has on the question at issue since the term reassignment does not occur in that section nor even once elsewhere in the body of that Act. The Solicitor further suggests the expediency of my opening a separate register for entering reassignments of copyright but does not say under what section of the Copyright Act or any rule under Act XXV of 1867 I am to open such a subsidiary book without the sanction of Government and whether the entries in such book opened as an act of my own motion would be considered valid in law, seeing that the Copyright Act provides for only one book of registry for all copyrights and assignments thereof. [Vide sections 3 and 5 of Act XX of 1847.]

5. My doubt is whether the case of reassignment falls at all under the provisions of the Copyright Act and whether it should not be dealt with under the Transfer of Property Act which has come into existence of late years, the Legislature intending perhaps to remedy what is a defect in the Indian Copyright Law. In these circumstances I beg to submit for consideration whether it might not be well to face the present situation—

(1) by ascertaining what the practice actually is in respect of reassignments in Bengal and Bombay, both the Acts under which this office is worked being Imperial Acts and not Local Enactments applicable only to registration of books in this Presidency;

(2) by reporting to Government the difficulties and doubts as to loss of fee income to Government involved in an attempt of this office to deal with reassignments; and

(3) by seeking the opinion of the Advocate-General on this matter of "considerable importance" to quote the words of the Government Solicitor, who seems to be by no means free from doubt and does not explicitly speak as to the propriety and validity of the proposed entries of reassignments in a "separate" or subsidiary book of registry.

ENCLOSURES.

MADRAS,

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I do hereby acknowledge to have received from——the sum of Rupees (2-0-0) two only being the amount of fee for the assignment of the proprietorship in the copyright of the under-mentioned book previously registered under section 5, Act XX of 1847 and the latter clause of section 18 of Act XXV of 1867.

Registrar of Books.

From Messrs. KING & JOSSELYN, Solicitors and Notaries, Madras, to the Registrar of Books, dated 9th December 1904.

Some time ago Mr. Nelson's book on the Indian Penal Code registered in his name on the 28th September 1900 was assigned under section 5 of Act XX of 1847 to Messrs. Parry & Co. Messrs. Parry & Co. now desire to reassign the copyright of the book to Mr. Nelson. Would you be good enough to let us know whether it will be necessary for some person authorized by Messrs. Parry & Co. under a general power of attorney to attend at your office and register the reassignment to Mr. Nelson or what other procedure is necessary to take for the purpose above mentioned.

Apologising for the trouble we are giving you, etc.

From Diwan Bahadur V. KRISHNAMA CHARIYAR, Registrar of Books, to the Government Solicitor, dated 10th December 1904, No. 423.

I have the honour to annex a letter from Messrs. King & Josselyn seeking the reassignment of copyright by Messrs. Parry & Co. to Mr. Nelson, the author of a work on the Indian Penal Code, which was once assigned to that Firm in 1900 by the author. I request your advice on the expediency of complying with Messrs. King & Josselyn's request as I apprehend that such compliance will open the door to an evasion of the law relating to transfer of property and the provisions of the Registration and Stamp Acts. My doubts and difficulties for the solution of which I now seek your advice are as follows :—

(1) In the Copyright Act XX of 1847, the term "reassignment" does not occur even once in the whole of that Act and the Book Registration Act of 1867. But the Acts being intended for the encouragement and protection of literature, the question is whether, after a book has been once assigned away to a Commercial Firm under section 5 of the Copyright Act, it has not lost its literary character and become simply an article of commercial speculation to be dealt with under the Transfer of Property Act on payment of the prescribed fee and the value of stamps for such transfer of proprietary right. In fact, the origin of Messrs. King & Josselyn's request is apparently the desire of Messrs. Parry & Co. to save money, the fee prescribed for registration being only Rs. 2 under the Copyright Act XX of 1847 and Act XXV of 1867 under which I am working both the Acts and therefore much smaller than the amount of expense involved in following the ordinary mode of registration under the other Acts relating directly to transfer of property or assignment of rights.

(2) It might, however, be contended that the proposed reassignment should be treated as if it was a fresh transaction just like the first assignment by a deed under section 5 of Act XX of 1847. But I am in doubt as to whether this new attempt to adopt the cheaper method of reassignment would not open the door to many such applications all over the Presidency for reassignment of copyright proprietorship in the same book for a second, third or fourth time or any number of times within the period of 42 years during which copyright lasts or endures in a literary work.

(3) Apart from want of space in my office registry book for such a multiplicity of reassignments of copyright in one and the same book, I venture to think further that the procedure now sought is highly questionable as one affecting the revenue of Government under the Transfer of Property, Registration and Stamp Acts. Viewed in this light I doubt the propriety or expediency of the Registrar of Books becoming a party to what seems to be an evasion of those Acts for the mere purpose of saving a few rupees in the expenditure involved in following the proper procedure under the Act for ordinary registration of such transfer of rights, the fee for such registration being far above the sum of Rs. 2 demanded for entry under Act XX of 1847 or Act XXV of 1867 under which the reassignment has to be made.

2. It being after all a money question and a mere commercial speculation in proprietorship of copyright, I solicit your advice as to whether I am legally competent to refuse the application as not coming under the Copyright Act without troubling the Government for an explicit order on the point raised, and without asking Messrs. King & Josselyn to point out the section of the Copyright Act XX of 1847 justifying an entry in my office registry book of the proposed reassignment of copyright which is, strictly speaking, a commercial transaction as distinguished from first assignment which is all that I am empowered to deal with under the Copyright Act XX of 1847 and Act XXV of 1867 which is based thereupon according to my reading of these enactments. Of course, I express my view as an unprofessional man subject to correction and await the favour of an early reply.

From SUTHERLAND ORR, Esq., Government Solicitor, Madras, to the Registrar of Books, dated 20th December 1904, No. 1150.

I have the honour to acknowledge receipt of your letter of the 10th instant with its enclosure which latter I herewith return.

2. I have considered the questions raised by you but I am afraid I cannot adopt your view that the provisions of section 5 of the Copyright Act as to the assignment of a copyright by an entry in the register is confined to one assignment only, namely, that from the proprietor who originally registered under schedule I of the Act.

3. It seems to me that the Act must be construed more liberally and that if it had been intended to limit the provisions as to assignment by entry (which were presumably enacted for the purpose of facilitating the transfer of a copyright) to one assignment, care would have been taken to expressly limit the section by words which rendered the meaning quite clear.

4. I think that the proprietor of a copyright referred to in section 5 is the proprietor of a copyright by whatever means he may have acquired that position and a reference to section 14 of the Copyright Act shows that it is necessary for every proprietor to be registered under the Act before he can take any action in respect of the infringement of his copyright.

5. I understand that Messrs. Parry & Co., though no assignment was registered under the provisions of section 5 of the Indian Copyright Act, were registered as the proprietors of the copyright under the provisions of section 18 of Act 25 of 1867 which would have the effect of an entry under section 5 of the Copyright Act and this being so my interpretation taking the two Acts together is that Messrs. Parry & Co. can be considered "such registered proprietors" as are referred to in the second paragraph of such section 5.

6. It seems to me also that it is not necessary for us to concern ourselves as to any possible difference between a reassignment and a fresh transaction as under the law the two things for the purpose of the working of the Act would be identical.

7. Moreover as already stated my view is that the provisions as regards registration were intended to facilitate assignments of a copyright whatever number of times they may take place during the time in which the copyright is in force.

8. I am of opinion therefore that a register should be kept by you of assignments of any copyrights of any books which may be registered in your catalogue and that Messrs. King & Josselyn should be informed that on a formal notification from Messrs. Parry & Co. to you applying that the name of Mr. Nelson should be entered in your catalogue as the proprietor of the copyright in the book in question such assignment will be registered. Such assignment would, I think, be effectual in law in the words of section 5 of the Copyright Act to all intents and purposes, etc.

9. The above is my view but as the matter appears to be of considerable importance, I will, if you wish it and on hearing from you, refer the question to the Advocate-General for his opinion.

N. Ref. on C. No. 10422 of 1904, dated 4th January 1905.

Submitted to Government for favour of orders. The matter is one on which I am unable to offer an opinion.

A. G. BOURNE,
Director of Public Instruction.

Memorandum No. 39, Educational, dated 24th January 1905.

Mr. R. A. Nelson's book on the Indian Penal Code was registered under section 18 of Act XXV of 1867 (Registration of Books) in September 1900. In the following month the copyright in it was assigned to Messrs. Parry & Co., Madras, on Mr. Nelson's application. Messrs. Parry & Co. have now applied for the reassignment of the copyright in the book to Mr. Nelson.

2. The Honourable the Advocate-General is requested to advise Government whether such reassignments can be made under the provisions of the Indian Press and Registration Act, 1867, or under the Indian Copyright Act, 1847.

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

To the Honourable the Advocate-General
(through the Government Solicitor).

From the Government Solicitor, Madras, dated 6th February 1905, No. 161.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 4th February 1905:—

OPINION.

I am of opinion that the assignment of the copyright by Messrs. Parry in favour of Mr. Nelson may be effected under section 5 of the Copyright Act XX of 1847. The provisions of section 5 cannot, in my opinion, be restricted so as to apply only to one assignment in the case of each registered book.

MADRAS,
4th February 1905.

J. P. WALLIS,
Advocate-General.

ORDER—No. 87, Educational, dated 15th February 1905.

The Advocate-General's opinion will be communicated to the Director of Public Instruction.

(True Extract.)

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

To the Director of Public Instruction.

EDUCATIONAL DEPARTMENT.

NOTES CONNECTED WITH G.O., No. 87, EDUCATIONAL, DATED
15TH FEBRUARY 1905.

[SUBJECT.—*Assignment of Copyright.*]

From the Director of Public Instruction, dated 4th January 1905, R.C. No. 10422.

Mr. R. A. Nelson's book on the Indian Penal Code was registered on the 28th September 1900 and the copyright in the book secured under section 18 of Act XXV of 1867 (Registration of Books). The copyright in this book is said to have been assigned to Messrs. Parry & Co. on Mr. Nelson's application to the Registrar of Books on the 5th October 1900. On the 9th December last Messrs. Parry & Co. applied to the Registrar, through their Solicitors, for the reassignment of the copyright in the book to Mr. Nelson. The Registrar of Books made a reference to the Government Solicitor asking for his opinion as to whether he can register any such reassignment under the provisions of the Press and Registration Act of 1867 or under the Copyright Act of 1847. The Government Solicitor in his reply to the Registrar stated that the provisions in the Acts as regards registration were intended to facilitate assignments of a copyright whatever number of times such assignments may take place during the time in which the copyright is in force, and that the provision in section 5 of the Copyright Act of 1847 was not confined to one assignment only, namely, that from the proprietor who originally registered the book and secured the copyright therein.

2. The Registrar of Books suggests that the practice in Bengal and Bombay may be ascertained and that the question may be referred to the Advocate-General for his opinion — *vide* paragraph 5 of the Registrar's letter. The Director of Public Instruction submits this for orders.

K. KUPPUSWAMI MUDALIYAR—9-1-05.

In paragraph 9 of the letter from the Government Solicitor to the Registrar, the former says: "As the matter appears to be of considerable importance, I will, if you wish it and on hearing from you, refer the question to the Advocate-General for his opinion".

P. T. THARYAN—9-1-05.

A. GALLETTI—10-1-05.

The opinion of the Advocate-General may be obtained.

H. D. TAYLOR—11-1-05.

Attention is invited to the notes connected with G.O., No. 429, Educational, dated 15th August 1887, where reference is made to the point whether registration of copyright can be refused by the Registrar of Books, and to the opinion of the Advocate-General in G.O., No. 499, Educational, dated 13th September 1887. From these it can be gathered that the Registrar of Books cannot refuse to register the copyright, nor can any rule be made under section 20 of Act XXV of 1867 empowering the Registrar to refuse to register copyright in any book at his own discretion.

2. If the opinion that the Registrar cannot refuse to register copyright, but on the other hand must register, without questioning, the copyright in any book that is tendered to him for such registry, can be adhered to in the present case, it is for consideration whether any reference need be made to the Advocate-General.

K. KUPPUSWAMI MUDALIYAR—18-1-05.

The opinion in G.O., No. 499, Educational, dated 13th September 1887, does not seem to cover the present case, but any how please put up sharp the reference ordered by the Secretary.

P. T. THARYAN—18-1-05.

A draft reference to the Advocate-General is placed below for approval.

K. KUPPUSWAMI MUDALIYAR—19-1-05.

P. T. THARYAN—19-1-05.

A. GALLETTI—20-1-05.

H. D. TAYLOR—22-1-05.

[Memorandum No. 39, dated 24th January 1905.]

From the Advocate-General, dated 4th February 1905.

The opinion of the Honourable the Advocate-General may be communicated to the Director of Public Instruction and a draft to that effect is placed below for approval.

K. KUPPUSWAMI MUDALIYAR—10-2-05.

P. T. THARYAN—10-2-05.

A. GALLETTI—13-2-05.

H. D. TAYLOR—14-2-05.

[G.O., No. 87, Educational, dated 15th February 1905.]

Educational Local & Munl. (1905) Department.

CURRENT No. 14

From

[Name] *The Hon'ble Mr. A.G. Bourne Esq. F.R.S.*

[Designation] *Director of Public Instruction*

[Station] *Madras.*

N. Ref. No. 10422 of 04

Dated *4th January* 1905.

Enclosures *4*

Received *5-1-* 1905

Registered *20* 1905

SUBJECT.

Submitting for orders of Government a reference from the Registrar of Books, Madras regarding the registration of Reassignments of Copy right.

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Act XX of 1847
Act XXV of 1867.

to 23-15-101 of

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C. No. 14, From the J.P.I. Re., No. 10422₀₆, dated 4 - 1 - 1905

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ORDER No. 87, dated 15.2. 1905.
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The Advocate-General's opinion
will be communicated to the D.P.I.

K.K.M.
10.2.05

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