Pension (1898) Department

Government (1898) of Madras.

EDUCATIONAL.

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Enclosures —
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G.O., No. 141, 2nd March 1898.

MARCH.

Copyright in Official Publications.

Communicating to the Director of Public Instruction the opinion of the Advocate-General on the question whether any copyright exists in official publications.

List

Order of 7th March 1898 No 215

GOVERNMENT OF MADRAS.

EDUCATIONAL DEPARTMENT.

Read—again the following paper :—

G.O., No. 579, Educational, dated 21st October 1897.

Read—the following paper :—

From J. B. BILDERBECK, Esq., M.A., Acting Director of Public Instruction, to the Secretary to Government, Educational Department, dated Madras, 9th August 1897, No. 9511.

I have the honour to inform you that I have been asked whether private individuals are at liberty to translate the Madras Educational rules into the vernaculars and to sell the translations for their own profit. As copyright in this and similar publications issued under the auspices of the Educational Department, without doubt, belongs to Government, only one answer can be given to the above question, but it appears to me that Government might with advantage part with so much of its right as would enable private individuals to translate these publications and to publish and sell the translations.

2. It seems to me that it is extremely desirable that certain portions of the Educational rules, the Grant-in-aid Code, the Inspection Code and other notifications should be translated into the vernaculars for the benefit of teachers and managers of schools who are ignorant of the English language, but I cannot advise Government to have these translations made and published at its own expense. Such a course would throw a great deal of work on the offices of the various Translators to Government and also on the already over-worked Government Press, and, moreover, the publication of these translations would be unremunerative to Government in view of the limited sale that can be expected for them. In 1893 and 1894 a portion of the first edition of the Educational rules was translated into Tamil, Telugu, Canarese, Malayalam and Hindustani and the translations were printed at the Government Press. The subjoined table, which is a copy of one supplied at my request by the Superintendent of the Press, is an eloquent commentary on the commercial aspects of the undertaking :—

Educational rules.	Date of publication.	Number of copies printed.	Sold for cash.	Price per copy.	Cash realized.	Gratis supply.	Sold by auction as per letter of the Director of Public Instruction, No. 4149, dated 1st April 1896.
			Rs.	Rs. A. P.	Rs. A. P.		
Tamil	25th Mar. 1893	500	263	0 4 6	73 15 6	..	237 †
Telugu	15th July	500	352	0 4 6	99 0 0	* 58	92 †
Canarese	24th Jan. ,, ...	300	39	0 4 6	10 15 6	2	259 †
Malayalam	31st July ,, ...	300	31	0 4 6	8 11 6	2	267 †
Hindustani	6th Mar. 1894	200	22	0 8 0	11 0 0	..	178 †

* Of this number 54 copies were supplied to the Agent to the Governor of Vizagapatam district as per endorsement of the Director of Public Instruction, No. B.B.—923 to 25, dated 19th September 1893, and No. B.B.—1944, dated 27th September 1893, and the two copies were sent to your department.

† Fifty copies of each have been retained in the Press—*vide* No. 4149, dated 1st April 1896, from the Director.

3. In these circumstances I would suggest that Government should assign to private individuals the right of translating, and publishing the translations, of such educational codes, notifications, &c., or such portions of these as they may be specially authorized to do, and that, in order to save repeated references to Government, it should delegate its authority in the matter of sanctioning such translations to the Director of Public Instruction for the time being.

4. Moreover, as it is most important that the translations should accurately express the meaning of the original, it would, I think, be expedient that the parties who are authorised to make translations should submit their translations before publication to the Translators to Government. This course would not add greatly to the work of these officers, while it would enhance the value of the translation when published by giving to it something of the nature of an official *imprimatur*.

5. I beg that early orders may be passed on these proposals.

Order—No. 579, Educational, dated 21st October 1897.

The Director's letter will be referred to the Advocate-General for an expression of opinion upon the question whether any copyright exists in official publications such as the Madras Educational rules, the Grant-in-aid Code and the Technical Examination notification.

(True Extract.)

(Signed) G. S. FORBES,
Secretary to Government.

To the Government Solicitor.

Read—also the following paper :—

From the Government Solicitor, Madras, dated 25th January 1898, No. 45.

Abstract.—Forwarding the following opinion of the Advocate-General, dated 24th January 1898 :—

[*Re* the question whether any copyright exists in official publications—*vide* G.O., No. 579, Educational, dated the 21st October 1897.]

OPINION.

Though the question directly referred to me for opinion is only whether any copyright exists in official publications such as the Madras Educational rules, the Grant-in-aid Code and the Technical Examination notification, yet, on referring to the letter of the Director of Public Instruction, dated 9th August 1897, No. 9511, I find that the principal question which arises for consideration is whether unauthorised translations of the above publications by a private individual will be an infringement of the copyright, if any, of the crown in the said publications.

2. The preponderance of judicial authority is decidedly in favour of the position that a translation is an original composition, and as such is not an infringement of the copyright in the work of which it is a translation. The translator has a copyright in the translation which he has published (see *Wyatt* v. *Barnard*, 13 R. R. p. 141, per Lord Eldon). But any one who re-translates it into the original language commits an infringement of the copyright in the original work. (*Murray* v. *Bogue*, 1 Drewry 353, 368). In *Millar* v. *Taylor*, 4 Burr at p. 2348, Mr. Justice Aston observed as follows :—

"I am of opinion that the publication of a composition does not give away the property in the work; but the right of the copy still remains in the author, and that no more passes to the public from the free will and consent of the author than an unlimited use of every advantage that the purchaser can reap from the doctrine and sentiments which the work contains. He may improve upon it, imitate it, *translate* it, oppose its sentiments, but he buys no right to publish the identical work."

And, in the same case, Mr. Justice Willes at p. 2310 observes as follows:—

"Certainly *bonâ fide* imitations, *translations* and abridgements are different, and in respect of the property may be considered as *new* works, but colourable and fraudulent variations will not do."

In *Burnett* v. *Chetwood*, 2 Meriv 441 where the author of a Latin work applied to restrain the publication of an English translation, Lord Macclesfield, while restraining the publication on the ground that it was not for the benefit of the public that an English translation should be published, added that "a translation might not be the same with re-presenting the original, on account that the translator has bestowed his care and pains on it, and so not within the prohibition of the Act." In *Prince Albert* v. *Strange*, 2 Degex and Smale p. 693, Vice-Chancellor Knight Bruce said: "A work lawfully published, in the popular sense of the term, stands in that respect differently from a book which has never been in this situation. The former may be liable to be *translated*, abridged, analysed, exhibited, complimented and otherwise treated in a manner that the latter is not."

3. The American law was to the same effect (see 3 Story, 780 per Story, J. and *Stowe* v. *Thomas* 2 Am-Law Reg. 210). In the latter case, Grier J. observed: "The author's exclusive property in the creations of his mind cannot be vested in him as abstractions, but only in the concrete form which he has given them and the language in which he has clothed them. When he has sold his book, the only property which he reserves to himself, or which the law gives him is the exclusive right to multiply the copies of that particular combination of characters which exhibits to the eye of another the ideas intended to be conveyed." Now, however, under the American Revised Statutes, section 4952, the author can reserve the right of translation, and if he does so he is protected against unauthorised translations (Serutton on copyright, third edition, 1896, p. 135).

4. The question arose recently in a case on the original side of the Bombay High Court, and Mr. Justice Parsons held that neither under English law nor under Act XX of 1847, a person who translates a book into another language is guilty of an infringement of copyright (*Munshi Shaik Abdurrahman* v. *Mirza Mahomed Shirazi* I.L.R. 14 Bombay 586).

5. The English Statute 5 and 6, Victoria C. 45, as amended and extended by 49 and 50 Victoria C. 33, section 8, is in force in British India along with India Act XX of 1847 as amended. And the wording of the Indian Act, as well as of the English Statute, is certainly in favour of the view taken by Mr. Justice Parsons. Even according to the principles of common law applicable to copyright, there is much to be said in support of it.

6. The doctrine that translation is not an infringement of copyright is strongly disapproved by certain text writers who express a hope that when the question actually arises for decision in England and is fully argued, such view will not prevail (*vide* Kerr on Injunctions, third edition, 1888, p. 369; Copinger on copyright, second edition, 1881, p. 214; Scrutton on copyright (1896) p. 135; Slater on copyright (1884) p. 72). Though there is considerable force in the arguments advanced by them, they are not so conclusive that one can feel sanguine that their view will prevail when the question again arises for actual decision before an English Court. As stated by Slater in his work on copyright, p. 70, it is tolerably well settled that a production, whether the subject of copyright or not, is liable to be translated into another language by any person who possesses the necessary ability, and who thinks it worth his while to make such a translation.

7. Under the International Copyright Acts 1844 to 1866, the right of translation is reserved to foreign authors of books published abroad. Though the said Acts are also applicable to British India, they have no bearing on the present case.

8. On the question of copyright in the publications in question, there can hardly be any doubt that the crown represented by the Local Government has the copyright in those publications. It may be suggested that in respect of translation, a work, the copyright of which vests in the crown, stands on a different footing from one, the copyright of which is in a subject. This necessarily leads to a consideration of the legal basis on which crown copyright rests. The Copyright Acts evidently do not

deal with the prerogative copyright of the crown, though possibly their provisions may be applicable to cases in which the crown may acquire by assignment the copyright of the author of a work. As stated by Kerr on Injunctions, third edition, p. 372 "crown copyright is not, like ordinary copyright, the creation of Statute. The crown has, by virtue of its prerogative, the exclusive right to the publication of Acts of Parliament, proclamations, orders of council, liturgies, books of divine service, the translation of the Bible, &c." On principle, the publications in question stand on the same footing as Acts of Parliament and orders of council. Is the copyright of the crown founded upon public policy only or upon right of property? The better opinion is that it is really founded upon right of property. Lord Mansfield in *Millar* v. *Taylor*, 4 Burr 2401, states: "Crown copies are, as in the case of an author, civil property which is deduced, as in the case of an author, from the Kings right of original publication." Willes and Aston J.J. were of the same opinion. While Yates J, the great opponent of literary property, in his dissenting judgment, distinguishes the right to copies published by authority as depending upon public principles perfectly distinct from literary property, the fruit of the author's invention. In the above case, the majority of the Judges deduce the common law copyright of a subject in his publications by analogy to the prerogative copyright of the crown. No doubt, reasons of public policy and State also demand that the crown should have the copyright in all Acts of Parliament, orders of council, proclamations and similar official publications in order that they may be correctly printed and promulgated. And in this view it would be equally important that translations of such publications should be correct and authorized. But this can be secured by the crown publishing translations and thereby acquiring a prerogative copyright in the translations also. If the Government does not consider it worth its while to publish translations of such official publications, it cannot reasonably complain of vernacular translations thereof being published by one of its subjects for the benefit of the public. I am of opinion that the crown has copyright in the publications in question as prerogative copyright independent of the imperial and the Indian Copyright Acts; that the juridical basis of such copyright is civil right of property as in the case of a private author, and that a translation of such publications is not an infringement of the copyright therein.

(Signed) V. BHASHYAM AIYANGAR,
Offg. Advocate-General.

Order—No. 141, Educational, dated 2nd March 1898.

The opinion of the Advocate-General will be communicated to the Director of Public Instruction for information.

(True Extract.)

S.S. Robe
for Ag. Secretary to Government.
14. 3. 98

To the Director of Public Instruction.
" Departments of the Secretariat including Departments under the Chief Secretary. (Revisions)
" Government Solicitor.

Ed. P. Secthariam