PART V. PERU.

The law of 1849 on literary property provides as follows:—

Duration.

Art. 1. Authors of writings, geographical charts, engravings, and musical compositions, of whatsoever kind, shall enjoy during their lives the exclusive right of being able to sell or circulate their works in the territories of the Republic, and the power of assigning their right in whole or in part.

Art. 2. The following are excepted from the right recognised in Art. 1: books and writings contrary to religion or good morals, and paintings or engravings which offend public morals; these works will be prosecuted in conformity with the laws.

Art. 3. The author's heirs and assigns shall enjoy the same rights for twenty years from his death.

Posthumous works.

Art. 4. The legitimate proprietors of a posthumous work shall enjoy the exclusive right during thirty years.

Deposit.

Art. 5. In order to prove at any time the copyright of a book, engraving, &c., it shall suffice to deposit a copy in the public library, if there be one, and another copy in the archives of the prefecture of the department where the work is published, except where there is a question or opposition raised by another person: in this case, the question must be decided by the tribunals. If the author does not desire to disclose his name, he shall deposit at the prefecture a sealed and closed envelope, in which his name shall be inscribed.

Penalties.

Art. 6. Any person publishing or selling within the Republic pirated publications shall incur a fine of 200 to 500 pesos for the benefit of the author, to whom there shall, in addition, be handed over all the copies.

Art. 7. Any person importing into or selling in the Republic publications made in a foreign country of works, the copyright of which belongs to another, shall be liable to suffer confiscation of all copies in his possession: these shall be allotted to the proprietor of the work.

Translations.

Art. 8. The author of a translation or version shall enjoy the same rights, provided he has fulfilled the formalities prescribed by Art. 5.

Art. 9. After the expiration of the periods mentioned in this law, the works, whatever they may be, shall become public property, and any citizen may freely print and sell them.

Rights of Foreigners.

Foreigners.

The law of 1849 not having defined who are to fall within the category of "authors," and being conceived in generous terms,

M. Darras has observed that possibly it might be held applicable to foreigners, whether resident in Peru or not, and whether publishing in Peru or abroad (*a*), but this view is probably too optimistic. At any rate, whilst Peru has ratified the Convention of Monte Video on the 25th October, 1889, she has expressly declared that she will not accept the accession of countries not invited to take part in the Congress of Monte Video in the same form as the accession of Spanish American countries invited to, but not represented at, that Congress (*b*). She has consequently refused to accept the adhesion of France, Italy, Spain, and Belgium to the Convention. Peru has no other copyright treaty.

SALVADOR.

Law of 2nd June, 1900.

Until the year 1900 copyright in Salvador was regulated by Art. 610 of the Civil Code of 1880, but on the 1 June, 1900, a law was passed, of which the provisions are as follows:—

Copyright and its duration.

Art. 1. Authors of writings of every kind, musical compositions, works of painting, design, sculpture, and, in short, all original works, are to have during their lives the exclusive right of selling, manufacturing, or putting in circulation their works reproduced by printing, lithography, moulding, or any other process of reproduction or multiplication whatsoever.

Art. 2. Their heirs are to enjoy the same right for twenty-five years, but the work falls into the public domain, if the treasury be the heir. Likewise the work falls into the public domain if the heirs do not within a year make use of their rights or renounce them before the Minister of "Fomento."

Art. 3. Authors and their heirs may transfer their rights to third persons.

Art. 4. The proprietor of a posthumous manuscript containing corrections made by the author of a work published during his life, is to enjoy the property therein for a fixed period of twenty-five years.

Art. 6. Theatrical pieces may not be performed on any stage in Salvador without the permission of the author during his life or of his heirs during the period of twenty-five years granted them.

Art. 7. Corporations are entitled to copyright for fifty years from publication.

(*a*) "Le Droit d'Auteur," 1897, p. 139.
(*b*) See note under the heading "Peru" in the Collection of Copyright Treaties published by the International Bureau at Berne in 1904.

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Art. 8. Translators of Latin or Greek works are protected for the like period as authors.

Formalities.

Art. 9. No Government document is necessary to confer copyright; it is sufficient to previously deposit a copy of the work with the Minister of "Fomento," and to indicate on the frontispiece to whom it belongs. Works manifestly immoral or contrary to public order will be forbidden.

Art. 10. The Government may accord privileges for a maximum period of five years to any one reprinting interesting works, provided the edition be correct and the permission of the proprietor be obtained.

Art. 11. At the expiration of the periods fixed by the preceding articles, a work may be considered common property, and any one may exploit it at his pleasure.

Penalties.

The penalties for piracy are, under the Penal Code of 1904, a fine and confiscation of piracies.

Art. 13. Authors or printers must send copies of their works to countries with which there may be treaties to this effect.

Periodicals.

Art. 14. Publications which have appeared in periodicals may be freely reproduced.

Art. 15. These provisions are without prejudice to treaties still in force.

Rights of Foreigners.

Foreigners.

Art. 5 of the above law provides that "foreigners who publish their works in Salvador shall enjoy the same rights as natives: likewise when, after they have been published abroad, a new edition shall be made in Salvador." Salvador has ratified the Pan-American Convention (decree of 16th May, 1902), and has treaties with the following countries: Costa Rica (12th June, 1895), France (2nd June, 1880), Guatemala (27th March, 1895), Honduras (19th January, 1895), and Spain (23rd June, 1884). A treaty, concluded on the 24th December, 1900, with Columbia does not appear to have been ratified by the latter country.

URUGUAY.

Law of 15th March, 1912.

The only copyright law of Uruguay is dated the 15th March, 1912 (*c*).

Works protected.

All literary and artistic works published or performed in the country, as well as the works of citizens of the Republic imported

(*c*) "Le Droit d'Auteur," 1913, p. 2.

from abroad, are declared to be private property. (Art. 1.) The expression "literary and artistic works" includes (*d*) books, pamphlets and other writings, dramatic and dramatico-musical works, choreographic works, musical compositions with or without words, drawings, paintings, sculptures, engravings, photographs, lithographs, geographical maps, plans, sketches and plastic works relating to geography, topography, architecture, or to the sciences in general; in short, any production in the literary or artistic domain capable of being published by any mode of printing or reproduction whatsoever. (Art. 2.)

Definition of copyright.

Copyright includes the liberty of disposing of, publishing, alienating, translating, or authorising the translation, and reproducing the work in any form whatsoever. (Art. 3.)

Translations.

Translators, provided their translations are made with the consent of the owners of the copyright in the original, have copyright in their translations, as also have translators of works which have fallen into the public domain; but in the latter case the translator cannot prevent similar translations by others. (Art. 4.)

Musical works.

In the case of musical compositions with words, the copyright belongs to the author of the music. (Art. 5.)

Portraits, &c.

Photographs, busts, pictures, and other artistic reproductions which represent any person become the exclusive property of such person, including the right of reproduction. (Art. 6.)

Special circumstances.

The copyright in anonymous and pseudonymous works is deemed to belong to the publisher. (Art. 7.) Any collaborator may exercise the entire right of publishing, reproducing, or translating the work, subject to accounting for profits to his co-authors. (Art. 9.) In the case of collective works the copyright is deemed to belong to the publisher, but each contributor may, unless he has formally assigned the copyright to the publisher, freely reproduce or translate his contribution. (Art. 10.)

Period of copyright.

The general period of copyright protection is the life of the author and twenty-five years after his death. (Art. 11.) For posthumous works the period is twenty-five years from first publication. (Art. 12.) In the case of collaborations the *post-mortem* period runs from the death of the last surviving author. (Art. 13.)

Piracy.

Art. 17 contains a list of acts which shall be deemed to be infringements of copyright. Amongst these we may notice (1) any printing or reproduction by mechanical process of a

(*d*) The definition Article is taken from Art. 5 of the Monte Video Convention, 1889, *ante*, p. 328.

PART V. URUGUAY.

literary work without the consent of the proprietor of the copyright; (2) adaptations, arrangements, or imitations of a literary, dramatic, or musical work; (3) public representation or performance of a dramatical or musical work; (4) appropriation of words for a musical composition, or of music for a literary composition, without consent; (5) copying or reproducing an artistic work by any process whatsoever; (6) reproducing portraits without consent. But by Art. 18 the following, amongst other things, are not to be regarded as piracies:—(1) publication of extracts, &c. intended for teaching, if the author's name be indicated; (2) reprinting articles from newspapers and reviews and reproducing engravings inserted in periodicals, unless prohibited at the foot of each article or engraving; (3) reproduction of fragments for comment or criticism: (4) representation by an author or his representative of theatrical works alienated by him, if two years have elapsed since the last representation; (5) reprinting by the author or his representative of literary works alienated by him, if five years have elapsed since stock was exhausted; (6) free reproduction of pictures, monuments, or allegorical figures exhibited in museums, promenades and public parks.

Formalities. In order to enjoy the rights given by this law, either two copies of the work, or two photographs of the work sufficient to identify the same, must be deposited at the National Library, together with a stamped declaration containing a description of the work and date of its being printed, exhibited, or published, and claiming copyright therein. (Art. 20.) Assignments must also be registered. (Art. 21.) Registration should be effected within three months after first publication or representation, as the case may be. Registration will be accepted after that date, but no action will lie for any infringement committed prior to registration. (Art. 25.) If registration is not effected within ten years, the work falls into the public domain. (Art. 26.)

Penalties. A person who infringes copyright is liable to a fine and payment of damages, and the infringing articles may be confiscated. (Arts. 29—31.)

Transitory provisions. Works published prior to the promulgation of the law may be registered within six months after such promulgation. (Art. 34.)

Rights of Foreigners.

All works published or performed (*e*) in Uruguay are, by Art. 1 of the above law, entitled to the benefit of copyright, as also are

(*e*) The law does not, apparently, require that the works shall be *first* published or performed in Uruguay.

the works of citizens of the Republic imported from a foreign country.

Uruguay has ratified the Convention of Monte Video, 1889 (*f*), but she has not accepted the adhesion of any European country. She has also signed, but not ratified, the Pan-American Convention.

VENEZUELA.

Early copyright laws.

The first copyright legislation in Venezuela was a law of the 19th April, 1837, which was replaced by a law of 12th May, 1887, closely modelled on the Spanish law of the 10th January, 1879, with the important exception that copyright was made *perpetual* in Venezuela. The law of 12th May, 1887, was a sufficiently satisfactory law, but in the year 1894 it was repealed and replaced by a new law of the 17th May, 1894, which required authors to comply with rigorous formalities in order to obtain copyright. The main provisions of the law of 17th May, 1894, are as follows (*g*):

Law of 17th May, 1894.

Art. 1. "Author" means any person who composes a scientific, literary, or artistic work, and "translator" means anyone who expresses a work in another language, distinct from that in which the original work or composition is expressed or written.

Art. 2. The right an author possesses over his composition, and the right acquired by translators over translated works or compositions, constitute intellectual property, which is sacred and inviolable like any other property, and is to be governed by the rules of the common law, subject to any restrictions established by law.

Art. 3. Copyright in an original work belongs legally to its author, or in the case of a translation to the translator, provided no pre-existing (*h*) international treaty prevents.

Duration.

Art. 4. Copyright is, by its nature, perpetual, and the following persons are to enjoy it: (a) Authors in respect of their works; (b) translators with respect to their translations; (c) persons who alter, abridge, make extracts from, or reproduce original or translated works with the consent of their proprietors; (d) publishers of unpublished works the proprietors of which are unknown, provided they make legitimate use of their rights; (e) assignees; (f) the heirs and representatives of proprietors; and (g) the nation, when the proprietor dies without heirs.

(*f*) *Ante*, p. 328.
(*g*) "Le Droit d'Auteur," 1895, p. 114.
(*h*) *Sic.* The word is ambiguous, and may mean either existing previously to this law or existing previously to the date when the work is published.

Transfer.

Art. 5. Copyright may be assigned by acts *inter vivos*, and the assignee obtains copyright in perpetuity, provided the rules and formalities established by the common law are observed.

Right of reproduction.

Art. 6. The author of a scientific, literary, or artistic work has the sole right of reproduction in any form or by any means, and (Art. 7) the author of a literary or scientific work has the right of translation.

Collaborations.

Art. 8. Copyright in collaborations, in the absence of contrary agreement, belongs to the joint authors in equal shares, but each of them may sue for infringements.

Commentaries, &c.

Art. 9. The consent of the proprietor of the copyright is necessary to the publication of the works of another, even though accompanied by notes, comments, and additions, but commentaries, criticisms, and notes upon any work may be published, provided only the portions or texts necessary for the object in view be inserted.

Art. 10. As regards works of art, and, in particular, musical works, any reproduction or copy falsifying the original is a piracy, and the consent of the author or his representatives is necessary before reproducing the work of another in the same or any other dimensions.

Anonymous works.

Art. 11. The publisher of an anonymous or pseudonymous work is to be deemed its author until the author proves his title.

Translations.

Art. 12. A translator has copyright in his translation, but without the right to prevent other translations.

Art. 13. A work may not be modified or altered without the consent of its author or his representatives.

Piracy.

Art. 14. Copyright in literary and scientific works extends to all written or spoken exposures of their ideas, comprising not only works that have been published, but writings of all kinds. Consequently, no one may publish, without the author's permission, either in pamphlet or any other form, (a) oral lessons and lectures; (b) pleadings or written judgments; (c) parliamentary, academic, or other speeches, except in political journals.

This provision is not to affect the right of Courts and tribunals to draw up authentic copies or documents.

Art. 15. Authors of speeches or writings the subject of the last preceding clause may publish or reproduce them in pamphlet or in any form they please.

Performing rights.

Art. 16. An injunction may be obtained against the unlawful public performance or execution of a literary or musical piece.

Art. 17. If the performance takes place in spite of the injunc-

tion the proprietor of the work is to be entitled to the total receipts, which may be recovered in a summary manner.

Art. 18. The author or proprietor of a dramatic or musical composition has the right to claim from the proper person that which the performance or execution of his work has produced (*i*) in a theatre or place of public entertainment, on conforming to the rules of the common law.

Art. 19. In case of performance of a lyrico-dramatic work, created in collaboration by the author of the libretto and of the music, the receipts or products are, in the absence of agreement to the contrary, to belong to the proprietors in equal shares, and (Art. 20) the author of the libretto and the musical part have each the right to print and sell separately the part of the work which he has created, but, in publishing the musical part, the words of a song may be added.

Formalities.

A register is established in the office of the governor of the federal district and in each of the offices of the State Presidents in which scientific, literary, and artistic works will be entered in chronological order. (Arts. 22 and 23.) The entry in the register is to give (a) the name and domicile of the person making the entry; (b) the title of the work; (c) the name of the author, translator, &c.; (d) the place and date of printing; (e) the edition, volumes, form, number of pages, and all other details which, in the opinion of the interested party, ought to be registered the better to assure his rights. (Art. 24.)

Request for protection.

Art. 25. In order to enjoy the benefits hereby conferred the author or translator or his representative should, before printing, engraving, or lithographing, address to the governor of the district or the State President a request containing the title of the work or composition, and, where registration is sought, the delivery of a "patent" to assure the copyright to the person entitled thereto.

Art. 26. Upon receipt of the request, the President or governor must, in his presence, take the oath of the applicant that the work in question, if original, or the translation has not been printed, engraved, or lithographed previously either in Venezuela or abroad (*k*), after which the title is to be registered, and (Art. 27) a sealed patent delivered to the applicant in the prescribed form.

Art. 28. Besides the titles of written works, those of engrav-

(*i*) *i.e.*, *semble*, net receipts. Under the preceding clause he is entitled to gross receipts.

(*k*) This is no real protection to a foreign work, it only prevents a pirate from obtaining copyright in the work he has pirated.

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ings, lithographs, architectural plans, geographical plans, and other artistic works, for which protection may be sought, are to be inscribed in the register or list kept at Caracas or in each State capital. At the bottom of these works are to be placed the words "Registered according to law," and underneath the signature of the proper authority (*l*).

Art. 29. The "patent" must be printed on the back of the title-page, and published at least four times in the official "Gazette."

Art. 30. There are no fees for registration, but the patent is to be on properly stamped paper.

Art. 31. Six copies of the work must be deposited at the registry.

Penalties.

Art. 32. The offence of falsification in prejudice of intellectual property is to be punished according to the Penal Code (*m*). Any fraudulent action or breach directed against the said property constitutes this offence; consequently, all are equally culpable who knowingly sell, expose for sale, or import pirated or falsified works. The responsibility falls, in the first place, on the author of the piracy, and, in his default, on the publisher and the printer, unless they respectively prove their innocence.

The infringing articles may also be forfeited. (Art. 33.)

Art. 38. The property in posthumous works belongs to the heirs or representatives of the author. Alterations, additions, annotations, and corrections left by an author relating to a previous work are considered posthumous works.

Rights of Foreigners.

Foreigners.

The only clause in the above law expressly referring to international rights is Art. 37, which authorises the government "to conclude treaties and arrangements with friendly nations with a view to better realising the doctrine upon which this law is based, provided that the government shall not accord to foreigners rights in excess of, or modifying, those conferred by the legislature upon intellectual property." No treaty has yet been concluded under the provisions of this Article, and it is impossible to say whether, in the absence of a treaty, a foreigner is entitled to any protection in respect of his works in Venezuela. The law of 1894 does not define "author."

(*l*) Presumably a copy of the signature.
(*m*) By fine and imprisonment.

UNITED STATES OF AMERICA.

Previous Copyright Acts.

In the United States, copyright in a published work depends entirely upon the legislation of Congress, but unpublished works are protected by the common law, as in England prior to the recent Act.

The Constitution of the 4th March, 1789, authorised Congress "to promote the progress of science and useful arts by securing for limited terms to authors and inventors the exclusive right to their respective writings and discoveries," and this provision is the source of the federal legislative power in matters of copyright. Several earlier laws were passed by Congress relating to copyright, but all these were repealed in 1870, and the entire law on the subject was embodied in an Act of 1873, which remained in force until 1909, with certain amendments made in the law, notably by the Act of 1891, commonly known as the Chace Act.

Copyright Act, 1909.

In the year 1909 was passed "an Act to amend and consolidate the Acts respecting copyright," which repealed all laws or parts of laws in conflict with its provisions (*n*), and is the Act which, as amended by Acts of 24th August, 1912 (*o*), and 28th March, 1914, now governs the copyright law in the United States.

Subjects of copyright.

The subjects of copyright under the Act of 1909 are: (a) books (*p*), (b) periodicals, (c) lectures, sermons and addresses, (d) dramatic and dramatico-musical compositions, (e) musical compositions, (f) maps, (g) works of art, (h) reproductions of works of art, (i) drawings or plastic works of a scientific or technical character, (j) photographs, (k) prints and pictorial illustrations, (l) motion picture photo plays, (m) motion pictures other than photo plays (*q*).

Unpublished works.

Common law copyright is expressly preserved (*r*), but statutory copyright may also be obtained in unpublished works, that is to say, works "of which copies are not reproduced for sale" (*s*).

Persons entitled to copyright.

The persons entitled by the Act to copyright protection for their works are: (1) the "author" of the work, if he is (a) a citizen of the United States, or (b) a resident alien domiciled in

(*n*) Sect. 63.
(*o*) Commonly known as the Townshend Act.
(*p*) As to the meaning of this and the following expressions, see "Rules and Regulations for the Registration of Claims to Copyright," Rule 2, Appendix D., *post*.
(*q*) Sect. 5 as amended by the Act of 1912.
(*r*) Sect. 2.
(*s*) Sect. 11.

PART V. UNITED STATES.

the United States at the time of the first publication of his work, or (c) a citizen or subject of any country which grants either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, the existence of reciprocal copyright conditions being determined by presidential proclamation (*t*); (2) the "proprietor" of the work, that is to say, a person deriving title under the author; and (3) the executors, administrators, or assigns of the author or proprietor (*u*).

Term of copyright.

The term of copyright in the United States is an original term of twenty-eight years from the date of first publication, with a right of renewal for a second period of twenty-eight years. This right of renewal belongs, in the case of a posthumous or a composite work, such as a periodical or encyclopædia, to the proprietor of the work, and in other cases to (a) the author, if still living; (b) the widow, widower, or children of the author, if the author is not living; (c) the author's executor, if such widow, widower, or children be not living; (d) if the author, widow, widower, and children are all dead, and the author left no will, his next of kin. Application for renewal must be made and registered within one year prior to the expiration of the first term (*x*). The assign of the author is not able to claim this renewal (*y*), but, presumably, the assign may have equitable rights to the renewed term after it has been claimed.

Assignment of copyright.

Copyright is distinct from the property in the material object copyrighted, and, *primâ facie*, a transfer of the material object does not transfer the copyright (*z*). Copyright may be assigned by any instrument in writing (*a*), but if executed in a foreign country, must be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorised by law to administer oaths or perform notarial acts (*b*). All assignments must be registered (*c*).

Publication.

The Act contains no precise definition of "publication," but, by sect. 62, "the date of publication" is, in the case of a work of which copies are reproduced for sale or distribution, to be "the earliest date when copies of the first authorised edition were placed on sale, sold, or publicly distributed by the proprietor of

(*t*) See *post*, p. 537.
(*u*) Sect. 8.
(*x*) Sect. 24.
(*y*) See Attorney-General's opinion (Report of Register of Copyrights, 1910, p. 46).
(*z*) Sect. 41.
(*a*) Sect. 42.
(*b*) Sect. 43.
(*c*) Sects. 44, 45.

the copyright or under his authority." Publication, therefore, only takes place with the concurrence of the proprietor of the copyright, and it would seem that, for books at least, there must be an issue of copies. Representation on the stage of a play is not a publication of it, nor is the public performance of a musical composition publication (*d*). It is not very clear whether the public exhibition of a work of art is a publication—it would seem to depend upon the circumstances. In the case of *American Tobacco Co.* v. *Werchmeister* (*e*), it was held that public exhibition in a place where copying was forbidden did not amount to publication, but the Court added "we do not mean to say that the public exhibition of a painting or statue where all might see and freely copy it, might not amount to publication within the statute, regardless of the artist's purpose or notice of reservation of rights which he takes no measure to protect."

Copyright notice.

Copyright is obtained by publication "with the notice of copyright affixed to each copy published or offered for sale in the United States by authority of the copyright proprietor" (*f*). By sect. 18 it is provided that this copyright notice "shall consist of the word 'Copyright' or the abbreviation 'Copr.,' accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication." In the case of copies of works (f) to (k) mentioned in sect. 5 (*g*), the notice may consist of the letter C inclosed within a circle thus: ⓒ accompanied by the initials, monogram, mark, or symbol of the copyright proprietor, provided that on some accessible portion of such copies, or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear (*h*). In the case of books or other printed publications, the notice must be upon the title-page or the page immediately following; in the case of a periodical, either upon the title-page or upon the first page of text of each separate number, or under the title heading; or, in the case of a musical work, either upon its title-page or the first page of music; provided that one notice of copyright in each

(*d*) See Regulation 23 of the Copyright Rules and Regulations, Appendix D., *post*.

(*e*) (1907), 207 U. S. Rep. 284.

(*f*) Sect. 9; Regulations 24, 25, 26. The notice may be omitted in the case of foreign made copies not offered for sale in the United States.

(*g*) *Ante*, p. 531.

(*h*) The old form of copyright notice will be sufficient in the case of works in which copyright subsisted at the time of the Act coming into force. Sect. 18.

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volume, or in each number of a newspaper or periodical published, is to be sufficient (*i*).

Effect of omission of copyright notice.

Accidental omission of the copyright notice from some copies does not invalidate the copyright, but damages are not in that case recoverable against an innocent infringer, and an injunction may be refused, except on the terms of reimbursing the expenses of an innocent infringer (*k*). On the other hand, no relief seems possible if the copyright notice is in the wrong place or a wrong form (*l*).

Registration and deposit.

The next step will be to register the copyright, which is effected by deposit at the Copyright Office of two complete copies of the best edition of the work (*m*), with a proper application for registration and a money order for the amount of registration fee (*n*). The statute requires this deposit to be made "promptly," which has been defined as "without unnecessary delay," but this does not mean the very day of publication (*o*).

Failure to make deposit.

The effect of a failure to deposit the necessary copies and to register the copyright is not to invalidate the copyright in the first instance, but only to prevent any action for infringement being brought until such deposit and registration have been effected (*p*), but notice may be given by the Register of Copyrights requiring the deposit to be made, and upon failure to comply with this notice within three months—or six months in the case of a foreign country—the proprietor of the copyright will be liable to a fine, and the copyright will become void (*q*).

Deposit in case of unpublished work.

In the case of unpublished works, statutory copyright may be obtained by deposit of one typewritten or manuscript copy in the case of a lecture, sermon, address, dramatic or musical work; a positive print in the case of a photograph; a photographic reproduction in the case of works of art, &c. (*r*). If, however, the work be afterwards published, deposit must be made in the ordinary way (*s*).

The "manufacturing provisions."

In addition to the above formalities, printed "books," except the original text (*t*) of books of a foreign origin in a language

(*i*) Sect. 19.
(*k*) Sect. 20.
(*l*) *Freeman* v. *Trade Register* (1909), 173 F. R. 419; Bowker on Copyright (Amer.), p. 131. As to false copyright notices, see sect. 29.
(*m*) Sect. 12.
(*n*) *I.e.*, one dollar, Regulations 22 and 40.
(*o*) Regulation 22. As to foreign works, see *post*, "Rights of Foreigners."
(*p*) Sect. 12.
(*q*) Sect. 13.
(*r*) Sects. 18 to 20.
(*s*) Sect. 11.
(*t*) It is to be noted that the exemption only applies to the "original text." Apparently the French translation of a German book, for instance, must comply with the manufacturing provisions: Bowker, p. 155.

other than English, must comply with the notorious "manufacturing provisions" of the Act. That is to say, they must be "printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or if the text be reproduced by lithographic process or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the texts and the binding of the said book shall be performed within the limits of the United States" (*u*). These requirements also extend to the illustrations of a book, and to separate lithographs or photo-engravings, except when, in either case, the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art (*x*).

These provisions are even more stringent than those contained in the repealed Act, inasmuch as they require that, not only shall the printing be done in the United States, but the type must be set and the binding done within the country. An affidavit to this effect must be made at the time of depositing the necessary copies (*y*), and, apparently, failure to comply with the manufacturing provisions involves loss of the copyright.

Rights of owner of copyright.

The proprietor of the copyright has the exclusive right (a) to print, reprint, publish, copy, and vend the work; (b) to translate, dramatise, arrange, or adapt the work; (c) to deliver in public for profit a lecture, sermon, or address; (d) to publicly perform the work (*z*).

Records, &c.

Authors of works published after July 1st, 1909, are also given the sole right to authorise the reproduction of their works by means of mechanical instruments (*a*), but subject to the condition, as regards musical works, that once the owner of the copyright has permitted such reproduction, any other person may make similar use of the copyrighted work upon payment of a fixed royalty of two cents on every record (*b*). The records themselves do not seem to be entitled to copyright.

Prohibition against importation.

The provisions of the American Act as regards importation of copyright works are somewhat unusual, inasmuch as they expressly permit the importation of copyright books under certain circumstances. Sect. 31 provides, generally, against the impor-

(*u*) Sect. 15.
(*x*) *Ib.*
(*y*) Sect. 16.
(*z*) Sect. 1.
(*a*) Sect. 1. As to foreign works, see *post*.
(*b*) Sect. 1.

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tation of "piratical copies," and even of copies authorised to be imported by the owner of the copyright which have not been produced in accordance with the manufacturing provisions of the Act; but the prohibition is not to apply to (a) works in raised characters for the use of the blind; (b) foreign-made periodicals containing authorised copyright matter; (c) authorised editions of works in foreign languages of which only an English translation has been copyrighted in the United States; (d) authorised copies published abroad when imported under special circumstances. The "special circumstances" permit the importation of authorised copies for individual use and not for sale, provided not more than one copy be imported at one time; by or for the United States; or by or for certain educational authorities, including free libraries, not more than one copy at a time; or when parts of libraries or collections are purchased and imported *en bloc* for the use of such authorities as before mentioned, or form parts of personal baggage belonging to persons or families arriving from foreign countries, and are not intended for sale.

Customs duties.

Books generally are also liable to payment of customs duties on importation into the States, but certain books are on the "free list," including books and pamphlets, chiefly in languages other than English (*c*); books, maps, music, photographs, etchings, lithographic prints and charts, specially imported, not more than two copies in any one invoice for the use of learned societies and free libraries, not for sale (*d*). The fact, however, that a work happens to be included in the "free list" does not authorise free importation in contravention of the copyright laws.

Rights of Foreigners.

The Chace Act, 1891, first gave foreigners copyright.

Until recent times, a foreign author or publisher had no rights as against an American publisher who reprinted or issued his work in America. The first Copyright Act of 1790 was expressly applicable only to citizens of the United States or persons resident there, and this provision was maintained in all subsequent amendments of the law until the Chace Act of 1891. Under that Act, foreigners could obtain American copyright, provided they were citizens or subjects of a foreign State or nation which permitted to Americans "the benefit of copyright on substantially the same basis as its own citizens," or of a State or nation which

(*c*) Regulation 518. (*d*) Regulation 519.

is "a party to an international agreement (*e*) which provides for reciprocity in the granting of copyright by the terms of which agreement the United States of America may, at its pleasure, become a party to such an agreement."

The Act of 1909.

The Act of 1909 provides (*f*) "that the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign nation, only:

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

(b) When the foreign State or nation of which such author or proprietor is a citizen grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty: or when such foreign State or nation is a party to an international agreement (*e*) which provides for reciprocity in the granting of copyright by the terms of which agreement the United States may, at its pleasure, become a party thereto."

The existence of such "reciprocal conditions" is to be determined by Presidential proclamation, which would appear to be conclusive.

Gramophone records.

With regard to the right to authorise reproduction by mechanical contrivances it is provided (*g*) that as regards musical works this right shall not apply to "the works of a foreign author or composer unless the foreign State or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights."

Countries receiving copyright protection in America.

Presidential proclamations have been issued according the right to acquire general copyright in the United States to citizens of Great Britain and her possessions (*h*), and the following other countries—Austria, Belgium, Chili, China, Costa Rica, Cuba, Denmark, France, Germany, Guatemala, Honduras, Hungary,

(*e*) The Berne Convention is not, it appears, such an international agreement.
(*f*) Sect. 8.
(*g*) Sect. 1.
(*h*) Notwithstanding that the unpublished works of American citizens are not protected in Great Britain or her possessions (*ante*, p. 27). There is, however, probably small prospect of the Presidential proclamation being revoked on this ground.

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Italy, Japan, Luxemburg, Mexico, Netherlands and her possessions, Nicaragua, Norway, Portugal, Salvador, Spain, Sweden, Switzerland, and Tunis. British subjects cannot, however, obtain gramophone and similar rights, these only being, at present, accorded to Belgium, Cuba, Germany, Luxemburg, and Norway.

America really grants no international protection.

In reality, the American law does not provide for international protection at all: it only enables the citizens of foreign countries under certain circumstances to obtain American copyright. Under the Revised Berne Convention the nationality of the author in the case of a published work is of no importance. In America the nationality of the author is of the first importance. A citizen, for instance, of a country which is not a "proclaimed" country—Russia, for example—cannot obtain copyright in America for his works by first publishing them in England, or even by publishing simultaneously in England and America; in order to gain American copyright he must become domiciled in America prior to publishing his work (*i*). Again, the principle of the Revised Berne Convention is that a work entitled to copyright in any one country of the Union *ipso facto* becomes entitled to copyright in all the other countries of the Union; the American law requires that the work shall be published first in America, or simultaneously in America and a foreign country, and must comply with all the formalities imposed by the Act in respect of native works, except in so far as these may have been expressly modified in favour of foreigners.

Formalities to be observed.

Foreign works must, therefore, be registered at the Copyright Office in Washington, and every copy must bear the necessary copyright notice (*k*). There are, however, two modifications of the law in favour of foreigners, first, in respect of deposit of copies (*l*), and, second, as regards the manufacturing provisions (*m*).

Deposit of one copy sufficient.

We have seen that the native author must deposit two complete copies of the best edition of his work. Sect. 12 of the Act of 1909 has recently been amended (*n*), and now provides that if the work is by an author who is a citizen or subject of a foreign State or nation, and has been published in a foreign country, only *one* complete copy of the best edition then published in such foreign country need be deposited.

Manufacturing provisions.

As regards the "manufacturing provisions," it has been pointed out that books of which the author is not a citizen or domiciled

(*i*) He cannot indirectly qualify for copyright by assigning to an American or other proprietor: *Bong* v. *Campbell* (1909), 214 U. S. R. 236.
(*k*) *Ante*, p. 533. (*l*) *Ante*, p. 534.
(*m*) *Ante*, p. 534. (*n*) Act of 28th March, 1914.

resident of the United States, if they are written in a language *other than English*, are not required to comply with the "manufacturing provisions" of the Act (*o*). On the other hand, a book published by a British or other foreign author in the English language must be printed from type set within the United States, and the printing and binding must also be performed within the limits of the country. This is a particularly onerous condition of copyright, and accounts for the fact that the great majority of English books are, at the present day, entirely unprotected in America.

Ad interim protection.

Some slight concession is, however, accorded to British authors by sect. 21, which enables them to obtain an *ad interim* protection for their works published abroad in the English language prior to the date of their publication in the United States. In order to obtain this *ad interim* protection, which is to have all the force and effect of copyright under the Act, deposit must be made at the Copyright Office not later than thirty days after the publication of the work abroad, of a complete copy of the foreign edition (*p*), with a request for the reservation of copyright, and the protection is to last for another thirty days after such deposit (*q*). This provisional copyright becomes permanent when, within the period of provisional protection, an authorised edition of the book is published within the United States complying with the manufacturing provisions of the Act (*r*). Thus, books in the English language can obtain *ad interim* protection for a period ranging from thirty days to sixty days before permanent copyright is obtained, the exact period depending upon how soon after publication the "foreign" copy is deposited at the Copyright Office (*s*). Of course, if an American edition with notice of copyright can be published simultaneously with the English edition, there will be no necessity to apply for *interim* protection, and this is the course which is adopted by many of the larger publishing firms having offices in both countries.

Manufacturing provisions do not apply to

It must further be remembered that the manufacturing provisions only apply to "books," and, moreover, to "the printed book or periodical specified in sect. 5, sub-sects. (a) and (b)" (*t*), so

(*o*) *Ante*, p. 534.
(*p*) It is not necessary that this copy should have the copyright notice required by sect. 9 (Copyright Rules, r. 26).
(*q*) Sect. 21.
(*r*) Sect. 22.
(*s*) There is a movement in the States in favour of legislation extending the time for the manufacture of the American edition.
(*t*) *Ante*, p. 531.

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artistic, dramatic, or musical works.

that not only are artistic works exempted from those provisions, but also dramatic and musical compositions, which are specified in sub-sects. (d) and (e) of sect. 5, notwithstanding that such works have been printed in book form (*u*). The proprietors of the copyright in such works can, therefore, obtain copyright for their foreign editions upon complying with the general formalities of the Copyright Act, without having them manufactured in the United States. First publication upon American soil is not expressly stated to be essential, provided the work has the requisite copyright notice and deposit of one copy with the requisite copyright notice has been made "promptly" at the Copyright Office in America (*x*); but the doubt has been expressed whether a book published in another country prior to publication in the United States has not fallen into the public domain, and thus forfeited copyright protection in the United States (*y*).

Treaties and conventions.

America is not a party to the Berne Convention, but she is a party to the Pan-American Convention of 1902, including the modifications made to that Convention at Buenos Aires in 1910 (*z*). She also has special Copyright Treaties with China (8th October, 1903), securing protection for ten years in that country for American books, maps, prints, or engravings, specially prepared for the use and education of the Chinese, and translations into Chinese of any book, but permitting Chinese subjects to make original translations into Chinese; and with Japan (10th November, 1905, 11th August, 1908), granting mutual protection to works, other than translations, and additionally protecting American works in China and Corea (*a*). She has also recently concluded a Copyright Treaty with Hungary (30th January, 1912), whereby authors who are citizens or subjects of either country are entitled to protection for their works in the other country, subject, however, "to the performance of the conditions and formalities prescribed by the laws and regulations of the country where protection is claimed under the present Convention," but works are to be protected independently of the existence of protection in the country of origin of the work.

(*u*) *Ditson* v. *Littleton* (1895), 67 F. R. 905; *Hervieu* v. *Ogilvie* (1909), 169 F. R. 978.
(*x*) *Ante*, pp. 534, 538.
(*y*) Bowker, p. 127.
(*z*) *Ante*, p. 328.
(*a*) *Ante*, p. 477.

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Hawaii, &c.

Alaska, Hawaii, Porto Rico, and the Philippine Islands are all specifically referred to in the American Act of 1909 (*b*), which is, therefore, in force in those countries. By a War Department Order of 1907, American copyright was extended to the Canal Zone of Panama.

Cuba.

Cuba stands on a different footing. As a Spanish colony, Cuba came under the Spanish law of 1879, and this law continues to be applicable under four military ordinances promulgated between the years 1900 and 1902, during the period of the United States protectorate, and continued under its present insular government. The first ordinance (*c*) referred to deals with the rights of foreigners, and prescribes as follows:—

Military governor of Cuba.

1. Authors of foreign scientific, literary, and artistic works, their agents or representatives, shall enjoy in the island of Cuba the protection conferred by the Spanish Copyright Law of 10th January, 1879 (*d*), for the period during which these works are protected in the country of origin, provided it does not exceed that prescribed by the said law, and that the conditions required by it and by the Rules for its execution (*e*) be fulfilled.

2. The general register provided by Art. 33 of the above-mentione' law shall be kept by the State and Government Department.

3. Foreign works must be entered in the general register. For this purpose a certificate issued by the competent authority of the country of origin of the work, duly legalised and establishing ownership in favour of the person seeking registration, should be presented.

4. The civil governors and municipal mayors shall not suspend the performance or recitation of foreign literary or musical works by virtue of Art. 63 of the Rules for Execution unless the person claiming such suspension establishes that he is the proprietor of the work, or the agent of the proprietor, by presenting the certificate of registration issued by the officer charged to keep the general register, or, in default, the agent's authority.

5. Registration of foreign works shall be gratuitous, and proprietors or their representatives can obtain, free of cost, certificates of registration.

By the second ordinance, dated 13th February, 1901, it is

(*b*) See sect. 34.
(*c*) 19th March, 1900. Translated from "Le Droit d'Auteur," 1903, p. 32.
(*d*) *Ante*, p. 429.
(*e*) These are the rules referred to, *ante*, p. 434.

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declared that for the purpose of registration of foreign copyrights it shall be sufficient to produce a document executed in the presence of a notary public or other public officer authorised to take oaths or declarations, provided the document contains, in full, the titles or certificates relating to the property delivered in the country of origin of the work, and that the officer in whose presence the document is executed certifies that the original certificates have been produced to him.

The third ordinance, dated 13th June, 1901, deals with the rights of natives, and is as follows (*f*):—

1. Rights of property in the matter of patents, copyrights, and trade marks duly acquired in Cuba, the Island of Pirios, and the Island of Guam, in accordance with the provisions of the Spanish law, and which existed on the 11th April, 1899, in these islands, or any of them, shall subsist in their integrity for the entire periods for which they have been granted: the proprietors shall be protected and maintained in their said rights, provided always that the original or duly certified copy of the certificate of registration of the trade mark or copyright be deposited at the office of the governor of the island where protection is sought . . . and the original certificate or duly certified copy thereof shall be received and deposited at the office of the governor of the island, for all the purposes of this ordinance, without the necessity for any other certification.

2. The rights of property accorded by the United States in the matter of patents (including designs), those concerning trade marks, prints, and labels registered at the office of patents for the United States, and those concerning copyrights duly registered at the office of the Library of Congress, shall be maintained and protected by the civil government of the said islands, provided that a duly certified copy . . . of the certificate of registration of copyright . . . be deposited at the office of the governor of the island where protection is desired.

3. The person, firm, partnership, or corporation guilty of violating the rights protected by virtue of the observance of the provisions of this ordinance shall be liable to the civil and penal punishments created and established by the Spanish laws relative to the aforesaid matters which remain in force in the said islands.

4. The provisions of existing ordinances in conflict with this ordinance are revoked.

The fourth ordinance (dated 26th February, 1902) contains pro-

(*f*) Translated from "Le Droit d'Auteur," 1903, p. 38.

visions as to the form of register prescribed by Art. 33 of the Spanish law and paragraph 3 of the military ordinance of 19th March, 1900, and this has now been replaced by a local ordinance of the 3rd April, 1909.

Entitled to benefit of U. S. Act of 1909.

Cuba has been "proclaimed" as a country entitled to the benefit of the United States Act of 1909, including the provisions relating to mechanical instruments for recording musical works.

TABLE SHOWING THE DURATION OF THE PRINCIPAL PERIOD OF COPYRIGHT PROTECTION IN VARIOUS FOREIGN COUNTRIES OF THE WORLD.

Argentina	20 years from death of author.
Austria	30 years from death of author.
Belgium	50 years from death of author.
Bolivia	30 years from death of author.
Brazil	50 years from 1st January in year of publication.
Chili	5 years from death of author.
China	30 years from death of author.
Columbia	80 years from death of author.
Denmark	50 years from death of author.
Ecuador	50 years from death of author.
Egypt	(?) Perpetual.
Finland	50 years from death of author.
France	*Id.*
Germany	30 years from death of author.
Greece	15 years from day of publication.
Guatemala	Perpetual.
Haiti	Life of author and his widow and 20 years more if there be children, 10 years if none.
Holland	50 years from death of author.
Hungary	50 years from death of author.
Italy	1st period: life of author or 40 years from publication, whichever shall be the longer; 2nd period: 40 years (*g*).
Japan	30 years from death of author.
Luxembourg	50 years from death of author.
Mexico	Perpetual. (Performing rights 30 years from death of author.)
Monaco	50 years from death of author.
Norway	*Id.*
Paraguay	(?) Perpetual.
Peru	20 years from death of author.
Portugal	50 years from death of author.
Roumania	10 years from death of author.
Russia	50 years from death of author.
Salvador	25 years from death of author.
Siam	7 years from death of author or 42 years from publication, whichever shall be the longer.
Spain	80 years from death of author.
Sweden	50 years from death of author (10 years from death of author for works of art).
Switzerland	30 years from death of author.
Tunis	50 years from death of author.
Turkey	30 years from death of author.
United States	28 years from registration, with a further period of 28 years on re-registration.
Uruguay	20 years from death of author.
Venezuela	Perpetual.

(*g*) During the second period the copyright is not exclusive. The work may be reproduced by any one paying a percentage to the proprietor.

PART VI.

ARRANGEMENTS BETWEEN AUTHORS AND PUBLISHERS.

Contracts between authors and publishers should be in writing

CONTRACTS between authors and publishers are not, as in some countries, notably Germany, regulated by any special law, but their validity, construction, and enforcement depend upon the ordinary rules of law governing contracts relating to dealings with personal property. It is always advisable that they should be in writing, and if they are not to be performed within a year, writing is necessary under the Statute of Frauds (*a*).

In *Sweet* v. *Lee* (*b*), it appeared that the agreement for the publication of a dictionary of legal practice was contained in a memorandum, which was signed with the initials of the publisher and of the author, and was to the effect that the latter should receive 80*l*. a year for five years, and 60*l*. a year for the rest of his life if he should live longer than five years. This was held to be void under the Statute of Frauds; because, being a memorandum of an agreement not to be performed within a year, no consideration was expressed on the face of it, and it was without any signature other than the initials of the parties. The plaintiff, therefore, was not entitled to damages claimed to have been sustained by the failure of the defendant to perform his agreement to prepare a new edition. Nor, although the contract was unenforceable,

(*a*) But a contract by a printer to print, and find the paper for printing a number of copies of a work, is not a contract for the sale of goods within the 4th section of the Sale of Goods Act, 1893; and the printer consequently may recover the price in an action for work, labour and materials, where the contract is a verbal one: *Clay* v. *Yates* (1856), 1 H. & N. 73. And a printer who is employed to print certain numbers, but not all consecutive numbers, of an entire work has a lien upon the copies not delivered for his general balance due for printing the whole of those numbers: *Blake* v. *Nicholson* (1814), 3 M. & S. 167. But it seems that by the custom of trade a printer cannot recover for the printing of a work before the whole is completed and delivered: *Gillett* v. *Mawman* (1808), 1 Taunt. 137; see also *Adlard* v. *Booth* (1837), 7 C. & P. 108. A contract to satisfy the Statute of Frauds need not appear from one document, but may be collected from any number of documents, provided they be sufficiently connected: see *Boydell* v. *Drummond* (1811), 11 East, 142; *Mavor* v. *Pyne* (1825), 3 Bing. 285; *Pearce* v. *Gardner* (1897), 1 Q. B. 688.

(*b*) (1843), 3 Man. & Gr. 452.

could the plaintiff, having paid for several years the sums mentioned in the memorandum, recover the money so paid on the ground of failure of consideration.

MSS. sent on approval.

Offer and acceptance are essential to every valid contract. If an author sends his manuscript to a publisher on approval, this is an offer by the author that the publisher shall have the right to publish on terms to be agreed upon, and if the latter publish without any agreement as to the author's remuneration, the law will imply a promise to pay a reasonable price for the work. What, short of actual publication, amounts to an acceptance of an author's manuscript will depend upon the circumstances of the case, but if the publisher retain the article and has it put into type and a proof sent for revision to the writer, the latter may generally treat this as an acceptance of his manuscript and sue the publisher for the price, even though the article is never, in fact, published (*c*).

An action maintainable for not supplying a work agreed to be furnished.

If an author agree in writing to supply a bookseller or publisher with a manuscript of a work to be printed by the latter, an action for damages can be maintained for refusing to furnish the same (*d*), provided the work be one which, if published, would not be libellous (*e*), or would not subject the author to punishment (*f*).

Should the work be stopped the author must be paid for work already done.

Where, however, the author was engaged for a certain sum to write an article to appear, among others, in a work called "The Juvenile Library," and before he had completed his article, and before any portion of it had been published, the work in which it was to have appeared was discontinued, Lord Chief Justice Tindal held that the publishers were not entitled to claim the completion of the article in order that it might be published in a separate

(*c*) *Macdonald* v. *National Review*, Westminster County Court, 16th May, 1893; *Pall Mall Gazette*, 17th May, 1893.

(*d*) *Gale* v. *Leckie* (1817), 2 Stark. N. P. C. 107. The Court of Chancery, however, could not compel him to write: *Clarke* v. *Price* (1819), 2 Wils. C. C. 157.

(*e*) *Lyne* v. *Sampson Low & Marston*, *Times*, 17th Feb., 1873.

(*f*) *Gale* v. *Leckie*, *supra*; and see *Brook* v. *Wentworth* (1795), 3 Anstr. 881; *Cowan* v. *Milburn* (1867), L. R. 2 Ex. 230. A contract for the publication of a book which it is unlawful to publish is not valid. But where this defence is set up, and the work is not produced, and no evidence of its character is offered, the jury are not to pronounce that the book is obnoxious: *Gale* v. *Leckie*, *supra*. A printer cannot maintain an action against a publisher for money due for printing an obscene book: *Poplett* v. *Stockdale* (1825), 1 Ryan & M. 337. But where a printer, after printing part of a book, received the manuscript of the other part and found it to be libellous, it was held that he was not bound to print the libellous part, and was entitled to recover for what he had printed: *Clay* v. *Yates* (1856), 1 Hurl. & N. 73; *Lyne* v. *Sampson Low & Marston*, *supra*.

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form for general readers, but were bound to pay the author a reasonable sum for the part which he had prepared (*g*).

Payment to author's representative for part of work finished.

Where a work called the "Elements of Mechanical Philosophy" was published in parts, the agreement between the author and publisher being that each part should be paid for when issued, and after the publication of a complete part the progress of the work was interrupted by the death of the author, it was held that the representatives of the deceased author were entitled to payment of the stipulated price of the published part (*h*).

Care necessary in drafting publishing agreements.

All agreements between authors and publishers should be drawn with care, so as to make the respective rights of the parties clear. "Agreements between authors and publishers," remarked Page-Wood, V.-C., in *Reade* v. *Bentley* (*i*), "assume a variety of forms. Some are so clear and explicit that no doubt can arise upon them. Thus, where an author assigns his copyright, the transaction is one which every person understands, and which leaves no room for uncertainty as to the rights of the parties."

Agreements for sale of copyright outright.

It will be remembered that in the case of literary copyright, the Copyright Act, 1911 (*k*), provides that the copyright shall vest, in the first instance, in the author, and not in the publisher, unless the relationship of master and servant subsists between the author and publisher (*l*). This, however, is not necessarily so in the case of engravings, photographs or portraits, for sect. 5 (1) (a) provides that, where such works have been made for valuable consideration in pursuance of an order, the person who has given the order shall be the first owner of the copyright (*m*). If, therefore, the terms of the arrangement between the author and publisher be that the copyright in a literary work is to belong to the publisher upon payment to the author of a fixed sum, an assignment in writing of the copyright by the author to the publisher should be made, even though the work has been written to the order of the publisher (*n*), but, in the case of an engraving, photograph or

(*g*) *Planché* v. *Colburn* (1832), 5 C. & P. 58; on app. 8 Bing. 14.

(*h*) *Constable* v. *Robinson's Trustees*, 14 Jac. Dec. 166, 1st June, 1868. One judge, however, dissented, thinking the contract was one for the entire work, and that the object of partial payment was the accommodation of the author, and not any qualification of the original obligation. If a bookseller undertakes to publish a work in parts, and before the completion he dies, the subscriber has a claim upon the estate to complete the work, for otherwise these parts which he has purchased upon the faith of the work being completed are useless.

(*i*) (1857), 1 K. & J. 656.

(*k*) Sect. 5 (1), *ante*, p. 108.

(*l*) Sect. 5 (1) (b), *ante*, p. 117.

(*m*) *Ante*, p. 113.

(*n*) As to what would amount to an assignment, see *ante*, p. 124. If no assignment has been executed, however, the publisher may have equitable rights: see *ante*, p. 124.

portrait made to the order of the publisher, no such assignment will be necessary.

As to the alteration of an author's work where copyright belongs to publisher.

If a publisher be the absolute owner of the copyright, he is entitled, without the consent of the author, to publish successive editions of the work with additions and corrections; and, in bringing out new editions, may make such omissions and other changes in the original as will not injure the reputation of the author. But such revision when done by another, cannot lawfully be represented as having been made by the author of the original: and if the publisher issues a new edition under the author's name so incorrect as to be injurious to the author's reputation, he renders himself liable to an action for damages (*o*).

When, however, a portion of the work is written to be published under the name of another, the author would have no remedy in case of its alteration or variation (*p*). This was decided in *Cox* v. *Cox* (*q*). The defendant, a house agent, having prepared a book on the sale of estates, applied to the plaintiff, a barrister, to correct the work, and to supply the legal matter necessary to complete it, for which the plaintiff was to be paid a certain remuneration, according to the number of pages the work might contain. "No agreement," said the Vice-Chancellor in passing judgment, "was come to as to the name under which the work was to appear. The case, therefore, stood thus: The defendant said, 'I am going to write a work, which you shall correct and put into shape, and a part of which you shall supply for a certain remuneration.' If that be so, the plaintiff was evidently in the subordinate position of assisting in the production of a work which was to come out in the name and as the work of the defendant. The work would be partly the defendant's own composition, and it would be partly the work of the plaintiff; but it was to come out as one entire publication, and to be paid for at one uniform rate. The bulk of the matter was apparently to be supplied by the defendant. The plaintiff employed himself in the preparation of a treatise on the law of vendor and purchaser and landlord and tenant, the whole of which the defendant desired to have compressed into one printed sheet. The plaintiff, on the other hand,

(*o*) See *Archbold* v. *Sweet* (1832), 1 Moo. & Rob. 162.

(*p*) The name of the editor appearing upon the title-page forms no part of the title; and the Master of the Rolls refused to restrain by injunction the proprietors of a journal from omitting the publication of the editor's name on the title-page, although the agreement between the proprietors and editor provided that the title of the journal should not be altered without mutual consent: *Crookes* v. *Petter* (1860), 6 Jur. 1131. Similarly the author's name may be omitted: *Brook* v. *Lloyd* (1910), 26 T. L. R. 519.

(*q*) (1856), 11 Ha. 118.

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thought that no information of value on the legal incidents of the property treated of could be condensed within that compass, and he extended this portion of the work to three sheets and a half. The defendant then said: 'If you will reduce this matter to one-half of its present magnitude, I am willing to print it; if not, I decline to print it at all.' This was an absolute rejection of the plaintiff's contribution, except upon the terms of reducing it in quantity to the extent which the defendant required. The plaintiff, on the other hand, was resolved that the whole should be printed or none. There was at this point of the transaction great difficulty in the way of any arrangement. The defendant said, 'I will have only one sheet and three-quarters of legal matter.' The plaintiff insisted that he should have three sheets and a half, or none. Then what followed? The plaintiff looked over the manuscript again, but did not reduce it to the required dimensions; and the defendant, although it had not been so reduced, took the manuscript in the state in which it had been left (which he could only have been entitled to do under the contract), and he began to print the work. The plaintiff proceeded to correct the proof sheets; but (as he states), when he began to find that the legal portion of the work was introduced in a mutilated form, he intimated his refusal to consent to any alteration; and in this state of things the application is made for the injunction. I have st. ' what appears to me to be the substance of the contract between the parties, up to the time of the discussion as to the space which the legal matter should occupy; and that contract the plaintiff has, by the fourteenth paragraph of the bill, treated as subsisting, for he thereby claims £60 as the unpaid part of the remuneration on the whole contract. On the other hand, the defendant, having taken the manuscript and used it, cannot, I think, dispute his liability to pay for it, according to the terms of the contract. But that would be a question for a court of law. Something was said with regard to the possible effect of the alteration of the plaintiff's portion of his work, as affecting his reputation; but, as it was held in Sir James Clarke's case (*r*), the possible effect on reputation, unless connected with property, is not a ground for coming to this court, though it may be an ingredient for the Court to consider when the question of a right of property also arises. . . . A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it,

(*r*) *Clarke* v. *Freeman* (1850), 11 Beav. 112.

and produce it in a mutilated form? How far, in a case in which the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and thenceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire; and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which had been accepted in that shape, the question might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required, in such a form as to enable the defendant to publish it as his own. I can find no circumstances from which any such special contract as I have mentioned can be inferred. The plaintiff has, indeed, sought to make it a stipulation that his contribution of the legal materials shall not be published otherwise than entire; but this stipulation has no foundation in the original contract, upon which his case rests. It may well be that this part of the work may suffer in value from the alterations made by the defendant, but no one will probably expect to find the law set forth with any great amount of precision in a work issued by a house agent for the guidance of his customers in dealings of a simple character. If any such mistakes should occur in the legal portion of the work, as the plaintiff apprehends, he will have the remedy in his own hands, by correcting the errors in a subsequent work, in which he may publish his treatise in a distinct form" (*s*).

Agreements for royalties or share of profits.

But instead of an "outright" transfer of his copyright, the author may agree with the publisher that the latter shall pay him a specified royalty upon all copies of the work which may be sold, or that the profits upon sale of the work shall be divided in certain proportions. In these cases it is still more important that the agreement between author and publisher shall be clear and precise.

Distinction between a publishing agreement and an assignment of copyright.

The first point that should be made clear is as to whether the copyright shall belong to the publisher, or whether he is merely to have the exclusive right of publishing the work.

(*s*) This right the plaintiff would have had by virtue of sect. 18 of the Copyright Act, 1842, now repealed (see *ante*, p. 17). No such right is given by the Copyright Act, 1911: cf. *Lee* v. *Gibbings*, *post*, p. 567. And as to the right of an editor of an encyclopædia or magazine who is interested in the success of the publication to prevent the owner of the copyright in the publication from altering articles proposed to be inserted by the editor, see *Crookes* v. *Petter* (1860), 6 Jur. 1131.

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The distinction between a mere publishing agreement and an assignment of copyright is well recognised. Thus, in the case of *Sweet* v. *Cater* (*t*) the agreement, after reciting that the author had prepared a tenth edition of his work, which the publisher was desirous of *purchasing*, and that it had been agreed that a certain printer should print a given number of copies, and the publisher should pay to the author *for the said tenth edition* a certain sum, went on to direct that the work should be in a given number of volumes, and should *be sold* to the public for a given price. It was objected that the plaintiff, the publisher, was not, under this agreement, the *proprietor of the copyright* within the meaning of the statute (54 Geo. III. c. 156, s. 4), but a mere licensee to sell a given number of copies. The Court overruled the objection, holding that the copyright was equitably vested in the publisher, on the ground that the contract was obligatory on both parties, that the plaintiff was bound to sell, and therefore the author was bound to abstain from doing anything which would interfere with the sale. The Court, moreover, were of opinion that the equitable right to the copyright endured until the number of copies fixed by the terms of the agreement had been exhausted.

Presumption that copyright is not intended to be assigned.

But wherever there are continuous obligations on the part of the publishers—for instance, the payment of royalties to the author—the tendency of the Courts is to construe the agreement as conferring upon the publisher a conditional licence to publish, rather than as giving him an equitable title to the copyright. Thus, in *Re Jude* (*u*), the plaintiff was the proprietor of the copyright in a series of musical compositions called "Music and the Higher Life." In the year 1900 the defendant company, through their managing director, agreed in consideration of the plaintiff giving to the company "the sole and exclusive right of printing and publishing" this series in volume form: first, to bear the whole cost of printing and issuing the volume; secondly, to pay the plaintiff 6*d*. on every copy sold; thirdly, to supply the plaintiff with such copies as he should require at 1*s*. 6*d*. per copy, such copies not to be liable to the royalty of 6*d*. It was held by the Court of Appeal, affirming Kekewich, J. (*x*), that this was a mere publishing agreement, and not an assignment of copyright. The Court of Appeal based their decision largely upon the fact that the defendants were only to be at liberty to publish the musical compositions in "volume form," but Mr. Justice Kekewich appears to have thought that the fact that the defendants

(*t*) (1841), 11 Sim. 573. (*u*) (1907) 1 Ch. 651.
(*x*) (1906) 2 Ch. 595.

were to be under continuing obligations to the plaintiff was evidence of an intention not to assign the copyright, and this view is supported by the case of *Stevens* v. *Benning* (*y*), where Page-Wood, V.-C., remarked as follows:—"Then it is argued, that the sole power of printing, reprinting and publishing is, in fact, the copyright. And no doubt if an author, in consideration of a sum of money paid to him, agrees that certain persons shall have the sole power of printing, reprinting, and publishing a certain work for all time, that would be a parting with the copyright; but, if the agreement is that the publishers, performing certain conditions on their part, should, so long as they do perform such conditions, have the right of printing and publishing the book, that is a very different agreement."

Whether payment of royalties can be enforced against assignees of copyright.

It may be said to be, generally, inadvisable that in any royalty agreement the author should part with his copyright, inasmuch as his right to claim the royalties against an assignee of the copyright might be jeopardised. It has been held in several patent cases that the vendor of patent rights has a lien upon the patent for payment of royalties (*z*), and such cases would seem to apply to copyright cases, provided the agreement to pay royalties is general, and not an agreement simply to pay royalties upon all copies manufactured by the original assignees. Such a lien, however, could not be enforced against a purchaser of the copyright without notice of the original agreement, and, of course, there would be no privity of contract between the author and the second assignee enabling the author to sue such assignee directly for the royalties (*a*).

Bankruptcy of publisher.

In the case of *Re Grant Richards* (*b*), it was held that, where an author had assigned his copyright in consideration of the payment of royalties, and, upon the bankruptcy of the publisher, his trustee continued the publisher's business for some time, the author had no right to claim payment of the royalties in full, but could only prove in the bankruptcy for damages. On the other hand, in a case where there was an agreement by the publisher to pay a share of profits to the author, and the copyright still remained vested in him, it was held that the agreement was terminated by the bankruptcy of the publisher, whose trustee in bankruptcy was restrained from reprinting or republishing the

(*y*) (1855), 1 K. & J. 168.
(*z*) *Werderman* v. *Société Générale d'Electricité* (1881), 19 Ch. D. 246; *Dansk* v. *Snell*, (1908) 2 Ch. 127; dist. *Bagot Pneumatic Tyre Co.* v. *Clipper Tyre Co.*, (1902) 1 Ch. 146.
(*a*) *Bagot Pneumatic Tyre Co.* v. *Clipper Tyre Co.*, *supra*.
(*b*) (1907) 2 K. B. 38.

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book, even on the terms of continuing to pay the author his share of profits, but without prejudice to the right of the trustee to dispose of stock (*c*).

Provisions of new Bankruptcy Act as to copyright.

The undoubted hardship caused to authors by the decision in the case of *Re Grant Richards* (*d*) has now been removed by sect. 25 of the Bankruptcy and Deeds of Arrangement Act, 1913 (*e*), whereby it is provided as follows:—

"Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee in the bankruptcy shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except upon the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the Court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of profits at a rate not less than that which the bankrupt was liable to pay."

Construction of this section.

This section only, in terms, applies to a case where the bankrupt is liable to pay royalties or a share of profits "to the author," but it seems probable that the Courts will not give a stringent construction to the section, but will hold that it applies equally to a case where the royalties or share of profits is payable to the personal representatives, or to an assign, of the author. It is further to be noticed that the section deprives the trustee in bankruptcy, not only of the right to continue to manufacture copies of an author's work without payment of royalties or share of profits, but also of the right to dispose of stock on hand without making like payment. On the other hand, the section might be construed as enlarging the rights of the trustee in bankruptcy by conferring upon the Court the power to authorise a transfer of the bankrupt's right or interest in the copyright, notwithstanding, perhaps, that the agreement between the author and the publisher

(*c*) *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683. Royalties, it may be noticed, are income, and therefore, as between tenant for life and remainderman, belong to the former: *Davidson* v. *Ogilvie* (1910), Sc. Sess. Cas. 294.

(*d*) *Supra*.

(*e*) 3 & 4 Geo. V. c. 34, now sect. 60 of the Bankruptcy Act, 1914 (4 & 5 Geo. V. c. 59). Sect. 102 of the Bankruptcy (Scotland) Act, 1913 (3 & 4 Geo. V. c. 20), is to the same effect.

was of a personal character, and, therefore, not generally assignable (*f*).

Basis of the royalty.

If the royalty payable to the author is a certain proportion of the price of the work, the agreement should fix a minimum price at which the work is to be sold (*g*), which may be a "long" price, enabling a discount to be allowed to the general public, or a "net" price, allowing no such discount. The royalty payable to the author will, generally, be calculated upon the retail price at which copies of the work are supplied to the "trade" (*h*).

Ordinary profit-sharing agreement between authors and publishers not a partnership.

The ordinary agreement between authors and publishers to the effect that the former shall contribute the manuscript, and the latter shall in the first place defray the cost of the bringing out of the work, and repay himself out of the proceeds of the sale, and that the net profits shall be divided, is not properly a partnership, and the author is not liable for paper and printing supplied and executed for the publisher (*i*). On the other hand, where the printing is arranged for by the author, the publisher is not liable if the work should prove to infringe the copyright of another (*k*).

But is a joint adventure terminable by notice.

The true relationship between author and publisher under a profit-sharing agreement was the subject of discussion in the case of *Reade* v. *Bentley* (*l*). There, by a memorandum of agreement, made in November, 1852, between the plaintiff and the defendant, it was agreed that the latter should publish, at his own expense and risk, a work entitled "Peg Woffington," of which the former was the author; and, after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of 10 per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that should be printed of the work were to be divided into two equal parts, one moiety to be paid to the plaintiff, and the other to the defendant. Subsequently the same parties entered into a similar agreement relative to the publication of another work entitled "Christie Johnstone," of which the plaintiff was also the author; and they signed for that purpose a memorandum

(*f*) See *post*, p. 561.
(*g*) As to agreements for maintenance of prices, see *post*, p. 566.
(*h*) If the book is published in different bindings this must be taken into consideration in the agreement. Royalties are not usually paid on press or other free copies.
(*i*) See *Gardiner* v. *Childs*, 8 C. & P. 345; *Reade* v. *Bentley* (1857), 3 K. & J. 271, and 4 *Ibid.* 656; *Wilson* v. *Whitehead* (1845), 10 M. & W. 503; *Gale* v. *Leckie* (1817), 2 Stark. 107.
(*k*) *Kelly's Directories* v. *Gavin*, (1901) 1 Ch. 374; (1902) 1 Ch. 631.
(*l*) (1857), 1 K. & J. 656.

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of agreement, which, except as to the date and the title of the work, was in the same words as the former. Two editions of the former work and four of the latter having been published by the defendant, and no fresh expenditure having been incurred by him since the publication of those editions, the plaintiff claimed a right to terminate the joint adventure between them, and to prevent the defendant from publishing any further edition of either work.

The main question to determine was, what was the effect of the agreement which had been entered into between the plaintiff and the defendant?

It was contended by the plaintiff that the case was one of simple agency; that by the effect of the agreement the defendant became a mere agent of the plaintiff. "But," observed the Vice-Chancellor, "it is clear that he became more than that. A mere agent may be paid, as the defendant was to be paid, by a share of the profits; but a mere agent never embarks in the risk of the undertaking; and here the defendant took upon himself the whole expense and risk of bringing out the work. Clearly, therefore, the case is something more than one of simple agency." He held, accordingly, that the enterprise was in the nature of a "joint adventure" which the author was at liberty to terminate by reasonable notice.

After considering and distinguishing the cases of *Sweet* v. *Cater* (*m*) and *Stevens* v. *Benning* (*n*), the Vice-Chancellor remarked as follows:—

"It was contended for the defendant that if the effect of the agreement was not an assignment of the copyright (which it is now clearly decided that it could not be), it resulted in a joint adventure, in which the defendant was to have a licence to publish the work; and that, from the nature of the case, and by the terms of the agreement, that licence was irrevocable. In *Stevens* v. *Benning* I considered the agreement must be regarded as creating, to a certain extent, a joint adventure, and Lord Justice Knight Bruce adopted the same view. He says, it must be observed, that such interest, if any, in the copyright of the author's work as the other parties to the agreement acquired under it, they acquired, not exclusively of the author, 'but by way of joint adventure with him, or of partnership with him, in respect and for the objects of which he undertook the fulfilment by himself personally of certain duties to them, and they undertook the fulfilment by themselves personally of certain duties to him' (*o*). Community

(*m*) (1841), 11 Sim. 572. (*n*) (1854), 6 D. M. & G. 223.
(*o*) 6 D. M. & G. at p. 229.

of risk does not appear to me to be by our law, any more than it was by the civil law, essential to constitute a partnership; one partner being at liberty to contract with another that he will take all the losses of the concern upon himself. Lord Justice Turner looked upon the agreement in *Stevens* v. *Benning* in the double light of a licence and a partnership, speaking, however, less decidedly as to its being a partnership. He says: 'Next, if there was a partnership, then, if the agreement does not affect the copyright, the partnership was not in the copyright, but in the copies printed under the licence contained in the agreement' (*p*)—viewing it, therefore, as a licence for the publication of the work, and then a joint adventure between the author and publisher in the copies so to be published. If that were the effect of the agreement in the present case, the question would still remain, whether the licence be irrevocable.

"The plaintiff does not attempt to interfere with the publication of an edition which the defendant had commenced, and incurred expense in preparing for publication, before he exercised the option of determining the agreement. His claim is limited to editions about which no such expense had been incurred by the defendant; and his argument is, that, unless he has a right to determine the agreement as to all such editions, the consequence will be, that, during the whole of the defendant's life, he may be under an obligation to the defendant, while the defendant will be under no reciprocal obligation to him. It is true that, according to *Stevens* v. *Benning*, a licence like the present would, I apprehend, be restricted to the defendant personally, and would not extend to his executors, or to any future partner or assignee; but if the defendant's construction be correct, it follows that, so long as he lives and is willing to continue publishing fresh editions of the work, so long, according to the doctrine in *Sweet* v. *Cater*, the plaintiff will be precluded from asserting a right to publish any competing edition. The defendant could compel the plaintiff to abstain from publishing a single copy of the work, so long as he expressed his readiness to continue publishing. But the plaintiff has no reciprocal power. He could never compel the defendant to publish more than a single edition of the work. His powers are limited tc what the contract gives him; and, according to the contract, when the defendant has published a single edition the contract on his part is fulfilled. That is a position of considerable hardship for an author, and one which ought to be clearly shown,

(*p*) 6 D. M. & G. at p. 231.

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upon the face of a contract, to have been contemplated by the parties who entered into it . . . In the present case, no new expense has been incurred by the defendant, either in printing, advertising, or otherwise, as regards 'Peg Woffington,' since the publication of the second edition, and, as regards 'Christie Johnstone,' since the publication of the fourth edition; and that being, as I have already intimated, the true test in construing the agreement, it appears to me, that, when those editions were published, the period had arrived at which the parties intended a division of profits to take place, and at which the plaintiff became entitled to terminate his agreement with the defendant. This is the only conclusion at which I can arrive, after a very careful consideration of the contracts. But it is much to be regretted that contracts should be framed with such uncertainty, when it would have been so easy to make them certain" (*q*).

Fiduciary relationship between author and publisher.

A profit-sharing agreement between an author and a publisher does, however, establish a fiduciary relationship between the parties, and the author is entitled to an account from the publishers (*r*). For this purpose the publisher must produce all books and documents necessary for the proper vouching of the accounts; he is not entitled to charge the author at a higher rate for the expenses of printing, paper, &c. than he himself actually pays, and must give the author the benefit of all trade commissions and discounts (*s*).

Works published at author's risk.

Where an author is prepared to run the entire risk of the publication of a work, he usually employs a publisher to publish and sell the work on his behalf at a fixed commission. In this case the publisher is simply agent for the author, and the entire liability for the expenses of printing and publishing the work falls upon the latter; but he receives the gross proceeds of sales, less the publisher's commission. It is, however, a well-known practice of publishers in accounting for sales to reckon "13 copies as 12" or "25 copies as 24," and it should be made clear in the agreement whether this practice is intended to apply as between the parties. It should further be made clear whether the particular publisher is to have the exclusive right of publication, or whether the author is to be at liberty to make similar contracts with other publishers (*t*).

(*q*) 1 K. & J. at p. 669.
(*r*) *Barry* v. *Stevens* (1862), 31 Beav. 258.
(*s*) See an opinion of counsel obtained in the year 1893, by the Society of Authors.
(*t*) See *ante*, p. 132.

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Some points in drafting publishing agreements.

Every well-drafted agreement between an author and a publisher should clearly state what are the precise rights which the publisher is to acquire. As we have seen (*u*), copyright is divisible as to time (*x*), place and method of reproduction. Is the agreement to include all translations, abridgments, selections, dramatizations, &c., or are these to be reserved to the author? Is the publisher to have foreign rights, as well as local rights? In the case of musical and dramatic works, is the publisher to have the performing rights and the right to authorise reproduction by records or other mechanical instruments? In the case of novels intended to be published as "serials" in magazines, is the right of publication in book form included, or is the author to be left free to arrange for book publication independently? In the case of pictures, is the publisher to have the right of reproduction by all processes or only by photography, engraving, lithography, or what other process, and is the original to become the property of the publisher or to be returnable within any, and what, time to the artist? All these are points which should be made clear upon the face of the agreement. If, again, the publisher is to have the right to publish only a single edition of a work, the number of copies of which the edition is to consist should be declared, for otherwise a publisher might, if so disposed, print 20,000 as one edition (*y*).

Construction of the word "edition."

The meaning of the word "edition," and the construction to be placed upon it, were fully discussed in *Reade* v. *Bentley*. It was argued that where a work has once been stereotyped, the term "edition" was no longer applicable; and that when a work is published in what are called "thousands," 20,000 or 30,000 being circulated, each thousand could not properly be called an "edition." Wood, V.-C., however, thought that not merely in point of etymology, but having regard to what actually takes place in the publication of any work, an "edition of a work was the putting of it forth before the public, and if this were done in batches at successive periods, each successive batch was a new edition; and the question whether the individual copies had been printed by means of movable type or by stereotype, did not seem to him to be material. If movable type were used, the type

(*u*) *Ante*, p. 126.

(*x*) It should be remembered that under sect. 5 (2) (b) of the Act of 1911, no assignment by an author is operative beyond a period of twenty-five years from the author's death (see *ante*, p. 128).

(*y*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 669; *Sweet* v. *Cater* (1841), 11 Sim. 572; *Stevens* v. *Benning* (1854), 1 K. & J. 168; *Benning* v. *Dove* (1831), 5 C. & P. 427.

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having been broken up, the new edition was prepared by setting up the type afresh, printing afresh, advertising afresh, and repeating all the other necessary steps to obtain a new circulation of the work. In that case the contemplated break between the two editions was more complete, because, until the type was again set up, nothing further could be done. It made no substantial difference as regards the meaning of the term 'edition,' whether the new 'thousand' had been printed by a resetting of movable type, or by stereotype, or whether they have been printed at the same time with the former thousand or subsequently. A new 'edition' is published whenever, having in his storehouse a certain number of copies, the publisher issues a fresh batch of them to the public. This, according to the practice of the trade, is done, as is well known, periodically. And if, after printing 20,000 copies, a publisher should think it expedient for the purpose of keeping up the price of the work, to issue them in batches of a thousand at a time, keeping the rest under lock and key, each successive issue would be a new 'edition' in every sense of the word" (*z*).

Where agreement is for a specified number of copies.

Where the agreement is for the exclusive publication of a specified number of copies, that number only can be printed and sold, and until their sale the author cannot revoke the authority given to the publishers, or himself publish the work.

An agreement that the publisher shall publish a second edition, if demanded by the public, and print as many copies as they can sell, gives them the right, when such demand arises, to publish and sell as many copies as can properly be considered to belong to that edition, and to prevent the author or any other person from publishing until such copies shall be sold (*a*).

Agreements as to style of publication.

The publisher is bound to observe the terms of the contract between himself and the author as to the manner and style of the publication, and the price at which it shall be issued to the public, but if the price at which the work is to be sold be not fixed by the agreement, or otherwise arranged by the author and publisher, the latter is the proper person to determine the same. At the same time, he would not be permitted to fix upon a style, or sell at a

(*z*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 667. See *Blackwood* v. *Brewster*, 7 Dec. 1860; 23 Sess. Cas. 2nd Series, 142. In this case it was held that an editor, under an agreement that he should prepare every new edition of a work, and should receive a certain sum for his services, is not entitled to superintend, or to claim payment for, the reprinting of a part of the work to replace copies destroyed by fire. The copies reprinted under such circumstances do not form a new edition, but go to replace the part of the edition destroyed.

(*a*) *Pulte* v. *Derby*, 5 McLean (Amer.), 328.

price, which would be clearly injurious either to the literary reputation or the pecuniary interests of the author, without his consent.

When neither the time during which the publication is to last, nor the number of editions or copies to be published, is specified, the publisher is not bound to publish more than the first edition; and the author, by giving proper notice, may end the contract and prevent the publication of any further editions (*b*). But the publisher is at liberty to continue publishing successive editions on the terms of the contract until the receipt of such notice; and the author is not entitled to restrain the publication or sale of any edition on which the publisher has incurred expense before receiving notice to end the agreement (*c*).

Specific performance not decreed.

A Court of Equity will not decree specific performance of an agreement to write a book. It has no power to go so far, and were it capable of making such an order, there would be no means of enforcing it (*d*).

Likewise an author cannot, it is thought, have specific performance of an agreement by a publisher to publish the author's manuscript (*e*).

An author may bind himself not to write upon a particular subject.

But an author may bind himself not to write upon a particular subject, or only for a particular person; for a bond or covenant to that effect would not resemble one in restraint of trade.

Thus, in *Morris* v. *Colman* (*f*), where Colman had contracted with the proprietors of the Haymarket Theatre not to write dramatic pieces for any other theatre, the Lord Chancellor maintained that such a contract was not unreasonable upon either construction, whether it was that Mr. Colman should not write for any other theatre without the licence of the proprietors of the Haymarket Theatre, or whether it gave to those proprietors merely a right of pre-emption. If, said he, Mr. Garrick were now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other? I cannot see anything

(*b*) *Reade* v. *Bentley* (1857), 3 K. & J. 271; 4 *Ibid.* 656; *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497. In this last case it was held that no agreement could be implied on the part of the author not to bring out a second edition until all the first edition was sold.

(*c*) *Reade* v. *Bentley*, *supra*.

(*d*) *Clarke* v. *Price* (1819), 2 Wils. C. C. 157. But a specific performance of an agreement to assign a copyright may be decreed: *Thombleson* v. *Black* (1836), 1 Jur. 198.

(*e*) *Stevens* v. *Benning* (1854), 6 D. M. & G. 223, 229; *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497, 499.

(*f*) (1812), 18 Ves. 437.

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unreasonable in this; on the contrary, it is a contract which all parties may consider as affording the most eligible, if not the only, means of making this theatre profitable to them at all as proprietors, authors, or in any other character which they are by the contract to hold.

But Court will not interfere until there be an actual publication.

But in *Brooke* v. *Chitty* (*g*), where the defendant had undertaken not to write or edit any work upon the criminal law, except a work of which the plaintiff had purchased the copyright, and an advertisement of an edition of Burn's "Justice of the Peace," by the defendant, had appeared, Lord Brougham refused to grant an injunction, observing that the defendant was at liberty to write in his closet what he pleased, and that the Court would not interfere until there was a violation of the alleged undertaking by actual printing and publication.

So, when an author sells the copyright of a work published under his own name, and covenants with the purchaser not to publish any other work to prejudice the sale of it, it seems that another publisher, who has no notice of this covenant, may be restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject, but under a different title, and though there be no piracy of the first book (*h*).

If an author undertakes to compose a work and dies before completing it, his executors or administrators are discharged from the contract, for the undertaking was merely personal in its nature, and by the intervention of the contractor's death has become impossible to be performed (*i*). And if an author becomes bankrupt his trustee has no power to compel him to complete the work (*k*).

Independent of agreement to the contrary, author at liberty to publish a continuation of his work.

But where no such covenant had been entered into and the publisher had agreed with an author for an edition of a history to be written by the latter, in four volumes, and had obtained subscriptions for all that could fall within his edition, the Court held that the author was at liberty to publish a continuation of the history which embraced part of the period and also much of the matter contained in the last of the four volumes (*l*).

(*g*) (1831), 2 Cooper's Cases, *temp.* Cottenham, 216; cf. *Brook* v. *Wentworth* (1795), 3 Anst. 881.

(*h*) *Barfield* v. *Nicholson* (1824), 2 Sim. & St. 1; but see *Sweet* v. *Archbold* (1834), 10 Bing. 133.

(*i*) *Marshall* v. *Broadhurst* (1831), 1 Tyrrh. 349; *Cooke* v. *Coleraft* (1773), 2 W. Bl. 856.

(*k*) *Gibson* v. *Carruthers* (1841), 8 M. & W. 343.

(*l*) *Blackie & Co.* v. *Aikman* (1827), 5 Sess. Cas. 719. As to the respective rights of a writer and publisher of a periodical to continue to publish the

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After an author has parted with the copyright in a book, he is not at liberty to reproduce substantially the same matter in another work. Even in the absence of any special agreement, the second publication would be an infringement of the copyright in the first (*m*).

But after parting with copyright, author cannot reproduce matter in any other book.

A writer agreed with a publisher to edit a translation of Montaigne, adding notes and a biographical sketch of the author, for a particular sum, which was to be increased by other sums as further editions should be published. It was intended that the publisher should have the sole right of multiplying copies of the work, but there was no assignment to him of the copyright. After the publisher's death, his widow and executrix, with the author's knowledge and assent, registered the copyright in her own name. On the publication of a fresh edition, the widow paid the author money, and gave him copies of the work on the same terms as were contained in the agreement made with her husband in his lifetime, and on three occasions, when the author claimed remuneration on those terms, she did not repudiate all liability, but disputed merely the amount. This was held to be evidence from which a jury might infer an agreement on the part of the widow to remunerate the author on the same scale as in the agreement with her husband, in consideration of the author assenting to her registering the copyright in her own name (*n*).

Warranty on sale of copyright.

Where the executor and son of a deceased author, in reply to an offer from a publishing house relating to one of his father's works, replied that he would be happy to treat with them "respecting the copyright" in it; and, in another letter, said he had accepted their offer "for the exclusive right of publishing it," and gave a receipt for the money paid "for permission to publish the work so long as the copyright may endure; that right to be exclusively their own for ten years from this date," it was held that this amounted to an express warranty of title, and an equitable assignment of the copyright having, unknown to the executor, been previously made to another publisher, the executor was held liable to an action for breach of the warranty (*o*).

Assignability of publishing agreements.

The question whether the benefit of a publishing agreement is assignable by the publisher turns upon whether the agreement

periodical in the old name after termination of their agreement, see *Ingram* v. *Stiff* (1859), 5 Jur. 947; *Clowes* v. *Hogg* (1870), W. N. 268; *Constable* v. *Brewster*, 3 Sess. Cas. 215.

(*m*) *Rooney* v. *Kelly*, 14 Ir. L. R. (N. S.), 153; *Colburn* v. *Simms* (1843), 2 Ha. 543.

(*n*) *Hazlett* v. *Templemore* (1866), 13 L. T. 593; cf. *Re Jude*, (1907) 1 Ch. 651.

(*o*) *Sims* v. *Marryatt* (1851), 17 Q. B. 281.

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ought to be regarded as of a personal nature or not. Contracts of a personal character are not assignable, and wherever the author is to be remunerated either by a share of profits or by royalties *primâ facie* the contract is of a personal nature. Thus, where there was an agreement in writing between an author and certain publishers, that they should print, reprint, and publish his book, upon the condition that the author should prepare it all before a certain day, and should correct it for the press, and that the publishers should direct the mode of printing, and pay all the expenses and take all risk of publishing, and out of the produce should first repay such expenses, and then divide the profits between themselves and the author equally; and that if all copies should be sold and a new edition should be required, the author should prepare the same, and the publishers should print and publish it on the same conditions; and that, if all the copies of any edition should not be sold in five years from the date of publication, the publishers might sell the remaining copies by auction or otherwise, in order to close the account; it was held to be a personal contract with the author, and not a contract for an assignment of the copyright; and, consequently, the benefit thereof could not be assigned by the publishers (*p*).

"The principal question then is," said Vice-Chancellor Wood, in giving judgment in this case, "whether this agreement is a personal engagement or not. It would be difficult for me to say that, in a contract of this kind, the author is utterly indifferent into whose hands his interests under such an engagement are to be entrusted.

"It is not merely a question of his literary interests, but certain publishers undertaking to incur the expenses of bringing out the work, and fixing the price, the author is to have a share of the profits; and they are to decide in what shape the book is to come out, and at what price it is to be sold, and are to account with him. I must say, that, in my opinion, these are peculiarly personal considerations; and that this contract bears the impress of being a personal contract in all these respects. It could not be a matter of indifference to Mr. Forsyth that the assignees in bankruptcy of Mr. Benning should be at liberty to transfer the future right of fixing the price of this and subsequent editions, and the right to call upon him to fulfil his duty of preparing a new edition, and the risk which might be incurred in conducting it, and the other

(*p*) *Stevens* v. *Benning* (1854), 1 K. & J. 168, affirmed, 6 D. M. & G. 223; 1 Jur. (N. S.) 74; *Reade* v. *Bentley* (1857), 3 K. & J. 271; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886.

benefits and obligations of the agreement, to any one they might think proper; possibly to some one not even carrying on the trade of a bookseller, as might happen in case of an absolute sale to the best bidder. Regarding the agreement as a contract for the purchase of a limited right, according to the view of the Vice-Chancellor of England in *Sweet* v. *Cater* (*q*), it is still impossible that it should be indifferent to Mr. Forsyth that it should pass from a respectable firm in London to booksellers residing in a remote part of the country, or to other persons unable to fulfil the engagements entered into with him. The contract, therefore, is one which involves personal considerations; and framed as it is, I must regard it as a special kind of agency, under which the agents were bound to sell, and to take the risk of there being no profits upon themselves."

If the publishers are a limited company.

The same principles have been held to apply in a case where the publishers were a limited company, and the proposed assignment was to be made by a receiver and manager of the company appointed in a debenture-holder's action. The Court declined to accede to the view that a distinction ought to be drawn between a limited company and an individual publisher, and considered that an author might repose confidence in a company, notwithstanding that the constitution of the company might alter and its officers might be changed at any time (*r*).

If the publishers are to pay a fixed sum.

If, on the other hand, the publisher is under an obligation to pay to the author a definite sum of money for the privilege of publishing his works, it seems probable that the publisher would have the right to assign the benefit of the agreement, for, though the literary interests of the author might possibly be affected to some extent, yet the change of publishers could not, at least directly, cause him any pecuniary injury.

If the copyright has been assigned.

Again, in the cases above cited, the authors had retained the copyright in themselves. If the copyright has been transferred to a publisher, then he has a statutory right to assign the copyright (*s*), and the mere fact that the author is to be remunerated by royalties or a share of profits will not be sufficient to deprive the publisher of that right: there would have to be an express agreement not to assign (*t*).

(*q*) (1841), 11 Sim. 579; *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683.
(*r*) *Griffith* v. *Tower Publishing Company, Ltd.*, (1897) 1 Ch. 21.
(*s*) See sect. 5 (2) of the Act of 1911.
(*t*) *Re Grant Richards*, (1907) 2 K. B. 33; but see as to the bankruptcy of the publisher under such circumstances, *ante*, p. 552.

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Breach by publisher of publishing agreement.

An author has a right to sue a publisher for breach by the latter of a publishing agreement. An author and publisher entered into an agreement under which the author was to edit the whole of the plays of Shakespeare (to be called the "Temple Shakespeare"), and was to write an introduction, notes, and glossary for each play. The publisher was to pay the author a royalty, and the copyright was vested in the publisher. One of the clauses of the agreement was that in the event of a cheaper or other form of edition of any or either of the plays being thought advisable by the publisher it should form the subject of an agreement with the author on similar *pro rata* terms to those embodied in that agreement. Subsequently, the publisher produced a "Temple Shakespeare" for schools, with notes, introduction, and glossary written by a person other than the author. The Court held this to be a breach of the publishing agreement, and on the author bringing his action, whilst refusing an injunction restraining the publication of the school edition, ordered a reference to Chambers to assess the damages the plaintiff had suffered (*u*).

In absence of agreement, purchaser of copyright not bound to publish.

It may be well to mention here that it is apprehended that, where the copyright in a work is sold outright, and there is no express agreement to publish the same, the proprietor may decline to publish, notwithstanding that the author may fail by reason of this to acquire additional reputation. The author should have made the publication by the purchaser part of the agreement, had he considered this material to his interests.

Rights of owners of copyright works.

A few observations may, perhaps, not be out of place here as to the rights of the owner of a material object which is the subject of copyright, to deal with that object in any way he pleases. We have already pointed out that the transfer of the material object does not, even in the case of a picture, *primâ facie* operate to transfer the copyright (*x*). The right of selling the material object is, however, no part of the copyright conferred upon an author by the Copyright Act. Copyright is infringed by reproduction of a work, not by sale of it. It is true that a person who sells a work which to his knowledge infringes copyright is, by sect. 2 (2) of the Act, exposed to an action for infringement of copyright, but no person can, it is thought, be sued on that ground for selling a work which has been lawfully made, save only in the case of a work lawfully made in another country, but improperly imported into this country (*y*). *Primâ facie*, therefore,

(*u*) *Gollancz* v. *Dent* (1903), 88 L. T. 358. (*x*) *Ante*, p. 120.

(*y*) Sects. 2 (2), 35 (1). But see *Monckton* v. *Pathé Frères*, (1914) 1 K. B. 395, more fully considered *ante*, p. 273.

any owner of a work which is the subject of copyright may sell it to any person, and at any price that he pleases, but may not multiply copies of it.

Stock in hand after termination of publishing agreement may be sold;

It consequently follows that if a publisher is given a right to publish a copyright work for a limited period, which has expired, he is entitled to sell stock which he has on hand, provided he has not manufactured in excess of the numbers permitted by his contract. Thus, in the case of *Howitt* v. *Hall* (*z*), the defendants paid to the plaintiff, the author of a work entitled "A Boy's Adventures in Australia," the sum of £250, "being the purchase-money, as agreed, for the copyright and sole right of sale for four years" of that work. At the expiration of the term of four years the defendants still had a number of unsold copies of the work in stock, and these the Court held he was entitled to dispose of as he pleased. Vice-Chancellor Wood, in giving judgment, remarked: —"The Copyright Acts were directed against unlawful printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed. The words 'sole right of sale' might or might not have been superfluous; but after four years the right to print the work reverted to the author, who had taken care to secure himself in this respect. It had been suggested that the effect might be to destroy the copyright in the author altogether, as the publisher who had purchased the copyright for a limited period only might during that period print off copies enough to last for all time. A nice question might indeed arise as to the number of copies of which an edition might consist, but a publisher was not likely to incur the useless expense of printing copies enough to exhaust the demand for all time, and have them lying upon his hands unprofitably. Besides this, even if the effect of a sale for four years might operate in this way to deprive the author of all copyright in his work, the answer was that he had not guarded himself against such a contingency. If a manifest case of fraud upon the author were established, the Court would know how to deal with it. But nothing of the sort was shown. The defendants had acted quite *bonâ fide*, and were making a perfectly legitimate use of their contract, and the motion must be refused" (*a*).

or stock made prior to an assignment of copyright.

On the same principles, it has been held that the assignor of the copyright in a work is equally at liberty to sell any copies of

(*z*) (1862), 6 L. T. 348.

(*a*) In consequence, it is usual in publishing agreements which are liable to determination to provide that upon such determination the author is to be at liberty to purchase unexhausted stock at cost price.

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the work manufactured prior to the date of the assignment (*b*); and prior to the recent Bankruptcy Act the trustee in bankruptcy of a publisher whose publishing agreement was terminated by the bankruptcy could also have disposed of stock (*c*).

Price maintenance agreements.

The question of what are known as "price maintenance" agreements has received some attention in recent times, though, as regards books, the question is a more burning one in America than in this country (*d*). The object of the publishers is to prevent—in the interests, as they contend, of the genuine bookselling businesses—the retail trade from selling at "cut prices," by placing upon every copy of the work issued a notice to the effect that the same shall not be sold at less than a certain price. As already pointed out, the Copyright Act does not include amongst the monopolies conferred upon the copyright owner the exclusive right of selling the work, and, therefore, the patent cases in which it has been held that the purchaser of a patented article is bound by any restrictions imposed by the owner of the patent with regard to user of the patented article, provided knowledge of those restrictions is brought home to the purchaser at the time of the purchase (*e*), have no application to copyright works. The owner of a copyright work is not bound by any restrictions in regard to the use or sale of the work, unless he has contracted to observe such restrictions. If a copyright owner sells to a purchaser upon the footing that the work shall not be sold at less than a certain price, and the purchaser does so, he is liable, not for infringement of copyright, but for breach of contract (*f*). Such contract, however, does not run in any sense with the work, so that a sub-purchaser is not liable to the copyright owner for selling under the stipulated price, even though he had full knowledge of the contract between his immediate vendor and the copyright owner, unless such sub-purchaser has himself contracted to observe the stipulations as to price (*g*). Sometimes, as affording some additional protection to the copyright owner, an agreement is

(*b*) *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418.

(*c*) *Lucas* v. *Moncrieff* (1905), 21 T. L. R. 683; *Re Curry* (1848), 12 Ir. Eq. 382; but see now sect. 60 of the Bankruptcy Act, 1914, *ante*, p. 552.

(*d*) Where the question is further complicated by the "anti-trust" legislation.

(*e*) See *National Phonograph Co.* v. *Menck*, (1911) A. C. 336, and the cases there cited. In America it has been held that, notwithstanding that, under the American Act, the copyright owner is given the exclusive right of vending the work, a sale in breach of a notice not to sell at less than a stated price, is not an infringement of copyright: *Bobbs-Merrill Co.* v. *Straus* (1908), 210 U. S. R. 339.

(*f*) *Benning* v. *Dove* (1831), 5 C. & P. 427.

(*g*) *Taddy* v. *Sterious*, (1904) 1 Ch. 354; *McGruther* v. *Pitcher*, (1904) 2 Ch. 306.

entered into by the purchaser not only that he will not himself sell under a certain stipulated price, but that he will, on the occasion of any sub-sale, procure that the sub-purchaser shall enter into a similar agreement. Such an agreement is not in restraint of trade, so that an action will lie if the purchaser fails to obtain any such agreement from the sub-purchaser (*h*); but if the sub-purchaser does enter into such a contract, there will generally be no privity of contract between the copyright owner and the sub-purchaser, so that the former will have no direct right of action against the sub-purchaser for breach of his contract (*i*).

Rights of purchasers to alter copyright works.

Fraudulent alterations of works of art are punishable summarily under sect. 7 of the Fine Arts Copyright Act, 1862 (*k*). The question of the right of a purchaser of a stock of books to make alterations was considered in a case of *Lee* v. *Gibbings* (*l*), decided in the year 1892. There Mr. Sidney Lee sought to restrain Mr. Gibbings from publishing as a new and complete work of the author, with the date 1892 on the title-page, mutilated copies of "The Life of Lord Herbert of Cherburg," prepared by the author for Mr. Nimmo in 1886, and issued by him in that year. The Court declined to interfere on an interlocutory application, and intimated that Mr. Lee's only remedy was for a libel against Mr. Gibbings. It seems that Mr. Nimmo having sold 395 copies to the public, sold the rest of the issue to Mr. Gibbings as a remainder, which Mr. Gibbings issued as a new book, with the date 1892, omitting the introduction and the index.

There can be no doubt that such an issue was calculated to damage the reputation of the author, for apart from the question of mutilation, no opportunity was afforded him of introducing matters having reference to the life in question which might have come to his knowledge since the appearance of the first issue. Mr. Justice Kekewich, in his judgment, said: "The legal side of the case is one of considerable interest, and not at all free from difficulty. I regard the defendant for this purpose as the owner of the copyright of this work. He is not, I am aware, the owner of the copyright, but he has purchased the unpublished sheets of the plaintiff's work, and as regards these unpublished sheets he stands in Mr. Nimmo's place, and is the owner of the copy-

(*h*) *Elliman & Co.* v. *Carrington & Son*, (1901) 2 Ch. 275. As to agreements between manufacturers to keep up prices, see *Urmston* v. *Whitelegg Bros.* (1890), 63 L. T. 455.

(*i*) *Dunlop Pneumatic Tyre Co.* v. *Selfridge & Co.* (1914), 83 L. J. K. B. 923.

(*k*) 25 & 26 Vict. c. 68, *ante*, p. 217.

(*l*) (1892), 67 L. T. 263.

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right (*m*). He has Mr. Nimmo's assent to their publication. He has even Mr. Nimmo's assent to the publication in the present form, and he, therefore, though having no right to multiply copies in the sense of printing further copies and publishing anything else but these sheets, can deal with these sheets as he pleases, provided he gives the plaintiff no cause to complain. He thinks fit, that is to say, he finds it convenient to his trade, to publish the plaintiff's work in a mutilated form. The word 'mutilated' may or may not imply something in derogation of the work, or of the defendant's manipulation of it; but strictly speaking the form is mutilated. The index is left out. I do not myself attribute very great importance to that in such a work as this, but I only speak for myself in saying that. There are other parts left out, including the introduction, and I should certainly say that the omission of the introduction to such a work as this was very nearly leaving out the principal part of the work. Then the date is altered, so as to give the impression that it is a new work. I am told that is not so; that nobody would suppose that was a work published in 1892 because the figures '1892' are on the title-page. I suppose that there are some people who would regard 1892 as meaning nothing. I confess to be amongst them who have regarded it as meaning that the work was published in 1892 and not in 1886; but that is a question of injury to the plaintiff to which I will come presently, and not otherwise a mutilation of the plaintiff's work. The omission of the introduction does seem to me to be a very cogent instance of mutilation. Is the defendant entitled to do that? There is no law compelling a man to publish the whole of the work because he has the copyright in the whole. Nor can he be prevented from publishing extracts from the work. Whether it is right for him to publish extracts without saying they are extracts, or whether he can publish a work in a mutilated form without indicating in the least that there has been that mutilation, is a question, to my mind, of some difficulty.

"The question resolves itself into this: Does he thereby injure the author's reputation? For that, what is the author's remedy at law? His remedy in law is, I think, undoubtedly libel or nothing. Injury to reputation is the foundation of the remedy in an action of libel. It is what you have to prove in order to get your damages, and if one endeavoured, which I am not intending to do, to frame the innuendo in an action of libel by the plaintiff against the defendant, it would necessarily point to the injury of

(*m*) This, we submit with deference, is too broad a definition of Mr. Gibbings' rights. Copyright must be assigned in writing, *ante*, p. 122.

the reputation of the author hereby informing the public that this mutilated work was really the work of the plaintiff, whereas, in fact, his work was something far superior, and that this would be discreditable to him. That would be necessarily the general line of complaint.

"It comes, therefore, to a question on this part of the case whether I ought to grant an injunction now to restrain a libel before that question has been before a jury, which is the avowedly proper tribunal for the purpose of determining whether a libel exists or not. The jurisdiction of the Court to restrain a libel is undoubted. It has been affirmed over and over again, even in those cases in which the Court has refused to grant an injunction, in particular the last case of *Bonnard* v. *Perryman* (*n*). Of late years there has been no such thing as an injunction to restrain a libel except in the recent case, where Mr. Justice Chitty distinguished trade libels from other libels, and granted an injunction (*o*), a decision with which, within the last week or two, I have had occasion to express my entire concurrence (*p*). But with that exception, as far as I know, the Court has not of late granted an injunction to restrain a libel before the point has been submitted to a jury, in other words, on interlocutory application.

"Now ought this to be an exceptional case? I see no reason for making an exception in favour of a case such as this. The balance of convenience does not seem to me to point in favour of granting an injunction, because, though the sale of the work will no doubt go on, and though if it goes on it is injurious to the plaintiff's reputation—the injury will be continued—yet the injury must to a great extent be done by the mere publication, and after all success in the ultimate result would be quite satisfactory to the plaintiff. I mean, if it were eventually determined that the plaintiff was right and could sustain an action of libel against the defendant by reason of this publication, then, not by the damages awarded, but by the mere verdict of the jury, he would have, I will not say rehabilitated, but maintained his reputation at the level at which it before existed. It cannot be suggested that the mere sale of a few copies more or less would place him in any worse position if eventually he succeeded, and of course, if he did not, then he has no reason to complain.

"Now, on the balance of convenience, I think I ought not to grant an injunction, especially it being of course understood that

(*n*) (1891) 2 Ch. 269.
(*o*) *Collard* v. *Marshall*, (1892) 1 Ch. 571.
(*p*) *Pink* v. *Federation of Trades* (1892), 67 L. T. 258.

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I express no opinion whether it is a libel or not. That is really the reason why the Court in these cases does not grant an injunction, because if it granted an injunction, or even if it refused it on any other ground than the one I have mentioned, the Court would be obliged to express an opinion, that the Court ought not to express an opinion on a matter that is to be left to a jury.

"But the plaintiff's case has been put by Mr. Renshaw on another ground, which strikes me as extremely deserving of attention, though I do not think I ought to grant an injunction on that ground at the present moment. He says this is like the case of *Clarke* v. *Freeman* (*q*), and *Clarke* v. *Freeman* may be considered for this purpose as decided quite differently from the way in which it was decided. In that I follow him. I do not think that after the observations of Vice-Chancellor Malins, Lord Cairns, and Lord Selborne on that case, I ought to hesitate to regard it as really erroneously decided, and I do not think that, having regard to Lord Cairns's observations on p. 310 of the second Chancery Appeals in the case of *Maxwell* v. *Hogg* (*r*), I ought to doubt what the proper decision should have been in *Clarke* v. *Freeman*, or on what ground that proper decision would have been rested, because he says—distinctly speaking, be it remembered—in the Court of Appeal: 'It always appeared to me that *Clarke* v. *Freeman* might have been decided in favour of the plaintiff on the ground that he had a property in his own name.' The question of whether a libel was a fit subject for an injunction either on motion or at the trial was not discussed in *Clarke* v. *Freeman*. It is not discussed by Lord Cairns, it is not discussed by Lord Selborne, and it is not discussed by Vice-Chancellor Malins, but they disapprove of the decision, and Lord Cairns says because the plaintiff had a property in his own name, the name was invaded by the actions of the defendant, and the plaintiff could therefore restrain the defendant from doing what he did on that ground. That is entirely independent of libel.

"Now, can I decide this case on that ground in favour of the plaintiff? I think not, and I think not because when you come to test that argument, according to my present opinion, you really come back again to the question of libel in this case, though you would not have done so in *Clarke* v. *Freeman*. The plaintiff's case on this part of it is, 'The defendant is publishing as my own what is not my own; that is to say, I am the author of an entire book, the defendant is publishing only part of it, and such part

(*q*) (1850), 11 Beav. 112.
(*r*) (1867), L. R. 2 Ch. 307.

that really he is not publishing my work at all; he is bringing out what I never sanctioned as my work, and which cannot be fairly represented as my work, and therefore I complain of him using my name in connection with a book that is not mine.' It comes back to this: Is the book the plaintiff's or not? It is avowedly only part of it; but is it such a substantial part of it that it may be fairly called the plaintiff's? It is so unless the mutilations are such as to give the plaintiff a right of action for libel. So that, try it as you will, it comes back to the same point, and I think, therefore, I should be doing wrong in seizing hold of the doctrine, not of *Clarke* v. *Freeman*, but which ought to have been supported in *Clarke* v. *Freeman*, to give the plaintiff relief which ought, on the other hand, to be denied him, because he is really bringing an action of libel. I therefore, on those grounds, must refuse the motion, without expressing any opinion whether what has been done is injurious to the plaintiff's reputation or not.

"This is really the whole question in the case. If the case is tried out, there is nothing else to be tried, and therefore the proper way to deal with the costs is to make the costs of both parties costs in the action" (*s*).

(*s*) Verbatim report in *The Athenæum*, 13th Aug., 1892. Cf. *Cox* v. *Cox* (1856), 11 Ha. 118, *ante*, p. 547.

APPENDIX A.

IMPERIAL STATUTES.

COPYRIGHT ACT, 1911.

1 & 2 GEO. 5, c. 46.

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.

Copyright.

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

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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.

Infringement of copyright.

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, *bonâ fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of

schools in which copyright subsists; Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged:

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries:

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

(b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(c) by way of trade exhibits in public; or

(d) imports for sale or hire into any part of His Majesty's dominions to which this Act extends,

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

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

Term of copyright.

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

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has

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paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

Compulsory licences.

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

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 licence, 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 licence 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.

Civil remedies for infringement of copyright.

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,

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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.

Rights of owner against persons possessing or dealing with infringing copies, &c.

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.

Exemption of innocent infringer from liability to pay damages, &c.

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 no reasonable ground for suspecting that copyright subsisted in the work.

Restriction on remedies in the case of architecture.

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.

Limitation of actions.

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

Summary Remedies.

Penalties for dealing with infringing copies, &c.

11.—(1) If any person knowingly—

(a) makes for sale or hire any infringing copy of a work in which copyright subsists; or

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or

(c) distributes infringing copies of any such work either for

the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) by way of trade exhibits in public any infringing copy of any such work; or

(e) imports for sale or hire into the United Kingdom any infringing copy of any such work:

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

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

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

(4) Nothing in this section shall, as respects musical works, affect the provisions of the Musical (Summary Proceedings) Copyright Act, 1902, or the Musical Copyright Act, 1906. 2 Edw. 7, c. 15. 6 Edw. 7, c. 36.

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

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

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 Importation of copies.

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39 & 40 Vict. c. 36.

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 on such detention; and may provide for notices under any enactment repealed by this Act being treated as notices given under this section.

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

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

Delivery of Books to Libraries.

Delivery of copies to British Museum and other 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 depôt in London named in the demand a copy of the book for, or in accord-

ance 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 letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

Special Provisions as to certain Works.

Works of joint authors.

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 licences a reference to the date of the death of the author who dies last shall

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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.

Posthumous works.

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

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

Provisions as to Government publications.

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

Provisions as to mechanical instruments.

19.—(1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making

of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within the parts of His Majesty's dominions to which this Act extends records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that—

(i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent.; and

(b) in the case of contrivances sold as aforesaid after the expiration of that period, five per cent.

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than a halfpenny for each separate musical work in which copyright subsists reproduced thereon,

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and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to the Board of Trade that such rate as aforesaid is no longer equitable, the Board of Trade may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, the Board of Trade may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if the Board think fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions:—

(a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply:

(b) The rate of two and one-half per cent. shall be substituted for the rate of five per cent. as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, nineteen hundred and thirteen, if contrivances reproducing the same work had been lawfully made, or placed on sale.

within the parts of His Majesty's dominions to which this Act extends before the first day of July, nineteen hundred and ten:

(c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal personal representatives:

(d) The saving contained in this Act of the rights and interests arising from, or in connexion with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section:

(e) Where the work is a work on which copyright is conferred by an Order in Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.

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

Provided that—

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

Provision as to political speeches.

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.

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Provisions as to photographs.

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of His Majesty's dominions to which this Act extends if it has established a place of business within such parts.

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

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

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

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

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.

Existing 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)

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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.

Application of Act to British dominions.

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

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

Legislative powers of self-governing dominions.

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.

Power of Legislatures of British possessions to pass supplemental legislation.

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.

Application to protectorates.

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;

APPENDIX A.

(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 part of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

(iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the Order;

(iv) the Order in Council may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the Order;

(v) in applying the provision of this Act as to ownership of copyright, the Order in Council may make such modifications as appear necessary having regard to the law of the foreign country;

(vi) in applying the provisions of this Act as to existing works, the Order in Council may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section five of the International Copyright Act, 1886.

49 & 50 Vict. c. 33.

(2) An Order in Council under this section may extend to all the several countries named or described therein.

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 possessions specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply. Application of Part II. to British possessions.

(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. Abrogation of common law rights.

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. Provisions as to Orders in Council.

(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.

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. Saving of university copyright. 15 Geo. 3, c. 53.

34. There shall continue to be charged on, and paid out of, the Consolidated Fund of the United Kingdom such annual compensation Saving of compensation to certain libraries.

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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: **Repeal.**

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.

APPENDIX A.

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.

Section 24.

FIRST SCHEDULE.

EXISTING RIGHTS.

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

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

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

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

(*a*) 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 sect. 18 of the Copyright Act, 1842.

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Section 36.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Geo. 2, c. 13	The Engraving Copyright Act, 1734.	The whole Act.
7 Geo. 3, c. 38	The Engraving Copyright Act, 1767.	The whole Act.
15 Geo. 3, c. 53 ..	The Copyright Act, 1775	The whole Act.
17 Geo. 3, c. 57 ..	The Prints Copyright Act, 1777	The whole Act.
54 Geo. 3, c. 56 ..	The Sculpture Copyright Act, 1814.	The whole Act.
3 & 4 Will. 4, c. 15.	The Dramatic Copyright Act, 1833.	The whole Act.
5 & 6 Will. 4, c. 65.	The Lectures Copyright Act, 1835.	The whole Act.
6 & 7 Will. 4, c. 59.	The Prints and Engravings Copyright (Ireland) Act, 1836.	The whole Act.
6 & 7 Will. 4, c. 110.	The Copyright Act, 1836	The whole Act.
5 & 6 Vict. c. 45 ..	The Copyright Act, 1842	The whole Act.
7 & 8 Vict. c. 12 ..	The International Copyright Act, 1844.	The whole Act.
10 & 11 Vict. c. 95.	The Colonial Copyright Act, 1847.	The whole Act.
15 & 16 Vict. c. 12.	The International Copyright Act, 1852.	The whole Act.
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 copy- "right 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.	The whole Act.
51 & 52 Vict. c. 17.	The Copyright (Musical Compositions) Act, 1888.	The whole Act.
52 & 53 Vict. c. 42.	The Revenue Act, 1889	Section one, from "Books first published" to "as provided in that section."

APPENDIX A.

Session and Chapter.	Short Title.	Extent of Repeal.
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 FINE ARTS COPYRIGHT ACT, 1862.

25 & 26 VICT. c. 68.

25 & 26 Vict c. 68.

An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works. [29th July, 1862.

Whereas by law, as now established, the authors of paintings, drawings and photographs have no copyright in such their works, and it is expedient that the law should in that respect be amended; Be it therefore enacted by the Queen'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:—

[*Sects.* 1—6 *are repealed by the Copyright Act*, 1911.]

Penalties on fraudulent productions and sales.

7. No person shall do or cause to be done any or either of the following acts; that is to say,

First, no person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram:

Secondly, no person shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work:

Thirdly, no person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having

been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken:

Fourthly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work or any copies of such work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Penalties.

Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding Ten Pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

Recovery of pecuniary penalties.

Words in brackets and italics repealed by Copyright Act, 1911.

8. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act [*and pursuant to any Act for the protection of copyright engravings*], may be recovered by the person hereinbefore [*and in any such Act as aforesaid*] empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows:—

In England and Ireland, either by action against the party offending, or by summary proceeding before any two justices having jurisdiction where the party offending resides:

In Scotland by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, * * * and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by [*advocation,*] suspension, reduction, or otherwise.

[*Sects.* 9—12 *repealed by the Copyright Act,* 1911.]

THE CUSTOMS CONSOLIDATION ACT, 1876.

39 & 40 VICT. c. 36.

39 & 40 Vict. c. 36. *An Act to consolidate the Customs Laws.* [24th July, 1876.

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Prohibitions and restrictions.

AS TO THE IMPORTATION, PROHIBITION, ENTRY, EXAMINATION, LANDING, AND WAREHOUSING OF GOODS.

* * * * * * *

42. The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

Goods Prohibited to be Imported.

[*Books wherein the copyright shall be first subsisting, first composed, or written or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire*] (*a*).

* * * * * * *

Indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles.

[*Sects.* 44 *and* 45 *are repealed by the Copyright Act*, 1911.]

* * * * * * *

Customs Acts to extend to British possessions abroad, except where otherwise provided for.

151. The Customs Acts shall extend to and be of full force and effect in the several British possessions abroad, except where otherwise expressly provided for by the said Acts, or limited by express reference to the United Kingdom or the Channel Islands, and except also as to any such possession as shall by local Act or ordinance have provided, or may hereafter, with the sanction and approbation of Her Majesty and her successors, make entire provision for the management and regulation of the Customs of any such possession, or make in like manner express provisions in lieu or variation of any of the clauses of the said Act for the purposes of such possession.

[*Sect.* 152 *repealed by the Copyright Act*, 1911.]

(*a*) Repealed by Copyright Act, 1911; but see sect. 14 of Act of 1911.

THE MUSICAL (SUMMARY PROCEEDINGS) COPYRIGHT ACT, 1902.

2 EDW. 7, c. 15.

An Act to amend the Law relating to Musical Copyright.

2 Edw. 7, c. 15.

[22nd July, 1902.

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:—

Seizure, &c. of pirated copies.

1. A Court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold or offered for sale, may, by order, authorise a constable to seize such copies without warrant and to bring them before the Court, and the Court, on proof that the copies are pirated, may order them to be destroyed, or to be delivered up to the owner of the copyright if he makes application for that delivery.

Power to seize copies on hawkers.

2. If any person shall hawk, carry about, sell or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner.

Definitions.

3. "Musical copyright" means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorise another person to do all or any of the following things in respect of a musical work:—

(1) To make copies by writing or otherwise of such musical work.
(2) To abridge such musical work.
(3) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

Short title and commencement.

4. This Act may be cited as the Musical (Summary Proceedings) Copyright Act, 1902, and shall come into operation on the first day of October, One thousand nine hundred and two, and shall apply only to the United Kingdom.

MUSICAL COPYRIGHT ACT, 1906.

6 EDW. 7, c. 36.

An Act to amend the law relating to Musical Copyright.

[4th August, 1906.

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:—

Penalty for being in possession of pirated music.

1.—(1) Every person who prints, reproduces, or sells, or exposes, offers, or has in his possession for sale, any pirated copies of any musical work, or has in his possession any plates for the purpose of printing or reproducing pirated copies of any musical work, shall (unless he shows that he acted innocently) be guilty of an offence punishable on summary conviction, and shall be liable to a fine not exceeding five pounds, and on a second or subsequent conviction to imprisonment with or without hard labour for a term not exceeding two months, or to a fine not exceeding ten pounds: Provided that a person convicted of an offence under this Act who has not previously been convicted of such an offence, and who proves that the copies of the musical work in respect of which the offence was committed had printed on the title page thereof a name and address purporting to be that of the printer or publisher, shall not be liable to any penalty under this Act unless it is proved that the copies were to his knowledge pirated copies.

Constable may take into custody without warrant.

(2) Any constable may take into custody without warrant any person who in any street or public place sells or exposes, offers, or has in his possession for sale any pirated copies of any such musical work as may be specified in any general written authority addressed to the chief officer of police, and signed by the apparent owner of the copyright in such work or his agent thereto authorised in writing, requesting the arrest, at the risk of such owner, of all persons found committing offences under this section in respect to such work, or who offers for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars.

(3) A copy of every written authority addressed to a chief officer of police under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority.

(4) Any person aggrieved by a summary conviction under this section may in England or Ireland appeal to a Court of quarter

sessions, and in Scotland under and in terms of the Summary Prosecutions Appeals (Scotland) Act, 1875. 38 & 39 Vict. c. 62.

Right of entry by police for execution of Act.

2.—(1) If a Court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act is being committed on any premises, the Court may grant a search warrant authorising the constable named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Act is being committed.

(2) All copies of any musical work and plates seized under this section shall be brought before a Court of summary jurisdiction, and if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies shall be forfeited and destroyed or otherwise dealt with as the Court think fit.

Definitions:

3. In this Act—

"Pirated copies."

The expression "pirated copies" means any copies of any musical work written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copyright in such musical work:

"Musical work."

The expression "musical work" means a musical work in which there is a subsisting copyright, [*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:]

"Plates."

The expression "plates" includes any stereotype or other plates, stones, matrices, transfers, or negatives used or intended to be used for printing or reproducing copies of any musical work: Provided that the expressions "pirated copies" and "plates" shall not, for the purposes of this Act, be deemed to include perforated music rolls used for playing mechanical instruments, or records used for the reproduction of sound waves, or the matrices or other appliances by which such rolls or records respectively are made:

"Chief officer of police."

The expression "chief officer of police"—

(a) with respect to the City of London, means the Commissioner of City Police;

(b) elsewhere in England has the same meaning as in the Police Act, 1890; 53 & 54 Vict. c. 45.

(c) in Scotland has the same meaning as in the Police (Scotland) Act, 1890; 53 & 54 Vict. c. 67.

(d) in the police district of Dublin metropolis means either of the Commissioners of Police for the said district;

(e) elsewhere in Ireland means the District Inspector of the Royal Irish Constabulary:

"Court of summary jurisdiction."

The expression "Court of summary jurisdiction" in Scotland means the sheriff or any magistrate of any royal, parliamentary, or police burgh officiating under the provisions of any local or general police Act.

Short title.

4. This Act may be cited as the Musical Copyright Act, 1906.

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INTERNATIONAL TREATIES AND CONVENTIONS.

REVISED BERNE CONVENTION, 1908 (*a*).

Convention for the purpose of revising the Convention of Berne of the 9th September, 1886, the Additional Article and the Final Protocol attached to the same Convention, and the Additional Act and the Interpretative Declaration of Paris of the 4th May, 1896; made on the 13th day of November, 1908, between His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of Italy; His Majesty the Emperor of Japan; the President of the Republic of Liberia; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Serene Highness the Prince of Monaco; His Majesty the King of Norway; His Majesty the King of Sweden; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

[The following is an English translation of the Convention, with the omission of the formal beginning and end.]

Art. 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.

Art. 2. The expression "literary and artistic works" shall include any production in the literary, scientific or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, choreographic works and entertainments in dumb show, the acting form of which is fixed in writing or otherwise; musical compositions with or without words; works of drawing, painting, architecture, sculpture, engraving and lithography; illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture or science.

Translations, adaptations, arrangements of music and other reproductions in an altered form of a literary or artistic work as well

(*a*) Sometimes called the "Berlin Convention."

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as collections of different works, shall be protected as original works without prejudice to the rights of the author of the original work.

The contracting countries shall be bound to make provision for the protection of the above-mentioned works.

Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows.

Art. 3. The present Convention shall apply to photographic works and to works produced by a process analogous to photography. The contracting countries shall be bound to make provision for their protection.

Art. 4. Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives as well as the rights specially granted by the present Convention.

The enjoyment and the exercise of these rights shall not be subject to the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights, shall be governed exclusively by the laws of the country where protection is claimed.

The country of origin of the work shall be considered to be: in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country the laws of which grant the shortest term of protection. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country shall be considered exclusively as the country of origin.

By published works must be understood, for the purposes of the present Convention, works copies of which have been issued to the public. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication.

Art. 5. Authors being subjects or citizens of one of the countries of the Union who first publish their works in another country of the Union shall have in the latter country the same rights as native authors.

Art. 6. Authors not being subjects or citizens of one of the countries of the Union, who first publish their works in one of those countries,

shall enjoy in that country the same rights as native authors, and in the other countries of the Union the rights granted by the present Convention.

Art. 7. The term of protection granted by the present Convention shall include the life of the author and fifty years after his death.

Nevertheless, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be regulated by the law of the country whore protection is claimed, and must not exceed the term fixed in the country of origin of the work. Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their domestic laws.

For photographic works and works produced by a process analogous to photography, for posthumous works, for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed. provided that the said term shall not exceed the term fixed in the country of origin of the work.

Art. 8. The authors of unpublished works, being subjects or citizens of one of the countries of the Union, and the authors of works first published in one of those countries shall enjoy, in the other countries of the Union, during the whole term of the right in the original work, the exclusive right of making or authorising a translation of their works.

Art. 9. Serial stories, tales, and all other works, whether literary, scientific, or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the consent of the authors.

With the exception of serial stories and tales, any newspaper article may be reproduced by another newspaper unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.

The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.

Art. 10. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of the countries of the Union and of special arrangements existing or to be concluded between them is not affected by the present Convention.

Art. 11. The stipulations of the present Convention shall apply

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to the public representation of dramatic or dramatico-musical works, and to the public performance of musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works shall be protected during the existence of their right over the original work against the unauthorised public representation of translations of their works.

In order to enjoy the protection of the present Article, authors shall not be bound in publishing their works to forbid the public representation or performance thereof.

Art. 12. The following shall be especially included among the unlawful reproductions to which the present Convention applies: Unauthorised indirect appropriations of a literary or artistic work, such as adaptations, musical arrangements, transformations of a novel, tale, or piece of poetry into a dramatic piece and *vice versâ*, &c., when they are only the reproduction of that work, in the same form or in another form without essential alterations, additions, or abridgments, and do not present the character of a new original work.

Art. 13. The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can reproduce them mechanically; (2) the public performance of the said works by means of these instruments.

Reservations and conditions relating to the application of this Article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.

The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the present Convention.

Adaptations made in virtue of paragraphs 2 and 3 of the present Article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country.

Art. 14. Authors of literary, scientific or artistic works shall have the exclusive right of authorising the reproduction and public representation of their works by cinematography.

Cinematograph productions shall be protected as literary or artistic works, if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character.

Without prejudice to the rights of the author of the original work the reproduction by cinematography of a literary, scientific or artistic work shall be protected as an original work.

The above provisions apply to reproduction or production effected by any other process analogous to cinematography.

Art. 15. In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous work the publisher, whose name is indicated on the work, shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author.

Art. 16. Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

In such a country the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.

The seizure shall take place in accordance with the domestic legislation of each country.

Art. 17. The provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

Art. 18. The present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin through the expiration of the term of protection.

If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country.

The application of this principle shall take effect according to the stipulations contained in special Conventions existing, or to be concluded, to that effect between countries of the Union. In the absence of such stipulations, the respective countries shall regulate, each in so far as it is concerned, the manner in which the said principle is to be applied.

The above provisions shall apply equally in case of new accessions to the Union, and also in the event of the term of protection being extended by the application of Article 7.

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Art. 19. The provisions of the present Convention shall not prevent a claim be.. ~ made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general.

Art. 20. The Governments of the countries of the Union reserve to themselves the right to enter into special arrangements between each other, provided always that such arrangements confer upon authors more extended rights than those granted by the Union or embody other stipulations not contrary to the present Convention. The provisions of existing arrangements which answer to the abovementioned conditions shall remain applicable.

Art. 21. The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its working.

The official language of the Office shall be French.

Art. 22. The International Office collects every kind of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and publishes such information. It undertakes the study of questions of general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations, edits a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.

The Director of the International Office shall make an annual Report on his administration, which shall be communicated to all the members of the Union.

Art. 23. The expenses of the Office of the International Union shall be shared by the contracting States. Until a fresh arrangement be made they cannot exceed the sum of 60,000 francs a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 24.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding

countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:— APPENDIX B.

1st class	.....	25 units.
2nd „	.....	20 „
3rd „	.....	15 „
4th „	.....	10 „
5th „	.....	5 „
6th „	.....	3 „

These coefficients are multiplied by the number of countries of each class, and the total product thus obtained gives the number of units by which the total expense is to be divided. The quotient gives the amount of the unit of expense.

Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration prepares the Budget of the Office, superintends its expenditure, makes the necessary advances, and draws up the annual account which shall be communicated to all the other Administrations.

Art. 24. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries. The Administration of the country where a Conference is to meet prepares, with the assistance of the International Office, the programme of the Conference. The Director of the Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote.

No alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

Art. 25. States outside the Union which make provision for the legal protection of the rights forming the object of the present Convention may accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. It may, nevertheless, contain an indication of the provisions of the Convention of the 9th September, 1886, or of the Additional Act of the 4th May, 1896, which they may judge necessary to substitute, provisionally at least, for the corresponding provisions of the present Convention.

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Art. 26. Contracting countries shall have the right to accede to the present Convention at any time for their Colonies or foreign possessions.

They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Such Declaration shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Art. 27. The present Convention shall replace, in regard to the relations between the Contracting States, the Convention of Berne of the 9th September, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of the 4th May, 1896. These instruments shall remain in force in regard to relations with States which do not ratify the present Convention.

The Signatory States of the present Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the Conventions which they have previously signed.

Art. 28. The present Convention shall be ratified, and the ratifications exchanged at Berlin not later than the 1st July, 1910.

Each Contracting Party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.

Art. 29. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Art. 30. The States which shall introduce in their legislation the duration of protection for fifty years contemplated by Article 7, first paragraph, of the present Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, who will communicate it at once to all the other States of the Union.

The same procedure shall be followed in the case of the States renouncing the reservations made by them in virtue of Articles 25, 26, and 27.

ADDITIONAL PROTOCOL TO THE REVISED CONVENTION OF BERNE OF THE 13TH NOVEMBER, 1908 (*b*).

[Dated 20th March, 1914.]

The States which are members of the International Union for the protection of literary and artistic works, being desirous of authorising an optional limitation as to the application of the Convention of the 13th November, 1908, have drawn up the following Protocol.

1. Whenever any country outside the Union fails to give adequate protection to the works of authors who are the subjects or citizens of one of the countries of the Union, nothing in the provisions of the Convention of the 13th November, 1908, shall be deemed to prejudice in any manner whatsoever the right of the Contracting States to impose restrictions upon the protection accorded to works the authors of which are, at the time when such works are first published, subjects or citizens of any such country outside the Union and are not actually domiciled in one of the countries of the Union.

2. The right conferred by this Protocol upon the Contracting States belongs equally to each of their possessions beyond the seas.

3. Any restrictions imposed by virtue of Article 1 hereof shall be without prejudice to any rights acquired by any author over a work published (*publiée*) in any country of the Union prior to the date when such restrictions come into force.

4. Every State which, acting under the provisions of this Protocol, shall impose restrictions upon the protection of the rights of authors, shall notify the fact to the Government of the Swiss Confederation by written declaration indicating the countries to which such restrictions apply and the nature of the restrictions to which the rights of authors who are subjects or citizens of that country are subjected. The Government of the Swiss Confederation shall forthwith communicate the fact to all other States of the Union.

5. This Protocol shall be ratified and the ratifications shall be deposited at Berne within twelve months after the date hereof (*c*). It shall come into operation one month after the expiration of this period and shall have the same force and duration as the Convention of which it forms part.

In witness whereof the Plenipotentiaries of the countries which

(*b*) The editor has not been able to obtain any official translation of this Additional Protocol, and the following is a translation from the French text ("Le Droit d'Auteur," 1914, p. 45).

(*c*) Great Britain ratified this Additional Protocol on the 7th July, 1914. Apparently, she is the first country to have done so.

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are members of the Union have signed this Protocol, a copy of which is to be sent to each of the Unionist Governments.

Done at Berne, the 20th day of March, 1914 (*d*).

(Signatures.)

Procès-verbal *of Signature.*

The undersigned duly authorised Plenipotentiaries, this day assembled to proceed with the signature of the Additional Protocol to the Revised Convention of Berne for the protection of literary and artistic works, dated the 13th November, 1908, take note of the following declaration read by the Plenipotentiary of Sweden:

"The King's Government, not yet having ratified the Revised Berne Convention of the 13th November, 1908, sign this Additional Protocol subject to the reserve that ratification of the Protocol shall only be made along with the Convention" (*e*).

In witness, &c.

Done at Berne, the 20th day of March, 1914.

BERNE CONVENTION, 1886.

Convention for protecting effectively and in as uniform a manner as possible, the rights of authors over their literary and artistic works. Made on the fifth day of September, 1887, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Hayti; His Majesty the King of Italy; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

[The following is an English translation of the Convention, with the omission of the formal beginning and end.]

Art. 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.

Art. 2. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries

(*d*) The Plenipotentiaries signing this Protocol represent Belgium, Denmark, France, Germany, Great Britain, Hayti, Holland, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Portugal, Spain, Sweden, Switzerland, and Tunis.

(*e*) Sweden has not yet ratified the Revised Convention (*ante*, p. 423).

or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

The enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and must not exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work shall be considered to be that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them the laws of which grant the shortest term of protection.

For unpublished works the country to which the author belongs shall be considered to be the country of origin of the work.

Art. 3. The stipulations of the present Convention shall apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

Art. 4. The expression "literary and artistic works" shall include books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of drawing, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

Art. 5. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.

For works published in incomplete parts (*livraisons*) the period of ten years shall commence from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections (*cahiers*) published by literary or scientific societies, or by private persons, each volume, bulletin, or collection shall be with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present Article, and for the calculation of the terms of protection, the 31st December of the year in which the work was published shall be regarded as the date of publication.

Art. 6. Lawful translations shall be protected as original works. They shall consequently enjoy the protection stipulated in Articles 2

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and 3 as regards their unauthorised reproduction in the countries of the Union.

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Art. 7. Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it shall be sufficient if the prohibition is indicated in general terms at the beginning of each number of the periodical.

This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or miscellaneous information.

Art. 8. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the effect of the legislation of the countries of the Union, and of special arrangements existing or to be concluded between them is not affected by the present Convention.

Art. 9. The stipulations of Article 2 shall apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, shall be, during the existence of their exclusive right of translation, equally protected against the unauthorised public representation of translations of their works.

The stipulations of Article 2 shall apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title page or commencement of the work that he forbids the public performance thereof.

Art. 10. The following shall be specially included amongst the illicit reproductions to which the present Convention applies: unauthorised indirect appropriations of a literary or artistic work, of various kinds, such as adaptations, musical arrangements, &c., when they are only the reproduction of a particular work, in the same form, or in another form, without essential alterations, additions, or abridgments, so as not to present the character of a new original work.

It is agreed that, in the application of the present Article, the tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

Art. 11. In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary,

be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article 2.

Art. 12. Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place in accordance with the domestic legislation of each country.

Art. 13. It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

Art. 14. Under the reserves and conditions to be determined by common agreement, the present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

Art. 15. It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

Art. 16. An International Office shall be established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This Office, of which the expenses will be borne by the Administrations of all the countries of the Union, shall be placed under the high authority of the Superior Administration of the Swiss Confederation, and shall work under its direction. The functions of this Office shall be determined by common accord between the countries of the Union.

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Art. 17. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries.

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

Art. 18. Countries which have not become parties to the present Convention, and which make provision by their domestic law for the protection of the rights forming the object of the present Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

Art. 19. Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Art. 20. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorised to receive accessions. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Art. 21. The present Convention shall be ratified, and the ratifications exchanged at Berne within the space of one year at the latest.

Additional Article.

The Convention concluded this day shall in no wise affect the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to this Convention.

Final Protocol.

1. As regards Art. 4 it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day, from the date of its coming into force. They shall, however, not be bound to protect the authors of such works further than is permitted by their own legislation except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between those who have legal rights.

2. As regards Art. 9 it is agreed that those countries of the Union whose legislation implicitly includes choreographic works amongst dramatico-musical works expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs in which copyright subsists, shall not be considered as constituting an infringement of musical copyright.

4. The common agreement contemplated in Art. 14 of the Convention is established as follows:—

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force, shall take effect according to the stipulations on this head contained in special Conventions existing, or to be concluded, to that effect.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each in so far as it is concerned, by its domestic legislation, the manner in which the principle contained in Art. 14 is to be applied.

5. The organisation of the International Office established in virtue of Art. 16 of the Convention, shall be fixed by a regulation which shall be drawn up by the Government of the Swiss Confederation.

The official language of the International Office shall be French.

The International Office will collect every kind of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will undertake the study of questions of general interest concerning the

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The International Office will always hold itself at the disposal of members of the Union with a view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Administration of the country where a Conference is to meet will prepare the programme of the Conference with the assistance of the International Office.

The Director of the International Office shall attend the sittings of the Conferences, and shall take part in the discussions without the right to vote. He shall make an annual report on his administration, which shall be communicated to all the members of the Union.

The expenses of the Office of the International Union shall be shared by the Contracting States. Until a fresh arrangement be made, they cannot exceed the sum of sixty thousand francs a year. This sum may be increased if necessary, by the simple decision of one of the Conferences provided for in Art. 17.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

1st class	25	units.
2nd „	20	„
3rd „	15	„
4th „	10	„
5th „	5	„
6th „	3	„

These co-efficients will be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.

Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the Budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

6. The next Conference shall be held at Paris between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office. APPENDIX B.

7. It is agreed that, as regards the exchange of ratifications contemplated in Art. 21, each Contracting Party shall deliver a single instrument, which shall be deposited with those of the other countries, in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries who took part.

The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

ADDITIONAL ACT OF PARIS. 1896.

[The following is an English translation of the Additional Act with the omission of the formal beginning and end.]

Art. 1. The International Convention of the 9th September, 1886, is modified as follows:—

1. *Art.* 2.—The first paragraph of Art. 2 shall run as follows:—

"Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished, or first published in one of those countries, the rights which the respective laws do now or may hereafter grant to natives."

A fifth paragraph is added in these terms:—

"Posthumous works shall be included among those to be protected."

2. *Art.* 3.—Art. 3 shall run as follows:—

"Authors not being subjects or citizens of one of the countries of the Union, who first publish or cause to be first published, their literary or artistic works in one of those countries, shall enjoy, in respect of such works, the protection granted by the Berne Convention, and by the present Additional Act."

3. *Art.* 5.—The first paragraph of Art. 5 shall run as follows:—

"Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works during the entire term of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing

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to be published in one of the countries of the Union, a translation in the language for which protection is to be claimed."

4. *Art.* 7.—Art. 7 shall run as follows:—

"Serial stories, including tales, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced, in original or translation, in the other countries, without the sanction of the authors or of their lawful representatives.

"This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or editors shall have expressly declared in the newspaper or periodical itself in which they shall have been published that reproduction is forbidden. In the case of periodicals it shall be sufficient if such prohibition is indicated in general terms at the beginning of each number.

"In the absence of prohibition, such articles may be reproduced on condition that the source is indicated.

"The prohibition cannot in any case apply to articles of political discussion, to news of the day, or to miscellaneous information."

5. *Art.* 12.—Art. 12 shall run as follows:—

"Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection.

"The seizure shall take place in accordance with the domestic legislation of each country."

6. *Art.* 20.—The second paragraph of Art. 20 shall run as follows:—

"Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country making it, the Convention remaining in full force and effect for the other countries of the Union."

Art. 2. The Final Protocol annexed to the Convention of the 9th September, 1886, is modified as follows:—

1. No. 1.—This clause shall run as follows:—

"As regards Art. 4 it is agreed as follows:—

"(A.) In countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of the present Additional Act.

"(B.) Photographic works and works produced by an analogous process shall be admitted to the benefits of these engagements in so far as the domestic laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works.

"It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries

of the Union, as contemplated by the Berne Convention and by the present Additional Act, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between those who have legal rights."

2. No. 4.—This clause shall run as follows:—

"The common agreement contemplated in Art. 14 of the Convention is established as follows:—

"The application of the Berne Convention and of the present Additional Act to works which have not fallen into the public domain within the country of origin at the time when these engagements come into force, shall take effect according to the stipulations on this head contained in special Conventions existing, or to be concluded, to this effect.

"In the absence of such stipulations between any of the countries of the Union, the respective countries shall regulate, each in so far as it is concerned, by its domestic legislation, the manner in which the principle contained in Art. 14 is to be applied.

"The stipulations of Art. 14 of the Berne Convention and of the present clause of the Final Protocol shall apply equally to the exclusive right of translation in so far as such right is established by the present Additional Act.

"The above-mentioned temporary stipulations shall apply in case of new accessions to the Union."

Art. 3. The countries of the Union which are not parties to the present Additional Act, shall at any time be allowed to accede thereto on their request to that effect. This stipulation shall apply equally to countries which may hereafter accede to the Convention of the 9th September, 1886. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, who shall in turn communicate it to the other Governments.

Art. 4. The present Additional Act shall have the same force and duration as the Convention of the 9th September, 1886.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of that Convention, as soon as possible, and within the space of one year at the latest.

It shall come into force as regards those countries which shall have ratified it three months after such exchange of ratifications.

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TREATY BETWEEN GREAT BRITAIN AND AUSTRIA-HUNGARY.

Convention for the Establishment of International Copyright.

[Vienna, April 24, 1893.]

Art. 1. Authors of literary or artistic works and their legal representatives, including publishers, shall enjoy reciprocally, in the dominions of the High Contracting Parties, the advantages which are, or may be, granted by law there for the protection of works of literature or art.

Consequently, authors of literary or artistic works which have been first published in the dominions of one of the High Contracting Parties, as well as their legal representatives, shall have in the dominions of the other High Contracting Party the same protection and the same legal remedy against all infringement of their rights, as if the work had been first published in the country where the infringement may have taken place.

In the same manner, the authors of literary or artistic works, and their legal representatives, who are subjects of one of the High Contracting Parties, or who reside within its dominions, shall in the dominions of the other Contracting Party enjoy the same protection and the same legal remedies against all infringements of their rights as though they were subjects of, or residents in, the State in which the infringement may have taken place.

These advantages shall only be reciprocally guaranteed to authors and their legal representatives when the work in question is also protected by the laws of the State where the work was first published, and the duration of protection in the other country shall not exceed that which is granted to authors and their legal representatives in the country where the work was first published.

Art. 2. The right of translation forming part of the copyright, the protection of the right of translation, is assumed under the conditions laid down by this Convention. If ten years after the expiry of the year in which a work to be protected in Her Majesty's dominions on the basis of this Convention has appeared, no translation in English has been published, the right of translating the work into English shall no longer within those dominions exclusively belong to the author.

In the case of a book published in numbers, the aforesaid period of ten years shall commence at the end of the year in which each number is published.

Art. 3. Authorised translations are protected as original works. They consequently enjoy the full protection granted by this Convention against the unauthorised reproduction of original works.

It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Art. 4. The expression "literary or artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions, with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

Art. 5. In the British Empire, and in the Kingdoms and States represented in the Austrian Reichsrath, the enjoyment of the rights secured by the present Convention is subject only to the accomplishment of the conditions and formalities prescribed by the law of that State in which the work is first published; and no further formalities or conditions shall be required in the other country.

Consequently, it shall not be necessary that a work which has obtained legal protection in one country should be registered, or copies thereof deposited in the other country in order that the remedies against infringement may be obtained which are granted in the other country to works first published there.

In the dominions of the Hungarian Crown the enjoyment of these rights is subject, however, to the accomplishment of the conditions and formalities prescribed by the laws and regulations both of Great Britain and of Hungary.

Art. 6. In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be, consequently, admitted to institute proceedings in respect of the infringement of copyright before the Courts of the other State, it will suffice that their name be indicated on the work in the accustomed manner.

The Tribunals may, however, in case of doubt, require the production of such further evidence as may be required by the laws of the respective countries.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the legal representative of the anonymous or pseudonymous author, until the latter or his legal representative has declared and proved his rights.

Art. 7. The provisions of the present Convention cannot in any way derogate from the right of each of the High Contracting Parties to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, exhibition, or sale of any book or production.

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Each of the High Contracting Parties reserves also its right to prohibit the importation into its own territory of works which, according to its internal laws, or to the stipulations of treaties with other States, are or may be declared to be illicit reproductions.

Art. 8. The provisions of the present Convention shall be applied to literary or artistic works produced prior to the date of its coming into effect, subject, however, to the limitations prescribed by the following regulations:

(a) In the Austro-Hungarian Monarchy—

Copies completed before the coming into force of the present Convention, the production of which has been hitherto allowed, can also be circulated in future.

In the same manner, appliances for the reproduction of works, such as stereotypes, wood blocks, and engraved plates of every description, such as lithographers' stones, if their production has not hitherto been prohibited, may continue to be used during a period of four years from the coming into force of the present Convention.

The distribution of such copies, and the use of the said appliance is, however, only permitted if an inventory of the said copies and appliances is taken by the Government in question, in consequence of an application of the interested party, within three months from the coming into force of the present Convention, and if these copies and appliances are marked with a special stamp.

Dramatic and dramatico-musical works, or musical compositions legally performed before the coming into force of the present Convention, can also be performed in the future.

(b) In the United Kingdom of Great Britain and Ireland—

The author and publisher of any literary or artistic work first produced before the date at which this Convention comes into effect shall be entitled to all legal remedies against infringement; provided that where any person has, before the date of the publication of the Order in Council putting this Convention into effect, lawfully produced any work in the United Kingdom, any rights or interest arising from or in connection with such production, which are subsisting and valuable at the said date, shall not be diminished or prejudiced.

Art. 9. The provisions of the present Convention shall apply to all the colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, New Zealand.

Provided always that the provisions of the present Convention shall apply to any of the above-named colonies or foreign possessions on

whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative at the Court of His Imperial and Royal Apostolic Majesty, within two years from the date of the exchange of ratifications of the present Convention.

Art. 10. The present Convention shall remain in force for ten years from the day on which the ratifications are exchanged; and in case neither of the two High Contracting Parties shall have given notice twelve months before the expiration of the said period of ten years of their intention of terminating the present Convention, it shall remain in force until the expiration of one year from the day on which either of the High Contracting Parties shall have given such notice.

Her Britannic Majesty's Government shall also have the right to denounce the Convention in the same manner, on behalf of any of the colonies or foreign possessions mentioned in Art. 9. separately.

Art. 11. The present Convention shall be ratified, and the ratifications shall be exchanged at Vienna as soon as possible. It shall come into effect ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties respectively.

In witness whereof, &c.

THE REVISED BERNE CONVENTION OF 1908, COLLATED WITH THE BERNE CONVENTION OF 1886 AND THE ACTS OF PARIS OF 1896 (*f*).

NOTE.—The alterations (other than drafting amendments) embodied in the Revised Convention, as compared with the Berne Convention and the additional Act of Paris, are shown in thick type (column (1)).

The provisions of the texts of 1886 and 1896 which are entirely omitted from the Revised Convention are shown in *italics* (column (2)).

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Berne Convention.
Art. 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.	*Art.* 1. The Contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.
Art. 2. The expression "literary and artistic works" shall include any production in the literary, scientific, or artistic domain, whatever may be the mode or form of its reproduction, such as books, pamphlets, and other writings; dramatic or dramatico-musical works, **choreographic works and pantomimes, the acting form of which is fixed in writing or otherwise;** musical compositions with or without words, works of design, painting, **architecture**, sculpture, engraving and lithography; illustrations, geographical charts, plans, sketches, and plastic works relative to geography, topography, architecture, or science.	*Art.* 4. The expression "literary and artistic works" shall include books, pamphlets, and all other writings; dramatic or dramatico-musical works and musical compositions, with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relating to geography, topography, architecture, or to the sciences in general; finally, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction whatever.

(*f*) Taken from the Annex to the Report of the Committee on the Law of Copyright, 1900 (Cd. 4976).

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Closing Protocol.—2. With reference to Article 9, it is agreed that those countries of the Union the law of which implicitly includes choreographic works amongst dramatico-musical works, expressly admit the said works to the benefit of the provisions of the Convention concluded this day. *It is, however, understood that disputes which may arise upon the application of this clause shall be reserved for the decision of the respective Courts.*
	Additional Act. *Revised Closing Protocol.*—1. With reference to Article 4, it is agreed as follows:— A. In the countries of the Union in which protection is accorded not only to architectural plans, but also to works of architecture themselves, those works are admitted to the benefit of the provisions of the Berne Convention and of the present additional Act.
	Berne Convention.
Translations, **adaptations, arrangements of music, and other reproductions in an altered form of a literary or artistic work, as well as collections of different works,** shall be protected as original	*Art.* 6. Lawful translations shall be protected as original works. Hence they shall enjoy the protection stipulated for in Articles 2 and 3 as regards their unauthorised reproduction in the countries of the Union.

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
works, **without prejudice to the rights of the author of the original work.**	*It is understood that in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.*
The contracting countries shall be bound to make provision for the protection of the above-mentioned works.	
Works of art applied to industrial purposes shall be protected so far as the domestic legislation of each country allows.	
Art. 3. **The present Convention shall apply** to photographic works and to works produced by a process analogous to photography. **The contracting countries shall be bound to make provision for their protection.**	*Closing Protocol.*—1. As regards Article 4, it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day from the date of its coming into effect. They shall, however, not be bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.
	It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, within the meaning of the said Convention, so long as the principal right of reproduction of the work itself subsists, and within the limits of private

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	agreements between the parties entitled.
	Additional Act.
	Revised Closing Protocol.—1. With reference to Article 4, it is agreed as follows:—
	* * *
	B. Photographic works, and works obtained by analogous processes, shall be admitted to the benefit of the provisions of those Acts, in so far as the domestic law of each country allows this to be done, and in the measure of the protection that it accords to similar national works.
	It is understood that an authorised photograph of a protected work of art shall enjoy legal protection, in all the countries of the Union, within the meaning of the Berne Convention, and of the present additional Act, so long as the principal right of reproduction of the work itself subsists, and within the limits of private agreements between the parties entitled.
	Berne Convention.
Art. 4. Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries **other than the country of origin of the work**, for their works, whether unpublished or first published in a country of the Union, the rights	*Art.* 2. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
which the respective laws do now or may hereafter grant to natives **as well as the rights specially granted by the present Convention.**	laws do now or may hereafter grant to natives.
	Additional Act.
	Art. 2. Authors who are subjects or citizens of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished or published for the first time in one of those countries, the rights which the respective laws do now or may hereafter grant to natives.
	Berne Convention.
The enjoyment **and the exercise** of these rights shall not be subject to **the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights shall be governed exclusively by the laws of the country where protection is claimed.**	*Art.* 2, § 2. The enjoyment of these rights shall be subject to the accomplishment of the conditions and formalities prescribed by the law of the country of origin of the work. . . .
	Interpretative Declaration.
	§ 1. With reference to the terms of Article 2, § 2, of the Convention, the protection assured by the aforesaid Acts shall depend solely upon the accomplishment, in the country of origin of the work, of the conditions and formalities which are prescribed by the law of that country. The same shall hold good for the protection of the photographic works mentioned in § 1 B. of the revised closing Protocol.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1866, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
The country of origin of the work shall be considered to be, in the case of unpublished works, the country to which the author belongs; in the case of published works, the country of first publication; and in the case of works published simultaneously in several countries of the Union, the country the laws of which grant the shortest period of protection. **In the case of works published simultaneously in a country outside the Union and in a country of the Union: the latter country shall be considered exclusively as the country of origin.**	*Berne Convention.* *Art.* 2, § 3. The country of first publication, or, if that publication takes place simultaneously in several countries of the Union, that one of them in which the shortest period of protection is granted by law, shall be considered to be the country of origin of the work. § 4. For unpublished works, the country to which the author belongs shall be considered to be the country of origin of the work.
By "published works" must be understood, for the purposes of the present Convention, works copies of which are issued by a publisher. The representation of a dramatic or dramatico-musical work, the performance of a musical work, the exhibition of a work of art, and the construction of a work of architecture shall not constitute a publication.	*Interpretative Declaration.* § 2. By "works published" must be understood works copies of which are issued by a publisher in one of the countries of the Union. Consequently the representation of a dramatic or dramatico-musical work, the performance of a musical work, and the exhibition of a work of art shall not constitute a publication in the sense of the aforesaid Acts.
Art. 5. **Authors being subjects or citizens of one of the countries of the Union, who first publish their works in another country of the Union,**	

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
shall have in this latter country the same rights as native authors.	*Berne Convention.*
Art. 6. Authors not being subjects or citizens of one of the countries of the Union, who first publish their works in one of those countries, shall enjoy **in that country the same rights as native authors, and in the other countries of the Union** the rights granted **by the present Convention.**	*Art.* 3. The stipulations of the present Convention shall apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.
	Additional Act.
	Art. 3. Authors not belonging to any country of the Union, if they have first published their literary or artistic works, or caused them to be first published, in one of those countries, shall enjoy for such works the protection granted by the Berne Convention and by the present Additional Act.
Art. 7. **The term of protection granted by the present Convention shall include the life of the author and fifty years after his death.**	*Berne Convention.*
Nevertheless, in case such term of protection should not be uniformly adopted by all the countries of the Union, the term shall be regulated by the law of the country where protection is claimed, and must not exceed the term	*Art.* 2, § 2. . . . it (the enjoyment of these rights) must not exceed, in the other countries, the duration of the protection granted in the said country of origin.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
fixed in the country of origin of the work. **Consequently the contracting countries shall only be bound to apply the provisions of the preceding paragraph in so far as such provisions are consistent with their domestic laws.**	
For photographic works and works produced by a process analogous to photography, for posthumous works, **for anonymous or pseudonymous works, the term of protection shall be regulated by the law of the country where protection is claimed, provided that the said term shall not exceed the term fixed in the country of origin of the work.**	*Additional Act.* *Art.* 2. Posthumous works shall be included among the works protected.
Art. 8. The authors **of unpublished works, being subjects or citizens of one of the countries of the Union, and the authors of works first published in one of those countries,** shall enjoy, in the other countries of the Union, during the whole term of the right in the original work, the exclusive right of making or authorising a translation of their works.	*Berne Convention.* *Art.* 5. Authors being subjects or citizens of one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union. *For works published by instalments, the period of ten years shall not begin to run until the publication of the last instalment of the original work.* *For works composed of several volumes published at intervals as*

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	well as for reports or papers published by literary or learned societies or by individuals, each volume, report, or paper shall be, with regard to the period of ten years, considered as a separate work.
	In the cases provided for by the present Article, the 31st December of the year in which the work was published shall be considered as the date of publication for the purpose of calculating the period of protection.
	Additional Act.
	Art. 5. Authors being subjects or citizens of one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising translations of their works during the whole term of the right in the original work. *Nevertheless, the exclusive right of translation shall cease to exist when the author shall not have made use of it within a period of ten years from the time of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is claimed.*
	Berne Convention.
Art. 9. Serial stories, tales, **and all other works, whether**	*Art.* 7. Articles in newspapers or magazines published in any

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
literary, scientific, or artistic, whatever their object, published in the newspapers or periodicals of one of the countries of the Union may not be reproduced in the other countries without the consent of the authors.	country of the Union may be reproduced, in original or in translation, in the other countries of the Union, unless the authors or publishers have expressly forbidden it. *For magazines it is sufficient if the prohibition is made in a general manner at the beginning of each number of the magazine.*
With the exception of serial stories and tales, any newspaper article may be reproduced **by another newspaper** unless the reproduction thereof is expressly forbidden. Nevertheless, the source must be indicated; **the legal consequences of the breach of this obligation shall be determined by the laws of the country where protection is claimed.**	No prohibition can in any case apply to articles of political discussion or to the reproduction of news of the day or miscellaneous items.
The protection of the present Convention shall not apply to news of the day or to miscellaneous information which is simply of the nature of items of news.	*Additional Act.* *Art.* 7. Serial novels, including short stories, published in the newspapers or magazines of any country of the Union may not be reproduced, in original or in translation, in the other countries, without the authorisation of the authors or their lawful representatives. This applies equally to other articles in newspapers or magazines, whenever the authors or publishers shall have expressly declared in the newspaper or magazine in which they have published such articles that they forbid the reproduction of these. *For magazines it is sufficient if the prohibition is made in a general manner at the beginning of each number.* In the absence of prohibition,

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(1)

Revised Convention as signed at Berlin on November 13th, 1908.

(2)

Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896.

[NOTE.—The Interpretative Declaration was not signed by Great Britain.]

reproduction shall be permitted on condition of indicating the source.

No prohibition can in any case apply to articles of political discussion, news of the day, or miscellaneous items.

Berne Convention.

Art. 10. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational purposes, or having a scientific character, or for chrestomathies, the effect of the legislation of each country of the Union and of special arrangements existing, or to be concluded between them, is not affected by the present Convention.

Art. 8. As regards the liberty of extracting portions from literary or artistic works for use in publications destined for education, or having a scientific character, or for chrestomathies, the effect of the legislation of each country of the Union and of special arrangements existing or to be concluded between them is not affected by the present Convention.

Art. 11. The stipulations **of the present Convention** shall apply to the public representation of dramatic or dramatico-musical works **and to the public performance of musical works,** whether such works be published or not.

Authors of dramatic or dramatico-musical works shall be protected during the existence of their right **over the original work** against the unauthorised public representation of translations of their works.

Art. 9. The stipulations of Article 2 shall apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, shall be protected in like manner during the existence of their exclusive right of translation against the unauthorised public representation of translations of their works.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
In order to enjoy the protection of the present Article, authors shall not be bound in publishing their works to forbid the public representation or performance thereof.	The stipulations of Article 2 shall apply equally to the public performance of unpublished musical works, and of published works as to which the author has expressly declared upon the title-page or at the commencement of the work that he forbids their public performance.
Art. 12. The following shall be specially included among the unlawful reproductions to which the present Convention applies:— Unauthorised indirect appropriations of a literary or artistic work. such as adaptations, musical arrangements, **transformations of a novel, tale, or piece of poetry into a dramatic piece, or vice versâ, &c.**, when they are only the reproduction of that work, in the same form or in another form, without essential alterations, additions, or abridgments, and do not present the character of a new original work.	*Art.* 10. The following shall be specially included among the unlawful reproductions to which the present Convention applies:— Unauthorised indirect appropriations of a literary or artistic work, known by various names, such as adaptations, arrangements of music, &c., when they are only the reproduction of such a work in the same form or in another form, without essential alterations, additions, or abridgments, and do not in other respects present the character of a new original work. It is understood that, in the application of the present Article, the Courts of the various countries of the Union shall, if occasion arises, take into account the reservations of their respective laws.
	Interpretative Declaration. § 3. The transformation of a novel into a play, or of a play into a novel, shall come within the stipulations of Article 10.

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(1)

Revised Convention as signed at Berlin on November 13th, 1908.

Art. 13. **The authors of musical works shall have the exclusive right of authorising (1) the adaptation of those works to instruments which can produce them mechanically; (2) the public performance of the said works by means of these instruments.**

Reservations and conditions relating to the application of this Article may be determined by the domestic legislation of each country in so far as it is concerned; but the effect of any such reservations and conditions will be strictly limited to the country which has put them in force.

The provisions of paragraph 1 shall not be retroactive, and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country to mechanical instruments before the coming into force of the present Convention.

Adaptations made in virtue of paragraphs 2 and 3 of the present Article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country.

(2)

Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896.

[NOTE.—The Interpretative Declaration was not signed by Great Britain.]

Berne Convention.

Closing Protocol.—§ 3. It is understood that the manufacture and sale of instruments serving to reproduce mechanically musical airs in which copyright subsists shall not be considered as constituting infringement of musical copyright

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1866, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
Art. 14. Authors of literary, scientific, or artistic works shall have the exclusive right of authorising the reproduction and public representation of their works by cinematography. Cinematograph productions shall be protected as literary or artistic works if, by the arrangement of the acting form or the combinations of the incidents represented, the author has given the work a personal and original character. Without prejudice to the rights of the author of the original work, the reproduction by cinematography of a literary, scientific, or artistic work, shall be protected as an original work. The above provisions apply to reproduction or production effected by any other process analogous to cinematography.	
Art. 15. In order that the authors of works protected by the present Convention may, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.	*Art.* 11. In order that the authors of works protected by the present Convention may, in the absence of proof to the contrary, be considered as such, and consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author.	For anonymous or pseudonymous works, the publisher whose name is indicated on the work shall be entitled to protect the rights belonging to the author. He shall be, without other proof, deemed to be the legal representative of the anonymous or pseudonymous author. *It is understood, nevertheless, that the Courts may, if necessary, require the production of a certificate from the competent authority, stating that the formalities prescribed, according to Article 2, by the law of the country of origin, have been fulfilled.*
Art. 16. Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection. **In such a country the seizure may also apply to reproductions imported from a country where the work is not protected, or has ceased to be protected.** The seizure shall take place in accordance with the domestic legislation of each country.	*Art.* 12. Pirated works may be seized upon importation into those countries of the Union in which the original work has a right to legal protection. The seizure shall take place in accordance with the domestic legislation of each country. *Additional Act.* *Art.* 12. Pirated works may be seized by the competent authorities of any country of the Union where the original work enjoys legal protection. The seizure shall take place in accordance with the domestic legislation of each country.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Berne Convention.
Art. 17. The provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.	*Art.* 13. It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit by measures of domestic legislation or police the circulation, representation, and exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.
Art. 18. The present Convention shall apply to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin **through the expiration of the term of protection.** **If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew in that country.**	*Art.* 14. The present Convention, under the reservations and conditions to be determined by a common agreement, shall apply to all works which, at the time of its coming into force, have not yet fallen into the public domain in their country of origin.
The application of this principle shall take effect according to the stipulations contained in special Conventions existing, or to be concluded, to that effect	*Closing Protocol.*—§ 4. The common agreement provided for in Article 14 of the Convention is concluded as follows:— The application of the Con-

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
between countries of the Union. In the absence of such stipulations, the respective countries shall regulate, each in so far as it is concerned, the manner in which the said principle is to be applied.	vention to works not fallen into the public domain at the time of its coming into force, shall take effect according to the stipulations relative thereto, contained in special treaties existing, or to be concluded for the purpose. In the absence of such stipulations between countries of the Union, the respective countries shall regulate, each for itself, by domestic law, the manner in which the principle contained in Article 14 is to be applied. *Additional Act.* *Closing Protocol.*—§ 4. The common agreement provided for in Article 14 of the Convention is concluded as follows:— The application of the Berne Convention and of the present additional Act to works not fallen into the public domain in their country of origin at the time of the coming into force of those Acts, shall take effect according to the stipulations relative thereto contained in special Conventions existing or to be concluded for the purpose. In the absence of such stipulations between countries of the Union, the respective countries shall regulate, each for itself, by domestic law, the manner in which the principle contained in Article 14 is to be applied. *The stipulations of Article* 14

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	of the Berne Convention and of this paragraph of the Closing Protocol shall apply equally to the exclusive right of translation as granted by the present Additional Act.
The above provisions shall apply equally in case of new accessions to the Union, **and also in the event of the term of protection being extended by the application of Article 7.**	The above-mentioned temporary provisions shall be applicable in case of new accessions to the Union.
Art. 19. **The provisions of the present Convention shall not prevent a claim being made for the application of any wider provisions which may be made by the legislation of a country of the Union in favour of foreigners in general.**	
	Berne Convention.
Art. 20. The Governments of the countries of the Union reserve to themselves the right to enter into special arrangements between each other, provided always that such arrangements confer upon authors more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention. The provisions of existing arrangements which answer to the above-mentioned conditions shall remain applicable.	*Art.* 15. It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to make separately particular arrangements between themselves, provided always that such arrangements confer upon authors or their representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

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(1)

Revised Convention as signed at Berlin on November 13th, 1908.

(2)

Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896.

[NOTE.—The Interpretative Declaration was not signed by Great Britain.]

Additional Article.

The Convention concluded this day shall not in any way affect the maintenance of the treaties already existing between the contracting countries, so far as those treaties confer upon authors or their representatives rights more extended than those accorded by the Union, or embody other stipulations which are not contrary to this Convention.

Art. 21. The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" **shall be maintained.**

That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its working.

Art. 16. An International Office shall be established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works."

That Office, the expenses of which shall be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confederation, and works under its supervision. Its functions shall be determined by common agreement between the countries of the Union.

Closing Protocol.—§ 5. The organization of the International Office provided for by Article 16 of the Convention shall be settled by a regulation which shall be drawn up by the Government of the Swiss Confederation.

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
The official language of the Office shall be French.	The official language of the International Office shall be French.
Art. 22. The International Office collects every kind of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and publishes such information. It undertakes the study of questions of general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations, edits a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.	*Closing Protocol.*—§ 5 (*continued*). The International Office shall collect every kind of information relative to the protection of the rights of authors over their literary and artistic works. It shall arrange and publish such information. It shall undertake the study of questions of general interest concerning the Union, and by the aid of documents placed at its disposal by the different Administrations shall edit a periodical publication in the French language on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorise by common accord the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.
The International Office will always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.	The International Office shall always hold itself at the disposal of members of the Union with the view to furnish them with any special information which they may require relative to the protection of literary and artistic works.
The Director of the International Office shall make an annual Report on his Administration, which shall be communi-	The Director of the International Office shall make an annual Report on his Adminis-

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(1)

Revised Convention as signed at Berlin on November 13th, 1908.

cated to all the members of the Union.

Art. 23. The expenses of the Office of the International Union shall be shared by the contracting countries. Until a fresh decision is arrived at, they cannot exceed the sum of 60,000 fr. a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 24.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

1st class	 25	units.
2nd „	 20	„
3rd „	 15	„
4th „	 10	„
5th „	 5	„
6th „	 3	„

These coefficients are multiplied by the number of countries of each class, and the total product thus obtained gives the number of units by which the total expense is to be divided. The quotient gives the amount of the unit of expense.

Each country shall declare, at the time of its accession, in which of the said classes it desires to be placed.

(2)

Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896.

[NOTE.—The Interpretative Declaration was not signed by Great Britain.]

tration, which shall be communicated to all the members of the Union.

Closing Protocol.—§ 5 (*continued*). The expenses of the Office of the International Union shall be shared by the contracting countries. Until a fresh decision is arrived at, they cannot exceed the sum of 60,000 fr. a year. This sum may be increased, if necessary, by the simple decision of one of the Conferences provided for in Article 17.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding countries into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

1st class	 25	units.
2nd „	 20	„
3rd „	 15	„
4th „	 10	„
5th „	 5	„
6th „	 3	„

These coefficients shall be multiplied by the number of countries of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unit of expense.

Each country shall declare, at

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
The Swiss Administration prepares the Budget of the Office, superintends its expenditure, makes the necessary advances, and draws up the annual account, which will be communicated to all the other Administrations.	the time of its accession, in which of the said classes it desires to be placed. The Swiss Administration shall prepare the Budget of the Office, and superintend its expenditure, make the necessary advances, and draw up the annual account, which will be communicated to all the other Administrations.
Art. 24. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union. Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries. The Administration of the country where a Conference is to meet prepares, with the assistance of the International Office, the work of the Conference. The Director of the Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote. No alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.	*Art.* 17. The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union. Questions of this kind, as well as those which are of interest to the Union in other respects, shall be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries. *Closing Protocol.*—§ 5. The Administration of the country where a Conference is to meet shall prepare, with the assistance of the International Office, the work of the said Conference. The Director of the International Office shall attend at the sittings of the Conferences, and shall take part in the discussions without the right to vote. It is understood that no alteration in the present Convention shall be binding on the Union, except by the unanimous consent of the countries composing it.

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(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
	Closing Protocol.—§ 6. *The next Conference shall take place at Paris within a period of from four to six years from the date of the coming into force of the Convention.* *The French Government shall fix the date of this Conference within these limits, after having consulted the International Office.*
Art. 25. States outside the Union which make provision for the legal protection of rights forming the object of the present Convention may accede thereto on request to that effect.	*Art.* 18. Countries which have not been parties to the present Convention and make provision in their own territory for the legal protection of the rights forming the objects of this Convention, shall be admitted to accede thereto on request to that effect.
Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.	Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.
Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention. **It may, nevertheless, contain an indication of the provisions of the Convention of the 9th September, 1886, or of the Additional Act of the 4th May, 1896, which they may judge necessary to substitute, provisionally at least, for the corresponding provisions of the present Convention.**	Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.
Art. 26. Contracting countries	*Art.* 19. Countries acceding to

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
shall have the right to accede to the present Convention at any time for their Colonies or foreign possessions.	the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.
They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.	They may do this either by a general Declaration comprising in the accession all their Colonies or possessions, or by specially naming those comprised therein, or by simply indicating those which are excluded.
Such Declaration shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.	
Art. 27. **The present Convention shall replace, in regard to the relations between the Contracting States, the Convention of Berne of the 9th September, 1886, including the Additional Article and the Final Protocol of the same date, as well as the Additional Act and the Interpretative Declaration of the 4th May, 1896. These instruments shall remain in force in regard to relations with States which do not ratify the present Convention.**	
The signatory States of the present Convention may declare at the exchange of ratifications that they desire to remain bound, as regards any	

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(1)

Revised Convention as signed at Berlin on November 13th, 1908.

(2)

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[NOTE.—The Interpretative Declaration was not signed by Great Britain.]

specific point, by the provisions of the Conventions which they have previously signed.

Art. 28. The present Convention shall be ratified and the ratifications exchanged **at Berlin not later than the 1st July, 1910.**

Each Contracting Party shall, as regards the exchange of ratifications, deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.

Art. 21. The present Convention shall be ratified and the ratifications exchanged at Berne, within a period of one year at the latest.

Closing Protocol.—§ 7. It is agreed that, as regards the exchange of ratifications provided for by Article 21, each Contracting Party shall deliver a single instrument, which shall be deposited with those of the other countries in the archives of the Government of the Swiss Confederation. Each Party shall receive in return a copy of the *procès verbal* of the exchange of ratifications signed by the Plenipotentiaries who took part.

Art. 29. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country which made it, the Convention remaining in full force

Art. 20. The present Convention shall be put in force three months after the exchange of ratifications, and shall remain in force for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government appointed to receive accessions. It shall only take effect in regard to the country which made it, the Convention remaining in full

(1) Revised Convention as signed at Berlin on November 13th, 1908.	(2) Berne Convention of September 9th, 1886, Additional Act of Paris and Interpretative Declaration of May 4th, 1896. [NOTE.—The Interpretative Declaration was not signed by Great Britain.]
and effect for the other countries of the Union.	force and effect for the other countries of the Union.
	Additional Act. Such denunciation shall be made to the Government of the Swiss Confederation. It shall only take effect in regard to the country which made it, the Convention remaining in full force and effect for the other countries of the Union.
Art. 30. **The States which shall introduce in their legislation the duration of protection for fifty years contemplated by Article 7, first paragraph, of the present Convention, shall give notice thereof in writing to the Government of the Swiss Confederation, who will communicate it at once to all the other States of the Union.** **The same procedure shall be followed in the case of the States renouncing the reservations made by them in virtue of Articles 25, 26, and 27.** In faith whereof, &c.	

APPENDIX C.

ORDERS IN COUNCIL MADE UNDER SECTS. 28 AND 29 OF THE COPYRIGHT ACT, 1911, EXTENDING THAT ACT TO FOREIGN COUNTRIES AND BRITISH PROTECTORATES.

ORDER IN COUNCIL UNDER THE COPYRIGHT ACT, 1911, REGULATING COPYRIGHT RELATIONS WITH THE FOREIGN COUNTRIES OF THE BERNE CONVENTION UNION (*g*).

At the Court at Buckingham Palace, the 24th day of June, 1912.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas on the 9th day of September, 1886, a Convention with respect to the protection to be given by way of copyright to the authors of literary and artistic works (hereinafter called the Berne Convention) set out in the Second Schedule to this Order was concluded between Her late Majesty Queen Victoria and the foreign countries following, that is to say:—Belgium, France, Germany, Hayti, Italy, Spain, Switzerland and Tunis, and on the 5th day of September, 1887, the ratifications of the said Berne Convention were duly exchanged between Her late Majesty Queen Victoria and the aforesaid countries:

And whereas subsequently the foreign countries following, namely, Luxemburg, Monaco, Montenegro, Norway and Sweden, acceded to the said Berne Convention:

And whereas an additional Act to the said Berne Convention (hereinafter called the Additional Act) set out in the Third Schedule to this Order was agreed upon between Her late Majesty Queen Victoria and the foreign countries following, namely, Belgium, France, Germany, Italy, Luxemburg, Monaco, Montenegro, Spain, Switzerland and Tunis, for the purpose of varying the provisions of the said Berne Convention, and the ratifications of the said Addi-

(*g*) Statutory Rules and Orders, 1912, No. 913.

tional Act were, on the 9th day of September, 1897, exchanged between Her late Majesty Queen Victoria and the aforesaid countries:

And whereas subsequently the Republic of Hayti acceded to the said Additional Act, and the foreign countries following, namely, Denmark and the Farõe Islands, the German Protectorates, Japan and Liberia, acceded to the said Berne Convention and the said Additional Act, and the Principality of Montenegro duly denounced the said Berne Convention and the said Additional Act:

And whereas by the Orders in Council mentioned in the Fifth Schedule to this Order and made under the authority of the International Copyright Acts, 1844 to 1886, effect is now given throughout His Majesty's dominions to the said Berne Convention and the said Additional Act:

And whereas a Convention (hereinafter called the Berlin Convention) set out in the First Schedule to this Order was on the 13th day of November, 1908, agreed upon between His late Majesty King Edward VII. and the foreign countries following, namely: Belgium, Denmark, France, Germany, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Spain, Sweden, Switzerland and Tunis, for the purpose of replacing the said Berne Convention and the said Additional Act:

And whereas it is provided by the said Berlin Convention that the Contracting States may make reservations by declaring at the exchange of ratifications that they desire to remain bound, as regards any specific point, by the provisions of the said Berne Convention and the said Additional Act, and it is further provided by the said Berlin Convention that the said Berne Convention and the said Additional Act shall remain in force in regard to relations with Contracting States which do not ratify the said Berlin Convention:

And whereas the said Berlin Convention was ratified by His Majesty on the 14th day of June, 1912, subject to the reservation mentioned in Part I. of the Fourth Schedule to this Order:

And whereas the said Berlin Convention has also been ratified by the foreign countries following, namely, Belgium, France, Germany, Hayti, Japan, Liberia, Luxemburg, Monaco, Norway, Spain, Switzerland and Tunis, subject to the reservations mentioned in Part II. of the Fourth Schedule to this Order:

And whereas the Republic of Portugal has acceded to the said Berlin Convention:

And whereas by the Copyright Act, 1911, the aforesaid International Copyright Acts, 1844 to 1886, are repealed, as from the commencement of the said Copyright Act, 1911, in the parts of His Majesty's dominions to which the said Act extends:

And whereas by the said Copyright Act, 1911, authority is conferred upon His Majesty to extend by Order in Council the protection of the said Act to certain classes of foreign works within

APPENDIX C.

any part of His Majesty's dominions, other than self-governing dominions, to which the said Act extends:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered as follows:—

(1) This Order shall extend to the foreign countries following, namely, Belgium, Denmark and the Faröe Islands, France, Germany, and the German Protectorates, Hayti, Italy, Japan, Liberia, Luxemburg, Monaco, Norway, Portugal, Spain, Sweden, Switzerland and Tunis. And the above countries are in this Order referred to as the foreign countries of the Copyright Union.

(2) The Copyright Act, 1911, including the provisions as to existing works, shall subject to the provisions of the said Act and of this Order apply—

(a) to works first published in a foreign country of the Copyright Union, in like manner as if they had been first published within the parts of His Majesty's dominions to which the said Act extends:

(b) to literary, dramatic, musical and artistic works, the authors whereof were at the time of the making of the works subjects or citizens of a foreign country of the Copyright Union, in like manner as if the authors had been British subjects:

(c) in respect of residence in a foreign country of the Copyright Union, in like manner as if such residence had been residence in the parts of His Majesty's dominions to which the said Act extends.

Provided that—

(i) Sections 1 (2) (d) and 19 of the Copyright Act, 1911, and such other part or parts thereof as confer upon the owner of the copyright in a literary, dramatic or musical work the exclusive right of making any record perforated roll cinematograph film or other contrivance by means of which the work may be mechanically performed and such other part or parts thereof as confer copyright in any record or perforated roll shall not apply in the case of any work of which the country of origin is Denmark, Italy, or Sweden.

(ii) The term of copyright within the parts of His Majesty's dominions to which this Order applies shall not exceed that conferred by the law of the country of origin of the work.

(iii) The enjoyment of the rights conferred by the Copyright Act, 1911, shall be subject to the accomplishment of the following conditions and formalities, that is to say:—

(a) In the case of any newspaper article (not being a

serial story or tale) of which the country of origin is one of the foreign countries following, namely, Belgium, France, Germany, and the German Protectorates, Hayti, Liberia, Luxemburg, Monaco, Portugal, Spain, Switzerland and Tunis, the right to prevent the reproduction of such article (either in the original language or in a translation) in another newspaper with an indication of the source shall be conditional upon reproduction being forbidden by express declaration in some conspicuous part of the newspaper in which the article is published.

(b) In the case of any newspaper or magazine article (not being a serial story or tale) of which the country of origin is Denmark, Italy, Norway or Sweden, the right to prevent the reproduction of such article (either in the original language or in a translation) with an indication of the source shall be conditional upon reproduction being forbidden by express declaration in some conspicuous part of newspaper or magazine in which the article is published.

(c) In the case of any literary or dramatic work of which the country of origin is Denmark, Italy, Japan, or Sweden the right after the expiration of ten years from the end of the year in which the work or in the case of a book published in numbers each number of the work was first published, to prevent the production, reproduction, performance in public or publication of any translation of the work shall be conditional upon the publication before the expiration of the above-mentioned period and within the parts of His Majesty's dominions to which this Order applies or within any foreign country of the Copyright Union of an authorised translation in the language for which protection is claimed of the work or of each number of the work.

(d) In the case of any published musical work of which the country of origin is Denmark, Italy, Japan or Sweden the right to prevent performance in public shall be conditional upon performance in public being forbidden by an express declaration on the title-page or commencement of the work.

(e) In the case of any work of which the country of origin is Denmark, Italy or Sweden the entire rights conferred by the Copyright Act, 1911, shall be conditional upon the accomplishment of the conditions and formalities prescribed by law in the country of origin.

(iv) Nothing in the provisions of the Copyright Act, 1911, as applied to existing works, 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

APPENDIX C.

virtue of Section 5 of the International Copyright Act, 1886.

(3) Subject to the provisions of Article (2) proviso (i) of this Order where any musical work to which this Order applies has been published before the commencement of the Copyright Act, 1911, but no contrivances by means of which the work may be mechanically performed have before the commencement of this Order been lawfully made, or placed on sale, within the parts of His Majesty's dominions to which this Order applies, copyright in the work shall include all rights conferred by the said Act with respect to the making of records, perforated rolls and other contrivances by means of which the work may be mechanically performed.

(4) In this Order the expression "the country of origin" as applied to a work has the same meaning as in the third paragraph of Article 4 of the Berlin Convention.

(5)—(a) This Order shall apply to all His Majesty's dominions, colonies, and possessions, excepting to those hereinafter named, that is to say, except to the—

Dominion of Canada,
The Commonwealth of Australia,
The Dominion of New Zealand,
The Union of South Africa,
Newfoundland.

(b) This Order shall also apply to Cyprus, and to the following territories under His Majesty's protection, that is to say:—the Bechuanaland Protectorate, East Africa Protectorate, Gambia Protectorate, Gilbert and Ellice Islands Protectorate, Northern Nigeria Protectorate, Northern Territories of the Gold Coast, Nyasaland Protectorate, Northern Rhodesia, Southern Rhodesia, Sierra Leone Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Weihaiwei.

(6) The Orders mentioned in the Fifth Schedule to this Order are hereby revoked, as from the date of the commencement of this Order, so far as regards the parts of His Majesty's dominions to which this Order applies:

Provided that neither such revocation nor anything else in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

(7) This Order shall be construed as if it formed part of the Copyright Act, 1911.

(8) This Order shall come into operation in the United Kingdom on the 1st day of July, 1912, and in any part of His Majesty's dominions to which this Order applies, and on the day on which the

Copyright Act, 1911, comes into operation in such part: which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of His Majesty's Treasury are to give the necessary orders accordingly.

Almeric Fitzroy.

[Then follow Schedules setting out in full the Revised Convention, 1908; the original Convention, 1886; the Additional Act of Paris, 1897; the Reservations made to the Revised Convention (*h*); and references to the Orders in Council under the International Copyright Acts, 1844 to 1886.]

ORDER IN COUNCIL AMENDING THE ORDER IN COUNCIL OF JUNE 24, 1912, REGULATING COPYRIGHT RELATIONS WITH THE FOREIGN COUNTRIES OF THE BERNE COPYRIGHT UNION AS REGARDS DENMARK AND JAPAN (*i*).

At the Court at Buckingham Palace, the 17th day of March, 1913.

PRESENT,

The King's Most Excellent Majesty,

Lord President	Lord Stamfordham
Viscount Knollys	Mr. Herbert Samuel.

Whereas His Majesty, by virtue of the authority conferred on Him by the Copyright Act, 1911, and having regard to the provisions of the Berlin Copyright Convention, was pleased to make an Order in Council, dated the 24th day of June, 1912 (hereinafter called the Principal Order), extending the protection of the said Act to certain classes of works to which protection is guaranteed by the said Convention:

And whereas the Kingdom of Denmark has ratified the said Convention subject to the reservation mentioned in the Schedule attached to this Order:

And whereas it is expedient that Article 2, proviso (iii) (a), of the Principal Order should be extended so as to apply to newspaper articles (not being serial stories or tales) of which the country of origin is Japan:

Now, therefore, His Majesty, by and with the advice of His Privy Council, and by virtue of the authority conferred upon Him by the Copyright Act, 1911, is pleased to order, and it is hereby ordered, as follows:—

(1) The provisions of Article (2), proviso (i), Article (2), proviso (iii) (c), Article (2), proviso (iii) (d), and Article (2),

(*h*) *Ante*, pp. 325, 326.
(*i*) Statutory Rules and Orders, 1913, No. 330.

proviso (iii) (c), of the Principal Order are hereby revoked so far as they relate to works of which the country of origin is Denmark, and the authors of all such works shall enjoy the same rights as if the said provisions had never related thereto.

(2) In the application of the provisions of Article (3) of the Principal Order to works of which the country of origin is Denmark, the date of this Order shall be substituted for the commencement of the Act and for the commencement of the Principal Order.

(3) Where any person has, before the date of this Order, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work at a time when such reproduction or performance would, but for the making of this Order, have been lawful, nothing in this Order shall diminish or prejudice any rights or interest arising from, or in connection with, such action which are subsisting or valuable at the said date unless the person who, by virtue of this Order, becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined in accordance with the provisions of the Copyright Act, 1911.

(4) The provisions of Article (2), proviso (iii) (a), of the Principal Order shall apply as if Japan were included amongst the foreign countries named in those provisions.

And the Lords Commissioners of the Treasury are to give the necessary orders accordingly.

Almeric FitzRoy.

SCHEDULE.

RESERVATION MADE TO THE BERLIN CONVENTION.

Country.	Subject.	Substituted Provisions of Berne Convention and Additional Act of Paris.
Denmark	Newspaper and magazine articles.	Article (7) of the Berne Convention as amended by the Additional Act.