THE LAW OF STAGE COPYRIGHT

AT HOME AND ABROAD

"The law allows it."
SHAKESPEARE, *Mer. of Ven.*, iv. 1.

STAGE COPYRIGHT

AT HOME AND ABROAD

BY

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TO

THE RIGHT HON.

RICHARD EVERARD LORD ALVERSTONE

P.C., G.C.M.G., K.B., LL.D., D.C.L., M.A., F.R.S.

THE LORD CHIEF JUSTICE OF ENGLAND

THE FOLLOWING PAGES ARE

WITH PERMISSION

DEDICATED

IN RESPECTFUL ADMIRATION OF HIS EMINENT GIFTS

AND PUBLIC SERVICES

PREFATORY NOTE

THIS work differs from the ordinary handbook intended chiefly for the use of lawyers. The present aim has been to combine an analysis of the Law of Copyright with an exposition based on a knowledge of the working conditions of the Stage, and thus to furnish authors, managers, artists, and all others affected with at once a comprehensive and a practical guide. While, it is hoped, the whole ground has been covered, special attention has been given to the particular way, in things little as well as big, in which the Copyright needs and perplexities of the different classes of stage-worker tend, a way of which naturally enough not much appreciation is shown in the average treatise. The important bearings of International Copyright, notably as they concern first publication and the position of the translating right, have also not been neglected. Through want of knowledge or faulty procedure valuable rights are often unacquired or forfeited.

Appendix I contains the text of the existing British Statutes relating to Copyright, which, even after the repeal of seventeen Acts, are sufficiently formidable; the text of the various foreign Conventions to which Great Britain is a party, and the Orders in Council relating thereto; and the text of the United States Copyright Law, 1909, and of the Buenos Ayres Convention, 1910.

Appendix II contains draft forms of Agreement, Assignment, License, etc. In preparing Agreement I. the Author has had the valuable assistance of Mr C. Harvard Pierson.

To facilitate reference an extended Index is given.

CONTENTS

PART II

I—APPENDIX OF STATUTES, ORDERS, AND CONVENTIONS

II—APPENDIX OF FORMS OF AGREEMENT, ASSIGNMENT, LICENSE, ETC.

INDEX

PART I

INTRODUCTION

THE coming into force of the Copyright Act, 1911 (1 & 2 Geo. V., ch. 46), dates from July 1, 1912, in the United Kingdom and elsewhere, as set out in sect. 37 (2). For the purposes of the Copyright Union the new law ought to have been ready by July 1, 1910, which was the date fixed for ratifying the Berlin Convention of the preceding year—for, in view of the deficiencies of the subsisting powers, Great Britain could not subscribe fully to the instrument, as she has since done by the ratification of June 14, 1912, which contains only a single reservation. The Copyright Act goes practically the whole length of the Convention, which stipulates that the enjoyment and the exercise of the rights thereunder shall not be subject to the performance of any formality. British authors within the Act have not merely a longer copyright than before; not merely a wider but also a simpler copyright, or rather one that is less a Chinese puzzle to make out. They have also a copyright not so unwieldy and so expensive to enforce in some respects, for summary proceedings for wilful offences can be taken at the Police Court. Unhappily, the aim of bringing copyright within a single statute has not been achieved, as it could have been, greatly to everyone's convenience. Acts relating to music, fine art, etc., have been allowed to remain either unrepealed or only repealed in sections. That would have been unnecessary had each class of copyright property been treated under its own head. But it is an essential weakness of the draughtsmanship of the Act that all classes are dealt with, so to speak, in bulk. They are made to fall under the

The Copyright Act, 1911.

How the Act is framed.

general term of " every original literary, dramatic, musical, and artistic work," and it is impossible to meet on these lines, fully and in the best way, the varying requirements of what are the property-bases of great fields of human activity. It follows that there is a good deal of indirect protection under the Act, as well as faulty protection, and possibly here and there no protection at all. Kinematograph property, for example, is not protected as a thing by itself. In certain circumstances it is protected as a dramatic work, and it may possibly, by adopting certain means, be protected as a literary work; while, as far as it is a photograph, it is protected as an artistic work. Similarly, the lesser subjects of stage copyright — chiefly materials of variety entertainment, such as gag, patter, business, parody, imitation, and the like—have no specific recognition. They are left to fare as best they may under the general term. The day of copyright law at once simple and comprehensive is evidently not yet. The Act will need the always expensive support of case law. The Courts will have, *inter alia*, to define what a dramatic work is and what a literary work is, and also what "in public" is, for the Act does not. Nor does the Act define what it means by "knowingly" in relation to infringement, nor by "reasonable ground" for suspecting the existence of copyright, though the terms are not strangers to the Courts. If a resident manager knows copyright to exist in a piece acted at his theatre, how far must he go to satisfy himself that the visiting manager has authority to perform?

Big simplifying changes.

However, the Act, if it contains much that is intricate, obscure, and defective, does effect some big simplifying changes. No longer need the author or other owner be confused by the old complications arising from the jumble of common law rights, statutory rights, copyright as applied separately and independently to printed publication, and performing right as applied similarly to public representation. For common law rights are abrogated, and the only statutory right is copyright—a simple, all-embracing right that dates from the making of the work.

This broad right, beginning with the work itself, lasts generally speaking for the life of the author and fifty years after.

There is only one thing that can cancel the right. An author forfeits the right if he gives or authorises first publication of the work in a country, including any self-governing British dominion, with which we have not the necessary copyright relations. It will not save him, under the Act, to fall back on our old friend, the "copyright performance." The copyright performance was never of any use under the old law, except that where an unpublished play was otherwise going to be performed for the first time in a non-reciprocal country the performance saved him the home rights. It could not, as far as the Act applies, serve that purpose now. Of course, an author can still give a performance if he chooses, but it will be absolutely without effect under the Act upon his copyright. The Act does not want it from him.

No "copyright performance."

Nor does the Act want registration; in fact, it will not have registration. He cannot register under the Act, which repeals the former statutory provisions in this respect. The Act says to the author: "You have made a certain thing, and on the ground that it is an original thing it belongs to you or your assigns; and all that is required of you is not to publish your work first of all in a non-reciprocal country." "You are a very simplicity 'oman," said Sir Hugh Evans of Mistress Quickly. One can but hope that this cardinal simplicity of the Act will not suffer abuse.

No registration.

It is important to remember that the work may be first performed in any such country without effect on the home rights (subject to an Order in Council), because performance is not publication under the Act. We give up our insular—but logical—position that defined performance as publication, and conform to the Continental usage. At present our self-governing dominions, which have not adopted the Act, nor passed legislation affording reciprocal protection, are not so well-situated. A work performed in a non-recip-

Performance not publication.

rocal foreign country must, not later than the date of the performance, be published (in accordance with the Imperial Acts and Orders in Council still applying to self-governing dominions) in the British dominions or a Unionist country or Austria-Hungary, in order to safeguard the rights in the self-governing dominions. This temporary necessity will pass away as soon as the self-governing dominions come into line with the Act, as no doubt they will in this respect.

The British author is, as far as the Act goes, in a much better position than the foreign author resident in a non-reciprocal country when he made his work. The latter has, roughly, no copyright in the work in this country unless he publishes it within those parts of the British dominions to which the Act applies or in Unionist or other reciprocal countries, and this publication must be not later than fourteen days after publication elsewhere. The work published in these circumstances is protected here, but unpublished it is not; and a public performance would throw it open to anyone who chose to take it. When the revised Bill was introduced in April last year, I ventured to draw attention to this effect of the redrafting of the first subsection of sect. 1. The Berlin Convention is somewhat vague on the point. Article 11 says that the stipulations of the Convention shall apply to the public representation and performance of dramatic and musical works whether published or not; while articles 6 and 8 deal with non-Union authors first publishing in a country of the Union.

Performance no protection.

Much has been done for the home dramatist in protecting him against infringement and piracy—though perhaps not so much as for other classes of author. The dramatist, as owner, possesses the sole right to produce, to reproduce, or to perform in public the work or any substantial part thereof in any material form whatsoever, and in any language. Whether a substantial part includes the title does not appear—apparently it would not—and no separate provision is made for titles. The dramatic work may not without authority be turned into a novel—as also a novel may not

be dramatised. Nor may the dramatic work be mechanically reproduced in any respect—by film, record, or similar contrivance. A musical work has not this sole right of mechanical reproduction. But a mechanical musical contrivance is given copyright in itself.

Term of copyright.

For dramatic works, in common with most other classes of property under the Act, the term of duration is that of life and fifty years. This simplification of our late cumbrous basis provides that the works of an author fall out of copyright at the same time.

Copyright at the making of a work.

But the greatest simplification under the Act has been made in the direction in which it was most necessary. How is the new statutory copyright obtained?[1] By publication, by performance, by obligatory registration? By none of these. Copyright vests automatically in a work from the date of the making. The work is written or otherwise composed, and thereupon copyright subsists in it. Here there is an all-round application of the statutory right that the Act of William IV. gave to dramatic pieces composed but not printed and published.

What the author should do.

With the investitive facts of copyright freed from formality, a precaution that the author or other owner should take against plagiarism is to put his work as speedily as possible in writing or other fixed form, and sign his name on the title-page in the usual way. And the less an oral or pantomimic piece for the stage answers to the description of a dramatic work the greater is the need to set it down or to describe it in literary form. It may then, if original, generally speaking, be regarded as a copyright literary work, vesting in the owner the sole right to produce or reproduce or to convert into a dramatic work, into a film, etc. As additional means of security, the manuscript should be typewritten by a responsible firm, stamped and dated by the firm, and read by one or two persons, whose names should be attached as witnesses. Or the work may be printed, provided that it is not issued to the public for sale unless the American requirements are complied with.

[1] Apart of course from international considerations.

New subjects of copyright.

The Act necessarily takes into account the developments of copyright brought about by performances by mechanical instruments, such as the kinematograph machine, the gramophone, the pianola, and the like. At the time when the old laws were framed the nearest approach to modern machines for the reproduction of sound, etc., was the musical box, and that unpretending instrument was not deemed worth troubling about. Indeed, even the Berne Convention of 1886, in its international bearings, gave the musical box a happy immunity in these words:—"It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright shall not be considered as constituting an infringement of musical copyright (F.P. (3))." But the inventions of recent years have changed a negligible quantity into a substantial factor in copyright affairs. The film is everywhere, and the gramophone disc is not much behind. As far as the old statutes were concerned any protection was accidental. The kinematograph film obtained a certain amount of protection as a photograph; and, further, Mr Justice Jelf once expressed the opinion (without, however, ruling on the subject) that it also came within the reach of dramatic copyright to the extent that a film reproducing the action of a copyright play would infringe the performing right. However, the law was extremely unsatisfactory. It is not surprising in the circumstances that it should have been so. The law affecting mechanical music, etc.—affecting, that is, the varied emanations of machines ranging from the gramophone to the barrel-organ—was yet worse. One speaks of the law, but one might almost say the want of law.

The Act, as has been noted already, does not deal with kinematograph works in their own name. On the other hand, records, perforated rolls, and other contrivances by means of which sounds may be mechanically produced, are, while treated generally as musical works, specially provided for under sect. 19.

Improved protection is given to choregraphic works,

performances in dumb show, recitations, lectures, etc. The protection of such works has been very defective hitherto, but it would be inexact to say that they now receive any protection for the first time under statutory law, though the debatable decision in the Appeal Court in Tate *v.* Fullbrook was unfavourable to dramatic pieces not expressed in words; and this view was, however reluctantly, rather emphasised than otherwise by Jelf, J. in Karno *v.* Pathé Frères, in which a kinematograph reproduction of *The Mumming Birds* was in dispute.

A triple purpose achieved

The Act serves the triple purpose of complying with or making possible compliance with the requirements of the Berlin Convention, of amending and consolidating our domestic copyright law, and of defining the positions of our self-governing and other dominions. The lay reader will not find it a statute particularly easy to understand, especially as some of the provisions are neither well expressed nor satisfactory in themselves; but, roughly speaking, the Act is comprehensive, and in conjunction with the Berlin Convention is calculated to give our authors —in countries within the Copyright Union at the least— nearly all that they can reasonably desire.

Some of the following chapters are amplified in parts from articles by the writer in *The Stage Year Book*, 1909–12, by permission of the editor, Mr Lionel Carson, to whom the writer wishes also to make acknowledgment of helpful consideration on various points.

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September 1, 1912.

I

THE NEW COPYRIGHT

It may be well to clear the ground by means of a few definitions and a few distinctions, and to note a few points that do not seem altogether clear. What, then, are the investitive facts of copyright?—that is to say, what has the author to do in order to possess and enjoy copyright? As an author, he has, with exceptions, to conceive or arrange a work entitled to copyright, to set it down in a fixed form or to express it by means of acoustic or visual presentation. Assuming that he is an author with a right to protection under the Act, nothing further is required of him, with the exception that he must not give first publication to his work in a country that has not been approved under the provisions of the Act.

Published and unpublished works.

Coming to the words of the Act (sect. 1 (1)), copyright subsists, subject to the provisions of the Act, throughout the parts of His Majesty's dominions to which the Act extends 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; (*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. The benefits of the Act also extend by Orders in Council, with reservations, to those countries with which we have Union or other reciprocal relations.

It will be noted that the doubtful word "original" is used, and also the vague word "making." There is no

definition of either word, and a certain amount of ambiguity is the consequence. Take, for example, the position of an adaptation made from a non-copyright foreign work or a work of which the translating right has, in this country, fallen into the common domain. The adaptation would only be original in those respects in which it was new or distinctive, and would not bar the first work, nor a work independently derived from the first work. Musical arrangements from other musical works are not original works, but the former are capable of copyright. Nor when we come to the Interpretation clauses are we helped much to be told not what a literary work is, but that it includes "maps, charts, plans, tables, and compilations," or that a dramatic work "includes any piece for recitation, choregraphic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any kinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character." From the wording it is not altogether plain whether only "choregraphic work or entertainment in dumb show" needs to be fixed in writing or otherwise, though most probably that is so. If recitation is included, are we to suppose that the expression is used in its narrow "penny reading" sense, or as covering every form of dramatic piece on the oral side? If the latter, every dramatic piece must be fixed "in writing or otherwise"; but sect. 1—developing the statutory right vested by the Act of William IV. in a dramatic piece composed but not printed and published—speaks of "the making of the work." Further questions therefore arise. What is the position of a spoken dramatic piece that is fixed only in the memory of the performer or performers? And may a stage piece, if not a dramatic work—and also if a dramatic work—be a literary work? One assumes that, in certain circumstances, it may, though Mr E. J. Macgillivray, one of our ablest authorities on copyright, expresses the opinion that a published dramatic work

Turns, etc., ballets, dumb-show pieces.

does not rank as a published literary work within the meaning of sect. 2 (1) (iv.). Would a piece of patter, especially if reduced to writing, be a literary work, and as original matter entitled to protection as a literary work?

Dramatic piece under old law.

One assumes that, too. The old law protected anything that was a dramatic piece. But recent decisions gave a very restricted meaning to the term dramatic piece. Under these decisions pieces of the kind of *The Mumming Birds* were not dramatic pieces. An entertainment in dumb show was not a dramatic piece. Moreover, as was decided in Tate *v.* Fullbrook with regard to *Motoring* and *Astronomy*, there were circumstances in which a piece might bear resemblance to another piece and yet not infringe the playright in the latter. In coming to these and similar decisions, the judges had before them the old statutory definition of a dramatic piece—*i.e.* "a dramatic piece shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment." It was a very broad definition, which the Courts seem needlessly to have restricted. The recent decision that such turns as those by Little Tich and Mr Johnson Clark, the ventriloquist, were not stage-plays was given under the definition of a stage-play in the Theatres Act, which is another matter.

The new Act affords in this respect little as a guide by way of actual definition. But ballets and dumb-show pieces become protected as a dramatic work if set down as specified. The fate of the very numerous class of piece such as *The Mumming Birds*, from the point of view of a dramatic work, is open to question. Such pieces seem to have their most direct protection as a literary work, if written down. It is advisable to note, however, that, for the purposes of subsect. (1) of sect. 2, dealing with infringement of copyright, there is no classification of works. "A work" is the bare term used; and while it does not follow that the question whether the work is dramatic or literary is never material, yet in many cases the unqualified term leaves the author with a desirable freedom.

Performance is defined, and so is publication. The former means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such representation made by means of any mechanical instrument. **Performance defined.**

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 public delivery of a lecture, or the public exhibition of an artistic work. There is no stipulation that a selling price must be attached to the copies. **Publication defined.**

Publication must not be colourable only, and must be intended to satisfy the reasonable requirements of the public.

Performance or publication without the consent or acquiescence of the author or other owner of a work is not counted as publication or performance, apart from purposes relating to infringement.

A work is deemed to be published simultaneously in two places if the time between publication in one place and publication in the other does not exceed fourteen days, or such longer period as may be fixed by Order in Council. In other words, to secure first publication under the Act, not more than fourteen days must elapse from publication outside the Act. **Simultaneous publication.**

Ambit of Protection

The measure of protection in a copyright work is far-reaching. The copyright subsisting in an original work is the sole right, as far as the Act runs, to produce or reproduce and to authorise the production or reproduction of the work or any substantial part thereof in public in any material form whatsoever and in any language. Thus one may not, without the authority of the owner, do any of the following :— **Extent of sole right.**

(1) Perform or (in the case of a lecture) deliver the work or any substantial part in public.

(2) If the work is unpublished, publish the work.

(3) In the case of a dramatic work, convert the work into a novel or other non-dramatic work.
(4) In the case of a novel or other non-dramatic work, or of an artistic work, convert the work into a dramatic work, by way of performance in public or otherwise.
(5) In the case of a literary, dramatic, or musical work, make any record, perforated roll, kinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered (sect. 1 (2)).

Protection of novels.

The greatest particular change here, as far as theatrical interests go, is of course the very proper long-delayed recognition of playright in a novel. Hitherto, provided no copies of any of the dialogue were made, a playwright was free to derive a dramatic piece from a published copyright novel. In future he must keep his hands as much off the plot or incidents as off the dialogue of a novel protected under the Act. A foreign novel is also protected—with a reservation as to existing works of which the old translating right has fallen into the common domain—assuming it is first published in any part of the British dominions to which the Act extends, or in any self-governing British dominion granting approved protection, or in any Union country or a country with which we have a special treaty.

Translation and adaptation.

Unauthorised translation and adaptation were, within limits, forbidden under the old law. There is in these respects much improved protection, which runs for the duration of the copyright in the original work. From the international point of view, the matter is put thus as to "unlawful reproductions": Unauthorised indirect appropriations of a literary or artistic work [which includes a dramatic work], such as adaptations, musical arrangements, transformations of a novel, tale, a piece of poetry into a dramatic piece and *vice versâ*, etc., when they are only the reproduction of that work, in the same form or another form, without essential alterations, additions, or abridgements, and have not the character of a new original work.

The 1911 Act contains no such condition as is expressed in the latter part of this sentence, but there are circumstances in which copyright may be obtained in a work that owes something to a preceding work. Any copyright in such work is not of course prejudiced; and where there is no copyright, any other adapter is open to go independently to that work. The only right of the adapter is in his individual treatment or in his new material. As far as any dealing with copyright dramatic or literary works goes, the adapter must now walk very warily indeed, for not only is the dialogue protected, but also the plot or dramatic action, the incidents, mise-en-scène, etc., assuming that they are not of so ordinary and familiar a kind and have not had so non-individual a treatment as to make them mere commonplaces of authors generally—things of which it would be unreasonable to say that anyone had, by the exercise of invention, skill, and judgment, given them a relatively distinctive character.

As to musical works.

In musical works there may be a certain amount of freedom of adaptation. This Act, so chary of definitions, does not say what a musical work is.[1] It needs a jury of musicians, to say nothing of a musician-judge, to decide where one musician is plagiarising from another. A question of mere words is simple, or of the likeness of incident to incident, scene to scene; but melody is an intangible quantity, and musicians have a little way of thinking—or of persuading themselves that they are thinking—unconsciously in the same terms. Hence the question of treatment is, more than anything else, the determining factor, as far as there is a determining factor. The author of musical arrangements, if not the author of the original work, occupies an ambiguous position.

A substantial part.

What is "a substantial part," generally speaking, depends a good deal on the facts in the particular case. The terms of the reference are, however, as appears from sect. 1 (2), very wide. It is not a question of mere

[1] But see definitions, Musical (Summary Proceedings) Copyright Act, 1902, p. 40, *post*.

quantity, but of the valuable nature of the matter taken and of its material bearing on the original work.

Films from plays.

The use of any material part of the dramatic action of a copyright play for the purpose of kinematograph exhibition —a use about which the old law was uncertain—is met by specific prohibition.

Exemptions

Public reading or reciting of extracts from published works permitted.

The exemptions to the foregoing are few. One that has unfortunately been made through an amiable misapprehension of the circumstances seriously affects dramatic and other authors. The reading or recitation in public by one person of any reasonable extract from a published copyright work is not an infringement of copyright. This privilege was obtained in the name of "penny readings," which are supposed to be semi-philanthropic in character. But are there any penny readings now, and even if there are, why should an author be compelled to be a party to their possible philanthropy? The amendment, however, carries the exemption much beyond penny readings. "In public" includes any ordinary place of amusement. Thus any reasonable extract from a copyright play, if published, may apparently be read or recited in public. The question will speedily arise, by the deplorable old way of litigation, as to how far recitation includes ordinary stage rendering. It certainly includes a dramatic handling of the piece; and recitations are often done with scenic accessories. In any case the exemption gives the single-handed entertainer the valuable privilege of extracting choice bits from copyright works. Recitations, and also speeches from plays and books by artists of the type of Mr Bransby Williams, now form regular music-hall turns. Assuming that a play or other dramatic work is published, elocutionists, music-hall artists and entertainers generally are entitled to read or recite, singlehanded, reasonable extracts therefrom, provided reading or recitation does not amount to performance. This exemption, inserted at a late hour in the Bill, possibly causes a certain amount of

complication in relation to sect. 11 (2). Sect. 2 (1) (vi.) says that reading or reciting in these circumstances is an act not constituting an "infringement of copyright." But sect. 11 (2) makes it a penal offence for any person knowingly and for his private profit to cause performance of a copyright work in public without consent, and in this sense performance means any acoustic representation. The intention, however, in adding sect. 2 (1) (vi.) was to permit reasonable extracts in public as described. The sole right conferred by sect. 1 (2) is limited in this respect, and it is unlikely to be held that sect. 11 (2) overrides this exemption. Even assuming that to be so, this subsection says nothing about reasonable extracts or a substantial part, the whole work being in contemplation.

In the case of a published recitation, the full work cannot, in any case, be given without permission, only a reasonable extract. Unpublished works are protected from the use of extracts for purposes of public reading or reciting, and so also are works performed but not published.

Fair dealing permitted.

Copyright is not infringed by any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary.

Works in MS. and publication.

This "fair dealing" applies to an unpublished work as well as one published. There is thus nothing in sect. 2 (1) to prevent a newspaper from, say, summarising the plot of a play performed but not published, or making reasonable quotations from the text thereof. In the case of a play both unperformed and unpublished, this right of summarising is rather disturbing. There seems, on the face of it, nothing to stop a newspaper from giving a summary of a play about to be produced. However, sect. 31, while abrogating the old common-law rights—though a play in MS. had statutory right under the repealed Dramatic Copyright Act of 1833—says that nothing herein "shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence." Thus proceedings can be taken to restrain improper publication, not only in

this respect, but generally concerning works submitted privately for consideration, etc.

Lectures, etc., subject to notice.

A public lecture, address, speech (non-political) may be reported in a newspaper, unless the report is prohibited by conspicuous written or printed notice at the main entrance of the building in which the lecture is given, and also in a position near the speaker. Newspaper summaries cannot be prohibited.

School-book extracts permitted.

Short extracts from published literary works may be included in school-books, if the source or sources of the passages are acknowledged. It will have to be decided whether plays and musical works published in book form come within the meaning of a literary work. If not, this exemption does not affect them. The Berlin Convention, by the way, includes dramatic and musical works within the expression " literary and artistic works."

Titles not copyright.

Titles are not specifically protected. As a title is not likely to be held to be " a substantial part " of a work, the sole right of the owner under the statute to produce or reproduce would not seem to be infringed by using the title, except possibly in the case of a very long and distinctive title requiring an unusual amount of invention. The owner will apparently have to depend on the right of user. The use of a title employed before, or of a colourable imitation, especially—though not necessarily—with the intent to deceive, or with the effect of misleading the public, will be restrained by the Courts if it is an injury to property.

Records, rolls, etc.

There are special provisions as to records, perforated rolls, and other contrivances by means of which sounds may be mechanically produced. These provisions are dealt with under a separate head.

Kinematograph works.

Kinematograph works do not come under these special provisions, which have been exacted by the mechanical sound-instrument makers. The Berlin Conference emphatically rejected the idea of an international system of compulsory royalties. Kinematograph works are also separately considered.

II

DURATION OF COPYRIGHT

Life and fifty years.

APART from certain subjects, broadly, the term for which copyright lasts under the Act is for the life of the author and a period of fifty years after his death. Copyright, however, may be determined by improper first publication elsewhere—as, for example, in the United States.

Compulsory licenses.

After the death of the author the sole right is not absolute. At any time after this death the Judicial Committee of the Privy Council can, if complaint has been made to them, order the owner of a copyright to grant a license to perform a dramatic, musical, or literary work, if previously published or performed, on such terms and conditions as the Committee think fit. Though the wording of the section—4—is not altogether clear, it seems that a license may equally be obtained to publish a work that has been performed but not published. The word "reproduced" is probably used inasmuch as, the work not having been published, "republished" could not be used. The complaint must be made on the ground that the owner has refused to reproduce the work and is consequently withholding it from the public.

Further, at any time after the lapse of twenty-five years, or, in the case of a published work copyright on December 16, 1911, thirty years, from the death of the author, the work may be reproduced for sale, without license, on a ten per cent. royalty, payable to the owner.

Oddly enough, provision is only made for the royalty on the price at which a work is to be republished. Owing

to this omission, a copyright dramatic or musical work cannot be reproduced in this way (without order from the Judicial Committee of the Privy Council on their own terms and conditions) except as a republished book.

Our self-governing dominions, Canada especially, will probably take full advantage of the compulsory license principle. The owner of the copyright will not enjoy a sole right. Subject to royalties, his work will be published or performed without his permission on certain conditions, which will not necessarily be the foregoing. Canada, for example, proposes to employ a system by which, as soon as a work has been published or performed in public, any Canadian resident may apply to the Minister acting under the section in question for a license to reproduce the work.

Board of Trade regulations—

Regulations governing the compulsory license under sect. 3 have been issued by the Board of Trade. The applicant intending to reproduce a work must, in his

(1) Notice.

notice to that effect, state his name and address, the name of the work in question, in what form the work will be reproduced and at what price or prices, and the earliest date the work will be on sale. The notice must, a month before any sale of copies, be sent to the owner, by registered post, if his address can with reasonable diligence be found; and otherwise be advertised (in brief) in the *London Gazette.*

(2) Payment of royalties as agreed.

The parties can agree as to any mode in which royalties shall be paid, and as to time and frequency of payment.

(3) Otherwise adhesive labels.

Failing agreement, adhesive labels, purchased from the owner of the copyright and affixed to the copies of the work, shall be employed. The owner must supply these labels from a reasonably convenient place in the United Kingdom, which he shall name by letter. The money for these labels must be tendered at this address. On demand in writing, labels of the required denominations must thereupon be supplied to a corresponding amount, without extra charge.

If within fourteen days from date of notification, the owner fails to intimate to the aforesaid place, or if within a subsequent fourteen he fails to supply the labels on due

demand, the sale of copies of the work only with labels duly affixed is not compulsory; and the amount of royalties due becomes a debt. An account of all copies sold must be kept.

(4) Character of label.

The adhesive label must be of paper, square in shape, not greater than three-quarter inch in length of side, must not bear any effigy, nor suggest a dutiable Government stamp.

Joint authors.

As regards works of joint authors, copyright lasts 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. References in the Act to the period after the expiration of any specified number of years from the death of the author are construed for purposes of works of joint authorship 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 is the shorter.

In the case of a work of joint authorship it is only necessary that one of the authors should satisfy the conditions conferring copyright. This joint authorship, however, must not be nominal. A work of joint authorship is defined as 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.

The interest of a married woman in a work in which she is jointly concerned with her husband is her separate property.

Posthumous works.

A work performed or otherwise produced in public after the death of the author has its subsisting copyright continue for fifty years from the date of first performance or first publication.

This date is reckoned as the starting-point for the twenty-five or thirty years under the royalty proviso to sect. 3.

Last portion of copyright unassignable.

An author who is first owner cannot, except by will, after the date December 16, 1911, dispose of any part of his copyright (including rights in existing works to which he is

entitled under the Act) for a period beyond the expiration of twenty-five years from his death. The remainder of the copyright devolves on his legal personal representatives as part of his estate. The position of joint authors in a work in such circumstances is not clearly provided for.

Modified term.

The duration of copyright affecting photographs and also records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced is limited to fifty years from the making of the original negative or plate.

The duration in the case of a kinematograph film or product is not so clear as it might be. It is referred to in the chapter on Kinematograph Works.

Existing copyrights extended.

The Act has an important bearing on existing copyright works in point of length of protection. There is an extended period of protection. In the case of a work copyright at the time of the Act coming into force, the author or his estate obtains the benefit of the extended period. But the holder of any right or interest granted by the author under the old terms at his option (1) may apply for the right or interest to be continued under the extended period for such consideration as, failing agreement, may be determined by arbitration; or (2) he may, without any re-assignment of right or grant of a similar interest, continue to reproduce or perform the work in like manner as before, subject to the payment, if demanded by the author within three years after the date at which the right would have expired, of such royalties to the author as, failing agreement, may be determined by arbitration. The holder of an assignment or other interest, if he adopts the first course, must give notice to the legal personal representatives of the deceased author not more than one year nor less than six months before the date at which the right would have expired. The notice must be sent by registered post, or, if the representatives cannot with reasonable diligence be found, must be advertised in the *London Gazette* and in two London newspapers.

Position of last holder.

This extension of copyright existing on July 1, 1912, for the benefit of the author or his estate does not apply when the work forms part of a collective work, such as an encyclopædia, newspaper, or other work in which the works of different authors are incorporated, and where the owner of the right or interest is the proprietor of the collective work.

Collective works in relation thereto.

It has been stated that a song with music is a collective work, and that the extended copyright in it therefore belongs not to the author or his estate but to the holder of the old right. If, however, a piece of vocal music is a collective work in itself, where is the collective work in which—as sect. 24 (1) (*a*) (ii.) requires—the piece of music is incorporated? It may be regarded, I think, as fairly certain that a piece of vocal music is not a collective work in this sense. Of course, if the piece is published as part of, say, a musical album made up of works by different authors, the extended period of copyright does not go to the author or his estate, but remains with the aforesaid proprietor.

Question of vocal music.

The definition of a collective work (sect. 35 (1)) is, however, very broad; and the relation of existing works as to the devolving of the extended term of copyright is one that is likely to give rise to a good deal of trouble. Would, for example, the fact that the proprietor of a play had published it with illustrations by an artist make the publication a collective work? If so, it looks as though the extended period of copyright in the play would go to the proprietor, not the author or his estate. But the broad view is that mere additions or adjuncts of this sort to a play do not turn it into a collective work of a kind contemplated by sect. 24 (1) (*a*) (ii.).

There is a stipulation that extended copyright goes to the author or his representatives "in the absence of express agreement," a stipulation that may cause some confusion, inasmuch as any assignment made after the passing of the Act can only affect the first twenty-five years of the period after death.

"Valuable interests."

Any person who, before July 26, 1910, incurred any expenditure or liability for the purpose of or with a view to the reproduction or the performance of a work at a time when the proceeding would, but for the passing of the Act, have been lawful, is, subject to compensation, entitled to exercise his right or interest therein, subsisting and valuable at the date given. If compensation is paid, the person paying it becomes entitled to restrain the reproduction or the performance. The amount of compensation can be arranged by agreement between the parties or by arbitration.

An instance of a valuable interest would be a performing right, lawful at this date, July 26, 1910, in a play dramatised from a novel, or the action taken and expenditure or liability incurred before this date over a play that, but for the extended term under the Act, would have fallen into the common domain.

III

OWNERSHIP AND ASSIGNMENT

Ownership

THE Act is practically uniform on the point that the author is the first owner. **Author first owner.**

But where the work is done in the course of employment under a contract of service, then, in the absence of any agreement to the contrary, the employer becomes, with a few exceptions, the first owner of the copyright. This condition prevails in the case of an engraving, photograph, or portrait; likewise in the case of records, perforated rolls, etc. (which belong in each case to the owner of the original plate); and also in the case where the author is in the employment of another person and the work is made in the course of employment by that person. As regards literary contributions to the periodical Press, the author has a right to restrain publication within certain limits. But a "house-author" turning out plays or other literary work while employed by a manager would, if his engagement was held to be a contract of service, be without copyright; and so would an actor or other performer who, in the course of such employment, added original features to his part or to the entertainment in which he was engaged. A dramatist employed by a manager to write him a play under his direction might be under a contract of service. An author who wrote a play for the periodical Press under a contract of service apparently could not prevent the employer from dealing in the performing rights, nor a story-writer restrain the employer from dramatising the **But not of work done in employment.**

story, provided the employer adhered to the stipulation —which, moreover, may not apply in this case—as to publication, *i.e.* "the issue of copies of the work to the public." The employer owns the copyright, and all that is possibly reserved to the author is a right to restrain the publication of the work otherwise than as part of a newspaper, magazine, or similar periodical.

What is a contract of service.

It becomes a serious matter, therefore, what is or is not a contract of service. In Simmons *v.* Heath Laundry, Cozens-Hardy, M.R., confessed his inability to lay down any complete or satisfactory definition of the term: "The greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the grounds for holding it to be a contract of service; and, similarly, the greater the degree of independence the greater the probability that the services rendered are of the nature of professional services, and that the contract is not one of service." The test seems to be whether the employer holds the substantial power of controlling and supervising the work. It is a nice point whether a dramatic critic, paid at scale rates for regular contributions to his paper, is under a contract of service. Mr G. S. Robertson, who sometimes lets a caustic humour play on the encyclopædic detail of his legal writings, remarks that the value, if any, in a curate's sermons may belong to his vicar under a contract of service. The amiable proposition has, since the date that it was made by Mr Robertson, been disposed of as far as a contract of service goes. The Commissioners under the National Insurance Act, on motion in the Chancery Division, before Mr Justice Parker, on July 26, 1912, raised the point, affecting the vicar of Kirgate and his curate the Rev. F. J. Cutts and the rector of West Hackney and his curate the Rev. R. E. Spencer, whether a contract of service applied. The learned judge held that the position of a curate was that of a person holding an ecclesiastical office and not of a person whose duties and rights were defined by contract at all. There was thus no relationship of master and servant.

A contract of service need not be in writing.

It is not stipulated that an agreement to the contrary shall be in writing. Under the old law a manager employing a dramatist did not *ipso facto* obtain playright in the work done. The playright lay in the author, failing an assignment in writing. In Shepherd *v.* Conquest (in which an author was paid by a manager to adapt a given piece), and in Eaton *v.* Lake (in which the conductor of an orchestra wrote music to a ballet), it was held that the employer had no copyright in the works in question. The position is now greatly modified.

This provision as to work done in employment does not affect the continuance of any right of publication of an essay, article, etc., in a separate form enjoyed by the author at the beginning of the Act by virtue of sect. 18 of the Copyright Act, 1842.

Assignment

Unconditional assignment.

The copyright in a work, as has been seen from the references to sect. 1, subsect. (2) of the Act, embraces a variety of rights. To assign the copyright means to assign the whole of the rights. For example, the dramatist would " pass "—that is, make over as part of the assignment—his kinematograph rights, the composer his sound-contrivance rights, and so on. That was not altogether so under the old law. An assignment of copyright did not pass the playright unless the intention of the parties to that effect was expressly stated in the assignment. Seeing that everything is now conveyed, authors should be the more wary of unconditional assignment. At the same time, the Courts may void an act of unconditional assignment if it can be proved that the assignment does not fairly and fully represent the agreement between the parties, and that the intention was, not to assign the copyright, but to grant a right for a temporary purpose.

Assignment in writing.

Any assignment of copyright must be in writing to be valid. The assignment must be by the owner of the particu-

lar right or his duly authorised agent. The assignment requires to be stamped. It need not be witnessed.

Copyright divisible.

Any part of the copyright may be assigned by the owner, for any particular country, and for any portion of the term belonging to the owner. A dramatic author, for example, could assign his right of translation, his right of printed publication, his kinematograph right, his right to novelise, etc., separately from his right to perform as a play. The Act says vaguely that the owner may assign his copyright "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," but one assumes that he could assign say London rights to A, and provincial rights to B. For "limitations to," "limitations in" is evidently meant.

In the case of an assignment, the assignee becomes the owner of the copyright to the extent of his right and can proceed accordingly.

Use by assignee.

An assignee is under no compulsion to perform, publish or otherwise put a work into future effect unless that is a provision of the assignment.

Alterations by assignee.

An assignee of a copyright cannot be prevented, as a matter of copyright, from using only portions of the work nor from making alterations. But if this treatment is damaging to the reputation of the author, the latter can sue on the ground of libel. Here, again, the author, on assignment, should make his own conditions in these respects.

Joint authors in a work apparently must assign the work or grant licenses jointly.

License preferable to assignment.

In most cases it is preferable, in lieu of assignment, to grant an interest in a right by way of a license. A license in general terms gives no proprietary rights. The owner sues for infringement, not the licensee.

A license is not a sole license unless so drawn. The licenser can grant similar licenses to other parties. A license in general terms is revocable on the giving of reasonable notice by the licenser. All licenses, however, are not

revocable. A license cannot be determined in this way if revoking it would be contrary to its specific terms.

Licenses must be in writing. Writing includes printing or similar reproduction. A license not in writing, however, might have a certain force. Thus, if it could be shown that A, the owner of a play, authorised B, a manager, for a good consideration, to perform the play, then A probably could not proceed against B for duly performing the piece during any period in which the license was unrevoked by A.

A license must be stamped. A witness is not necessary, but it is advisable to have one.

IV

INFRINGEMENT

The sole right.

THE different acts infringing copyright will be gathered from the particulars fully setting out what copyright is under the statute. It is an infringement for an unauthorised person to do any of those things the enjoyment and the exercise of which the statute vests in the owner. The sole right is set out in sect. 1 (2), subject to the exemptions already noted. The subsection runs in full :—

> For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public ; if the work is unpublished, to publish the work or any substantial part thereof ; and shall include the sole right,—
>
> (*a*) to produce, reproduce, perform, or publish any translation of the work ;
>
> (*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work ;
>
> (*c*) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;
>
> (*d*) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, kinematograph film, or other contrivance by

means of which the work may be mechanically performed or delivered,

and to authorise any such acts as aforesaid.

Further, by sect. 2 (2), in relation to indirect infringement :—

Selling, distributing, exhibiting, importing, etc.

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 dominion in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

Possession and conversion of infringing copies.

Sect. 7 relates to the rights of owner against persons possessing or dealing with infringing copies, etc. It says :—

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.

An infringing copy, when applied to any copy of a work, means any copy, including any colourable imitation, made or imported in contravention of the Act.

As to the importation of copies, the word "copies" in sect. 14 is used in a limited sense, not including portions of a work,

Unlawfully imported copies.

or colourable imitations, or derivative works. The section aims at giving the author immediate protection in the United Kingdom (and similarly in a British possession under the Act; see subsect. (7)) against foreign and colonial copies, by which he might be undersold or otherwise interfered with. Such underselling might be brought about, for example, by means of imported copies made under licenses for editions in British possessions, such licenses not covering the United Kingdom. The section says that the owner or his agent must give notice in writing to the Commissioners of Customs and Excise against the importation of such copies into the United Kingdom. They will then be deemed to be goods falling within the prohibitions under sect. 42 of the Customs Consolidation Act of 1876, which says that such goods, unlawfully imported, shall be forfeited and may be destroyed or otherwise disposed of as the Commissioners of Customs direct. Sect. 14 authorises the Commissioners to make regulations as to detention and forfeiture, and these regulations may provide for the recovery of all expenses and damages incurred by detention made on the information of the owner or his agent.

The quotations from the 1911 Act may be left to a considerable extent to speak for themselves. They concern civil proceedings, not necessarily always for infringement of copyright, as under sect. 7, relating to infringing copies, or sect. 14, relating to imported copies, where actions would lie for detinue or for trover.

Permitting use of theatre.

Copyright is also infringed by any person who permits a place of amusement to be used for hire for unauthorised performance. Sect. 2 (3) says:—

> 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.

This subsection applies (subject to the provisions of the Act) to the public performance of any copyright literary, dramatic, musical, or artistic work.

Copyright "presumed."

In an action for infringement, the plaintiff is "presumed" to be the owner, which simplifies the old position. To some extent, it may simplify it at the expense of other persons; but, after all, anyone who, without payment, is making use of another person's work should scarcely grumble if one does not find facilities thrown in one's way.

Name on work.

Though copyright is presumed, the defendant in an action can put in issue both the fact of the copyright and the title of the plaintiff. In that case the name on the copy of the work becomes important. If a name purporting to be that of the author is printed or otherwise indicated on the work in the usual manner (including a written signature in manuscript), the person whose name is so printed or indicated shall, failing proof to the contrary, be presumed to be the author of the work. If no name is so printed or indicated, or if the name 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, then the latter person is presumed to be the owner.

No registration safeguards.

One is not sure whether registration was not, or rather whether a reformed system of registration would not have been better *primâ facie* evidence of ownership. It is easy to put names on works, especially if the works are not printed. It may not be easy but it is possible for an unscrupulous person falsely to allege infringement of a work concocted for the purposes of an action. The proposed optional registration would have been a safeguard all round. Particularly, the question of "innocent infringement" would have been placed on a working basis, as it is not at present. If the particulars of a work were duly registered, then a defendant could not plead innocent infringement. He would be deemed to have had, in the fact of the registered entry, reasonable means of making himself aware that copyright subsisted in the work.

The question of registration was of special importance to owners of musical works. Registration would, as far as concerns them, have taken the place of the old printed notice reserving the public performing rights hitherto necessary on the face of published musical compositions. The Musical Copyright Act, 1882, and the Amending Act of 1888, are repealed; hence there is no further obligation on the owner of a musical work (except in the case of certain foreign countries referred to in Chapter X.) to state on the title page that the performing rights are reserved. This change is made in accordance with a revision contained in the Berlin Convention, which says that "authors shall not be bound in publishing their works to forbid the public representation or performance thereof." Much confusion, litigation, and loss will again arise from this loose state of things. Owners will perhaps have less to object to than managers, conductors, singers, pianists, and others, who will not know "where they are." It is not easy to ascertain, in the absence of all notification, what is copyright and what is not. For example, T. W. Robertson's *Caste*, produced in 1867, is free; the same author's *M.P.* just escapes; but his *Birth* and *War* rank for an extended period, ending in 1921. That is because the last-named, still entitled to copyright under the old Act, get the benefit of the fifty years from death of author.

The dilemma in the case of foreign musical works may be imagined, and the old Harry Wall scandals, which led to compulsory notification of copyright on sheet music, will re-appear. The dilemma will be aggravated, too, because the formal notice is still obligatory as concerns Denmark, Italy, Japan, and Sweden.

Reasonable means.

It is true that, as the position is, where (apart from sect. 7, relating to proceedings for the possession of infringing copies of a work, and sect. 14, to imported copies) proceedings are taken the plaintiff will not be entitled to any remedy other than an injunction or interdict in respect of the infringement (and possibly not even to that in the case of indirect acts of infringement by an innocent in-

fringer) if the defendent proves that at the date of the infringement he was not aware and had not reasonable means of making himself aware that copyright subsisted in the work. Further, the costs of all parties are in the absolute discretion of the Court, from which in this respect no appeal would seem to lie. Such provisions may act as a check on frivolous actions and otherwise be something of a protection. But what are "reasonable means"? The question is likely to appeal with special force to those third parties to so many performances, the lessees, as may be seen from sect. 2 (3) already quoted. The responsibility of lessees of places of entertainment is a serious one as regards every form of entertainment presented at their houses.

Remedies

Civil remedies.

For infringement there are not only civil but also summary remedies. As to the former, where copyright in a work has been infringed, the owner of the copyright is, except as otherwise provided by the Act, entitled to remedies by way of injunction or interdict, damages, accounts, and otherwise.

Interim injunction.

In the case of an alleged infringement, the owner of the right may apply for an interim injunction pending the trial of the action. Motions of this kind, however, do not seem to grow in favour with judges; and it is doubtful whether the provisions of the Act will be helpful in this respect. Yet a speedy process, arresting the improper use of, say, a dramatic work, which is often a matter of the moment, is a very necessary facility for authors and managers. The plaintiff must be able to show a strong *primâ facie* case, and he is liable to the defendant in respect of these proceedings if the grant of the injunction is not upheld at the trial of the action.

Action within three years.

Proceedings must be taken within three years of the infringement. Where the action is one for wrongful detention or conversion of copies, this limitation might not apply.

Criminal remedies.

Action in the High Court is a slow and expensive process, and one of the great reforms of the Act is that Police Court proceedings may be taken. Unfortunately, dramatic copyright suffers badly from the way in which its special requirements are subordinated to those of literary copyright in this section. When the 1910 Bill appeared I pointed out the fact—of great importance from the point of view of dramatic authors and theatrical managers—that amongst other deficient provisions there was no specific mention of unauthorised public performance of a play in the list of offences given in the section relating to Summary Remedies. The omission was afterwards dealt with, as follows, in sect. 11 (2) :—

> If any person knowingly makes or has in his possession any plate for making pirated 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, etc.

The provision as to a plate happened to be there already ; and the second clause—the new one—was inserted without regard for congruity. It is of course better to get this specific inclusion of unauthorised performance anyhow than not at all ; but the section is a sad jumble, and may give trouble in the working. That is because, one feels, the section as a whole was originally drawn with a view to copies in print and the like, and while it has full practical point as far as they go, it is very badly framed from the point of view of unprinted plays. Few actual copies are made in the case of a pirated dramatic work, and the difficulty of proving their existence is considerable ; and thus many of the salutary powers of the Act in connection with pirated copies seem to fall to the ground where dramatic works are concerned.

"Causing" performance.

The roughly-interjected clause refers merely to the person who "causes" the performance. Under section 11 (1) (*d*) a person commits an offence if he "knowingly by way of trade exhibits in public any infringing copy."

But an actor playing a part in public would scarcely be "exhibiting" in this sense. Turning back from sect. 11 to sect. 2, one gathers, as already explained, that copyright in a work is infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the public performance of the work without the consent of the owner of the copyright, unless he proves that he acted innocently. This clause, however, is not inserted under the heading of Summary Remedies. It concerns civil proceedings. The distinction here is that in the one case the person who merely provides the place of entertainment for another is affected, whereas in the second the person "causing" the entertainment is aimed at. How far performing is causing is very doubtful. And the causing must be for private profit—which brings in another train of doubtful circumstances.

Making infringing copies.

A person making, letting, selling, or exhibiting any infringing copy for sale or hire, or distributing infringing copies for purposes of trade or prejudicially to the owner, is liable under this section, if he commits the offence knowingly. The definition of an infringing copy has already been given. A portion of a copyright work evidently does not, under this section, amount to an infringing copy. The whole work is in contemplation, or a colourable imitation of it. On this assumption, an adaptation or a dramatisation of a novel is not an infringing copy in this sense (though it would be, no doubt, for civil remedies), nor is a mechanical sound-contrivance made from a musical work, nor a kinematograph work from a play, etc., though a film from a film is an infringing copy, also a plate from a plate.

However, where a person makes an unauthorised copy of a play, or a colourable imitation, knowing the play to be copyright, this subsection—(1)—of sect. 11 places a valuable weapon in the hands of the owner. The play-pirate who for his purposes thus prepares his copy, or deals in a prepared copy or copy in writing or otherwise, is guilty of an offence under this subsection. The subsection does not include specifically a copy of a published play, bought in the

ordinary way, nor a pirated copy of the work that may have come legitimately into the possession of the person using it.

Penalties. The penalty for knowingly and for private profit causing unauthorised performance is on summary conviction a fine not exceeding £50, or, in the case of a second or subsequent offence, either such fine or imprisonment with or without hard labour for a term not exceeding two months.

The penalty for dealing in infringing copies is a fine not exceeding forty shillings for every copy dealt with in contravention of the section, but not exceeding £50 in respect of the same transaction ; or in the case of a second or subsequent offence, either such fine or imprisonment with or without hard labour for a term not exceeding two months.

No part of the penalties goes to the copyright owner.

There is a right of appeal from a summary conviction in England or Ireland to a court of quarter sessions, and in Scotland under the Summary Jurisdiction Act.

The summary remedies of the Act apply only to the United Kingdom.

The provisions of the Musical Copyright Acts of 1902 and 1906 further apply to musical works.

V

MUSIC-PIRACY

THE Musical (Summary Proceedings) Copyright Act, 1902, and the Musical Copyright Act, 1906, are not repealed by the Act of 1911, except part of sect. 3 in the 1906 Act relating to registration. It was first sought to incorporate the provisions of these Acts, but they did not lend themselves to the generalising methods adopted in the new Act. The summary powers of these Acts still therefore apply to pirated copies of musical works, apart perhaps from records, perforated music-rolls, and like mechanical contrivances, though the latter are now musical works. The defects of the first Act were made good by the second Act, of which the provisions may briefly be summarised. **Music-piracy.**

Pirated copies mean copies reproduced without the lawful consent of the owner. It is an offence punishable on summary conviction for any person to print, reproduce, sell, expose, or offer for sale any pirated copies, or for anyone to have in his possession any plates for producing pirated copies, unless he proves that he acted innocently. But a person convicted of an offence under the Act for the first time shall, if he proves that the copies of the musical work in question had printed on the title page a name and address purporting to be that of the printer or publisher, not be liable to any penalty, unless it is proved that he knew the copies to be pirated. On conviction an offender is liable to a fine not exceeding £5, 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 £10. **1906 Act.** **Summary conviction.** **Fine or imprisonment.**

Arrest without warrant.

A constable may, if the chief officer of police has been authorised in writing by the apparent copyright owner or his agent, take into custody without warrant any person who hawks pirated copies in a street or public place, or offers them by personal canvass or by the delivery of circulars, etc. This authorisation, which may be in general terms, is at the risk of the owner.

Entry of suspected premises.

The Act gives a right of entry into premises and seizure of copies and plates by a constable on a search warrant, which a court of summary jurisdiction is empowered to grant if the court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the Act is being committed on the premises. The Court shall order all pirated copies and plates brought before it under these powers to be forfeited and destroyed, or otherwise dealt with.

Appeal.

A right of appeal against a conviction lies in England and Ireland to Quarter Sessions and in Scotland under the Summary Jurisdiction (Scotland) Act, 1908.

Definitions.

"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.

VI

MECHANICAL CONTRIVANCES

Records, etc., and royalties.

RECORDS, perforated rolls, and other contrivances for the mechanical reproduction of sound are protected as musical works. Hitherto, such contrivances have not only been without statutory copyright in themselves, but have not infringed it in other works. Under these loose, not to say piratical conditions, a great industry has, however unfairly, grown up; and the mechanical instrument-makers, by means of pressure at a critical moment in the fate of the Bill in Parliament, succeeded in establishing their interests, to some extent in defiance of the long-abused claims of musical composers and publishers. As has been noted, the royalty principle, introduced in the United States Copyright Act of 1909, but rejected at the Berlin Conference, has been adopted; and the American Act is also followed in the compulsion that is placed on the owner of a musical work, once he has used or allowed the use of his work for these purposes of reproduction, to permit any other person to make similar use of his work at a prescribed rate of payment. The American royalty was fixed at two cents per contrivance; and these provisions of the statute were not retro-active. In our case there is a minimum royalty of ½d. per contrivance, with varying rates of percentage, calculated at different periods, and for certain periods not calculated at all; and the provisions are made retrospective, not merely as regards the original works from which the contrivances were derived, but also as regards certain of the contrivances, which, piratical in

their origin, are brought into the odour and sanctity of protection. This special treatment of mechanical sound-contrivances is marked by the longest section in the Act—sect. 19—and also the most technical and intricate.

In explaining the section, regard must be had to the fact that the Act recognises and provides for the old conditions as well as the new. Thus, in giving a musical record or similar contrivance copyright as a musical work, protection is accorded to contrivances made before July 1, 1912, as well as to contrivances made after.

Copyright in mechanical contrivances.

First, as to copyright in contrivances as musical works made after July 1, 1912. Sect. 19 (1) says that copyright shall subsist in them in the same way as if they were musical works.

The term of copyright, however, is limited to fifty years from the making of the original plate from which the contrivance was derived, directly or indirectly.

The owner of the original plate at the time when it was made is deemed to be the author of the work. Where the owner is a body corporate, it is sufficient, for purposes of residence, for the firm to have established a place of business anywhere in the British dominions where the Act runs. This residential qualification is important. It entitles foreign firms, if incorporated bodies, to protection for their contrivances under the Act, if in business as stated—a protection that they otherwise would not enjoy if they belonged to countries with which we have no reciprocal relations. The United States, by the way, does not afford a similar protection to British owners, though there may be power, by Order, to afford it under sect. 1 (2) of the United States Copyright Act, 1909.

This protection of records, etc., as copyright works means that one firm cannot, as formerly, reproduce at will the records, etc., of another firm. Firms are, under the royalty system, entitled to make contrivances from the same original sources, but they must go to the sources independently. In other words, a maker, if he wants to produce, under royalty, a record of this piece of music

or that song, cannot take advantage of the work of a preceding maker in obtaining the material or in completing the record.

Copyright in old records.

With regard to contrivances made before July 1, 1912, the first maker—using maker in the sense of owner—of a contrivance reproducing a musical work is the owner, to the exclusion of other makers who reproduced the like contrivance. That is to say, the person who on July 1, 1912, is the owner of the plate from which the original contrivance was made has the copyright; and copies subsequently made by other makers become infringing copies, subject to civil or summary proceedings.

The sub-section creating this right—(8)—does not appear to limit a mechanical contrivance to one derived from a musical work. The right is given, in the way stated, "where a record, perforated roll, or other contrivance by means of which sounds may be mechanically produced has been made before the commencement of this Act."

Modified rights for owners of musical works.

Now as to the position of authors or other owners of copyright musical works in relation to the makers of contrivances. Owners of original musical works have copyright, but it is modified in material respects. In the case of works published before July 1, 1912, contrivances may be made by anyone subject to the payment of royalties. In the case of works not published prior to this date, the authors can restrain mechanical reproduction, provided they have not mechanically reproduced or allowed the mechanical reproduction of the works since July 1, 1912. If they have done so, or as soon as they do so, they cannot restrain mechanical reproduction on payment of royalty.

Works published before July 1, 1912.

First, as to works published before July 1, 1912. It must be noted that the words employed in sect. 19 (7) are "musical works published." We are speaking now, therefore, of works published, not works performed but not published. Any copyright musical work published before July 1, 1912, may be mechanically reproduced by records, perforated rolls, and the like without the consent of the owner of the work.

Royalties payable thereon.

No royalty is payable up to July 1, 1913, if contrivances reproducing the same works have been lawfully made, or placed on sale, prior to July 1, 1910, within the British area of the Act. The royalty afterwards on such works is 2½ per cent.

There is a royalty of 2½ per cent. on other contrivances made from musical works published before July 1, 1912, within the same area.

Alterations or omissions from the original works may be made in the mechanical reproductions.

Works after July 1, 1912.

With regard to musical works not adapted to mechanical instruments prior to July 1, 1912, mechanical reproduction is forbidden until such time as the owner of the copyright in a musical work has made or acquiesced in any such reproduction.

If there has been this reproduction, then the person desiring to make mechanical contrivances from a musical work must give a prescribed notice of his intention to make them. Should the owner not reply in the first place to certain prescribed inquiries, which are set out under the Board of Trade regulations summarised below, the applicant is deemed to possess the consent of the owner.

Alterations in, or omissions from, the musical work can only be made provided they have been made in previous contrivances, or unless the owner agrees thereto; or unless the alterations or omissions are reasonably necessary to the mechanical adaptation of the work. The royalties are:—

Royalties payable thereon.

(*a*) For contrivances sold up to July 1, 1914, 2½ per cent.

(*b*) For contrivances sold after July 1, 1914, 5 per cent.

This royalty is on the ordinary retail selling price of the contrivance, with a minimum of ½d. in respect of each separate copyright work. Fractions of ¼d. are reckoned as ¼d.

As to musical works performed but not published before July 1, 1912, the foregoing conditions—in the absence of any provision in the Act to the contrary—apparently apply, instead of the antecedent provisions set out affecting works published before this date.

Touching the provision respecting alterations and omissions (sect. 19 (2) (ii.)), a musical work is deemed to include any words so closely associated therewith as to form part of the same work, but not to include a contrivance by means of which sounds may be mechanically reproduced.

Dramatic and literary works not affected.

These privileges of mechanical reproduction only affect musical works. Literary and dramatic works are exempt, except as far as subsect. (8) may apply to copyright in mechanical contrivances from works prior to July 1, 1912. But words that form an essential part of a musical work may be reproduced in connection with a mechanical contrivance.

Assignment.

An unconditional assignment of copyright in a literary, dramatic, or musical work under the Act includes the rights of an author as to mechanical reproduction. This fact is one to be borne in mind by authors, especially musical composers.

An assignment of copyright in a musical work, made prior to December 16, 1911, does not carry with it these rights. They are given to the author or his legal personal representatives. Any valuable interests covered by the terms of sect. 24 are subject to the terms and conditions laid down in sect. 19.

Joint-owners and royalties.

A contrivance sometimes reproduces the works of two or more different owners. Where that is so, the royalties payable on the contrivance are to be apportioned by agreement amongst the owners or else determined by arbitration.

Foreign musical works.

Further, as to a musical work under this section—19— where the work is a foreign one, on which copyright is conferred by an Order in Council, the rights in respect of mechanical adaptation are dependent on the provision made in the Order.

Article 13 of the Berlin Convention gives the authors of musical works the exclusive right of authorising mechanical adaptation and mechanical reproduction in public; but any Union country can, within its own area, by domestic legislation, make its own reservations and conditions.

The exclusive right under the Convention is not retroactive. The article also says that unauthorised mechanical adaptations imported into a country where they would not be lawful shall be liable to seizure in that country.

The British position as to mechanical contrivances has already been given fully in this article. This position applies within the area of the Act to copyright in mechanical musical instruments and to the rights of owners of copyright musical works from which no mechanical contrivances have been made prior to July 1, 1912—this position applies to owners of musical works and musical contrivances of foreign countries of the Union, with the exception of Denmark, Italy, and Sweden. But it should be noted that the Berlin Convention does not contain any provision specifically giving international copyright protection to mechanical musical contrivances. However, if a work protected under the Convention were based on a contrivance, the right of that work against unauthorised mechanical adaptation might be maintained.

Board of Trade Regulations

Regulations governing the royalty system for mechanical musical instruments have been issued by the Board of Trade.

Prescribed inquiries.

The prescribed inquiries by the person intending to reproduce a musical work mechanically must be directed to the owner of the copyright (by name, if known). The inquiry-form must state the name, etc., of the musical work in question, the name of the person making the inquiries, an allegation that a contrivance has already been made, and an inquiry it this making was with the consent or acquiescence of the owner.

How made and answered.

The inquiries must be made by registered post, if the address of the owner can with reasonable diligence be found, or otherwise be published by advertisement in the *London Gazette*.

The owner of a work already mechanically reproduced must reply to a letter within seven days of delivery of the

inquiries in ordinary course of post, or to an advertisement within seven days of date of advertisement, which one assumes to be that of the paper. Failing reply within seven days, then—sect. 19 (5)—the owner is deemed to have given his consent to the making, provided that the work has already been mechanically reproduced.

Prescribed notice.

A person intending to reproduce a musical work mechanically must give the owner of the copyright notice to that effect. This notice is not covered by the prescribed inquiries. The applicant must state his name and address, the name, etc., of the musical work, the class of contrivance (*i.e.* whether discs, cylinders, rolls), the ordinary retail selling price, and the amount of royalty payable thereon, the earliest date that the work will be on sale, and whether any other musical work is to be reproduced on the same contrivance.

How made and answered.

The notice must be sent by post, or advertised (in brief), not fewer than ten days before the contrivance is on sale. Any number of musical works may be specified in the same advertisement.

These time-limits apply presumptively only to the United Kingdom, though it is not so stated in the regulations. For other parts of the British dominions within the Act they would be inadequate.

Royalties. By (1) arrangement, (2) adhesive stamps.

The parties can agree as to the mode in which royalties are paid and as to time of payment.

In the absence of agreement, adhesive labels, purchased from the owner of the copyright and affixed to the contrivances, must be employed.

Mode as to adhesive stamps.

The owner must supply these labels from a reasonably convenient place in the United Kingdom, which he must name by letter. The money for these labels must be tendered at this address; and labels of the required denominations must, on demand in writing, then be supplied to a corresponding amount, without extra charge.

If within five days after the date of the notification the owner fails to intimate the aforesaid place, or if within a subsequent three days fails to supply the labels on due

demand, the sale of copies of the work only with labels affixed, denoting the amount of royalty, is not compulsory; and the amount of royalties due becomes a debt. An account of all copies sold must be kept.

Character of adhesive stamp.

The adhesive label must be of paper, square in shape, not greater than three-quarter inch, must not bear any effigy, nor suggest a dutiable Government stamp.

Selling price defined.

The price of a contrivance is calculated at the marked or catalogued selling price of single copies to the public, or, in the absence of this price, at the highest price at which single copies are ordinarily sold to the public.

VII

KINEMATOGRAPH WORKS

NONE of these privileges of compulsory royalty, etc., is enjoyed by kinematograph works, which represent interests far larger than those of mechanical musical instruments. The old law was somewhat dubious and naturally incomplete; and it is extremely unfortunate, seeing how vast an industry has sprung up about moving pictures, that new legislation, with the opportunity before it, should not have made proper and full provision. The Act is content to say that a dramatic work "includes" any kinematograph production where the arrangement or acting form, or the combination of incidents represented, gives the work an original character. One is uncertain how far the term original applies to a horse-race, a procession, a ceremony, and a hundred other happenings to which kinematograph art specially addresses itself. It seems absurd, too, to apply the term "dramatic work" to a film showing scenery or dealing prosaically with an educational subject. The reference employed in the Berlin Convention —"kinematograph productions shall be protected as literary or artistic works"—is much less open to objection, especially as under the Convention these works include dramatic works.

Inadequate protection.

As dramatic work.

The implication is that without this original character the kinematograph product is not protected as a dramatic work. If that is true, there remains the film, which is the substantial part of the work. The film can be protected as a photograph or as a plate directly, one imagines;

As photograph.

or, if not, then through photographs from the film or through the negative. Under United States law, the term " photograph " covers all positive prints from photographic negatives, including those from kinematograph films, the entire series being counted as one photograph.

As literary work.

Or, by placing its incidents, scenery, etc., in writing, the film might obtain indirect protection as a literary work. In this respect the United States law gives protection. Descriptions of moving pictures, of settings for the production of moving pictures, and of spectacles are, when printed and published, " books," and are registered as such at Washington.

As to this form of protection under the Act, sect. 1 (2) (*d*) says that copyright in a literary work includes the sole right to make any kinematograph film. Thus in the case in which a film was not a dramatic work, the owner seemingly would, if necessary, be in a position to proceed as the owner of a literary work in which his sole right to make kinematograph productions had been infringed. A piquant position might arise, assuming that two film-makers produced identical films of, say, a prize-fight, and No. 1 film-maker wrote a close literary account of the fight. Would the Courts regard the kinematograph product of film-maker No. 2 as an infringement of the sole right of film-maker No. 1 in the literary work? One supposes not, as film No. 2 would have been independently derived.

Duration of copyright.

As a dramatic or a literary work—the Act says nothing about a kinematographic production as an artistic work—the copyright is for life and fifty years, and the author is the owner. In the case of a photograph, however, the duration is only fifty years from the making of the original negative, and the owner of the negative at the time is deemed to be the author of the work. There appear to be some elements of confusion here, as to duration and ownership. And as to duration, the elderly owner only gives a limited expectation of copyright to any assignee on the basis of the work being a photograph. Suppose the former makes the photograph, assigns it, and dies, all within a

year. The assignee only has the right, under the proviso to sect. 5 (2), for twenty-five years from the death of the author, and thereafter the copyright devolves on the author's legal personal representatives. This contingency in the case of photographs may not have been taken into account when the proviso was added to the Bill. Alternatively, the proviso may not apply—the proviso to sect. 3 evidently does not to photographs and mechanical sound-contrivances. Neither proviso could very well apply to corporate trading bodies as owners.

A film of which copies were issued to the public would be published. But a kinematograph work simply as a dramatic work, in public representation, would be performed; and performance is not in itself publication.

Protection of foreign (non-Union) works.

First publication within the meaning of the Act is required for published photographs. A place of business on the part of a body corporate within the area of the Act meets the requirement of residence as regards unpublished photographs. In the case of a dramatic work there must, in relation to non-reciprocal countries, be publication within the Act not later than fourteen days from publication elsewhere. Performance does not answer the same purpose. Failing this requirement as to publication, the author, if not a British subject, must have been a resident within the British area of the Act or within certain reciprocal countries at the date of making the work. These considerations do not simplify the ambiguous position of kinematograph works.

Under the Berlin Convention, kinematograph works, if of an original character, as defined in article 14, are protected as literary or artistic works. Further, authors have the exclusive right of kinematograph reproduction for their literary, scientific, or artistic works.

Great Britain has for her part agreed to and ratified this article, but certain other countries have not. Therefore in the Order in Council extending the benefits of the 1911 Act to works of foreign Unionist countries, exemptions are in this respect made in the cases of Denmark, Italy, and

Sweden. The exclusive right of the owner of a literary, dramatic, or musical work to make and authorise kinematograph reproductions, and also the right of the owner of an original kinematograph work to copyright, do not apply to works of which the place of origin is Denmark, Italy, or Sweden. Protection can, however, be obtained by first publication here; or by residence of the author in a Unionist country subscribing to article 14 of the Berlin Convention, during the making.

VIII

VARIETY ART COPYRIGHT

When one comes to the—in one sense—lesser subjects of copyright, one realises how deficient and inexplicit some of the terms of the Act are. In speaking of the lesser subjects of copyright, one has chiefly in mind the materials of variety entertainment, though of course there are other sorts. The variety artist will perhaps be puzzled to know how his turn is protected. It is a fact that under the Act it has not only a longer but a much wider protection than before, but the fact wants a good deal of piecing together. The old law protected anything that was a dramatic piece; it also protected a musical piece amply if the words and music received printed publication. But recent decisions seriously restricted the meaning of the term "dramatic piece." It was held that pieces of the kind of *The Mumming Birds* were not dramatic pieces. An entertainment in dumb-show was not a dramatic piece. Then there was the decision in Tate *v.* Fullbrook, with regard to *Motoring* and *Astronomy*. The Appeal Court held that a piece might bear resemblance to another piece and yet not infringe the playright in the latter. The law, in short, has been extremely loose and inadequate, with a consequence that the piracy and plagiarism in connection with variety entertainments have reached proportions perhaps approached nowhere else. Jokes are filched, patter and gags stolen, business copied. The law has also been very weak on the subject of parodies and imitations. There are numberless per-

Improvement on old law.

formers, especially at minor entertainments, who get the cream of the material of the most popular turns in this way.

The new Act, as has been said, takes no specific account of gag, patter, business, parody, imitation, or the like. But some relief is afforded under the term "dramatic work," which is made to include "any piece for recitation, choregraphic work or entertainment in dumb-show, the scenic arrangement or acting form of which is fixed in writing or otherwise." The meaning to which the term of "dramatic piece" had been narrowed down in the cases mentioned is thus considerably changed. A piece for

Recitation. recitation does not necessarily require any scenic arrangement or acting form; therefore all recitations need not apparently be fixed in writing or otherwise. But an entertainment in dumb-show must be; a ballet must be. The dumb-show entertainment need not be a play, nor the ballet a dramatic one. Any entertainment in dumb-show, assuming it to be original in character, or not made up of mere commonplaces of knockabout business, without freshness of arrangement, is entitled to protection, if put down in writing, or, say, "fixed" by means of a kinematograph film. The Courts may of course circumscribe this very free definition, holding that the dumb-show must be reasonably consistent with a dramatic work. But, as it stands, the definition says nothing about any dramatic

Dumb-show and dancing. character or connected interest in the dumb-show. So, too, about the choregraphic work, which is a big name that may also cover any little dance showing invention and skill in its arrangement. Strictly, a choregraphic work is a work representing dancing by signs, as singing is represented by notes, but the intention of the clause is of course to protect the actual dancing performance.

Similarly, if we go to the dictionary, a recitation means delivering to an audience, as a display of elocution, a piece committed to memory. Exactly what recitation means in the Act the Courts will have to decide.

"Business," gag, and patter. As far as the term "dramatic work" goes, therefore, it is not clear at present that an artist's "business" is

protected as an entertainment in dumb-show, nor that gag or patter is covered by the word "recitation," which is probably used in the ordinary sense.

But the term "literary work" remains; and under it variety art ought to secure a good deal of fresh protection. The only "interpretation" of literary work that we get in the Act is that the term includes "maps, charts, plans, tables, and compilations," which is not particularly helpful. A piece of patter is conceivably as much a literary work as a table or a chart; and there is even hope on this assumption for original jokes and gags. The maker of a joke—it is not incumbent on him to comply with any formalities, beyond perhaps writing it down, for a literary work, one imagines, is philologically a work expressed in letters—then enjoys amongst other things the sole right to produce or reproduce the work [*i.e.* joke] or any substantial part thereof in any material form whatsoever; to perform the work or any substantial part thereof in public; if the work is unpublished to publish the work, and the sole right . . . to convert it into a dramatic work, if it is a non-dramatic work. One rather trembles for the gaiety of nations, if there should be a close time for jokes to this extent. Seriously, what is important to the variety artist is the fact that a literary work enjoys, in common with a dramatic work, the sole right of performance in public and that this right includes "any acoustic representation," which means anything that can be heard, and also any visual representation—anything that can be seen, though the visual representation is limited to any dramatic action in the work.

As a literary work.

Right of performance.

It follows that where a turn is one that is spoken, the artist should reduce the whole of the spoken matter to writing, and should fully describe in writing all business, scenery, costume, etc., that belong to the turn. A dumb-show turn, whether dramatic, dancing, or acrobatic, should also be set down in detail in writing.

Put in writing.

The name and address of author or other owner should appear on the title page. The written matter should be

dated. It is also well to have it typewritten, with the pages stamped with the stamp of the typewriting firm.

Musical works.

A copyright song or other musical work is protected in its original words or music, or both, as the case may be.

Gramophone reproductions.

As far as reproduction on mechanical instruments, such as gramophones, is concerned, an artist owning copyright in a musical work will not be able to restrain reproduction—on royalty—if he has once consented to the adaptation of the work, for sale, to such instrument. The artist, if he does not hold the full copyright, including the mechanical-instrument rights—which go with the copyright if there is no condition to the contrary—cannot prevent the rendering of the work by these instruments.

Scenes and designs.

Stage scenes are protected as artistic works. Designs are also protected, provided they are not used or intended to be used as models or patterns, to be multiplied by an industrial process. In the latter case they come under the Patents and Designs Act, and can be registered thereunder in the way described in the sections from the Act appearing in the Appendix; but this is a matter not greatly affecting variety artists. A costume party is protected in original designs for dresses and *mise-en-scène*. For its title it will have to depend on the right of user. That is to say, if the title is original in its application, the first user can restrain the similar use of it by others if the use is damaging to him in this respect.

Costume party.

Right of user.

Pictures.

A copyright picture may not be reproduced in public by way of *tableaux vivants* or living pictures.

Infringment of a dramatic, musical, or literary work means, amongst other things, taking without authority the work or a substantial or vital part of the work.

A substantial part.

Considerable passages must not be reproduced or colourably imitated. A few passages no doubt may be, if they have no special bearing on the piece. Commonplace business, incidents, gag, and make-up may be reproduced or imitated, if without originality of arrangement, but substantial or material parts of the general dramatic action

or the chief scenes and situations may not be used, provided they possess a reasonable amount of freshness or invention and skill in arrangement.

A parody or burlesque, having invention and skill of its own, is not an infringement of the copyright work on which it is based. There is infringement if an unfair use of material parts of the original work is made, injurious to the latter. **Parodies.**

An imitation of an artist, using substantial portions of his work, if a copyright work, is an infringement, particularly if portions of his words or music are taken. **Imitations.**

Generally speaking, mere trivial, familiar, inconsequent stage material, almost common property, is unlikely to be granted protection as copyright matter by the Courts, unless, by treatment or otherwise, the material has been invested, to a reasonable extent, with qualities that can be said to distinguish the work substantially from the general run.

IX

OVER-SEAS DOMINIONS

List of British dominions.

THE Act extends to the British dominions, colonies, and possessions, with the exception of the self-governing dominions, which have not adopted it, and will probably rely on their own legislation, which, if granting adequate protection, will be accepted under sect. 26, in return for the benefits of the Act in those parts of the dominions to which the Act extends.

Apart from those daughter states, as the self-governing dominions may be called, there are affected the colonies with representative government, crown colonies, protectorates, and those portions of the Indian Empire known as British India.

The dominions beyond the seas include—

EUROPE.

Isle of Man.
Channel Islands.
Cyprus.
Malta and Gozo.
Gibraltar.

ASIA.

Indian Empire.
Ceylon.
Straits Settlements.
Federated Malay States.
Hong Kong.
Wei-hai-wei.
North Borneo.
Brunei.
Sarawak.

AFRICA.[1]

Cape Colony. } South African Union.
Natal. } South African Union.
Transvaal } South African Union.
Orange Free State } South African Union.
Basutoland.
Bechuanaland.
Rhodesia.
Nyasaland Protectorate.
Gambia.
Gold Coast.
Sierra Leone.
Northern Nigeria.
Southern Nigeria.
Somaliland.
East Africa.
Uganda.

[1] The "occupied" Ottoman province of Egypt and the Anglo-Egyptian Sudan are not included here. British and other foreign authors are protected in the Mixed and Consular Courts.

AFRICA—*continued.*

Zanzibar.
Nyasaland.
Mauritius.
Seychelles.
Ascension.
Falkland Islands.
South Georgia.
St Helena.

AMERICA—*continued.*

Leeward Islands.
Windward Islands.
Barbados.
Trinidad and Tobago.
British Guiana.
British Honduras.
Bermuda.

AMERICA.

Ontario.	Dominion of Canada.
Quebec.	
Nova Scotia.	
New Brunswick.	
Prince Edward Island.	
British Columbia.	
Manitoba.	
Alberta.	
Saskatchewan.	
North-West Territories.	
Newfoundland.	
Jamaica.	
Bahamas.	

OCEANIA.

New South Wales.	Commonwealth of Australia
Victoria.	
South Australia.	
Queensland.	
Tasmania.	
Western Australia.	
Commonwealth Territory.	
British New Guinea.	
New Zealand.	
Fiji.	
Papua.	
Pacific Islands.	

Protectorates under the Act.

By an Order in Council, dated June 24, 1912,[1] the Act is extended without reservations to the following territories under Imperial protection:—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, Somaliland Protectorate, Southern Nigeria Protectorate, Solomon Islands Protectorate, Swaziland, Uganda Protectorate, and Wei-hai-wei. The Act is also, by the same Order, extended to Cyprus.

All dominions, except self-governing, under the Act.

A further Order [2] of the same date extends the Act to all the British dominions, colonies, and possessions, except the self-governing dominions mentioned therein.

[1] See p. 147, *post.*
[2] See p. 148, *post.*

Existing interests not prejudiced.

The Order does not affect prejudicially any right previously acquired or accrued.

Local modifications.

A British possession under the Act may, by its own laws, vary the provisions as to procedure and as to remedies for infringement, etc., within the possession. It may do so in these respects in relation to all works in which the Act gives copyright that come into the possession. Other modifications of or additions to the Act by the legislature of a possession can apply only to (1) works of residents of the possession at the time of the making; and (2) works first published in the possession.

Power to except a possession.

A possession may, by an Order in Council, be excepted at any time from Part II. of the Act, but any right acquired prior to the Order will not be prejudiced.

Position of self-governing dominions.

The self-governing dominions that have not adopted the Act, and have also not been joined to the Berlin Convention in connection with Great Britain and the remainder of her dominions, are—

The Dominion of Canada.
The Commonwealth of Australia.
The Dominion of New Zealand.
The Union of South Africa.
Newfoundland.

For the time being, therefore, the conditions of the old law apply. The Order[1] says that the necessary repeal of Acts only applies to those dominions to which the 1911 Act extends. The Act itself says that the Acts in question, as far as they are operative in self-governing dominions, shall continue in force until repealed by the dominions respectively concerned. Thus, to this extent, the Act of 1842 (5 & 6 Vict. c. 45) and other Acts, in conjunction with the International Copyright Acts, 1844 to 1886, and Orders in Council thereunder, remain unrepealed. It is a position of considerable complication, aggravated by the fact that Acts passed by legislatures of certain dominions are not without conflict with Imperial law. There are the different periods of duration of copyright under the old

[1] See p. 148, *post*.

law and the new, and vexed questions relating to imported copies, and other matters. With regard to foreign works within the Union, the Berne Convention and the Additional Act of 1896 apply, pending legislation on the part of the self-governing dominions, though there are local Acts that are in some respects at variance with these instruments; and the Austro-Hungarian Treaty does not extend in all cases to the self-governing dominions.

New legislation preparing.

These dominions are, in a somewhat leisurely way, preparing new legislation.

Canadian Copyright Bill.

The Canadian Copyright Bill is a case in point. The text of the Bill removes some recent fears that Canada was about to repudiate not merely international but also Imperial copyright. The Bill provides that the Governor in Council may direct by Order in Council that "the Act shall apply to literary, dramatic, musical, and artistic works, the authors whereof were at the time of the making of the work *bonâ fide* residents in a part of His Majesty's dominions, other than Canada, to which the Order relates, or British subjects resident elsewhere than in Canada." The provisions are complementary to other provisions that say that, except in so far as the protection conferred by the Bill is extended by Order in Council thereunder, copyright shall subsist only in works of which the authors are *bonâ fide* residents of Canada, and of which the copies published in Canada shall have been printed or made in that country.

International copyright is provided for on the same lines—that is, by an Order in Council.

In each case it is stipulated that the Governor in Council shall be satisfied that the part of the British dominions or the foreign country desiring protection under the Bill makes reciprocal provision for the authors of Canadian works. It is true that these powers are permissive in form. The Governor in Council *may*, by Order in Council, grant—not *shall* grant. But this conditional wording arises from the peculiar circumstances of the case. Not one part of the British dominions has to be considered, but various parts, some self-governing; not one foreign

country ; not the countries of the Berlin Convention only, but other countries, and the United States and other American countries especially. The same permissive form is adopted in relation to self-governing dominions and foreign countries in our Copyright Act. With our Act, indeed, the Canadian Bill has a great deal in common. The latter has, in fact, as far as possible, been based on the former. In many places the text is the same.

Compulsory license at any time.

But there are exceptions, and certain of these exceptions are important. There is, in particular, as has been noted, a somewhat disturbing extension of the principle of the compulsory license. This principle is not, as seems generally to be supposed, new to our copyright laws. The Act of 1842 authorised the Judicial Committee of the Privy Council to grant licenses to applicants to publish a copyright book in such manner and subject to such conditions as they thought fit if after the death of the author the book was withheld from the public by the proprietor.

The serious thing about the Canadian Bill is that the compulsory license may come into operation at any time after publication. Any time after performance in public is included ; hence plays are brought in, which seems specially unreasonable, as performance is not held to be publication under the Bill.

After a work has been published or been performed in public, a petition may be presented to the Minister acting under this section by any person interested, alleging that the work has been withheld from the public, or that the price charged for copies of the work or for the right to perform it in public is such that the reasonable requirements of the public are not met, and praying for the grant of a license to reproduce the work or perform it in public. The Minister, if after inquiry he is satisfied that the allegations contained are correct, and if within a reasonable time no remedy is provided by the owner of the copyright, may grant to the petitioner a license to reproduce or to perform the work in public in Canada. The terms as regards price and payment of royalties to the owner of

the copyright in the work, and otherwise, are fixed as the Minister thinks fit.

The only satisfaction here for authors and publishers is that the work will not be reproduced in this way without payment. The Bill, however, shows a bad principle carried to an extreme length.

Licenses and imported copies.

The security of copyright is also hampered by some drastic and unwieldy provisions affecting the importation of copies—made out of Canada—of a work in which copyright subsists under the Bill.

Such copies, except as otherwise provided, may not be imported into Canada, and shall be deemed to be included in Schedule C to the Customs Tariff, and that schedule shall apply accordingly.

In the case of a copyright book published in any part of His Majesty's dominions, other than Canada, the owner of the copyright may grant a license to reproduce in Canada—from movable or other types, or from stereotype plates, or from electroplates, or from lithographic stones, or by any process for facsimile reproduction—an edition or editions of the book designed for sale only in Canada. In the event of that license the Minister can prohibit the importation into Canada, except with the written consent of the licensee, of any copies of the book printed elsewhere.

The Minister may at any time suspend or revoke his prohibition upon importation if it is proved to his satisfaction that (*a*) the license to reproduce in Canada has terminated or expired; or (*b*) the reasonable demand for the book in Canada is not sufficiently met without importation; or (*c*) the book is not being suitably printed or published, etc.

A licensee for his part must supply to any person resident or being in Canada, a copy of any edition of the book on sale and reasonably obtainable in the United Kingdom or other part of the British dominions. In such circumstances he must import and sell this copy to the person applying for it, at the ordinary selling price, with the duty and forwarding charges added.

Thus, in the interests of Canadian printing and publishing, the right of importation by British publishers as regards Canadian copyrights is ingeniously—and surely a little Pharisaically—reduced to a minimum.

This Bill may be taken as a fair indication of the terms which the self-governing dominions will offer as a *quid pro quo* for the benefits of the 1911 Act.

X

INTERNATIONAL COPYRIGHT

The present international grouping.

INTERNATIONAL copyright is variform and complex. The Berlin Conference of 1908 has, in some respects, not improved matters. It was the amiable purpose of the Conference to enlarge the Union, and as far as possible to make uniform the working basis of agreement amongst the signatory countries. Great Britain went with considerable misgivings to the Conference. At the second sitting, on October 15, 1908, in a formal declaration, the late Sir Henry Bergne, speaking for the British Government, said that it must be stated at the outset that "assent by the British delegates to any amendment or to a revised text of the [Berne] Convention does not imply that Great Britain will be able eventually to adhere and give effect to such amendment or revised Convention." It turns out, however, that Great Britain, with perhaps the most difficulties in the way, has—apart from her self-governing dominions--been able to ratify the Berlin Convention with but a single reservation; whereas other countries, with the principal exceptions of Germany, Belgium, Spain, and Portugal, have either ratified with reservations or not ratified at all. The consequence is that—while in the upshot Great Britain has improved her own copyright law, freeing it from some absurd anomalies, making good many deficiencies, and consolidating it—the Union as a whole has now less consistency than it had before. Some countries come completely under the Berlin Convention; some rely jointly on it and the Berne Convention and the Additional Act and Declaration of 1896; and others

remain under the Berne Convention and the Additional Act and Declaration, or the Berne Convention and the Declaration. The States to the Berne Convention numbered 16, of whom 13 have ratified the Berlin Convention; as has also a newcomer, in the republic of Portugal — the latter only out of 21 non-Union States attending the Conference. The Austro-Hungarian Monarchy regulates its international copyright affairs by separate treaties. South American and Central American States are under Conventions of their own, which are not accepted by Great Britain, but are by other countries of the Union. Here, in brief, is the present situation; and like other international politics, it is sufficiently tangled.

Aims of Berlin Conference.

The Berlin Conference, held in October and November 1908, aimed at a revised Convention amongst other things (1) dispensing with formalities, (2) making uniform as far as possible the period of protection; (3) supplementing the subsisting measure of protection in various ways; and (4) revising and clarifying the old text as far as it was employed. Generally the Conference succeeded in these purposes, but as all the Unionist countries have not ratified the Convention, the uniform working that had been hoped for at Berlin is for the present not possible—even amongst the countries adhering to the Convention the period of copyright protection varies—and thus two objects of the Convention are affected, the waiving of formalities and the means of governing the extent of protection.

Countries ratifying the Berlin Convention.

The countries that have ratified the Berlin Convention are—

Belgium.
France.
Germany.
Great Britain (not for self-governing dominions).
Hayti.
Japan.
Liberia.
Luxembourg.
Monaco.

Norway.
Portugal.
Spain.
Switzerland.
Tunis.

Reservations.

The countries that have made reservations in connection with certain articles are—

Great Britain.
France.
Tunis.
Japan.
Norway.

Great Britain: (1) Retrospective effect.

The reservation on the part of Great Britain relates to article 18, in lieu of which the analogous article 14 and paragraph 4 of the Final Protocol of the Berne Convention remain in force for this country. Great Britain perhaps was influenced in not ratifying this article by the protection that we have given to mechanical sound-contrivances, certain of which, though they were in the public domain, have by a retrospective measure been given copyright as musical works.

(2) Right of translation.

It is noteworthy, too, that in the Order in Council of June 24, 1912, relating to the Berlin Convention, it is provided that nothing in the provisions of the Copyright Act 1911 as applied to existing works is construed as reviving any right to prevent the production or the importation of a translation in a case where the right has ceased, by virtue of sect. 5 of the International Copyright Act, 1886, which imposes a limited protection of ten years in the absence of certain conditions. Broadly, a foreign work already open to translation within the area of the Act cannot be reprotected. This provision is in accordance with sect. 29 (1) (vi.) of the Copyright Act, 1911. This subsection specifies translation, but not adaptation, and it is perhaps not absolutely certain that the latter is covered by the section of the 1886 Act.

How the ten-years proviso operated.

This matter of translating right is of particular interest to dramatic authors. According to English law as it was

before the 1911 Act, a foreign Unionist author must, within ten years from the end of the first year of the production of his work, protect his English right of exclusive translation by publishing a translation in that language in a country of the Union. If the translation was in the form of a play, he could protect himself by either performance or printed publication. Public performance of the original work—if a play—in the country of origin counted, in the eyes of the English law, as publication. That is to say, if the piece was first given in a place of public entertainment, the ten years began to run therefrom. Failing to print or perform a translation in English within the ten years, the author lost his exclusive right, and anyone could make an English translation.

In these remarks, however, the translation should be distinguished from the original. For example, a French play not in the common domain, assuming it had been given by its owner in London for the first time on any stage, ranked as an English production, irrespective of the nationality of the author, and was entitled to the protection accorded to a native work. Again, while the French piece was free for translation and performance in accordance with international law—which, however, would not, I think, have affected the exclusive right of translation in Great Britain—after ten years in the circumstances explained, the piece itself still retained its rights in its original form and was duly protected in that form.

Works in the common domain.

Notwithstanding the safeguards of which authors could avail themselves, innumerable works have, in their translating right, fallen into the common domain as far as Great Britain is concerned, especially plays, for a foreign play simply performed in a foreign Unionist country was not covered with us by the Declaration of Paris, to which Great Britain was not a party.

Existing works are works already in existence on July 1, 1912. Thus works in foreign languages first given publication by printing or performance in foreign Unionist

countries prior to January 1, 1902, without the necessary translation by the owner within that date, are free for translation purposes under the 1911 Act.

The question of adaptations.

In Gandillot *v.* Edwardes it was argued for the plaintiff, when in a tight place over the ten-years proviso that, while a translation was governed by the proviso, an adaptation was not. The contention was that the ten-years limit did not operate in the latter case, and the sole right to adapt remained with the author for the full periods of protection allowed by the different countries.

This issue was left undetermined, as the case was settled out of Court. But it seems only logical to suppose that, in speaking of translations in general terms, the intention was to cover the lesser by the greater. Why say that the actual work may, in translation, become free in certain circumstances, yet restrain a foreign adaptation, in which independent skill and invention have been exercised? In the unlikely event of this contention holding good, while translations of works prior to January 1, 1902, would be permissible, as already stated, adaptations would be protected for the same periods as the original works.

This view as to the effect of the old modified translating right in relation to foreign works already in existence on July 1, 1912, is simply an individual one. Our Courts of course have not yet had an opportunity of pronouncing on the subject, nor has it been otherwise discussed. But M. M. R. Comtesse—to whom I am indebted for placing at disposal the facilities of the International Bureau of the Union at Berne—has been good enough to express an opinion on the subject. The accomplished Director of the Bureau, who is eminently versed in the intricacies of international copyright, says:—"Comme vous, nous admettons que la Grande-Bretagne, en adhérant à la Convention de Berne revisée du 13 novembre 1908, conformément à l'ordonnance en conseil du 24 juin 1912, a voulu exclure tout effet rétroactif du nouvel article 8 de ladite Convention (protection complète du droit de traduction, à l'égal du droit de reproduction) par rapport aux œuvres

parues il y a plus dix ans et pour lesquelles aucune traduction autorisée en *anglais* (v. loi du 25 juin 1886, art. 5, no. 2) n'aura été publiée dans ces dix dernières années. Lorsque le droit de traduction reconnu sous l'ancien régime unioniste est perdu à la suite du non usage du droit la langue anglaise dans les dix ans à compter de la fin de l'année de la première production de l'œuvre, ce droit ne renaît plus. Afin de ne laisser aucun doute sur cette restriction la Grande-Bretagne, en adhérant à la Convention de Berne revisée, a formulé la réserve qu-au lieu d'accepter l'article 18 de ladite Convention, le Gouvernement de S. M. B. entend rester lié par l'article 14 de la Convention de Berne de 1886 et le no. 4 Protocole de clôture amendé par l'Acte additionnel de 1896."

Reservations by foreign countries.

Getting back to the reservations made to the Berlin Convention, Norway remains under article 14 of the Berne Convention on the subject of retrospective effect; France and Tunis do so in relation to works of art applied to industrial purposes (article 5 as amended by the Additional Act); Japan does so as to the translating right and also as to notification of performing right on published musical works; and Norway further adheres to the Berne Convention in the cases of newspaper and magazine articles (article 7) and works of architecture (article 4).

Countries not ratifying Berlin Convention.

It will be convenient now to take in the Unionist countries that have not so far ratified the Berlin Convention. They are—

Denmark.[1]
Italy.
Sweden.

Corresponding limited rights:

These countries continue, therefore, as they were—Denmark and Italy under the Berne Convention and Paris Amendments, and Sweden under the Convention and the Declaration. Some of the consequences are seen in the discriminations made against Denmark, Italy, and Sweden in the Order in Council of June 24 last.

Fortunately there is little complication arising from the

[1] Denmark has been waiting for her new copyright law, which came into force in July, 1912.

actual copyright period in those countries, where it is either equal to or over the term of life or fifty years—though of Italy's eighty years after first publication the latter moiety is not absolute in the case of books (including printed plays).

(1) Conditions and formalities.

These three countries, however, in accordance with the basis of the Berne Convention, secure their British rights only if the conditions and formalities prescribed by the country of origin of a work have been accomplished. As a result, the author of a work must, in prosecuting his claims here, prove his title to copyright in the Unionist country of first publication.

(2) New subjects of copyright.

These countries also do not obtain protection for new subjects of copyright, such as mechanical musical contrivances and kinematograph products, nor the improved protection given to other copyright subjects. Thus, the owner of a dramatic, musical, or literary work of which the country of origin is Denmark, Italy, or Sweden has no exclusive British right of making kinematograph products, nor the rights obtaining in respect of mechanical musical contrivances.

(3) Right of translation.

Further, the exclusive right of translation in a dramatic or literary work is subject to the ten-years proviso.

Japanese works are also subject to this proviso, as Japan still adheres to the Berne Convention in this matter.

(4) Notification of performing right.—

In addition, a published musical work having Denmark, Italy, or Sweden as country of origin must expressly forbid performance in public.

Japanese musical works must bear the same notification.

Danish, Italian, Swedish, and Japanese musical works will, therefore, to prevent unauthorised performances within the area of the Act, have to bear this notification.

But note

The absence of the notification from the musical works of other countries must not of course be taken as giving liberty to perform. Such works, if copyright, will be protected without notification. Performers of musical works must be careful not to be misled by this superficially-contradictive state of things.

(5) Newspaper and magazine articles.

In the case of any newspaper or magazine article of which the country of origin is Denmark, Italy, or Sweden, the right to prevent the reproduction of the article (either in the original language or in a translation) with an indication of the source is conditional upon reproduction being forbidden by express declaration in a conspicuous part of the newspaper or magazine in which the article is published.

This stipulation also applies to Norwegian newspaper and magazine articles.

Newspaper articles under Berlin Convention.

There is a somewhat similar stipulation in the case of certain countries under the Berlin Convention. The countries are Belgium, France, Germany and the German Protectorates, Hayti, Liberia, Luxembourg, Monaco, Portugal, Spain, Switzerland, and Tunis.

If, in the case of any newspaper article in one of these countries, reproduction is not expressly forbidden in a conspicuous part of the newspaper, then the article may be printed in another newspaper published within the area of the Act. The source must be indicated.

Dramatic works, serial stories, tales, etc., printed in a newspaper or a magazine do not come under this liberty. They must not be reproduced without the consent of the authors, nor translated, nor adapted unless given the character of original works.

Austria-Hungary

Austria-Hungary, under her treaty with Great Britain, is not subject to the same discriminations as those already mentioned against Denmark, Italy, and Sweden, with the exception that the ten-years proviso applies in the case of the translating right. Austro-Hungarian musical works, kinematograph works, and mechanical-musical contrivances enjoy all rights conferred by the Act, subject to the stipulation that the conditions and formalities of the country of origin have been accomplished.

The terms of copyright for Austro-Hungarian works are, as required by the Act, governed by those conferred by the Austro-Hungarian laws, *i.e.* life and thirty years in Austria, and life and fifty years in Hungary.

Scope of Berlin Convention: (1) Benefits.

With the reservations already made, authors of the foreign countries of the Copyright Union enjoy for their works within the area of the Act—apart from the term of copyright—substantially the same benefits as natives. Our authors enjoy similar benefits in the foreign countries in question. Further, the authors of all the Unionist countries enjoy the rights specially granted by the Convention.

(2) Duration

The term of copyright does not exceed the term conferred by the country of origin of the work. But article 19 says rather cryptically that the provisions of the Convention shall not prevent a claim for the application of any wider provisions that may be made by the legislation of any country in favour of foreigners generally.

Definitions.—(1) Country of origin.

The country of origin is defined as (1), in the case of unpublished works, the country to which the author belongs; and (2), in the case of published works, the country of first publication.

When works are published simultaneously in several countries of the Union, the term is that of the country granting the shortest term. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country is deemed to be exclusively the country of origin.

(2) Published and unpublished works.

By published works are meant, for the purposes of the Berlin Convention, works of which copies 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 do not constitute publication. Under the Berne Convention and Paris Amendments, published works mean works of which copies have been issued from the press to the public.

Terms in countries of the Union.

The following are the principal terms of copyright in the foreign countries of the Union :—

Life and eighty years—Spain.

Life and fifty years—Belgium, Denmark, France, Luxembourg, Monaco, Norway, Portugal, Sweden (for playright life and thirty years), Tunis.

Life and thirty years—Germany, Japan, Liberia, Switzerland.

Life and that of widow; or life and twenty years in favour of children; or life and ten years in favour of other heirs—Hayti.

Life or forty years first from publication, whichever is the longer; with enjoyment of 5 per cent. royalty for a further forty years. This double term is for books (including printed plays). Playright is for eighty years from first performance or publication—Italy.

How want of uniformity affects procedure.

Uniformity of the term amongst the different countries—or at least that the term shall not fall short of life and fifty years—is necessary for the full purpose of the Berlin Convention. Article 4 sets forth that not merely the means of redress secured to the author to safeguard his rights, but also the extent of protection, shall be governed exclusively by the laws of each country where protection is claimed. Until this uniformity is reached, the term of copyright is regulated by the law of the country where protection is claimed, and, as stated, must not exceed the term fixed in the country of origin of the work. Therefore in a foreign court a plaintiff is obliged to prove the law as to duration of copyright in the country of origin.

For photographic works and the like, posthumous works, anonymous or pseudonymous works, the term of protection is left by the Convention to be regulated by the law of the country where protection is claimed. But the term must not exceed the term fixed in the country of origin.

Improved procedure.

In other respects the Convention simplifies the procedure of the author. He is no longer under the necessity—imposed by the Berne Convention—of producing in a foreign court the evidence required to prove his title to copyright in the Unionist country in which the work was first produced.

Exclusive translating right.

Under the Berlin Convention the exclusive right of making or authorising a translation of a work belongs to the author, and lasts for the whole term of copyright enjoyed by the original work in the country in which protection is claimed. The ten-years stipulation dis-

appears. This provision, in relation to the 1911 Act, comes into force from June 14 last.

Any original work protected under the Berne Convention and Additional Act, and published or performed not earlier than 1902, obtains this new measure of protection with us.

Berlin Convention in force from June 14, 1912.

Up to June 13, 1912, the Berne Convention and the Additional Act remained in force for Great Britain. On June 14, the Berlin Convention came into force instead, except for the self-governing dominions not adopting the Act, which can make their own laws for their respective countries as to the treatment of international copyright.

Countries outside the Union.

The countries outside the Union—not reckoning Austria-Hungary, which has its own treaties—include:

Argentine Republic.
Bolivia.
Brazil.
Bulgaria.
Chili.
China.[1]
Columbia.
Costa Rica.
Cuba.
Dominican Republic.
Ecuador.
Egypt.[1]
Finland.
Greece.
Guatemala.
Holland and Dutch Indies.
Honduras.
Mexico.
Montenegro.
Nicaragua.
Panama.
Paraguay.
Persia.
Peru.

[1] Protection for foreign authors in the Consular Courts.

Roumania.
Russia.
Salvador.
San Marino.
Servia.
Siam.
Turkey.[1]
United States.
Uruguay.
Venezuela.

United States and other American countries.

Of these countries the most important from the point of view of British authors is of course the United States of America, whose case is dealt with in a separate chapter. The Central and the South American States have Conventions of their own.[2] The Conventions are not accepted by Great Britain; and protection can only be secured by complying with the copyright formalities of those States; or in certain cases by assignment or by first publication (that is, issued from the press) in countries—France, for example—that, unlike ourselves, are parties to the Monte Video Convention, as far as the Argentine Republic and Paraguay are concerned, an arrangement that in certain circumstances secures protection in the other countries that are parties to the Convention. There appears to be no protection for unpublished works under the Monte Video Convention, but in some of the countries or States such works in manuscript enjoy common law and other rights.

European and other countries.

The only non-Union States with which we have treaties are those of the Austro-Hungarian Monarchy.

Russia has a copyright term of life and fifty years. She is said to be meditating adhesion to the Union.[3] Holland will join at the end of 1912. The present Dutch law is very niggardly and exacting in the case of playright. Playright in a printed play lasts only ten years, and

[1] Protection for foreign authors in the Consular Courts.

[2] See Buenos Ayres Convention, p. 95 *post*.

[3] Russia has signed a Convention with France, under which a work first published in the latter country is protected in the former, irrespective of the nationality of the author.

the printing must be done in the country. If the play is not printed, playright is for life and thirty years, but the author must be domiciled in Holland. The proposed new law, which now only awaits the approval of the First Chamber, provides a copyright period of life plus fifty years, except for a proviso as to translations. Columbia, with its manuscript copies, and life and eighty years for the period of protection, has a liberal system, the international question apart. Columbia has, like Costa Rica, an odd provision that if a play has not been registered within a year of first performance the work becomes public property for ten years, but will then be restored to the author or his assigns on registration within a year. Ten years is a heavy penalty, but is preferable to total forfeiture. Why, indeed, should an author be penalised in so drastic a manner as forfeiture of rights for faults in procedure or even for first publication in a non-reciprocal country ?

Forfeiture of Rights

First publication outside the Act.

Yet so it is; and the new Act maintains the policy. Thus a home author first publishing his work in a foreign country with which we have no reciprocal copyright relations, or in a self-governing British dominion similarly placed in this respect, loses the British copyright that he already possessed in his unpublished work.

But a home author may have his play performed in a non-reciprocal country without this penalty of loss of rights under the Act. Dramatic authors will be thankful for this latter concession ; but why should our authors of books not enjoy the same immunity ? Why should they be penalised because of the copyright shortcomings of other countries ?

First publication within the Act.

Oddly enough, the Act reverses the position in the case of an author of a non-reciprocal country first publishing here. If he gives his book first publication in this country he is protected (subject, if he is not resident in His Majesty's dominions, to the extreme measure of an Order in Council cutting off a country from any protection under the Act). But his play is not protected unless

given first printed publication within a part of His Majesty's dominions to which the Act extends or in a reciprocal country. The Act and the Order in Council provide that copyright shall subsist in those portions of His Majesty's dominions to which the Act applies and in those countries to which the benefits of the Act are extended, 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 or in one of the countries in question; 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 was resident or domiciled within such parts of His Majesty's dominions or in one of the foreign countries in question; but in no other works, except as otherwise provided.

Well, in this position, the resident of a non-conforming dominion cannot obtain the benefit of first publication—that is, the benefit of copyright—by acting his piece in a part of the British dominions to which the Act extends. Performance is not publication, and the resident in question has no protection under the Act for his unpublished play unless he meets the condition as to making. It may be said that he has the protection as a British subject or as a resident in the dominion in question, but this right is in the circumstances voided by sect. 26 (3).

Temporarily, the resident of a self-governing dominion is protected under the old Imperial law, which holds good for the dominions until they adopt the 1911 Act or repeal the old law as it bears on the respective dominions.

An American Dilemma

Performance no protection.

This stipulation that the author of an unpublished work must, for the purposes of the Act, be a British subject or a resident within the area of the Act or of the international extensions at the time of making is a serious one for playwrights of non-reciprocal foreign countries. The United States is especially concerned. Let us suppose that Mr

Charles Frohman, as he often does, performs in London a play by an American author, who wrote it, say, in New York. It is an unpublished work, and the author is without the specified British qualifications. It must be repeated that no author has common law rights in his unpublished work. He is not entitled to copyright or any similar right except under this Act or other statutory enactment for the time being in force. In the United States the British author performing his unpublished play is protected at common law; or he can file a copy of his work at Washington and come under statutory protection. It seems unreasonable for us not to give to first performance a benefit equivalent to that given to first publication.

A dubious section.

However, this latter benefit is perhaps extended with a certain reluctance, and is contingent. Sect. 23 says that by Order in Council authors who are subjects or citizens of foreign countries, and not resident in His Majesty's dominions, may, if such countries do not accord adequate protection to British authors, be deprived of the benefit derived from the foregoing first publication.

The power given here is in conflict with provisions of the Berlin Convention, adopted by means of the Order in Council of June 24, 1912, which is construed as forming part of the Act. According to article 6 of the Convention, such foreign authors, if they first publish their work in one of the countries of the Union, enjoy in that country the same rights as native authors, as well as in the other countries the rights granted by the Convention. It is true that a signatory State may declare that it desires to remain bound, as regards any specific point, by the provisions of the Conventions which it has previously signed, but even then, article 3 of the Berne Convention, as amended by the Additional Act of 1896, has to be met. Great Britain has made no reservations on the subject of article 6.

It is conceivable that the changed attitude of Great Britain in the treatment of performance may rouse the ire of the United States. Our present relations, as far as they go in copyright, are brought about by the American

proclamation of April 9, 1910, which, subject to the manufacturing provisions, places our authors on the same footing as United States citizens. A country not "proclaimed" is without benefit under the Act of 1909. One imagines, however, that these retaliatory powers will be as little exercised as our own under sect. 23.[1]

American owners must publish.

The way for American dramatic authors to secure British protection for their works is by publication in copies. This publication must be within the area of the British Act or the foreign extensions, and it must take place not later than fourteen days from first American publication.

It seems that, even if there is not American publication, and only American performance, there is no British protection apart from publication of the work according to the Act. Anything performed, from a play to a music-hall turn, is, in its unpublished state, not a copyright work unless by a British subject—and not always then—or by an author resident or domiciled within the area of the Act or of the extensions of the Act[2] at the time of the making of the work.

No manufacturing provisions.

The only thing in these circumstances for the American author of a work, or for an American manager or artist owning the work, is to publish it in copies according to the Act. He will be wise to do so before any performance in public in the United States, or at the latest within fourteen days thereof. It may be a consolation to American owners to know that there are no manufacturing provisions to comply with. It would be cheaper for the American owner to set and print here, were it not that it is a question whether his own law does not compel him to set and print in the States, in the event of publication; and settings here and there would be a double expense.

[1] Assuming an Order in Council were issued extending the residential qualification in like manner as if residence in the United States were residence within the territorial area of the Act, unpublished works, including acted plays, by United States authors, would be protected.

[2] The American author would be protected if he wrote his work while resident in, say, France.

XI

AMERICAN COPYRIGHT

THE Act amending and consolidating the Acts concerning Copyright in the United States came into force on July 1, 1909. The Act is one of much length—naturally so, because of its comprehensive character—and the provisions are set forth in considerable verbal detail; but, as legal enactments go, the statute is fairly plain sailing. The law gives American authors and other owners of copyright works a very large measure of protection. One deficiency is that there is no specific provision for kinematograph pictures.[1] Such pictures ought to have been made one of the separate classes of copyright property enumerated under sect. 5; and, as it is, these subjects of copyright—now often extraordinarily valuable—have to get their protection under cover of subsections dealing with photographs or with books. A kinematograph picture has, if one comes to think of it, no solid existence. It is an ever-varying shadow on a screen; and it would have been wise to have provided for it as a particular subject. The omission to deal with the kinematograph picture specifically is the more notable for the reason that provision is made as to mechanical reproductions of musical works by phonographs, gramophones, pianolas, and the like. The fixed royalty principle was in the 1909 Act in this respect given a novel legislative sanction,

The consolidated law.

[1] However, a Bill, called the Townsend Bill, giving kinematograph pictures a specific copyright, has passed the House of Representatives and is now before Congress.

which our Copyright Act has imitated. But, generally speaking, the American copyright owner is protected in an ample way. The period for the enjoyment of his rights is a maximum of fifty-six years, which works out less favourably than our new period. For infringement the remedies at civil law are considerable, and they carry with them heavy penalties. Wilful infringement for profit is also punishable as a criminal offence. The formalities attendant on taking out copyright are, however, onerous. They include deposit of copies, registration, filing of affidavit, printing of copyright notice on works, etc.—altogether a formidable and needlessly vexatious procedure. Here the law of 1909 consolidated without simplifying. It might with advantage have followed the Berlin example.

The poor foreign author, especially the writer in English, comes badly off. Fortunately, the dramatic author escapes the worst effects of the way in which the United States—a way so regrettable in a great country—regards the obligations of international copyright. In the case of a published book in English the foreign author or owner, if belonging to a "proclaimed" country,[1] has, in order to claim copyright, to meet this requirement:—

> All copies accorded protection under this Act . . . shall 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 produced 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 text and binding of the said book shall be performed within the limits of the United States (sect. 15).

But the English dramatist, as long as he keeps from printed copies for sale outside the United States, is saved

[1] Great Britain is one of the "proclaimed" countries under the Presidential proclamation of April 9, 1910.

from these consequences by the definition of American law which says that public performance is not publication. Thus a play, or dramatic composition—as the term is under the American statutes—if in manuscript, or only printed privately and not for sale, is protected at common law. But as soon as it is issued in copies for sale it becomes published in the eye of American law; and, assuming it to be a book or in the same position as a book—a point that may be in doubt, as discussed later—then, if it does not comply with the foregoing "manufacturing provisions" and other conditions of the Act it forfeits all rights—performing as well as printing or other multiplying forms—in the States.

Performance not publication.

This distinction between performance and publication is maintained in the 1909 Act. Sect. 2 says expressly :—

> Nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.

A play performed, but not printed for sale, is an unpublished work. It is in most respects effectually protected at common law. Moreover, certain States—New York, Louisiana, Pennsylvania, Ohio, New Jersey, Massachusetts, etc.—have penal statutes covering the unauthorised performance of plays. These statutes apply to plays that are unpublished works.

Further, the author who does not take out copyright under the statute and lets his play remain at common law has the advantage of perpetual protection. That is to say, there is no time limit to his exclusive right to his work. Under the Copyright Act, on the other hand, he can only enjoy his right—at all events as that of a published work—for a certain number of years.

The statute, however, does make concessions in point of statutory copyright to authors or other owners of certain works. Sect. 11 says :—

A valuable concession.

Copyright may also be had of the works of an author of which copies are not reproduced for sale by the deposit, with claim of copyright, of one complete copy of such work if it be a . . . dramatic or musical composition; of a photographic print if the work be a photograph, or of a photograph or other identifying reproduction thereof if it be a work of art or a plastic work or drawing.

There is no stipulation that the copy must be in print. As regards a dramatic composition, a typewritten copy or even a manuscript one is all that is needed to fulfil the requirement of the section. It is stipulated that if a work is later on reproduced in copies for sale the copyright proprietor is not exempt from the deposit of two copies at Washington, in accordance with sects. 12 and 13. In other words, the statutory copyright secured in the unpublished work lapses upon irregular publication in this respect.

The provision is chiefly advantageous to dramatic compositions. It is advantageous also as far as the performing rights of songs and other musical compositions go. But such pieces as songs, etc., are often valuable as printed publications for sale, and copyright obtained under sect. 11 forbids anything of this kind. How far a kinematograph work could protect itself under this section is doubtful. The section becomes inoperative so soon as the work is "reproduced in copies for sale." Is the exhibition of a kinematograph work publication within the meaning of American law? It would seem not. But what of the films? Are they, if multiplied and sold, copies for sale? If so, and they are not made within the United States, do they invalidate any protection enjoyed by the kinematograph work either at common law or under the Act? As to mechanical sound-contrivances, the Act relates only in this respect to foreign musical works published and copyrighted after July 1, 1909, and then only when the country of which the author is a citizen or subject grants to citizens of the United States similar rights—a

thing that Great Britain, for sufficient reasons, does not do.

But, in relation to dramatic compositions, the provision contained in sect. 11 is certainly valuable. On the whole, as a manuscript or a typewritten copy is valid, it seems advisable—good as the protection at common law is—for the English owner to avail himself of the provision. He then comes under full statutory protection. The only point that he has to consider is that he may limit his term of protection to the maximum statutory period of fifty-six years, whereas at common law his right endures for ever. It is not certain, however, that he limits his right in this way, for if the fact of filing one copy of his work still leaves it an unpublished work,[1] then, according to sect. 2, "nothing in this Act shall annul or limit" his right at common law. It seems rather an odd and even impossible conjunction of common-law rights and statutory rights. One is inclined to think that as the property becomes a copyright under the Act, the statutory period for copyright is applicable; and sect. 8 is favourable to this view. Sect. 18, dealing with the notice of copyright required by sect. 12, says that "if the [published] work be a printed, literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication." "By publication" is rather ambiguous, seeing that copyright may be had by filing a manuscript copy at Washington. **Filing a MS. copy.**

There is also the point of view of English law to be considered. First publication in a non-reciprocal country forfeits the home right to protection. Would filing a manuscript copy at Washington amount to publication? There appears to be no sufficient reason for saying that it would. The deposit of a single copy would not be "the issue of copies of the work to the public," as publication is defined in the 1911 Act.

[1] It was held under a previous Act, repealed in 1909, that filing the title and depositing copies of a book at Washington amounted to publication and that the common law rights in the work in its unpublished form ceased.

Variety art protection.

The words of monologues, duologues, sketches, scenas, songs, etc., if falling within the definition of dramatic or musical compositions can (apart from mechanical sound-contrivances) similarly be protected under this section. This fact should be noted by variety artists.

***Ad interim* copyright.**

A further concession, applicable to English books published for sale, gives the owner of a work an *ad interim* copyright for a maximum period of sixty days. The owner of a book published abroad in the English language before publication in the States must deposit in the Copyright Office, not later than thirty days after the publication abroad, one complete copy, with a request for the reservation of the copyright and a statement of the name and nationality of the author, of the copyright proprietor, and of the date of publication. The owner thereby secures an *ad interim* copyright, which has the force and effect given to copyright by the Act. It lasts for thirty days from the date of deposit.

This copyright is extended to the full statutory term if within the period of the *ad interim* protection an authorised edition of the work is published in the United States, in accordance with the manufacturing provisions.

Is a printed play a book?

In Hervieu *v.* Ogilvie Publishing Company it was held that a dramatic composition or a musical composition published in copies for sale is not a book or the equivalent of a book within the meaning of the manufacturing provisions. How far this decision can be relied on in law seems doubtful, though it has been embodied in the Treasury decisions and is reflected in the Copyright Office regulations. If it cannot be relied on, and an English play is published and sold in ordinary book-form, without publication in the States (within sixty days), in accordance with sects. 12, 15, and 16—that is, set, printed, and bound there—then there is no copyright in the States.

Hervieu *v.* Ogilvie Publishing Co.

This position has, therefore, seeing the issues at stake, very carefully to be considered. The case referred to—Hervieu *v.* J. S. Ogilvie Publishing Company—was heard in the U.S. Circuit Court, New York, on March 23, 1909,

and is to be found fully reported in 169 *Federal Reporter*, p. 978, *et seq*. On the strength of this decision—which followed on a similar decision in Littleton *v*. Ditson (1894), heard in the U.S. Circuit Court, Massachusetts, in which it was held that sheets of vocal music need not comply with the manufacturing provisions, the sheets being exempted as musical compositions—some English publishers of plays do not comply with the American manufacturing provisions.

The action was brought by the well-known French dramatist, Paul Hervieu, against the J. S. Ogilvie Publishing Company, for infringement of the copyright of his play *Le Dédale*. There was no dispute as to the facts, which were contained in a statement agreed to by the attorneys for the respective parties for submission to the Court. The alleged infringement consisted in the publication by the defendant company of a play called *The Labyrinth*, by George Morehead. The preface stated clearly that it was based directly upon *Le Dédale*, and it was agreed in the statement of facts that the publication was an infringement of the plaintiff's copyright, if in law he had such copyright. It was, however, also agreed " that the book was printed from plates made in France or from type set up in France, and not printed from plates made in the United States or from type set up in the United States," and the defendants submitted that this constituted a non-compliance with the law which had the effect of depriving the plantiff of copyright. The law bearing on the matter is contained in sect. 3 of the Chace Act of 1891 which extended the privilege of copyright to subjects of "proclaimed" countries. The section in question provides that a person desiring copyright for a foreign work shall deliver to or deposit with the Librarian of Congress " two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph. . . . provided that in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within

the limits of the United States or from plates made therefrom. . . ."

The judge (District Judge Martin) held that although a dramatic composition printed in book-form was of course a " book " in the ordinary acceptation of that term, it was not a book within the above proviso requiring it to have been printed in the United States. His ground for so holding was that in the enumeration of things to be deposited with the Librarian of Congress, book and dramatic composition are mentioned separately, while in the proviso in question, the word book alone is used. *Ergo*, " dramatic composition " is not within the proviso. " The question here presented," said the learned judge, " is not whether a dramatic composition can ever be regarded as a book, but whether Congress intended, by the Act above quoted, to include dramatic compositions within the terms of the proviso." In his opinion, Congress did not so intend, and as M. Hervieu had duly deposited two copies of his composition with the Librarian, all that the Act required to obtain the copyright had been performed, and M. Hervieu was therefore entitled to judgment in the action.

Decision under old Act.

In the first place, this decision was under an Act repealed by the Act of 1909.

Wording of 1909 Act.

The latter Act now governs the matter. Sect. 12 of the Act sets out that, " after copyright has been secured by publication of the work [with notice of copyright and registration], there shall promptly be deposited [at Washington] two complete copies of the best edition thereof, which copies, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in sect. 15 of this Act." It is important to observe that any actual distinction between or separation of dramatic composition and literary composition in sect. 3 of the old Act is not existent here, for the sufficient reason that the term " dramatic composition " is not mentioned at all in sect. 12. It is mentioned in the preceding section, which says that " copyright may be had of the works of an author of which

copies are not reproduced for sale," and here "dramatic composition" is mentioned; but this section—11—has a provision to the effect that the copyright proprietor is not exempt "from the deposit of copies under sect. 12 . . . where the work is later reproduced in copies for sale."

In interpreting the sections concerned, regard must be had to the fact that the manufacturing provisions are inserted in the Act in the interests of copies for sale. American printing interests are not affected by MS. copies, and little by copies not for sale; for, as a manuscript copy of a dramatic composition will—in the absence of publication for sale—secure copyright, there is no inducement to print a dramatic composition for purposes of copyright. But a play printed for sale is open to readers, like any book; and the principle of the manufacturing provisions is that the great American public shall do its reading of copyright works through American setting, printing, and binding. True, the original texts of books not in the English language need not comply with the manufacturing provisions, but of such books the sale is a negligible quantity, which is not the case with published plays.

Definition of "book."

There is no definition of "book" in the Act, but the judge in Hervieu *v.* Ogilvie Printing Company said frankly that in ordinary language a play in book-form is of course a book. Under our law a sheet of letterpress, or of drawings, or of music, even a legal printed form, has been held, if published, to be a book; and so it would be under sect. 15 (7) of the Copyright Act, 1911, relating to compulsory delivery of books to libraries.

The foregoing view, *i.e.* that a broad interpretation of the 1909 Act requires the setting and printing of copies for sale, in the case of a hitherto unpublished play by a British author, to be done in the United States—a view admittedly not generally held—has since been supported by Mr Ligon Johnson, an authority on American copyright, and counsel to the National Association of Theatrical Producing Managers, and by Mr Frank E. Woods, the managing editor of the New York *Dramatic Mirror*. Mr

Woods, in a communication that he has kindly made on the subject, says:—"The differentiation in American law is between copies which are and copies which are not reproduced for sale. Dramatic compositions which are reproduced for sale must comply with the American manufacturing provisions." Mr Johnson concurs in this statement.

Courses open to British authors.

Assuming that the decisions under the repealed statutes can no longer be relied on, a British dramatic author about to print his play has, safely, three courses open to him. One is, by arrangement, to get his work set up in the first place in the United States and have copies for sale printed over there, and then to get the plates sent over for the English edition—which must be published not later than fourteen days from first American publication. A second course is to print for sale here; take out *ad interim* protection at Washington, and within sixty days bring out an American edition, set and printed over there. The third course is to print privately in this country, and in the event of a subsequent issue for sale to have copies made in the States from type set for the purpose. This last course is in its provisional state the less expensive and more advisable. If the piece becomes worth printing for sale here, the additional cost for the American edition is not relatively very great, though at the lowest computation it means mulcting the British author in some pounds. Here, in this country, the expense of play-printing may be made very much what the author or his publisher pleases. Personally, I should like to see a standard price and a very low one. Library editions would be another matter. But a printed play with a price to its copies is not printed for private circulation. A fourth course is simply to print here, file two copies at Washington, and trust to the old decisions. In this case, the author should be careful to register at Washington under form D^1, and not under form A^1.

Procedure for ordinary copyright.

The American manufacturing provisions have been explained. The proprietor of an alien book is of course at

liberty to set and print and bind copies for sale as far as concerns his own country and countries other than the United States, but only copies produced in the States will be protected there. Sects. 15 and 16 are not without some looseness of wording, but it certainly seems that it will not suffice, as formerly, that only the type be set in the States. The whole work as a book must be set, printed, and bound in that country. Two copies must be deposited at Washington not later than thirty days after publication. (In the case of *ad interim* copyright, as explained, a period of thirty days is allowed from the date of deposit; and the deposit of one complete copy of a book published abroad in the English language need not be made at a less period than thirty days from this publication.)

The two copies must be accompanied by an affidavit under the official seal of any officer authorised to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorised agent or representative residing in the United States, or by the printer who has printed the work, setting forth that the copies deposited have been printed in accordance with the manufacturing provisions. The affidavit must state also the establishment or establishments in which the type was set or plates made and the printing and binding were done, and the date of the completion of the printing of the book or the date of publication. Any person who knowingly makes a false affidavit is guilty of a misdemeanour, punishable by fine and also by forfeiture of all rights and privileges under copyright.

In addition, a notice of copyright must be affixed to each copy of the work published or offered for sale in the United States by authority of the copyright proprietor, except in the case of a work seeking *ad interim* protection. The notice of copyright must consist either of the word "Copyright" or the abbreviation "Copr.," accompanied by the name of the copyright proprietor on the title-page or page immediately following; and if the work is a dramatic,

musical, or literary work the notice must include also the year in which the copyright was secured by publication.[1]

If the two copies of the American issue are not promptly deposited, the Register of Copyrights may require the proprietor of the copyright to deposit them, and after the demand has been made, in default of the deposit of copies of the work within three months from any part of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright is liable to a fine of one hundred dollars, and the copyright becomes void.

The fee for registration of copyright is one dollar, except in the case of photographs, for which it is 50 cents.

The Act lays down an elaborate system of registration, with periodically-issued catalogues. The catalogues and index volumes are to be admitted in any court as *primâ facie* evidence of the facts stated therein as regards any copyright registration.

No action or proceeding can be maintained for infringement of copyright in any work until the provisions as to deposit of copies and registration of the work have been complied with.

Assignments must be registered.

There is a stringent provision dealing with registration of assignment. Every assignment of copyright must be recorded in the Copyright Office within three calendar months after its execution in the United States, or within six calendar months after its execution without the limits of the United States. Otherwise it will be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded.

Wide powers.

The powers enjoyed under the Act are, as have been said, of the amplest kind. The copyright owner has the exclusive right :—

(*a*) To print, reprint, publish, copy, and vend the copyrighted work ;

[1] See p. 85 *ante*.

(*b*) To translate the copyrighted work into other languages or dialects, or make any other version therefor, if it be a literary work; to dramatise it if it be a non-dramatic work; to convert it into a novel or other non-dramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(*c*) To deliver or authorise the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

(*d*) To perform or represent the copyrighted work publicly if it be a drama, or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(*e*) To perform the copyrighted work publicly for profit if it be a musical composition and for the purpose of public performance for profit; and for the purposes set forth in subsection (*a*) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced (sect. 1).

Incidentally it may be pointed out that under (*d*) dramatic pieces are protected from kinematographic piracy, and under (*e*)—to which there is a long addendum—musical works from mechanical reproduction, subject to freedom to reproduce in certain circumstances on payment of a 2 cents royalty for each disc, roll, cylinder, or other reproducing device employed.

Duration of copyright.

Formerly the statutory copyright period, dating from due registration and filing at Washington, ran for twenty-eight years; and the author, if he was living, or his wife or children, if he was dead, might obtain a further term of fourteen years on re-complying with the regulations for original copyrights. The later period of fourteen years has since become one of twenty-eight, making fifty-six years in all. Application for the renewal and extension must be made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright. In default of application for renewal and extension, the copyright in a work ends at twenty-eight years from first publication. The extension under the statute applies to a copyright that was subsisting at July 1, 1909.

Remedies, civil and summary.

The penalties for infringement are, by way of civil action, heavy and various. In the case of dramatic or dramatico-musical or choral or orchestral composition the Court may, in its discretion, allow 100 dollars for the first and 50 dollars for every subsequent infringing performance, provided that the damages shall not exceed 5000 dollars nor be less than 250 dollars, such damages not to be regarded as a penalty.

On the criminal side, any person who wilfully and for profit infringes any copyright work, or knowingly and wilfully aids or abets the infringement, is deemed guilty of a misdemeanour to be punished by imprisonment for a term not exceeding one year, or by a fine of not less than 100 dollars nor more than 1000 dollars, or both, in the discretion of the Court. The power to imprison existed under sect. 4966 of the old law, but not in conjunction with a fine.

THE BUENOS AYRES CONVENTION, 1910

[Pan-American Convention]

The numerous Republics of "the three Americas" are linked up under this pan-American Convention. The Convention was made at Buenos Ayres on August 11, 1910, delegates of twenty of the Republics assembling on the banks of La Plata. Bolivia was the only absentee, she and Argentina being engaged at the time in the favourite little South American pastime of biting thumbs and incidentally firing shots. The United States ratified the Convention on February 15, 1911. The signatory States also include Argentina, Brazil, Chili, Columbia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, and Venezuela.

The text of the Convention, from the official French, will be found in Appendix I. Judging from articles 6 and 7, European countries are shut out from benefit—a fact that is not altogether so in the case of the Monte Video Convention of 1889, made amongst the South American States of Argentina, Bolivia, Paraguay, Peru, and Uruguay, and apparently not affected by the later Convention. Certain European countries—France, Belgium, Italy, Spain—are parties to the Convention, to a limited extent. That is to say, the adhesion has only been accepted by some of the American States (*i.e.* Argentina and Paraguay), and to that extent works published in those European countries are protected under the Monte Video Convention. But the Buenos Ayres Convention is very much a pan-American affair, and there seems to be no power to extend its benefits to countries not belonging to that continent. First publication must take place in America. This condition could be met, however inconveniently; as, for example,

by publication in the United States, followed by publication in accordance with our 1911 Act not later than fourteen days therefrom. A further obstacle is that the enjoyment of the rights under the Convention is only given to "les auteurs ou leurs ayants droit, nationaux ou étrangers domiciliés." It has been decided in the United States that a foreign author not qualified to secure copyright cannot indirectly do so by assignment to an American owner. But "ayants droit"—which may be translated as "persons entitled to"—is a comprehensive term; and it may be that under this clause in art. 6 European works could be protected, if given the necessary first publication. The Convention appears to await the ratification of most of the States in order to become effective.

No copyright in seditious, immoral, or fraudulent works.

WORKS that are blasphemous, seditious, immoral, or fraudulent are not protected at law. There are no words in the 1911 Act to this effect, but the condition has not been a matter of statutory law but of public policy. Some of the decisions go a long way back, and would be unlikely to be delivered now, especially on questions of blasphemy or sedition. Byron, for example, would not be refused an injunction for piracy of his *Cain*, nor Southey for a similar offence against his *Wat Tyler*. As to fraudulent works, a case in point is that of Wright *v.* Tallis. An author named Huish wrote a devotional work, which he falsely ascribed to a popular German writer of the time, C. C. Sturm. It was held by Tindal, C.J., to be incapable of protection as copyright.

How far the *ipse dixit* of the Lord Chamberlain would be accepted, in the case of a censored dramatic work, as evidence of blasphemous, seditious, or immoral qualities in the work, is a mere speculation. One imagines not very far, or indeed not at all. It is the peculiar function of the Lord Chamberlain to extinguish the public performing right in Great Britain in a work of which he does not approve. He has declared a great variety of works to be unfit for public performance, but no one has had the temerity to flood the market with unauthorised *Monna Vannas* or *Blanco Posnets*. It would be interesting for a bold bad pirate to do so, and then pose in Court as, say, an innocent infringer, on the ground that he thought that a work

officially condemned by the Lord Chamberlain as immoral, and consequently shut off from the stage in Great Britain, was non-copyright.

Licensing of stage-plays.

The Lord Chamberlain has no copyright jurisdiction. He derives his powers from the Theatres Act of 1843 (6 & 7 Vict. c. 68), under which he is not only censor of stage-plays for Great Britain, but also a licenser of the theatres within his jurisdiction—capacities that he has lately enlarged by taking official cognisance of stage-plays in music halls and by issuing theatre licenses to the music halls within his jurisdiction in this respect.

All new stage-plays, and all additions to old ones, must be submitted for license to the Lord Chamberlain at least seven clear days before the first performance in any part of Great Britain. Ireland is not affected. In the Regulations issued from the Lord Chamberlain's Office, the words "every building or place of public resort in Great Britain licensed for the performance of stage-plays" appear, instead of "every theatre" as before. This statement marks the new policy by which sketches and other dramatic pieces in the music halls, instead of existing on sufferance, being doubly illegal—as the bulk of them were (1) because without a stage-play license and (2) because played in a building without a theatre license—instead of that condition of things, are taken into the odour and sanctity of the Lord Chamberlain's protection if, in his opinion, moral or not likely to disturb the peace of the community. Practically all music halls now have the double license—the stage-play and the music-and-dancing. All theatres have not the music-and-dancing license to the same extent as the music halls have the stage-play. But a music-hall entertainment is illegal in a theatre unless the house has a music-and-dancing license under the Act of 1751 or other Acts, though it is hard to reconcile this decision with the wording of the former Act, as far as it applies, and particularly hard to see why a theatre under the Lord Chamberlain should require the license in view of the exemption clause in sect. 4 of the 1751 Act.

What is a stage-play?

The definition of a stage-play—the only definition that we now have—is as follows: "In this Act the word stage-play shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage or any part thereof," with a limited exemption for performance at feasts and fairs. It is a very wide definition, and any piece coming under it requires a stage-play license and the building in which the piece is given a theatre license. Ordinary music-hall turns in which there is no dramatic element are not stage-plays. When, on April 16 and May 7, 1912, Little Tich and Mr Johnson Clark were summoned under the Theatres Act at Bow Street, the magistrate decided that the former's well-known songs and the latter's ventriloquial sketch were not stage-plays. Ballets with plots are stage-plays, but not ballets of the *divertissement* order. Most sketches are stage-plays and some monologues, but where the action is not related and the dialogue is in the nature of variable patter, the definition does not apply. They do not need a stage-play license, being thus free from the Censor in the halls. The authority issuing the music-and-dancing license, however, exercises a certain amount of control. The authority has no power to forbid the performance of a turn of this kind, but if the performance is persisted in, the authority can, in the exercise of its discretion, refuse to renew the license under which the place of entertainment is open. The police can also prosecute for indecent performance.

Censorial powers.

No stage-play, old or new, licensed or unlicensed, is free from the Lord Chamberlain's right to prohibit performance within his jurisdiction. Sect. 14 of the Theatres Act says that it "shall be lawful for the Lord Chamberlain for the time being, whenever he shall be of opinion that it is fitting for the preservation of good manners, decorum, or of the public peace so to do, to forbid the acting or presenting any stage-play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, anywhere in Great Britain, or in such theatres as he shall specify, and

either absolutely or for such time as he shall think fit." Patent theatres are not exempt. Performing a play unlicensed or disallowed renders a theatre license—whatever the licensing authority—null and void. In addition, every person who for hire acts or presents or causes the performance of a play unlicensed or disallowed is liable on conviction to a fine not exceeding £50.

Lord Chamberlain retains manuscripts.

The Lord Chamberlain cannot be compelled to return manuscripts of stage-plays sent to him for approval. He is entitled, even if he refuses a license to a stage-play, to retain the manuscript.

Authorities licensing places of amusement.

The Lord Chamberlain issues, in relation to premises, only theatre licenses, and these licenses only to premises within his jurisdiction. This jurisdiction does not include the whole area of London theatres. The authority of the Lord Chamberlain as licenser of theatres is, with some exceptions of minor importance, confined to houses (not being patent theatres, *i.e.* Covent Garden, Drury Lane,[1] the Royal, Bath, and the Royal, Margate, which are exempt from license) within " the Parliamentary boundaries of the cities of London and Westminster and of the boroughs of Finsbury and Marylebone, the Tower Hamlets, Lambeth, and Southwark." Other theatres situated within the county of London fall to the London County Council; and this body also issues the whole of the licenses for other places of amusement so situated, of which the music halls are chief. The County Council also possesses the powers of inspection formerly exercised by the late Metropolitan Board of Works over the various places of amusement in the county, including the Lord Chamberlain's theatres. In the home counties, such as Surrey, Essex, Kent, Middlesex (apart from the areas of jurisdiction of the Lord Chamberlain and the London County Council), and in the provinces (with some minor exceptions at times affecting the Royal boroughs), the powers for issuing all forms of license—theatre, music-and-dancing, music, and kinematograph—belong to the County Councils and the Town Councils of County Boroughs, who may, if

[1] It is doubtful if Drury Lane is strictly a patent theatre.

they prefer, delegate the powers to the Justices. There are, however, exceptions as to music-and-dancing licenses where towns have obtained local Acts of their own, or where towns have adopted Part IV. of the Public Health Acts Amendment Act, 1890. In the latter case the Justices become the authorities for the issue of music-and-dancing licenses.

Powers of closure.

The Lord Chamberlain may order any theatre licensed by him, or any patent theatre, to be closed on account of riot or misbehaviour, and also on "such public occasions as to the Lord Chamberlain shall seem fit" (sect. 8, Theatres Act). Wilful infringement of the rules and regulations made by the Lord Chamberlain causes a license issued by him forthwith to determine and be of no effect.

The Justices may order any theatre licensed by the local authority to be closed on account of riot or of breach of any regulations made by the authority.

Scottish and Irish authorities.

The Burgh Magistrates, or the Magistrates' Committee, are the authority for licensing both theatres and music halls in Scotland.

In Ireland there is no censorship of stage-plays. Theatres in the city and county of Dublin are licensed by Letters Patent from the Lord-Lieutenant, and music halls in Dublin are licensed by the Recorder. Outside the City and County of Dublin, both theatres and music halls are licensed by the Justices.

The performance of dramatic sketches in music halls in Dublin has been successfully resisted by the patentees of the theatres.

Licensing immaterial to copyright.

The fact that a dramatic work is performed without the Lord Chamberlain's license, or that the work is produced in a building not licensed as a theatre, has no effect on the validity of the copyright. This consideration was of more importance when, under the old law, performance was publication.

Library copies of published books—

In the United Kingdom.

Not only must a copy of a new stage-play, before first production, be sent to the Lord Chamberlain—a copy of it, and indeed of any theatrical or musical piece issued in printed copies to the public within the United Kingdom, must be delivered to the trustees of the British Museum

not later than one month after publication. The latter is a requirement of the 1911 Act, sect. 15 (1), and it applies to non-copyright as well as copyright books. Copies must also, if demand is made within twelve months of publication, be delivered to the Bodleian Library, Oxford; the University Library, Cambridge; the Advocates' Library, Edinburgh; the Library of Trinity College, Dublin; and (excluding books specified in Board of Trade regulations)[1] the National Library of Wales. The books must be forwarded to the depôt in London named in the demand. Only books when published in the United Kingdom are affected, and not all of them. There is power under sect. 29 (1) (iii.) to make provisions as to books first published in foreign countries, but, in the Orders of June 24, 1912, this power is not exercised. Therefore there appears to be no obligation, in the case of a reciprocal foreign country, where a book has been first published there, for copies of the book, when published in the United Kingdom, to be forwarded to the British Museum and the other libraries. But in the case of any other book published in the United Kingdom, irrespective of the country of origin, the publishers must deliver the copies required by the Act.

Colonial and foreign books.

Penalties.

The penalty for non-delivery is, on summary conviction, a fine not exceeding £5 plus the value of the book.

"Book" defined.

"Book" is defined, for the purposes of this section, as including every part or division of a book, pamphlet, sheet of letterpress, sheet of music, etc.

A play printed for private use and not for sale need not comply with these requirements.

[1] The books, of which copies must be delivered to the National Library of Wales, do not include any book of the following classes:—Books (other than books written wholly or mainly in Welsh or any other Celtic language, or relating wholly or mainly to the antiquities, language, literature, philology, history, religion, arts, crafts, or industries of the Welsh or other Celtic peoples, or relating wholly or mainly to the natural history of Wales) of which: (i) the number of copies in the published edition does not exceed 300; or (ii) the number of copies in the published edition does not exceed 400 and the published price of each volume exceeds £5; or (iii) the number of copies in the published edition does not exceed 600 and the published price of each volume exceeds £10.

Lord Chamberlain's Office,
St James's Palace, S.W.

REGULATIONS

1. It is the duty of the Licensee of every building or place of public resort in Great Britain licensed for the performance of stage-plays to send to the Lord Chamberlain, seven days at least before the first acting or presentation thereof, one copy of every new stage-play, and of every new act, scene, or other part added to any old stage-play.

2. Copies of new stage-plays sent for examination and license should be typewritten or clearly and legibly written. They are not returned, but registered and bound in volumes for preservation in the Lord Chamberlain's Department. Changes of title should be notified to the Examiners of stage-plays beforehand.

3. Pantomimes are expressly included in the general designation "stage-plays" under the Act. It is the topical and occasional matter interpolated in pantomimes licensed in former years for other theatres that requires a license.

4. The reading fee (payable by cheque or postal order) is to be paid at the time when a new stage-play is sent to the Lord Chamberlain; and the said period of seven days shall not begin to run until the said fee shall have been paid.

The scale of reading fees, as fixed by the Lord Chamberlain, in accordance with the Act of Parliament, is as follows:—

For every stage-play of 3 or more acts . .	£2, 2s.
For every stage-play of less than 3 acts . .	£1, 1s.

All communications to be addressed to The Lord Chamberlain's Office, St James's Palace.

PERIODS OF COPYRIGHT

TABLE FOR ALL COUNTRIES

Perpetual

Guatemala, Mexico (playright, life and 30 years), Nicaragua, Venezuela.

Duration of Principal Term after Death of Author

5 years . Chili.
7 years . Siam (alternatively 42 years).
10 years . Roumania, Argentina.
20 years . Hayti (life of widow; 10 years for heirs other than children); Peru.
25 years . Salvador.
30 years . Bolivia, Germany (and in any case 10 years from date of first publication); Austria, China, Japan, Liberia, Switzerland, Turkey.
40 years . Greece (playright).
50 years . Belgium, Brazil (playright, 10 years), Costa Rica, Denmark, Ecuador (playright, 25 years), Finland, France, Great Britain, Hungary, Luxembourg, Monaco, Norway, Portugal, Russia, Sweden (playright, 30 years).
80 years . Columbia, Spain.

Duration after First Publication

50 years . Holland and Dutch Indies (and at the least during the life of the author, if he has not ceded the right). This term is for copyright. In a printed play, playright lasts only for 10 years from publication. In a play not printed for publication playright lasts for author's life and 30 years.

Other Systems

28 years . After registration, and a supplement of 28 years to author or heirs on new registration. United States.
40 years . From first publication or life of author if it exceeds this term; and a second (non-exclusive) period of 40 years during which 5 per cent. royalty is payable by users on published price. Playright, 80 years from first performance or first publication. Italy.

PART II

APPENDIX I

STATUTES, ORDERS, AND CONVENTIONS

INDEX TO APPENDIX I

THE COPYRIGHT ACT, 1911

NOTE

THE Copyright Act was passed on December 16, 1911, and came into force in the United Kingdom on July 1, 1912, and elsewhere in the British Dominions as fixed in accordance with the terms of sect. 37 (2). The benefits of the Act were extended to reciprocal foreign countries by Orders in Council dated June 24, 1912.

THE COPYRIGHT ACT

[1 & 2 GEO. V., CH. 46]

An Act to amend and consolidate the Law relating to Copyright

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 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;[1]

[1] As to reciprocal countries, the sole right of translation is modified (under Orders in Council) in the case of any literary or dramatic work of which the country of origin is Austria-Hungary, Denmark, Italy, Japan, or Sweden.

(*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, kinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,[1]

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

[1] As to reciprocal countries, clause (*d*) does not apply (under Order in Council) in the case of a work of which the country of origin is Denmark, Italy, or Sweden.

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[1] :

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

[1] As to reciprocal countries, term of copyright shall not exceed that conferred by law of the country of origin of work.

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 [1] 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 licenses.

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

Ownership of copyright, etc.

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

Provided that—

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

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

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

[1] See p. 139, *post*.

or for any part thereof, and may grant any interest in the right by license, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent :

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a license to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

Civil Remedies

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, 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.[1]

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

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, etc.

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, etc.

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

[1] As to reciprocal countries, sect. 6 (3), modified (under Orders in Council) in the case of any work of which the country of origin is Austria-Hungary, Denmark, Italy, Japan, or Sweden.

(*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 a 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.[1]

2 Edw. VII. c. 15. 6 Edw. VII. 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

Importation of copies.

[1] See p. 137 *et seq.*, *post*.

such copies should not be imported into the United Kingdom, shall not be so imported, and shall, subject to the provisions of this section, be deemed to be included in the table of prohibitions and restrictions contained in sect. 42 of the 39 & 40 Vict. c. 36. Customs Consolidation Act, 1876, and that section shall apply accordingly.[1]

(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.

[1] The section in question runs: The goods enumerated and described in the following table of prohibitions and restrictions inward 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 shall direct.

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 accordance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin, and subject to the provisions of this section the National Library of Wales. In the case of an encyclopædia, newspaper, review, magazine, or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

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

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

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

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

(7) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of 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 licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

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

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *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 half-penny for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a farthing, such fraction shall be reckoned as a farthing :

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

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

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

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

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

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

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

(*c*) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal personal representatives and not to the 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 connection 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.[1]

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.

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. VII. 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 sect. 86 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

[1] As to reciprocal countries, sect. 19 does not apply in the case of a work of which the country of origin is Denmark, Italy, or Sweden.

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 connection 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 interests arising from or in connection 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 sect. 19, subsections (7) and (8), and of sect. 33 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[1]: 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

[1] See p. 148 *et seq.*, *post*.

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 subsection, authorised to confer within other parts of His Majesty's dominions.

For the purposes of this subsection, 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,[1] 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.

[1] See p. 147, *post*.

PART II

INTERNATIONAL COPYRIGHT

Power to extend Act to foreign works.

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

(*a*) to works first published in a foreign country to which the Order relates, in like manner as if they were first published within the parts of His Majesty's dominions to which this Act extends;

(*b*) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the Order relates, in like manner as if the authors were British subjects;

(*c*) in respect of residence in a foreign country to which the Order relates, in like manner as if such residence were residence in the parts of His Majesty's dominions to which this Act extends;

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

Provided that—

(i) before making an Order in Council under this section in respect of any foreign country (other than a country with which His Majesty has entered into a convention relating to copyright), His Majesty shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to His Majesty expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act;

(ii) the Order in Council may provide that the term of copyright within such parts of His Majesty's dominions as aforesaid shall not exceed that conferred by the law of the country to which the Order relates;

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

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

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

[1] See p. 151 *et seq.*, *post.*

(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 sect. 5 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.

Application of Part II to British possessions.

30.—(1) An Order in Council under this Part of this Act shall apply to all His Majesty's dominions to which this Act extends except self-governing dominions and any other possession specified in the Order with respect to which it appears to His Majesty expedient that the Order should not apply.

(2) The Governor in Council of any self-governing dominion to which this Act extends may, as respects that dominion, make the like Orders as under this Part of this Act His Majesty in Council is authorised to make with respect to His Majesty's dominions other than self-governing dominions, and the provisions of this Part of this Act shall, with the necessary modifications, apply accordingly.

(3) Where it appears to His Majesty expedient to except from the provisions of any Order any part of his dominions not being a self-governing dominion, it shall be lawful for His Majesty by the same or any other Order in Council to declare that such Order and this Part of this Act shall not, and the same shall not, apply to such part, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order.

PART III

Supplemental Provisions

Abrogation of common law rights.

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.

Provisions as to Orders in Council.

32.—(1) His Majesty in Council may make Orders for altering, revoking, or varying any Order in Council made under this Act, or under any enactments repealed by this Act, but any Order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the Order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every Order in Council made under this Act shall be published in the *London Gazette* and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

Saving of university copyright. 15 Geo. III. c. 53.

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

Saving of compensation to certain libraries.

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

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

Interpretation.

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

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb-show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any kinematograph 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;

"Kinematograph" includes any work produced by any process analogous to kinematography;

"Collective work" means—

(*a*) an encyclopædia, dictionary, year book, or similar work;