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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

THE INDIAN COPYRIGHT BILL, 1885.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title, extent and commencement.
2. Repeal of Act XX of 1847, and Act XXV of 1867, section 18, last clause.
3. Savings.
4. Definitions.
5. No copyright in published matter except under this Act.
6. Nature of property in copyright.

CHAPTER II.

COPYRIGHT IN BOOKS AND LECTURES.

General Provisions relating to Books.

7. Copyright in books.
8. Infringement of copyright in books.
9. License by High Court for re-publication of books to prevent suppression.

VI.—11

SECTION.

Registration of Books.

10. Register to be established.
11. Mode of registration.
12. Inspection of register and grant of copies.
13. Rectification of register.
14. Assignments, transmissions and trusts.
15. Application of sections 10 to 14 to portions of books.
16. Power to make general rules as to registration.

Special Provisions as to particular Descriptions of Books.

17. Compositions published in periodicals.
18. Book or composition published on terms that copyright shall belong to publisher.
19. Compositions of several authors published in one book and not otherwise provided for.
20. Registration of periodicals, law reports and encyclopædias.
21. Registration of works containing compositions by different authors.
22. Act to apply to compositions as to books.
23. Newspapers.

Lectures.

24. Lectures.

CHAPTER III.

FINE ARTS.

Paintings.

25. Copyright in paintings.
26. Term of copyright in painting.
27. Infringement of copyright in painting.

SECTION.

28. Copyright on sale of painting.
 29. Effect of reservation of copyright of painting on sale.
 30. Saving as to representation of same subject.
 31. Saving for use of sketches on sale of painting.

Sculptures.

32. Application of Act to sculptures.

Engravings and Photographs.

33. Application of Act to engravings.
 34. Application of Act to photographs.
 35. Registration of engravings and photographs.

General Provisions as to Works of Art.

36. Penalty on fraudulent production and sale of works of art.

SECTION.

37. Provision as to engravings, &c., forming part of book.

CHAPTER IV.

NEWSPAPER TELEGRAMS.

38. Protection of newspaper telegrams.

CHAPTER V.

SUPPLEMENTAL.

39. Forfeiture of and provisions as to unlawful copies.
 40. Saving of prosecutions under other laws.

THE SCHEDULE.—FORMS.

*The Indian Copyright Bill, 1885.**(Chapter I.—Preliminary—Sections 1—4.)**A Bill to Amend the law relating to Copyright.*

WHEREAS it is expedient to amend the law relating to copyright; It is hereby enacted as follows:

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Indian Copyright Act, 1885.

(2) It shall extend to the whole of British India; and

(3) Shall come into force on the day of 1885.

2. Act XX of 1847 (*An Act for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called Copyright therein*) and the last clause of section 18 of Act XXV of 1867 (*An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books*) are repealed, except as regards the copyright in anything published before the commencement of this Act and the protection and enforcement thereof.

Savings.

3. Nothing in this Act shall—

- (a) affect the provisions of any Act of Parliament;
 (b) affect the right of any persons to prevent the publication of unpublished matter; or
 (c) confer any copyright in anything the publication of which is illegal.

4. In this Act, unless there is something repugnant in the subject or context, the following expressions shall have the following meanings:—

“Book” shall include every volume, part or division of a volume, pamphlet, newspaper, sheet of letter-press, sheet of music, map, chart or plan separately published.

“Painting” shall include a drawing, but shall not include an engraving or a photograph.

“Sculpture” shall mean any original sculpture, model, cast or alto or basso relievo representing—

- (a) the human figure or any bust or part of the human figure, whether clothed with drapery or otherwise; or
 (b) any animal or part of an animal combined with the human figure or otherwise; or
 (c) any subject, being matter of invention in sculpture.

“Engraving” shall mean any such print, whether an historical print, or a print of any portrait, conversation, landscape or architecture, or any other print, as a person has either—

- (a) himself invented, designed, engraved, etched or worked in mezzotinto or chiaro-oscuro; or
 (b) caused to be engraved, etched or worked in mezzotinto or chiaro-oscuro from his own design; or
 (c) engraved, etched or worked, or caused to be engraved, etched or worked, in mezzotinto or chiaro-oscuro from any painting or sculpture within the meaning of this Act, either ancient or modern;

and shall also include any print, whether coloured or otherwise, taken by lithography or other mechanical process.

“Copy,” in the case of a painting, shall include any repetition, colourable imitation or other multiplication of the painting or of the design thereof, or of any material part thereof, whether by painting, drawing, photography or otherwise.

“Copy,” in the case of a sculpture, shall mean any model, copy or cast, and include any copy made by painting, drawing, engraving, photography or otherwise, subject to this qualification, that any painting, drawing, engraving or photograph of a scene in which the sculpture forms an incident only shall not be deemed to be a copy of the sculpture within the meaning of this section.

[Bill, s. 59.]

[Bill, s. 60.]

[Bill, s. 71 (generally).]

[5 & 6 Vic., c. 45, s. 2.]
 [“Newspaper” added.]

[5 & 6 Vic., c. 56, s. 1.]

[7 Geo III., c. 38, s. 1.]

[15 & 16 Vic., c. 12, s. 14.]

The Indian Copyright Bill, 1885.

(Chapter I.—Preliminary—Sections 5—6. Chapter II.—Copyright in Books and Lectures—Sections 7—8.)

"Print," and other expressions relative thereto, when used in respect of a book or composition, shall include any production or multiplication of copies of a book or composition, whether by the process of ordinary printing, by lithography or by any other process.

"Translation" shall mean the translation of a book or composition into a different language from that in which it was first published, and include an abridgment or adaptation of a book or composition in a language different from that in which it was first published.

[New.] "Periodical" shall mean any review, magazine or newspaper, or other work published periodically or in a series or in parts, except an encyclopædia and a series of law reports.

"Author" shall include any person deriving title through the author.

"Registrar" shall mean the officer appointed to keep the register under this Act.

[Act XX of 1847, s. 16.] "High Court" shall mean Her Majesty's High Court of Judicature at Fort William.

"Prescribed" shall mean prescribed by rules made by the Governor General in Council in pursuance of this Act and for the time being in force.

[New.] "New book" and "new composition" mean respectively a book and a composition not previously published in British India or elsewhere.

Explanations.—For the purposes of this definition—

(1) a translation of a book or composition is a different book or composition;

(2) a second or subsequent edition of a book or composition with additions or alterations or differently arranged may be a different book or composition.

5. There shall be no copyright in any matter published after the commencement of this Act, except such as is conferred by this Act or by some other enactment for the time being in force.

[Bill, s. 57.] 6. (1) Copyright shall be property, may be owned in shares, and shall be capable of assignment and of transmission by operation of law, but shall not be divisible so that a person shall be entitled to it only throughout a part of British India or, except as provided by this Act, during a part of the period for which it endures.

(2) The assignment of a copyright shall not be valid unless it is in writing, and, where the copyright is required to be registered under this Act, is authenticated by a proper entry in the register of copyrights.

[Bill, ss. 5 & 25.] (3) For the purpose of determining whether a person is entitled under this Act to copyright in a work published in British India, it shall be immaterial whether he is or is not a British subject or domiciled or resident in British India at the time of the publication.

CHAPTER II.

COPYRIGHT IN BOOKS AND LECTURES.

General Provisions relating to Books.

7. (1) Except as provided by this Act, the author of a new book published in British India after the commencement of this Act shall, unless a copyright previously existing is infringed by the publication, be entitled to copyright in the book throughout British India. [Bill, s. 5.]

(2) When a book published as aforesaid is divisible into portions, and a person would, if those portions were published as separate books, be entitled under sub-section (1) to copyright in some of those portions and not in others, he shall be entitled to copyright only in the former portions. [New.]

(3) The copyright shall endure for the following terms:— [Bill, s. 7. Sec 5 & 6 Vic., c. 45, s. 3. Act XX of 1847, s. 10.]

(a) if the book is published in the lifetime and in the true name of the author—for the life of the author and thirty years after his death;

(b) if the book is published after the death and in the true name of the author—for thirty years from the date of the first publication of the book;

(c) if the book is not published in the true name of the author—for thirty years from the date of the first publication of the book.

8. Every person shall be deemed to infringe the copyright conferred by this Act in a book who, during the term of copyright, and without either the written consent of the proprietor of the copyright or the authority of a license granted under this Act, does any of the following things, namely:— [Bill, s. 8. Act XX of 1847, s. 7.]

(a) prints or causes to be printed any copy of the book; or [5 & 6 Vic., c. 45, ss. 15, 17.]

(b) prints or causes to be printed any abridgment of the book; or

(c) prints or causes to be printed any translation of the book; or

(d) prints or causes to be printed any dramatized version of the book; or

(e) imports or causes to be imported for sale or hire any copy of the book or of any abridgment, translation or dramatized version of the book printed beyond the limits of British India; or

(f) sells, publishes, lets on hire, exposes for sale or hire, or causes to be sold, published, let on hire or exposed for sale or hire, or has in his possession for sale or hire, any copy, abridgment, translation or dramatized version of the book, by the making or importation of which the copyright in the book is infringed; or

(g) does any other act in respect of the book which would be an infringement of a copyright under the law in force before the commencement of this Act: [New.]

The Indian Copyright Bill, 1885.

(Chapter II.—Copyright in Books and Lectures—Sections 9—13.)

Provided that a person shall not be deemed to infringe the copyright in a book by reason of his having, at any time after the expiration of three years from the first publication of the book, printed, imported, sold, published, let on hire, exposed for sale or hire, or possessed, or caused to be printed, imported, sold, published, let on hire or exposed for sale or hire, a translation of the book into any language, unless within the said period of three years the author of the book or some person by his authority has published in British India a translation of the entire book into that language.

[Bill, ss. 9 & 63.
5 & 6 Vic., c. 45, s. 5.
Act XX of 1847, s. 2.]

9. (1) In order to provide against the suppression of books of importance to the public, the High Court may, on complaint that the proprietor of the copyright acquired under this Act in any book has after the death of the author thereof refused to republish or allow the republication of the book, and that by reason of this refusal the book is withheld from the public, license the complainant to publish the book in such manner and subject to such conditions as the Court may think fit.

(2) A license under this section shall authorize the licensee to publish the book in accordance with the terms of the license notwithstanding anything in this Act.

(3) The licensee shall register the license in the register under this Act.

(4) On such registration, the licensee shall have the same rights as the proprietor of the copyright in the book, as against all persons including that proprietor, with this qualification, that the license or the registration thereof shall not prevent the issue of the like license to the proprietor or another person.

Registration of Books.

[Bill, s. 11.
Act XX of 1847, s. 3.]

10. (1) The Governor General in Council shall establish a register of books for the purposes of this Act, and may, from time to time, for the purpose of keeping the register and performing the duties imposed by this Act in connection therewith, appoint and remove a registrar for the whole of British India and deputy registrars for any parts of British India, and such number of other officers and servants as he may think necessary.

[Bill, s. 10(1).
Act XX of 1847, s. 14.]

(2) No legal proceedings shall be taken or forfeiture incurred under this Act in respect of any infringement of copyright in a book published in British India after the commencement of this Act until the book has been registered under this Act.

(3) If any such book is not registered under this Act within one month after the date of the first publication, no legal proceedings shall be taken or forfeiture incurred in respect of anything printed in, or imported into, British India before the date of registration, whether it is published, sold or otherwise dealt with before or after that date.

[Bill, s. 10
(2).]

11. (1) The proprietor of the copyright in a book published in British India after the commencement of this Act, or a person who has published the book with his consent, may apply for the registration of the book under this Act.

(2) A person applying for the registration of a book shall deliver to the registrar, or, if the book is published in any part of British India for which a deputy registrar is appointed, to the deputy registrar, a copy of the book, accompanied by a statement, verified in the prescribed manner, and showing the name, address and calling of the publisher of the book, the place and date of the first publication of the book, and, except as otherwise provided by this Act, the name, address and calling of the proprietor of the copyright.

(3) If the book is at the time of registration published in the true name of the author, the statement shall also show the true name, address and calling of the author.

(4) If the book is not at the time of registration published in the true name of the author, the proprietor of the copyright may, at any time during the author's life and with his consent, deliver to the registrar a statement showing the author's true name, address and calling, and thereupon the copyright in the book shall endure for the same term as if the book had been published in the author's true name.

(5) The statement to be made on registration may be in or to the effect of the form contained in the schedule to this Act, or in or to the effect of such other form as may for the time being be prescribed.

(6) A deputy registrar receiving a statement under sub-section (2) shall, within one week from the receipt thereof, forward a copy thereof certified under his hand to the registrar; and the registrar shall, on the receipt of the copy, register the book as if the statement had been originally delivered to him.

12. (1) Every person shall on payment of the prescribed fee be entitled to inspect the register under this Act at such reasonable times as may be prescribed, and to obtain copies certified in the prescribed manner of any entries therein.

(2) The copies so certified shall be admissible as evidence of matters entered in the register in pursuance of this Act, and shall be *prima facie* proof of those matters.

13. (1) In any of the following cases:—

(a) if the name of any person who is not for the time being entitled to the copyright in a book is entered on the register under this Act as proprietor of the copyright in that book; or

(b) if the registrar refuses to register as proprietor of the copyright in a book the name of any person who is for the time being entitled to the copyright; or

[Bill, s. 12.
Act XX of 1847, s. 5.]

[See section 21.]

[New.
Cf. Act XXV of 1867, s. 18, last clause.]

[Bill, s. 13.
Act XX of 1847, s. 3.]

[Bill, s. 10(2),
s. 13.
Act XX of 1847, s. 3.
Cf. Act I of 1872, s. 79.]

[Bill, s. 14,
Act XX of 1847, s. 6.
See 5 & 6 Vic., c. 45, s. 14.]

The Indian Copyright Bill, 1885.

(Chapter II.—Copyright in Books and Lectures.—Sections 14—18.)

(c) if any book is entered as the subject of copyright in which there is no copyright; this Act published the composition in his periodical in British India,—

any person aggrieved may apply in such manner as may be directed by rules made by the High Court in this behalf for an order of the High Court that the register may be rectified; and the Court may either refuse the application, or, if satisfied of the justice of the case, make an order for the rectification of the register, and may award compensation to the person aggrieved.

(2) The Court may in any proceeding under this section decide any question whether there is or is not copyright in a book, any question relating to the right of any person who is a party to the proceeding to have his name entered on the register, or to have the name of any other person removed from the register, and any other question that it may be necessary or expedient to decide for the rectification of the register.

(3) Where an order is made rectifying the register the Court shall, by its order, direct that due notice of the rectification be given to the registrar.

[Bill, s. 15.
Act XX of
1847, s. 5.]

14. (1) Where the copyright in a book is required to be registered under this Act, an assignment of the copyright, or a transmission thereof by operation of law, shall not be valid unless it is registered under this Act in the prescribed manner; except that the executors, administrators or other legal representatives of a deceased proprietor of copyright may dispose of the copyright without being themselves registered.

(2) No notice of any trust, expressed, implied or constructive, shall be entered in the register or be receivable by or through the registrar or a deputy registrar, except that caveats against any assignment of a copyright may, if it is so prescribed, be received and entered in the prescribed manner.

15. Sections 10 to 14 (both inclusive) shall apply to a portion of a book as if it were an entire book.

16. The Governor General in Council may, from time to time, make rules as to the registration of copyrights and of first and subsequent proprietors of copyrights, as to the fees to be charged for registration or inspection of the register, or for copies or extracts therefrom, as to caveats and notices, as to the inspection of the register, and as to any matter authorized by this Act to be prescribed, and generally for carrying into effect this Act.

Special Provisions as to particular Descriptions of Books.

17. When the proprietor of any periodical, with the permission of the author of any new composition, has published in periodicals.

[Bill, s. 19.
5 & 6 Vic., c.
45, s. 18.
Act XX of
1847, s. 10.]

(a) the proprietor of the periodical shall be entitled to copyright in the composition throughout British India for a period of three years from the date of the publication, but shall not publish it separately without the consent of the author;

(b) during the said period of three years the author may register the composition under this Act as if it were a book, and thereon shall be entitled, subject to the rights of the proprietor of the periodical, to prevent the publication of or other infringement of the copyright in the composition as if he were the owner of the copyright therein;

(c) on the expiration of the said period of three years, the author shall become entitled to copyright in the composition, and the copyright shall endure until the same date, as if the composition had been a book published separately by him when it was first published in the periodical:

Provided that—

1st.—If the proprietor of the periodical has before the publication of the composition relinquished in writing all claim to the copyright therein, the copyright shall on the publication belong to the author, and endure until the same date, as if the composition were a book; and

2ndly.—If the author has before the publication of the composition relinquished in writing all claim to the copyright therein, the copyright shall on the publication belong to the proprietor of the periodical, and shall endure for thirty years from the date of the publication and no longer.

18. (1) When the author of any new book or composition permits any person to publish the same otherwise than in a periodical on the terms that the copyright in the book or composition shall belong to that person, and that person publishes the book or composition in British India after the commencement of this Act in accordance with the permission, the copyright throughout British India shall belong to him and shall endure for thirty years from the date of the publication and no longer.

(2) In the following cases it shall be presumed, for the purposes of this section, until the contrary is proved, that the permission to publish has been given on the terms that the copyright is to belong to the person to whom the permission is given, namely:—

(a) when the permission is given for a valuable consideration;

(b) when the permission is given with a view to the publication of a composition in an encyclopædia or other work comprising the compositions of different authors.

The Indian Copyright Bill, 1885.

(Chapter II.—Copyright in Books and Lectures—Sections 19—24. Chapter III.—Fine Arts—Sections 25—29.)

[New.] 19. When, in any case not provided for by either of the two last foregoing sections, new compositions by several authors are published after the commencement of this Act in one book in British India, each author shall be entitled to copyright in his composition throughout British India for the same time as if his composition were a book.

[Bill, s. 19 (d). 5 & 6 Vic., c. 45, s. 19. Act XX of 1847, s. 11.] 20. The proprietor of any periodical or series of law reports or encyclopædials, law reports and encyclopædials may register the same under this Act in the prescribed manner, so however that it shall not be necessary to register separately every number thereof.

[New.] 21. (1) The proprietor of any periodical, encyclopædia or other work containing compositions by different authors may, if he thinks fit, register the same under this Act in the prescribed manner, but without registering the names of the persons entitled to the copyright in the several compositions contained therein; and such registration shall, for the purposes of section 10, enure for the benefit of every person entitled to the copyright in any such composition as if his name had been registered as proprietor thereof.

(2) When any work is registered in the manner permitted by this section, a person entitled to the copyright in a composition published therein may register the composition separately under this Act as if it were a book.

[New.] 22. When under the foregoing provisions of this Act any person is entitled to copyright in a composition, the provisions of this Act shall, except as otherwise provided by this Act, apply as if the composition were a book.

[Bill, s. 20 (1).] 23. Notwithstanding anything in the foregoing provisions of this Act, no person shall be deemed to have copyright in such portions of a newspaper as are chiefly intended to furnish news or comments on news.

Lectures.

[Bill, s. 21. See 5 & 6 Wm. IV, c. 65.] 24. (1) The author of a lecture, other than a lecture delivered in a university, public school, college or public foundation, or by any person in virtue of or according to any charity, shall be entitled to copyright in the lecture; and this Act shall apply as if the lecture were a book, with the following modifications and additions:—

- (a) the first delivery of the lecture shall be deemed to be the first publication thereof;
- (b) while the lecture has not been printed and published by the author, if any person, during the term of copyright, and without the written consent of the proprietor of the copyright, delivers the lecture, he shall be deemed to infringe the copyright therein;

(c) it shall not be requisite to register under this Act the copyright in a lecture which is not printed and published by the author.

(2) But nothing in this section shall prevent the proprietor of a newspaper from publishing a report of the lecture in the ordinary current edition of the newspaper, unless the author, before or at the time of the delivery of the lecture, gives notice that he prohibits such a report.

CHAPTER III.

FINE ARTS.

Paintings.

25. (1) The author of an original painting published in British India after the commencement of this Act shall be entitled to copyright therein throughout British India.

(2) Provided that there shall be no copyright in a painting unless the painting, and every copy thereof made with the author's consent before the painting is published, bears the author's name and the date of the execution of the painting.

26. Copyright in a painting shall endure for the following terms:—

- (a) if the painting is published in the lifetime of the author, for the life of the author and thirty years after his death;
- (b) if the painting is published after the death of the author, until the expiration of thirty years from the date of his death.

27. Every person shall be deemed to infringe the copyright in a painting who, during the term of copyright, does without the written consent of the proprietor of the copyright any of the following things, namely:—

- (a) makes or causes to be made any copy of the painting; or
- (b) imports or causes to be imported for sale or exhibition any copy of the painting made beyond the limits of British India; or
- (c) sells, publishes, exposes for sale or exhibits, or causes to be sold, published, exposed for sale or exhibited, or has in his possession for sale or exhibition, any copy of the painting made or imported in infringement of copyright.

28. Where a painting is sold or is executed on the order of any person for valuable consideration, the copyright therein shall vest in the purchaser or person on whose order it is executed, unless the author reserves it by written agreement.

29. Where the copyright in a painting is reserved by agreement,—

- (1) the author shall not, without the consent of the owner for the time being of the

The Indian Copyright Bill, 1885.

(Chapter III.—Fine Arts—Sections 30—34.)

painting, execute or authorise any person to execute any copy thereof, and the owner shall have the same right of preventing the execution of any such copy as if he were the proprietor of the copyright;

- (2) if the copyright is infringed, the owner of the painting shall be entitled to take the same proceedings in respect of the infringement as if he were the proprietor of the copyright;
- (3) provided that, if the infringement is by any person other than the author, the owner, before he takes any legal proceedings in respect thereof, shall give to the proprietor of the copyright notice of the infringement, and of his intention to take proceedings in case the proprietor fails to do so, and shall give the proprietor an opportunity of taking proceedings to prevent the infringement;
- (4) the proprietor of the copyright shall, or, if he fails after notice from the owner of the painting, then that owner may register the copyright in the painting by delivering to the registrar or deputy registrar a statement, verified in the prescribed manner, showing the nature and subject of the painting, the name, address and calling of the author, of the proprietor of the copyright, and of the owner of the painting, and the date of and parties to the agreement;
- (5) the statement may be in or to the effect of the form contained in the schedule to this Act, or in or to the effect of such other form as may for the time being be prescribed;
- (6) until the copyright is registered no legal proceedings shall be taken or forfeiture incurred in respect of any infringement of copyright in the painting;
- (7) unless the copyright is registered within one month after the date of the agreement, no legal proceedings shall be taken or forfeiture incurred in respect of any copy made or imported before the date of registration, whether any such copy is sold, exhibited or otherwise dealt with before or after that date.

[Bill, s. 40.
See 25 & 26
Vic., c. 65, s.
2.]

30. Nothing in this Act shall prejudice the right of a person to copy or use any painting in which there is no copyright, or to represent any scene or object notwithstanding that there may be copyright in some representation of that scene or object.

[Bill, s. 31.]

31. Nothing in this Act shall prevent a person who has sold a painting from selling or using any models, casts, sketches or studies made by him for the purpose of making the painting, so that he do not repeat or colourably imitate the design of the painting.

Sculptures.

32. (1) The provisions of this Act with respect to paintings shall apply to sculptures as if they were herein re-enacted with the substitution of "sculpture" for "painting."

(2) The author of a copy of a sculpture in which there is no copyright, or which was copied with the consent in writing of the proprietor of the copyright, shall be entitled to the same copyright as if his copy were an original sculpture.

Engravings and Photographs.

33. The provisions of this Act with respect to paintings shall apply to engravings as if they were herein re-enacted with the substitution of "engraving" for "painting"; subject as follows:—

- (a) the provisions of this Act as to the name of the author and date of execution shall not apply, but there shall be no copyright in an engraving unless the name of the author is printed thereon;
- (b) the copyright in an engraving shall belong to the proprietor of the plate, stone or other instrument by means of which copies of the engraving are produced;
- (c) where the engraving is made on the order of any person for a valuable consideration, the proprietor of the copyright shall not be entitled to sell, expose for sale or exhibit any copy of the engraving without the consent of that person, and that person shall have the same right of preventing the selling, exposing for sale or exhibition of any copy of the engraving and, if the copyright is infringed, of taking proceedings in respect of the infringement, as if he were the proprietor of the copyright.

34. The provisions of this Act with respect to paintings shall apply to photographs as if they were herein re-enacted with the substitution of "photograph" for "painting"; subject as follows:—

- (a) the provisions of this Act as to the name of the author and date of execution shall not apply;
- (b) the copyright in a photograph shall endure for thirty years from the death of the publication of the photograph, and no longer;
- (c) the copyright in a photograph shall belong to the proprietor of the negative from which the photograph is printed;
- (d) where the photograph has been made on the order of any person for a valuable consideration, the proprietor of the copyright shall not be entitled to sell, expose for sale or exhibit any copy of the photograph without the consent of that person,

[Bill, s. 32.
See 54 Geo.
III, c. 56.]

Application of Act to sculptures.

[Bill, s. 33.
See 8 Geo. II,
c. 12; 17 Geo.
III, c. 38; 17
Geo. III, c.
57.
6 & 7 Wm.
IV, c. 59; 15
Vic., c. 12, s.
14.]

Application of Act to photographs.

[Bill, s. 34, 25
& 26 Vic., c.
68, s. 1.]

Saving as to representation of same subject.

Saving for use of sketches on sale of painting.

The Indian Copyright Bill, 1885.

(Chapter III.—Fine Arts—Sections 35—37. Chapter IV.—Newspaper Telegrams—Section 38.
Chapter V.—Supplemental—Section 39.)

and that person shall have the same right of preventing the selling, exposing for sale or exhibition of any copy of the photograph and, if the copyright is infringed, of taking proceedings in respect of the infringement, as if he were the proprietor of the copyright.

[Bill, s. 35.]

35. The provisions of this Act with respect to Registration of engravings the registration of the and photographs. copyright in books shall apply to the copyright in engravings and photographs as if they were herein re-enacted with the substitution of "engraving" or "photograph," as the case requires, for "book," except that, where an engraving or photograph has not a distinctive title, there shall be substituted for the title in the statement required on registration a short description of the nature and subject of the work.

General Provisions as to Works of Art.

[Bill, s. 36.
25 & 26 Vic.,
c. 68, s. 7.]

Penalty on fraudulent production and sale of works of art.

36. (1) Every person who commits any of the following offences, that is to say:—

- (a) fraudulently signs or otherwise affixes, or causes to be signed or affixed, on or to any painting, sculpture, engraving, photograph or negative of a photograph any name, initials or monogram; or
- (b) fraudulently sells, publishes, exhibits, offers for sale, or exposes for sale or exhibition any painting, sculpture, engraving, photograph or negative of a photograph having thereon the name, initials or monogram of a person who did not make the painting, sculpture, engraving, photograph or negative; or
- (c) fraudulently sells, publishes, exhibits, offers for sale or exposes for sale or exhibition any painting, sculpture, engraving, photograph or negative of a photograph as having been made by the author of the original work, of which it is a copy or imitation; or
- (d) where a painting, sculpture, engraving, photograph or negative of a photograph has been sold and subsequently altered during the life of the author and without his consent, knowingly sells, publishes or offers for sale the work so altered, or any copy thereof, as, or as a copy of, the unaltered work of the author,

shall be punished with fine which may extend to one hundred rupees and double the full price, if any, at which any such paintings, sculptures, engravings, photographs or negatives have been sold or offered for sale, and this fine shall be paid to the person aggrieved.

(2) Every work which has the name, initials or monogram of any person so fraudulently signed thereon or affixed thereto, or which, being spurious or altered, is so fraudulently or falsely ascribed to any person, shall be forfeited to that person, or his assigns or legal representatives,

(3) Provided that no penalty shall be incurred under this section unless the person whose name, initials or monogram is or are used, or to whom a spurious or altered work is ascribed, is alive at the time when the offence was committed, or was alive within twenty years before that time.

[Bill, s. 37.]

37. Where an engraving or photograph is, with the consent of the author, first published as part of a book containing letter-press, it shall, for the purposes of this Act, be deemed part of the book, and not an engraving or photograph; and the copyright in the engraving or photograph shall belong to the proprietor of the copyright in the book.

CHAPTER IV.

NEWSPAPER TELEGRAMS.

38. (1) Where a telegram from any place outside British India is sent, either directly or through a news agency, to any person for publication in a newspaper, and is published in that newspaper with the particulars hereinafter specified, within twenty-four hours after its receipt by the person to whom it is so sent, no person shall, within twenty-four hours from its publication in that newspaper, and without the consent of the proprietor of that newspaper, print and publish the telegram, or the substance thereof, or any extract therefrom, unless he can prove that the information so published by him was obtained otherwise than directly or indirectly from that newspaper, or from another newspaper to which the same telegram had been supplied by the same agency.

(2) Every telegram to which this section applies shall be headed "Protected Telegram," and shall state the day and hour of its receipt and the day and hour of its publication.

(3) The days and hours so specified shall be presumed to be correct until the contrary is proved.

(4) If any person contravenes this section, he shall be liable to a fine which may extend to two hundred rupees.

CHAPTER V.

SUPPLEMENTAL.

39. (1) Every copy of a book, painting, sculpture, engraving or photograph imported for sale or hire in infringement of copyright shall be forfeited to the Crown, and may be seized and destroyed by any officer of Customs.

[Bill, s. 64.
See 5 & 6 Vic.,
c. 45, ss. 17,
23; 25 & 26
Vic., c. 68,
s. 6.]

(2) Every copy of a book, painting, sculpture, engraving or photograph made in British India in infringement of copyright shall be forfeited to the proprietor of the copyright.

(3) Where any copy of a subject of copyright is under this Act forfeited to the proprietor of the copyright, then, without prejudice to any other remedy,—

The Indian Copyright Bill, 1885.

(Chapter V.—Supplemental.—Section 40 and Schedule.)

- (a) the District Magistrate or a Presidency Magistrate may order any such copy to be delivered to the proprietor of the copy-right;
- (b) if any person in any street or highway, or elsewhere than at his own house, shop or place of business, hawks or offers, or keeps for sale, hire or distribution, any such copy, it may be seized by any police-officer above the rank of constable under the orders of the proprietor of the copyright or of any person authorized by him, and forthwith taken before the District Magistrate or a Presidency Magistrate with a view of obtaining an order for its delivery to the proprietor of the copyright;
- (c) the exportation of any such copy is hereby prohibited, and this prohibition shall be enforced in the same manner as any like prohibition is enforced under the laws relating to sea customs for the time being in force.

40. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission for which any punishment or penalty is provided by this Act or from being liable under that other law to any other or higher punishment or penalty:

Provided that a person shall not be tried twice for the same offence.

THE SCHEDULE.

(See sections 11 and 29.)

FORMS.

A.

Form of Statement for Registration.

I, A. B., of _____, request the registration of the following book:—

Title of Book.	Name, Address and Calling of Author.	Name, Address and Calling of Publisher.	Name, Address and Calling of Proprietor of Copyright.	Place and date of first Publication.

I hereby declare that the above particulars are true.

(Signed) A. B.

Dated _____ day of _____ 18 .

Note.—Where the thing registered has not a distinctive title, a short description of its nature and subject must be entered in the first column, and the heading of that column altered accordingly.

B.

Form of Statement for Registration of Copyright in Painting when reserved on sale.

I, A. B., of _____, request registration of the copyright in the following painting:—

Short Description of Nature and Subject of Work.	Name, Address and Calling of Author.	Name, Address and Calling of Proprietor of Copyright.	Name, Address and Calling of Owner of Painting.	Date of, and Parties to, Agreement reserving the Copyright to the Author.

I hereby declare that I am the proprietor of the copyright in [or the owner of] the above painting, and that the above particulars are true.

(Signed) A. B.

Dated _____ day of _____ 18 .

Note.—If the applicant for registration so desires, a sketch, outline or photograph of the work may be registered. The agreement must be produced to the registrar or deputy registrar, and, if so prescribed, delivered to him.

STATEMENT OF OBJECTS AND REASONS.

1. So long ago as the year 1864 the Government of India were urged to take steps for the improvement and extension of the copyright law, as contained in Act XX of 1847, and a Bill was drawn in that year with the object of carrying out one of the recommendations which had been made, namely, that facilities should be given for the protection of copyright in pictures, engravings, prints and other similar productions.

2. It was not, however, till the year 1876 that the question was systematically taken up. In that year the Government formulated proposals for amending Act XX of 1847,—*first*, by extending the author's privilege to translations into the Native languages, subject to a provision similar to that contained in the Statute 15 & 16 Vic., cap. 12, section 8, which makes the exclusive privilege of translation conditional on the publication, within a given period, of a translation sanctioned by the author: and, *secondly*, by providing for the protection of copyright in lectures, paintings, sculpture, engravings, and photographs. It was also proposed to amend the law (Act XIII of 1872) providing for the protection of patterns and designs, which had been found defective in practice, and to incorporate it in the new law.

3. These proposals were circulated to the several Local Governments and received their general support. They were then in the year 1877 communicated to the Secretary of State: but the proposed legislation was deferred at his suggestion pending the completion of the labours of the Royal Commission, which was then sitting to consider amendments in the Imperial law of copyright.

4. The necessity for an amendment of the law was again brought to the notice of the Government of India in the years 1882 and 1883 in connection with a difficulty experienced by the Government of Madras in asserting a copyright in certain educational works published under its authority, and with memorials submitted by certain Art Associations in Calcutta and Poona, praying for the enactment of provisions which would enable them to register the copyright in their productions in this country, the present law (25 & 26 Vic., cap. 68) admitting of registration in London only. The whole subject was again taken into consideration, and it was decided to re-enact Act XX of 1847, making such amendments as experience has shown to be necessary, particularly in regard to copyright belonging to the Government and to corporations, and copyright in translations, and at the same time providing for copyright in—

- (a) public lectures after delivery;
- (b) sculptures and casts;
- (c) engravings and lithographs;
- (d) drawings, paintings and photographs.

The proposal formerly entertained of incorporating in an amended form the law relating to patterns and designs (Act XIII of 1872) was abandoned, as it was thought that the balance of practical convenience was in favour of following the precedent of English legislation and treating this subject, as it has hitherto been treated here, in connection with patents. It was therefore decided to deal with the amendment of this branch of the law of the Bill for amending Act XV of 1859, which is being separately considered by the Government of India.

These proposals have been approved by the Secretary of State, and the present Bill is designed to carry them into effect.

5. The Bill is based chiefly on the corresponding provisions of the Bill which was brought in by Lord John Manners in the year 1879, and which was intended to give effect to the recommendations of the Copyright Commission (1878).

In explaining its provisions it will be convenient to begin with the subject of books and other printed matter, which stands first in order, and moreover possesses the widest interest.

6. It will be observed that the portions of the Bill dealing with this subject are confined in their operation to matter published after the commencement of the Act. All rights in regard to unpublished matter, as, for example, unpublished letters, which have at times given rise to interesting controversies are [section 3 (b)] left untouched, and, as regards matter published before the commencement of the Act, the present law (Act XX of 1847 and the last clause of section 18 of Act XXV of 1867) is kept alive (section 2).

7. It is probable that section 5, which provides that there shall be no copyright in published matter except such as is conferred by express enactment, simply declares the existing state of the law (see the preamble to Act XX of 1847 and Article 4 of Sir James Stephen's Digest annexed to the Report of the Copyright Commission); but it has been thought safest to preclude all doubt on a point which has on more than one occasion given rise to troublesome discussions.

8. Section 6 (nature of copyright) provides, among other matters, that the British Indian copyright, though it may be owned in shares, cannot be divided so that a person shall be entitled to it only throughout a part of the territory over which it holds good or for a part only of the time for which it endures. The former branch of the rule is in accordance with the view taken by Lord St. Leonards in *Jeffreys v. Boosey*. "Nothing," he there says, "could be more absurd or inconvenient than that this abstract right should be divided, as if it were real property, into lots, and that one lot should be sold to one man and another lot to a different man. It is impossible to tell what the inconvenience would be.

You might have a separate transfer of the right of publication in every county in the kingdom.' These remarks were not intended to apply directly to the point touched by the second branch of the proposed rule; and it is believed that, though some doubt has been felt on the point (which appears never to have been judicially decided), the Registrar in England acts on the view that a copyright is assignable for a limited period; but it is to be apprehended that complications similar to those of which Lord St. Leonards spoke as likely to rise from divisions with reference to local area would be likely to arise also from divisions with reference to duration. It is important to prevent the accrual of complications in a right of this description, and it is believed that all that is needed for practical purposes can be effected by means of contracts and licenses without any actual dismemberment of the copyright itself.

9. The last sub-section of section 6, which provides that an author shall be entitled to copyright whether he is or is not a British subject or resident or domiciled in British India at the time of publication, has been introduced, following Lord John Manners's Bill, to prevent the possibility of any such question as arose in certain well-known English cases on this point. It may be doubted, however, whether there is any necessity to provide expressly for the matter in the present Bill.

10. The section of the Bill (7) which confers copyright in books is limited to "new books" (that is, to books not previously published in British India or elsewhere) which are published in British India after the new law comes into force; and the right is limited, as having regard to the limited powers of the Governor General's Council it must necessarily be, to British India.

It would, of course, be possible to provide, somewhat as in Lord John Manners's Bill for the protection in British India of books first published in other parts of Her Majesty's dominions, but it seems unnecessary to do so. Parliament itself protects in all British possessions abroad (including British India) books published in the United Kingdom; and books published in the Colonies are, it is believed, rarely heard of in this country.

It seems likewise unnecessary to provide any protection at present for books published beyond the limits of Her Majesty's dominions and re-published in British India.

11. A question arises on sub-section (1) of section 7, which is indicated by the words shown in italics, namely, whether it ought to be a condition of the acquisition of copyright in a book that the book should not in any way infringe another copyright recognized by the law. X, for example, publishes a book which is new within the meaning of the Bill, but it is a translation or abridgment of a work previously published by Y, or its contents can be shown on examination to have been borrowed to such an extent from Y's work that Y would, if he were so minded, be in a position to take proceedings for the infringement of his copyright against X. This being so, Z publishes a book which would involve an infringement of X's copyright, supposing such copyright to exist, and X takes proceedings against him. Is Z to be allowed to defend himself on the ground that X's work, being an infringement of Y's copyright, cannot itself be the subject of copyright? The question appears to have rarely arisen in England, and then only in cases in which separable portions of the works concerned had been copied (see, for example, *Cary v. Fuden*, 5 Ves. 23); but as the Bill makes a translation or an abridgment an infringement of copyright, it is likely to be of more importance here and to present itself under a somewhat different form.

12. The second sub-section of section 7 is intended to meet the case of a book part only of which is original; for example, a classical text, in which no copyright could be acquired, published with original notes in which a copyright would be claimable.

13. The rules in sub-section (3) of section 7, fixing the duration of the copyright in a book, are taken from Lord John Manners's Bill, and involve a considerable change in the existing law. In the ordinary case of a book published in the true name of the author during his life, the term of the copyright will run on to thirty years after his death, instead of only to seven years as at present.

14. Clauses (a) to (f) of section 8, specifying the various modes in which the copy-right in a book may be infringed, are taken from Lord John Manners's Bill, but it is apprehended that these clauses would not exhaust the subject. There are many ways of using another's work which must be treated as an infringement of copyright, and which would not fall under any of those headings; and as it seems hopeless to define those ways, the only practicable mode of dealing with the matter appears to be to add a clause (g) treating as an infringement "any other act in respect of the book which would be an infringement of a copyright under the law in force before the commencement of this Act."

15. The only other matter which it appears necessary to notice in connection with this section is one which is of growing interest in this country, namely, the question of copyright in connection with translations. That a translation is, as laid down in section 4 of the Bill, a new work, and is, if lawfully made, entitled to copyright as such, appears, as the law now stands, open to no doubt; but the further question whether any one is at liberty to publish a translation of a book in which there is a subsisting copyright is one which appears never to have been decided in England. In this country, however, where translations are commonly made of works which are the subject of copyright here, it has been more than once brought to the notice of the Government.

Primâ facie it seems clear that an author should have the exclusive right of translating his work, and, though the matter is not referred to by the Copyright Commission in dealing with the subject of home copyright, probably because it is rarely of much practical importance in that connection in England, a clause was inserted in Lord John Manners's Bill making the translating of a book an infringement of the home copyright. In connection with international copyright the exclusive right of the author to translate his work is fully recognized.

The only doubt that appears to have been suggested in this country as to the expediency of recognizing this right arose with reference to the right to make vernacular translations from English works, it having been argued that, if the copyright of the author of the English work were to comprise an exclusive right of translation, it might stand in the way of translations being made, and might thus interfere with the diffusion of knowledge.

The answer to any such argument seems to be that in the case of many English works published in this country (and it is with such works only we are here concerned) the author must lose a large share of the benefit of his labours unless the right of translation is reserved to him, that his translation is likely to be better than any one else's, and that we can easily make his exclusive right of translation subject, as under the international copyright law, to the condition that he shall publish a translation of his work within a fixed period.

Section 8 has been framed so as to give effect to these views—the body of the section providing that the publication, &c., of a translation shall be an infringement of the copyright, and the proviso barring the operation of the section in this respect if the author himself does not publish a translation in British India within a certain period (three years is suggested in the Bill) from the first publication of the book.

16. Act XX of 1847 contains a section (2) giving power to grant a license for the publication of a book already published in order to prevent its being withheld from the public. Section 9 of the Bill contains corresponding provisions, but the power is now given to the High Court instead of to the Governor General in Council, and the details have been re-cast on the lines of Lord John Manners's Bill.

17. Sections 10 to 16 of the Bill substitute for the existing system of registration of copyright a system based on the scheme of Lord John Manners's Bill.

The first important alteration is in section 10 (3). By the existing law an owner of copyright may register when he pleases, and, though no proceedings for infringement can be maintained before registration, proceedings can be maintained after registration for an infringement antecedent to registration. This may be productive of hardship in cases where registration is deferred and a person, supposing that the owner does not mean to assert his right, publishes or imports some work which involves an infringement of the copyright. The owner may then register and institute proceedings against him in respect of an act for which he can hardly be deemed worthy of blame.

On the other hand, if it were to be enacted that no proceedings should be instituted in respect of anything done before registration, it might in some cases be possible for an unscrupulous person to publish with impunity a large number of copies of the work before the owner of the copyright could arrange to register it.

The Copyright Commission, having pointed out the similar difficulties arising in England, wrote as follows:—

“We therefore recommend that proprietors of copyright should not be entitled to maintain any proceedings in respect of anything made or done before registration, nor in respect of any dealings subsequent to registration with things so made or done before registration. But, as this provision might in some cases operate harshly, we think it should not apply if registration is effected within a limited time, say, one month after publication.”

Section 10 (3) substantially gives effect to this recommendation.

18. The Bill provides for the appointment not only of a registrar at the central office, but also of deputy registrars for such local areas as the Governor General in Council may think fit.

This seems necessary in order to admit of the maintenance of something similar to the local system of registering copyright which is established under section 18 of Act XXV of 1867, and has in some places almost superseded registration under the principal Act. The deputy registrar, who will, it is presumed, ordinarily be the person whose duty it is to keep up the catalogue prescribed by that section, will receive from the person desiring to have a book registered for the purposes of the copyright law the copy of the book and the verified statement which he is required by the Bill to submit, and will within a week transmit the statement to the registrar for incorporation in the register at the central office. The single and complete central register, which is an essential feature of the system, can thus be maintained without sacrificing in any way the convenience of the public. Subsequent dealings with the register, such as rectifications of the entries in it and the registration of assignments, must no doubt take place at the central office, but for a long time to come they will be of comparatively rare occurrence.

19. The provisions of Chapter II, which have up to this been referred to, proceed for the most part as if the only case to be dealt with were the simple one of a book written by a single author and published by him under such circumstances that there is nothing to interfere with his acquisition of the full copyright. But other more complicated cases remain to be provided for. The commonest case is that of a “periodical”, the proprietor of which publishes in each of his volumes or parts the compositions of several authors; but there are other cases (for example, that of an encyclopædia or a series of law reports) in which the compositions of several persons are published in a single volume; and there are, moreover, occasionally cases in which one person employs another to write an entire book, the intention being that the copyright shall belong to the employer.

20. The most important of these cases are provided for in a section (10) of Act XX of 1847, based on the 18th section of the 5 & 6 Vic., c. 45, but in a manner which is not altogether satisfactory as regards either substance or form.

The existing state of the law and the suggestions made by the Copyright Commission will be seen from the following extract from the Commission's Report :—

"One other point relating to the term of copyright remains, to which we wish to call attention. It has been provided that in the case of encyclopædias, reviews, magazines, periodical works and works published in a series of books or parts, for which various persons are employed by the proprietor to write articles,—if the articles are written and paid for on the terms that the copyright therein shall belong to the proprietor of the work, the same rights shall belong to him as to the author of a book, except in one particular, in which particular a difference is made between essays, articles or portions of reviews, magazines or other periodical works of a like nature and articles in encyclopædias. In the case of the former (but not of encyclopædias) a right of separate publication of the articles reverts to the author after 28 years for the remainder of the period of copyright, and during the 28 years the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns. Authors can, however, by contract reserve to themselves during the 28 years a right of separate publication of the articles they write, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical. We think some modification in this provision is required as regards the time when the right of separate publication should revert to the authors of the articles, and that three years should be substituted for twenty-eight.

* * * * *

"It has been pointed out to us that under the existing law the author of an article in a magazine or periodical cannot, until the right of separate publication reverts to him, take proceedings to prevent piracy of his work; so that, unless the proprietor of the magazine or periodical be willing to take such proceedings (which may very likely not be the case when the right of the author is about to revive), the result would practically be to deprive the author of the benefit of the right reserved to him. We recommend, therefore, that, during the period before the right of separate publication reverts to the author, he should be entitled, as well as the proprietor of the magazine or periodical, to prevent an unauthorised separate publication.

21. It is on the lines thus indicated that the most important section of this portion of the Bill, namely, section 17, relating to compositions published in periodicals, has been drawn.

"Periodical" is defined in section 4 of the Bill as meaning "any review, magazine or newspaper, or other work published periodically or in a series or in parts, except an encyclopædia and a series of law reports"; and subject to a special provision regarding newspapers, to be presently noticed, the provisions of section 17 of the Bill apply to all works included in that definition.

The general rules laid down are—

- (a) that the proprietor of the periodical shall be entitled to copyright in each composition published in it for three years from the date of publication, but shall not publish it separately without the consent of the author;
- (b) that during that period of three years the author may register the composition, and, if he does so, shall be entitled, subject to the rights of the proprietor of the periodical, to take steps to protect the copyright in the composition as if he were the owner of it; and
- (c) that on the expiration of the three years the copyright in the composition shall pass to the author and endure until the same date as if the author had himself published the composition as a separate book.

These general rules, however, may be modified by writing between the parties in either of two ways; that is to say, the proprietor of the periodical may by writing relinquish his claim to the copyright, in which event the copyright in the composition will from the moment of publication belong to the author; or the author may similarly relinquish his claim in favour of the proprietor of the periodical, in which event the copyright of the latter will endure for thirty years from the date of publication.

22. It is perhaps superfluous to observe that here, and in the cases to be next noticed, it is open to the parties to make any terms they think fit by way of contract or license. It is only with the vesting of the ownership of the copyright that the rules now in question are concerned.

23. Section 18 deals with the case of a new book or composition which the author allows to be published by another person otherwise than in a periodical on the terms that the copyright in it shall belong to that other person. It provides that in such a case the copyright shall belong to that other person and shall endure for thirty years, and further enacts that the publication shall, until the contrary is proved, be presumed to have taken place on the terms referred to if the author's permission to publish has been given for valuable consideration, or has been given with a view to publication in any encyclopædia or other work comprising the publications of different authors. It is believed that the presumption is in both cases a fair and reasonable one, and that it will at times save a publisher from being vexatiously put to the proof of something regarding which there may be no reasonable ground of doubt, and which, nevertheless, it might involve a considerable expenditure of time and money to prove.

24. Section 19 is intended to cover such cases of compositions of several authors published in one book as are not covered by the preceding sections. It will apply, for example, if authors allow their compositions to be published in an encyclopædia, but on the terms that the copyright shall belong to them, and in the case, which occasionally occurs, of the authors of a number of essays having a common tendency joining to publish them in a single volume. It simply gives to each author the copyright in his composition as if it had been published as a separate book.

25. Section 21 is new. It is intended to meet cases in which the proprietor of a periodical, encyclopædia or other work containing the compositions of different authors is not the proprietor of the copyright of all those compositions. In some such cases the registration of the ownership of the copyright might be difficult, and in the case of a periodical or such like, if the registration of the ownership of the copyright was imperative, the simple method of registration provided by section 20 would be inapplicable. It is therefore left optional to the proprietors of such works to register them without naming the owner of the copyright; and as an entry of a work in the copyright register, even if it does not contain the name of the owner of the copyright, is a sufficient warning to all persons to abstain from piracy, it is provided that an entry made under this section shall, for the purposes of section 10 (see *supra*, paragraph 17), enure for the benefit of each person entitled to the copyright of a composition contained in the work as if his name had been registered as proprietor thereof.

It is, however, further provided that when any work is registered in the manner permitted by this section the owner of the copyright of any composition published in it may register his composition separately as if it were a book.

26. It has been already stated that newspapers are treated as periodicals subject to a certain qualification. That qualification, which is taken from Lord John Manners' Bill, will be found in section 23, and its effect is to prevent such portions of a newspaper as are chiefly intended to furnish news or comments on news becoming the subject of copyright. This is in substantial accordance with the recommendation of the Copyright Commission, who, in the 88th paragraph of their Report, suggest that any future legislation should define "what parts of a newspaper may be considered copyright by distinguishing between announcements of facts and communications of a literary character."

27. Section 24 of the Bill deals with copyright in lectures. It is copied from Lord John Manners' Bill and runs as follows:—

"24. (1) The author of a lecture, other than a lecture delivered in a university, public school, college or public foundation, or by any person in virtue of or according to any charity, shall be entitled to copyright in the lecture; and this Act shall apply as if the lecture were a book, with the following modifications and additions:—

"(a) The first delivery of the lecture shall be deemed to be the first publication thereof;

"(b) while the lecture has not been printed and published by the author, if any person, during the term of copyright, and without the written consent of the proprietor of the copyright, delivers the lecture, he shall be deemed to infringe the copyright therein;

"(c) it shall not be requisite to register under this Act the copyright in a lecture which is not printed and published by the author.

"(2) But nothing in this section shall prevent the proprietor of a newspaper from publishing a report of the lecture in the ordinary current edition of the newspaper, unless the author, before or at the time of the delivery of the lecture, gives notice that he prohibits such a report."

28. As already stated, the Indian Statute-book contains no provisions regarding copyright in lectures, and, as the subject is new in this country, it seems desirable to re-produce here the remarks and suggestions of the Copyright Commission, which will afford a sufficient explanation of the provisions of the section. In the 82nd to 87th paragraphs of their Report they write as follows:—

"Lectures are peculiar in their character, and differ from books, inasmuch as, though they are made public by delivery, they have not necessarily a visible form capable of being copied. Nevertheless, it has been thought right by the legislature in recent years to afford them the protection of copyright, and, considering the valuable character of many lectures, it is our opinion that such protection should not only be continued, subject to certain changes in the law, but extended. Although lectures are not always capable of being copied, because not reduced to writing, many lectures written for the purpose of delivery are not published, and many are written that the matter of them may be preserved, or that they may be capable of delivery in the same form on other occasions. Moreover, lectures, though not put in writing by the author, may be taken down in shorthand, and thus published or re-delivered by other persons. The present Act of Parliament, which gives copyright in lectures, seems only to contemplate one kind of copyright, namely, that of printed publication, whereas it is obvious that for their entire protection lectures require copyright of two kinds, the one to protect them from printed publication by unauthorised persons, the other to protect them from re-delivery.

"The present law is that the author of any lecture, or his assignee, may reserve to himself the sole right of publishing it, by giving two days' notice of the intended delivery to two Justices of the Peace living within five miles from the place where the lecture is to be delivered, unless the lecture is delivered in any university, public school or college, or on any public foundation or by any person in virtue of or according to any gift, endowment or foundation, in which cases no copyright is given on any condition. If any person obtains a copy of a protected lecture by taking it down, and publishes it without the leave of the author, or sells copies, he is to forfeit the copies and *l*d. for every sheet found in his custody. This law is designed merely to prevent unauthorised publication of lectures by printing, but, as has been observed, it does not prohibit unauthorised re-delivery.

"We think that the author's copyright should extend to prevent re-delivery of a lecture without leave as well as publication by printing, though this prohibition as to re-delivery should not extend to lectures which have been printed and published. We also recommend that the term of copyright in lectures should be the same as in books, namely, the life of the author and 30th years after his death.

"In the course of our inquiry it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will become unlawful. It does not seem to us desirable that this practice should be prevented, but, on the other hand, the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control so as to prevent such publication if he wishes to do so; and we therefore suggest that, though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless before or at the time when the lecture is delivered he gives notice that he prohibits reporting.

"By the present law, as above stated, a condition is imposed of giving notice to two Justices. Without entering into the origin of this provision we find that it is little known and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest that this provision should be omitted from any future law.

"We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere, wherein no statutory copyright can be acquired."

29. The provisions of Chapter III of the Bill, relating to copyright in works of art, follow closely those of Lord John Manners's Bill, the only important difference being that their application will be restricted to works "published" in British India after the Bill comes into operation. The protection of the copyright in works of art "published" elsewhere will, it is believed, be best left, as the protection of the copyright in books published elsewhere has been, to be dealt with by Parliament.

30. Sections 28 and 29 of the Bill deal with the question of the ownership of the copyright in a painting which has been sold by the artist or executed by him on the order of any person for valuable consideration—a question which the Copyright Commissioners observe (paragraph 101) was the most difficult of those which came under their consideration with relation to fine arts.

Section 28 provides that the copyright in such a painting shall vest in the purchaser or person on whose order it is executed, unless the artist reserves it by a written agreement; while section 29 provides that when the artist so reserves the copyright he shall not be entitled without the consent of the owner of the painting to make copies of it, and gives the owner of the painting certain remedies against infringements of the copyright by third persons in the event of the owner of the copyright failing to proceed against them.

These provisions are applied also to sculptures (see section 32).

31. The case of photographs and engravings, on the other hand, stands on a different footing. The Copyright Commission, referring to the case of photographs, say—

"120. But the point upon which we feel difficulty is, whether the copyright should be assimilated to that in paintings and pass to a purchaser, or whether it should remain with the photographer. When photographs are taken with a view to copies being sold in large numbers, it is practically impossible that the copyright in the negative should pass to each purchaser of a copy, and it must remain with the photographer, or cease to exist. On the other hand, the same reasons exist for vesting the copyright of portraits in the purchaser or person for whom they are taken, as in the case of a painting. Indeed, considering the facility of multiplying copies, and the tendency among photographers to exhibit the portraits of distinguished persons in shop windows, it may be thought that there is even greater reason for giving the persons whose portraits are taken the control over the multiplication of copies than there is in the case of a painting. It therefore becomes a question whether it is not necessary to make that distinction between photographs that are portraits and those that are not, and between photographs taken on commission and those taken otherwise, which we have deprecated in the case of paintings.

"121. We suggest that the copyright in a photograph should belong to the proprietor of the negative; but, in the case of photographs taken on commission, we recommend that no copies be sold or exhibited without the sanction of the person who ordered them."

As regards engravings, their remarks are as follows:—

"122. The same questions arise with respect to engravings, lithographs, prints and similar works. These arts, like photography, may be employed for the purpose of issuing a large number of copies of a picture, or merely for the purpose of executing a commission and printing a few copies, of a portrait for instance, for private distribution by the person giving a commission among his friends. We think, therefore, that, so far as regards the transfer and vesting of the copyright, these arts should be placed upon the same basis as photography."

The suggestions contained in these paragraphs are substantially adopted in sections 33 and 34 of the Bill.

32. As regards the cases in which copyright is recognized in sculpture and the extent of the right two novel provisions have been introduced into the Bill, the nature of which and the reasons for them will be best explained in the words of the Copyright Commissioners:—

"As to sculpture," they say in paragraphs 97 to 100 of their report, "we have had to consider by what acts the sculptor's copyright ought to be deemed to have been infringed. Sculpture may be

copied in various ways, not only by sculpture and casting, but by engraving, drawing and photography ; and since the rise of photography the copying of sculpture by that means has become a considerable business. The question has therefore been brought before us whether copying by other means than sculpture or casting ought not to be considered piracy.

" 98. A material item in the consideration of this question is the injury likely to be inflicted on the sculptor. The principal witness on this point, Mr. Woolner, R.A., though he thought that the photographing of sculpture would probably operate rather as an advertisement in the sculptor's favour than to his detriment, expressed a wish that the law should give a sculptor protection against copying by means of drawing or engraving, and he was of opinion that incorrect copying by drawing or engraving might be very prejudicial to the sculptor's reputation. But besides this there is the question whether a sculptor ought not to be entitled to any profit to be made by allowing his works to be photographed or otherwise copied.

" 99. Upon the whole we are disposed to think that every form of copy, whether by sculpture, modelling, photography, drawing, engraving or otherwise, should be included in the protection of copyright. It might be provided that the copying of a scene in which a piece of sculpture happened to form an object should not be deemed an infringement, unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture.

" 100. It was also suggested that copyists of antique works ought to be protected by copyright so far as their own copies are concerned. Many persons spend months in copying ancient statues, and the copies become as valuable to the sculptors as if they were original works. It may be doubted whether the case does not already fall within the Sculpture Act ; but we recommend that such doubts should be removed, and that sculptors who copy from statues in which no copyright exists should have copyright in their own copies. Such copyright should not, of course, extend to prevent other persons making copies of the original work."

The recommendation made in the first three paragraphs quoted will be found to be carried out by the definition of copy in the case of a sculpture, (section 4 of the Bill) and that made in the last paragraph by section 32, sub-section (2).

33. The term for which the copyright in works of art endures has, in accordance with the recommendations of the Commissioners, been made the same as for books, namely, the life of the artist and 30 years after his death, except in the case of photographs, when it is limited to 30 years from the date of publication.

34. Section 31 of the Bill, which is new, will be best explained by the following remarks of the Commissioners, to the suggestions contained in which it is intended to give effect :—

" 123. Before leaving the subject of the fine arts," they say, "we wish to notice one other matter as to which artists say the law is disadvantageous to them. Before an artist paints a picture, he frequently finds it necessary to make a number of sketches or studies, which, grouped together, make up the picture in its finished state. These works may be studies expressly made for the picture about to be painted, or they may be sketches which have been made at various times, and kept as materials for future pictures. If, after a picture is so composed, the copyright is sold, the artists are afraid that they are prevented from again using or selling the same studies and sketches, as they have been advised that such user or sale would be an infringement of the copyright they have sold.

" 124. It may be doubted whether this fear is well founded ; but as the use of such studies and sketches as we have described could not, in our opinion, result in any real injury to the copyright owner, who has copies of them in his picture in a more or less altered shape, and combined with other independent work, we think the doubt should be removed, and that the author of any work of fine art, even though he may have parted with the copyright therein, should be allowed to sell or use again his *bonâ fide* sketches and studies for such works and compositions, provided that he does not repeat or colourably imitate the design of the original work. We may observe that a provision to this effect was inserted in the Copyright Bill which was introduced by Lord Westbury in 1869."

35. As regards the registration of the copyright in works of art, the following are the remarks of the Commissioners :—

" 156. For the sake of uniformity, we are of opinion that it is desirable that the law of registration should, as far as possible, be the same for works of fine art as for books, music and the drama.

" 157. It has, however, been strongly urged upon us that compulsory registration in the case of paintings and drawings is practically impossible ; and it would seem that the same arguments that are used against compulsory registration in the case of paintings and drawings apply equally to sculpture. There is no doubt a great difficulty in the way of compulsory registration of paintings and drawings. This arises from the fact that the class of pictures to be registered cannot be limited, and that if copyright in an important work is only to be secured by registration, copyright in the smallest sketch or study could only be preserved by the same means. Some difficulty also arises from the fact that paintings, drawings and sketches are so frequently subjected to alteration that it would be almost impossible to say when a work is finished so as to be capable of registration as a completed work.

"158. On these grounds, therefore, we recommend that registration of paintings and drawings should not be insisted on so long as the property in the picture and the copyright are vested in the same person, but that if the copyright be separated by agreement from the property in the picture, there should be compulsory registration, and that the register should show—

- (a) the date of the agreement ;
- (b) the names of the parties thereto ;
- (c) the names and places of abode of the artist and of the person in whom the copyright is vested ;
- (d) a short description of the nature and subject of the work, and, if the person registering so desires, a sketch outline or photograph of the work in addition thereto.

"159. With regard to such works as engravings, prints and photographs, there would not be the same difficulty, and we think that they should be subject to compulsory registration in the same way as books."

The suggestions made in these paragraphs have been adopted in the Bill.

36. Section 36 of the Bill, which provides for the punishment of the fraudulent production and sale of works of art, is based upon the 7th section of the 25 & 26 Vic., c. 68, but is generalized so as to apply to all works of art dealt with by the Bill.

It is probable that many of the offences punishable under this section would be punishable under the Indian Penal Code ; but it has been thought safest to re-produce the provisions of the English Act in their integrity.

37. Section 37 provides that, when an engraving or photograph is published in a book, it shall be treated as a part of the book, and not as a separate work, the copyright in it following the copyright in the book.

38. Section 38 relates to newspaper telegrams. Its provisions are novel in this country, but a precedent for them is to be found in the legislation of some of the British Colonies. It has been represented to the Government of India that telegraphic messages obtained at great expense from foreign countries, either directly or through such agencies as that of Reuter, are copied with impunity by other newspapers, and that this form of piracy materially discourages honest journalistic enterprise. Under these circumstances, it is proposed to give newspaper telegrams protection against being copied during a period of twenty-four hours from the date of their publication, provided they are published within twenty-four hours from their receipt.

39. Section 39, which provides for the forfeiture of copies of books and works of art imported for sale or hire or produced in infringement of copyright, is based upon the provisions of existing English Acts extended and modified in accordance with the recommendations of the Copyright Commission and the provisions of Lord John Manners's Bill.