THE LAW ON LITERARY PROPERTY

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PART I

a. *General Idea of Literary Property.*—Every new and innocent product of mental labor, which has been embodied in writing, or some other material form, is the property of its author, entitled to the same protection which the law throws around the possession and enjoyment of other kinds of property. The right which the author has over his composition is property in its essential features, and is just as sacred, and as much entitled to the protection of the law, as the right to any other kind of personal property. Its acquisition and succession are governed by the same legal rules which control the acquisition and succession of other property of the same general class, and, if the rights of its owner are violated, he is entitled to the same remedies to which the owner of other personal property may resort for redress. This property right not only attaches to the physical or corporeal substance which composes the manuscript, but includes the incorporeal right to the exclusive use of its contents.

The foundation of all rights of this description is the natural dominion which every one has over his own ideas, the enjoyment of which, although they are embodied in visible forms or characters, he may, if he chooses, confine to himself or impart to others. That is, the law recognizes the artistic or literary productions of intellect or genius, not only to the extent which is involved in dominion over and ownership of the thing created, but also the intangible estate in such property which arises from the privilege of publishing and selling to others copies of the thing produced.

Whether the product of the mental labor consists in literary, dramatic or musical compositions, or designs for works of ornament or utility, planned by the mind of an artist, its owner, like the owner of any other kind of property, may do what he will with his own; his right is absolute, and exclusive as against the world. Subject to the rule that a general publication operates as a dedication to the public and terminates all private property rights, he is master of the situation. If he chooses to keep his productions unpublished and private, he may do so, and

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he has remedies to prevent or to redress an unauthorized publication. He has exclusive right to make first publication. He also has the right of private circulation among such persons as he may designate, and may impose such conditions and restrictions as he pleases on their use of it.

b. *Development of the Law.*—The recognition of the doctrine of a distinctive literary property has existed from very early times. The senate of the republic of Venice in 1469 granted to one John of Spira the exclusive privilege for five years of printing the letters of Cicero and Pliny. The right to literary property may be called the child of the printing press. Authors and artists have existed since the beginning of history, but for any general recognition of their rights to the fruits of their labor, the creators of intellectual works had to wait until the invention of printing made possible the quantity production of books. In England, where Caxton had set up the first printing press in 1474, we find no account of any special privilege of printing until 1518, when Richard Pynson brought out a book, the title-page of which stated that it was protected under a grant of privilege from the King, against reprinting within the kingdom or importation from without, for a period of two years. Royal grants of monopoly to print certain works continued to be made in England for a century or more. In all these grants of monopolies of printing we find no recognition of authorship as creating a property right. "The rising tide of printed matter, accompanying the growth of free speculation and criticism," says Roger de Wolf, "alarmed the absolutist princes and prelates of the sixteen century and they sought to check it in so far as it propagated doctrines contrary to what they conceived as essential to the existence of the State or the Church." Hence a series of laws to regulate the press, the first of which, in England, was included in the charter granted to the guild of printers called the Stationer's Company in 1556, by Queen Mary. By this act, the Stationer's Company was given a monopoly of all printing in England. There was, however, no mention of the author. He is never once considered as having an interest to be protected. The law protected the Company and its members in their monopoly of printing and publishing in England. It did not protect the author himself.

But by the end of the seventeenth century the calling of authorship had begun to be respectable. The writing of books had ceased to be merely the accomplishment of aristocrats or

the function of sycophants. Dryden, Swift, Pope, Addison and Steele did not depend entirely upon their writings for their livelihood, but they enjoyed a great reputation as authors and some of them received considerable pecuniary rewards. Authors became class conscious. They met in each other's homes, or at the famous coffee houses and discussed matters of common interest. Some of them were members of the government, where they had gained places by their literary talent. So it came about that when the Stationer's Company petitioned Parliament for a renewal of the licensing act, the authors themselves took an interest in the matter. The Stationer's Company had no particular idea of setting up a property right in authors, but the ultimate results of the law thus obtained were quite different from what it had expected.

This law, the celebrated Statute of Anne (8 Anne, ch. 19) entitled "an act for the encouragement of learning," was passed in 1710. It recited that, whereas lately booksellers and others had made a practice of reprinting books without the consent of their authors or proprietors, therefore such authors, or their assigns, should have the sole liberty of printing such books for a limited time,—twenty-one years in the case of books already in existence, and fourteen years with a possible renewal for a second fourteen years in the case of new books. The penalties for violation of the act were forfeiture of the unauthorized copies and a fine of a penny a sheet. In the Statute of Anne we have the first law ever enacted for the protection of literary property. It is the parent of all copyright legislation.

This law did not, as might be supposed, settle all questions relative to the right of authors over their works. It was realized soon after the enactment of the Statute of Anne that the limitation of the term of protection had changed a permanent property right into a temporary one. A number of applications were made to the High Court of Chancery for injunctions to restrain the unauthorized printing of copies alleged to belong to the applicants, and in all these cases the books had been published so long before that the statutory term of protection had expired. The Court seems to have had little hesitation in granting the injunctions and this fact was largely responsible for the theory, which soon made its appearance, that there had always been, at common law, a right of perpetual copyright, and that the Statute of Anne had not taken that right away.

The soundness of this principle was first tested in the great case of Millar v. Taylor, decided in 1769 by the Court of King's Bench. The plaintiff could not base his claim on the Statute of Anne, because the statutory term of protection had expired, and he frankly claimed a perpetual and absolute ownership of this literary property under the common law. The questions presented for decision were two: (1) Whether the copyright of a book belonged to an author by common law, and (2) whether such common law right, if any, was taken away by the Statute of Anne. Three out of the four judges, headed by Lord Mansfield, decided that there was an original common law right and that it had not been abrogated by the Statute. Lord Mansfield's opinion was based primarily upon that sense of the justness and fitness of things which was the stronghold of the believers in "natural law". The author's undoubted right to control his unpublished manuscript, Lord Mansfield thought, should be continued after publication. It was agreeable to natural principles and moral justness that authors should be allowed to reap the pecuniary profits of their own ingenuity and labor, which they could not do unless permitted to retain ownership of their works after they had been put in print. They could reap no pecuniary profit if at the next moment after their works came out, they might be printed upon worse paper, in worse print, and in a cheaper volume.

But the rule of this decision was set aside within a few years. Perpetual copyright, which may be said to have existed in England for a few years as a result of this decision, was done away with, once for all, by the decision of the highest tribunal in England, the House of Lords, in the case of Donaldson v. Becket, in 1774.

The total number of judges who answered the questions in the case of Donaldson v. Becket was eleven and the number of question put to them was five, as follows:

First, Whether at common law the author of any book or literary composition had the sole right of first printing and publishing the same for sale and might bring an action against any person who printed, published, and sold the same without his consent? Ayes, 10. Noes, 1.

Second, If the author had such right originally, did the law take it away on his printing and publishing such book or literary compositions; and might any person afterwards reprint and sell for his own benefit such book or literary composition against the will of the author? Ayes, 4. Noes, 7.

Third, If such action would have lain a common law, is it taken away by the Statute of 8 Anne; and is an author by the said Statute

precluded from every remedy, except on the foundation of said Statute, and on the terms and conditions prescribed thereby? Ayes, 6. Noes, 5.

Fourth, Whether the author of any literary composition and his assigns had the sole right of printing and publishing the same in perpetuity by the common law? Ayes, 7. Noes, 4.

Fifth, Whether this right is in any way impeached, restrained, or taken away by the Statute of Anne? Ayes, 6. Noes, 5.

Stated more briefly, what the judges held was that an author had in perpetuity the right to control his unpublished work, but that, as to published works, this right had been taken away by the Statute of Anne, after the enactment of which the protection of the statute, for a maximum period of twenty eight years, was all that could be had for a published work. The decision in Donaldson vs. Becket has ever since been followed in the courts of England and America. It established finally both the doctrine of full property in an unpublished work, and the destruction of that property by publication, except when copyright is secured by compliance with statutory requirements. Since the promulgation of this decision, statutory copyright is not to be confounded with the common law right. At common law, the exclusive right to copy existed in the author until he permitted a general publication. Thus, when a book was published in print, the owner's common law right was lost. At common law the author had a property in his manuscript, and might have an action against anyone who undertook to publish it without authority. The statute created a new property right, giving to the author, after publication, the exclusive right to multiply copies for a limited period. This statutory right is obtained in a certain way and by the performance of certain acts which the statute points out. That is, the author, having complied with the statute, and given up his common law right of exclusive duplication prior to general publication, obtained by the method pointed out in the statute an exclusive right to multiply copies and publish the same for the term of years named in the statute.

Thus the history of literary property in England. But the movement for legislative protection of literary rights was by no means limited to English authors. Publiscists everywhere in the continent were in the same plight as their colleagues in England, and under the stress of the same needs, they sought identical remedies. In Paris various authors united themselves into an association under the leadership of Victor Hugo, the purpose of which was to interest the government in legislating for

the protection of authors' rights. Their efforts were gradually, if slowly, rewarded. Other countries soon followed England in enacting legislation for the protection of literary property. France passed her first copyright laws in 1791, Germany in 1870. Since 1879, Spain has had a complete and comprehensive law on intellectual property. Italy in 1882 collected together her various statutes on the rights of authors and codified them into a single text. Switzerland passed her copyright laws in 1888, Hungary in 1884. The Belgian copyright law is considered to be one of the best enactments on the subject. Adopted in 1886, it has since been used as a model for the copyright laws of several countries. The constitution of the United States empowers Congress to "promote the Progress of Science and Useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The first copyright law enacted by Congress pursuant to this provision was that of May 31, 1790. Many subsequent revisions were made, the last and most complete of which was the law of March 4, 1909. This, with all its amendments, is the present law, superseding all former statutes on the subject of copyright.

c. *History of the Law in the Philippine Islands.*—During the Spanish regime, literary property in the Philippine Islands was governed by the copyright laws of Spain, extended here from time to time by Royal Decrees. Before the passage of the General Copyright Law of June 10, 1879, which was subsequently made applicable here by Royal Decree of May 5, 1887, there had been a number of enactments on the subject. The first recognition in Spanish law of the rights of authors in their compositions is found in the Novísima Recopilacion, in which the property in the work is made transmissible to the author's heirs. As in England, the Spanish statutes were pervaded by a spirit of enlightenment and liberty, and followed the policy of encouraging literary and artistic genius by not only protecting the author in the products of his intellect, but by recognizing the rights of his heirs to the same after his death. The Spanish Civil Code provides in Article 428: "The author of any literary, scientific, or artistic work is entitled to profit by it and dispose of it at will." And in Article 429: "The Law of Intellectual Property determines the persons to whom such right pertains, the manner of exercising it, and the period of its duration. In cases not provided for or determined by such

special law, the general rules with respect to property established by this code shall be observed." Manresa, commenting on these articles, says the following (vol. 3, p. 616):

"He who writes a book, or carves a statue, or makes an invention, has the absolute right to reproduce or sell it or its fruits. But while the owner of land, by selling it and its fruits, perhaps fully realizes its economic value, by receiving its benefits and utilities, which are represented, for example, by the price, on the other hand the author of a book, statue, or invention, does not reap all the benefits and advantages of his own property by disposing of it, for the most important form of realizing the economic advantages of a book, statue, or invention, consists in the right to reproduce it in similar or like copies, every one of which serves to give to the person reproducing them all the conditions which the original requires in order to give to the author the full enjoyment thereof. If the author of a book, after its publication, cannot prevent its reproduction by any person who may want to reproduce it, then the property right granted him is reduced to a very insignificant thing and the effort made in the production of the book is in no way rewarded."

We shall now proceed to review in a general way the more important provisions of the Law of Intellectual Property, enacted on January 10, 1879, which is the most complete law on copyright in Spain, and under whose protection the authors in the few cases found in the Philippine Reports under this class of litigation sought to enforce their rights.

The law may be subdivided under the following headings:

(1) Term
Life of author and eighty years after his death. Exclusive right of translation: full term.

(2) Applicants
Authors of literary or artistic works, and their heirs and assigns; proprietors of posthumous works, unpublished works, periodical publications as a whole, collaborative works; publishers of anonymous or pseudonymous works, works in the public domain, unpublished works; corporate bodies; translators; editors, compilers and adapters.

(3) Subject-matter
All works produced or published by any kind of impression now known or hereafter invented, including writings; dramatic and musical compositions; government publications; contributions to periodicals, if reproduction is forbidden by printed notice; translations, with same rights as original works; geographical, geological and topographical models; engravings, lithographs and photographs; drawings, paintings and sculptures; architectural designs and models; scientific charts, plans and drawings; oral lectures and speeches; telegraph messages published in a periodical.

(4) Requirements
Registration at Ministry of Fomento, but works of art are

exempted. Deposit of one copy of manuscripts, unprinted works, or dramatic compositions; three copies of other works at time of registration. Printing notice: Of reservation of right of reproduction in case of contributions to periodicals.

(5) General Provisions

Copyright includes all works produced or published by "process writing, drawing, printing, painting, engraving, lithographing, photographing, or any kind of impression or reproduction known now or subsequently invented;" the exclusive right of public performance or representation in the case of musical or dramatic works; the exclusive right of translation. For a "musical work * * * prohibition extends to the total or partial publication of melodies, with or without accompaniment, transposed or arranged for other instruments, or with different words." Persons within the jurisdiction of States which concede to Spaniards the right of intellectual property according to Spanish law, shall enjoy in Spain the rights conferred by this law without the necessity of any treaty of diplomatic interference, by means of private action before the competent tribunal.

The importation of piratical reproduction is prohibited.

Provision is made for the publication of registrations in an official gazette or journal of the government.

This law was extended to the Philippine Islands by Royal Decree of May 5, 1887, and published in the "Gaceta de Manila," with the approval of the Governor-General, on June 15, 1887, and took effect six months after its promulgation or publication. With the transfer of sovereignty from Spain to the United States, the question soon arose as to whether or not this law continued in force. The question was never definitely settled. Doubt was also expressed as to whether the provisions of the Act of Congress of March 5, 1909, (Copyright Act) was automatically extended here with the implantation of American sovereignty. The question was presented squarely before the Supreme Court in the case of Wise v. Harvey and it was there held that:

"The court is unanimously of the opinion that there is a copyright law in the Philippine Islands, under which literary property may be protected, but inasmuch as some members of the court put their decision on the ground that the Act of Congress of March 5, 1909, is in force in the Philippine Islands, while other members believe that the copyright law of Spain is in force, and their being no majority of the court in favor of either contention, no extended opinion will be given at this time."

The Attorney General of the United States, in response to query addressed to him by the Secretary of War, as to whether citizens of the Philippines were entitled to avail themselves of the copyright laws of the United States, rendered an opinion

dated July 6, 1904, to the effect that as citizens of the Philippine Islands could not properly be designated as citizens or subjects of a foreign state or nation they were entitled to avail themselves of such laws. The Attorney General further held that books printed from type set within the territory of the Philippine Islands did not meet the requirement that the two copies deposited with the Librarian of Congress shall be printed from type set within the limits of the United States; and that in determining what fees should be charged for registration, in the case of the entry of a work by a Filipino author, it is necessary to treat citizen or resident of the Philippine Islands as "a person not a citizen or resident of the United States."

There has been no question, however, as to the status of the rights acquired under the Spanish Copyright Law. These rights were specifically and amply protected under Section 13 of the Treaty of Paris which provides:

"The rights of property secured by copyrights and patents secured by Spaniards in the Island of Cuba, and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected. Spanish scientific, literary, and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty in such territories, for a period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty."

This was enforced by the Supreme Court in the case of Serrano v. Paglinawan (44 Phil. 855) of which the pertinent part of the decision is as follows:

"Even considering that the said Law of January 10, 1879, ceased to operate in these Islands upon the termination of Spanish sovereignty in the substitution thereof by that of the United States of America, the right of the plaintiff to invoke said law in support of the action instituted by him in the present case cannot be disputed. His property right to work published by him and edited in 1889, is recognized and sanctioned by said law, and by virtue thereof, he had acquired a right of which he cannot be deprived merely because the law is not in force now or is of no actual application. This conclusion is necessary to protect intellectual property rights vested after the sovereignty of Spain was superseded by that of the United States. It was so held in the Treaty of Paris of December 10, 1898, between Spain and the United States, when it declared in Section 13 thereof that the rights to literary, artistic, and industrial properties acquired by the subjects of Spain in the Island of Cuba, Porto Rico, and the Philippines and other ceded territories, at the time of the exchange of the ratifications of said treaty, shall continue to be respected."

To settle this uncertainty, the Assistant Director of the Philippine Library and Museum sent a memorandum to the Philippine Legislature, urging the enactment of a copyright law for the pretection of literary property in these Islands. After citing Sections 3 and 7 of Act No. 2572, which vest upon the Philippine Library and Museum the function of registering copyrights, he said:

"A perusal of these two sections of the law leads one to the conclusion that there is a copyright law existing here. But as has been stated by the Attorney General repeatedly, the Spanish law of copyright is not in force in the Philippines so far as it relates to new productions, and a Court of First Instance has decided that the law 'became impossible of execution.' It has also been shown that according to the authorities cited the copyright law in the United States is not in force here. In view of the foregoing this office begs that a copyright law be enacted by the Philippine Legislature, as soon as possible, for the protection of authors residing and producing work in these Islands."

Some doubt was expressed as to the authority of the Philippine Legislature to pass such a law. Professor Espiritu gave this opinion:

"I personally believe that no harm will be done if the Philippine Legislature shall attempt to pass such a law because as far as the constitutional limitation of the power of the Philippine Legislature to pass such a law is concerned, it seems that Congress has no right to complain inasmuch as the general tendency of the United States Copyright Law is exclusive in character. If this is the case, I maintain that the Philippine Legislature has the power to enact a copyright law for the proper protection of the citizens of these Islands."

The Philippine Legislature finally passed Act No. 3134, which was approved on March 6, 1924, entitled "An Act to Protect Intellectual Property." It is in the main an adaptation of the Act of Congress of March 4, 1909, amended and arranged to suit local conditions. The enactment of this law put an end, once for all, to all questions as to what law is in force here governing copyright.

We shall now proceed to examine and analyze the provisions of this law. We shall draw freely from the decisions of the Federal courts of the United States, in accordance with the well known principle of statutory construction that when a law is copied from the statute of another jurisdiction, the rulings of the courts in that jurisdiction in applying the law has a persuasive effect upon the courts of the state which copied the statute.

PART II

I. SUBJECT-MATTER OF COPYRIGHT

Since copyright in published works is purely a statutory creation, a copyright may be obtained only for a work falling within the statutory enumeration or description. Under this heading consideration will be given to two correlative questions: first, what classes of works can be protected under the copyright law; second, under what circumstances copyright is denied to works normally coming under this head, either by reason of express statutory prohibition, or by decisions of the courts based on motives of public policy.

1. What may be copyrighted.

Section 2 of the Copyright Act sets forth what may be copyrighted:

SEC. 2. Copyright may be secured by any citizen of the Philippine Islands or of the United States for any work falling within the following classes of work:

(a) Books, including composite and cyclopedic works, manuscripts, directories, gazetteers, and other compilations;

(b) Periodicals, including pamphlets;

(c) Lectures, sermons, addresses, dissertations prepared for oral delivery;

(d) Dramatic or dramatico-musical compositions;

(e) Musical compositions with or without words;

(f) Maps, plans, sketches, charts, drawings, designs;

(g) Works of art; models or designs for works of art;

(h) Reproductions of a work of art;

(i) Drawings or plastic works of a scientific or technical character;

(j) Photographs, engravings, litographs, lantern slides, cinematographic pictures;

(k) Prints and pictorial illustrations;

(l) Dramatizations, translations, adaptations, collections, compilations, abridgments, arrangements, commentaries, critical studies, abstracts, versifications;

(m) Other articles and writings.

Provided, nevertheless, That any error in classification shall not invalidate or impair the copyright protection secured under this Act.

Without broadening this classification, but rather by way of further particularizing, we have Sec. 7.

SEC. 7. Collections, compilations, abridgments, adaptations, commentaries, critical studies, abstracts, versifications, arrangements, dramatizations, translations, and other versions of copyrighted works when produced with the consent of the proprietor thereof or of works enumerated in the next section, or works republished or reproduced with new matter and editions with corrections or alterations shall be regarded as new works subject to copyright under the provisions of this Act; but the publication

of any of such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such original works.

Section 2 includes nearly everything which one can think of as coming by its nature within the sphere of copyright protection, and if an article is clearly outside any of the classes named, it may still be included under paragraph (m) thereof. Let us glance briefly at the classes of articles enumerated in Section 2, and see what is embraced by each.

(a) *Books, including composite and cyclopedic works, manuscripts, directories, gazetteers, and other compilations.*

This is a very broad class, including practically any article consisting of words which has the requisite originality to be copyrightable, and is not otherwise classifiable. The right or form of the work is immaterial. A single page, paragraph, or even a single sentence may be a "book". But a mere statement of fact, such as anybody might make: Yesterday was the anniversary of the capture of Manila; Quezon is the President of the Senate; is not a book, because it lacks the element of authorship.

It is not necessary that the work shall be printed, although it must have been reduced to material form. "Books" may therefore include mimeographed works, such as the notes used by students in the College of Law. Webster defines a book to be: a collection of sheets of paper or similar material, blank, written or printed, bound together; commonly, many folded and bound sheets containing continuous printing or writing. The courts have shown the greatest liberality in interpreting the copyright laws, and have, in favor of authors, extended the word book so as to include works which do not fall even within this broad definition. It may be said that it is the kind of authorship, the nature of the faculties employed in the creative act, which determines the classification of the work, at least as much as the character of the work itself.

The Rules and Regulations of the Philippine Library governing registration of copyrights define the term as follows:

(a) Books.—This term includes all printed literary works (except dramatic or dramatico-musical compositions, translations, dramatizations, adaptations, collections, compilations, abridgments, arrangements, commentaries, critical studies, abstracts, and versifications) published either in the ordinary form of a book or pamphlet, or printed as a leaflet, card

or single page. The term embraces tabulated forms of information, tables of figures showing the results of mathematical computations, such as logarithmic tables; interest, cost, and wage tables; single poems, and the words of a song when printed and published without music, librettes, descriptions of cinematographic films or spectacles; encyclopedias, catalogues, directories, manuscripts, gazetteers, and other similar compilations; circulars or folders containing information in the form of reading matter on any subject provided they are not mere lists of articles, names and addresses; and all other literary contributions to periodicals and newspapers.

The term "books" cannot be applied to: Blank books for use in business or in carrying out any system of transacting affairs, such as record books, account books, memorandum books, blank diaries or journals, bank deposit, and check books; forms of contracts or leases which do not contain original copyrightable matter; coupons; forms for use in commercial, legal, or financial transactions, which are wholly or partly blank and whose value lies in their usefulness and not in their merit as literary compositions.

(b) *Periodicals, including pamphlets.*

The distinction between a periodical and a book rests in the serial nature of the former and perhaps to some extent in its composite character. In respect of the rights given by copyright, periodicals are like books. Their separate classification under Section 2 is only of importance in connection with their registration. The term refers to dailies, weeklies, reviews, and all serial publications appearing once or more times a day or at regular or irregular intervals of time provided that it be with greater frequency than once a year and with constant titles, whether of a scientific, political, literary, or other class. Under this heading are also included all "pamphlets" containing the proceedings of societies and associations which appear regularly with lesser intervals of time than a year, and in general whatever class of printed matter which may be registered at the post-office as second-class mail matter. Serial publications which are not clearly periodicals should be registered as books. (Rules and Regulations, Phil. Lib.) All the contents of any issue of a periodical are protected under a single notice and a single registration.

There can be no copyright in a prospective series of newspapers. The copyright may attach upon each successive publication, but that which has no present existence cannot be the subject of this series of property. (Platt v. Walter 17 C. T. Rep. N. S. 157.)

(c) *Lectures, sermons, addresses, dissertations prepared for oral delivery.*

This paragraph authorizes the grant of copyright even for unpublished works. As may be noted, the works may be prepared for oral delivery. The subject matter is like that of books, and if such works are published, they become books under the copyright law.

(d) *Dramatic or dramatico-musical compositions.*

The term "dramatic compositions" has been the subject of much discussion in litigation and is still rather vaguely defined. The Copyright Office has placed a construction on the term in Art. 9 of its Rules:

> These refer to all dramas, comedies, opera, operettas, and other similar works.
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> Dramatico-musical compositions include principally operas, operettas, vaudevilles (zarzuelas), or other similar productions which are to be acted as well as sung.
>
> Ordinary songs even when they are intended to be dramatically sung on the stage, and the fragments of operas, operettas and vaudevilles separately published, should be registered as musical compositions.
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> The designation of "dramatic compositions" does not include the following: dances, ballets, or other choregraphic works; tableaus and motion picture shows; stage settings or mechanical devices by which dramatic effects are produced, or "stage business"; animal shows, sleight of hand performances, acrobatic or circus tricks of any kind; descriptions of motion pictures or of settings for the production of motion pictures.

The dividing line between a dramatic composition and a book is hard to draw. The ordinary play, prepared for presentation on the stage and containing both speeches and directions for action, is a clear enough case, but there may be dramatic compositions without words to be spoken, i. e., pantomimes, and there are many works in dramatic form which are intended only for reproduction in copies and are unfitted for actual performance, e. g., Shelley's "Prometheus Unbound," (Fuller v. Bemis, 50 Fed. 926). On the other hand, a railroad accident scene, with practically no words spoken, was held to fulfill the conditions of protectable drama (Daly v. Palmer, 6 Blatch. 256.) A dramatic composition, in copyright law, must be intended for, or suited to, representation as distinguished from mere narration, it must tell a story, and its essence must be action. For the rest, one may notice an increasing tendency to a liberal construction of the law in recent decisions regarding the protection of performing rights. (Green v. Luby, 177 Fed. 287.)

A dramatico-musical composition is a dramatic composition with accompanying music, such as an opera, a musical comedy

or perhaps an oratorio or cantata. The classification makes it possible to secure a single copyright covering all the component parts of the work, literary, musical, and dramatic.

Ordinary songs, even when intended to be sung from the stage in a dramatic manner, or separately published songs from operas and operettas, should be registered as musical compositions, not dramatico-musical compositions. (Rules & Reg. U. S. Copyright Office.)

(e) *Musical compositions with or without words.*

A musical composition may consist of music alone, or of music accompanied by words, and in the latter case both words and music are covered by a single copyright. But a "song" consisting of words only is classifiable as a book, not as a musical composition. The Supreme Court of the United States gives this definition of musical composition: A rational collocation of sounds apart from concepts, reduced to a tangible expression from which the collocation can be reproduced either with or without continuous human intervention. (White v. Apollo Co. 209 U. S. 1.)

In order to be copyrightable, musical compositions must be original, but the protection is not confined to absolutely new productions. Any substantially new arrangement or adaptation of an old piece may be copyrighted. The right of the author of a musical composition is not affected by the fact that he has borrowed in general from the style of his predecessors. The collocation of notes, which constitute the composition, becomes his own, even though strongly suggestive of what has preceded, and it ceases to be an invention, and becomes an infringement, only when the similarity is substantially a copy, so that to the ear of the average person the two melodies sound to be the same. (Hein v. Harris 175 Fed. 875.) One who adapts words of his own to an old air, adding thereto a prelude and accompaniment also his own, acquires a copyright in the combination, and may, in declaring for an infringement against one who has pirated the whole, properly describe himself as the proprietor of the entire composition. (Lover v. Davidson, 87 E. C. L. 182.)

(f) *Maps, plans, sketches, charts, drawings, designs.*

Maps include all cartographical works, such as terrestrial maps, plots, "marine charts, star maps, but not diagrams, astrological charts, landscapes, or drawings of imaginary regions which do not have a real existence. The term "plans" embraces

all graphic representation on a single plane surface traced by virtue of technical processes, of a ground or of the site of a camp, plaza, fortress, building or other similar constructions. By "designs" are meant the delineations of buildings or of figures. "Charts" refer to descriptions of the sea and of (water) ocean currents. (Rules and Reg's., Cop. Office.)

(g) *Works of art; models or designs for works of art.*

This paragraph includes all works belonging fairly to the so-called fine arts, such as painting, sculpture and drawing, but not works of the useful arts, which are within the sphere of patent protection. Models or designs for works of art may also be protected pending their execution and completion. No copyright exists in toys, games, dolls, advertising novelties, instruments, or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles.

(h) *Reproduction of works of art.*

This paragraph refers to such reproductions as engravings, woodcuts, etchings, casts, etc., which contain in themselves an artistic element distinct from that of the original work of art which has been reproduced. Such works, in order to secure copyright, must be made with the consent of the copyright proprietor of the work reproduced, unless such work is in the public domain.

(i) *Drawings or plastic works of a scientific or technical character.*

These are architects' or engineers' drawings or plans, relief maps or technical models, not within the sphere of the fine arts.

(j) *Photographs, engravings, lithographs, lantern slides, cinematographic pictures.*

The basis and justification of these copyrights is the undeniable fact that a photograph may embody original work and artistic skill and be in fact an artistic production, the result of an original intellectual conception on the part of its author. The fact that the photographer arranged the light, the background, and other details of a photograph, and posed the subject so as to produce an artistic and pleasing picture is sufficient to sustain a copyright for such a photograph. (Burrow-Giles Lith. Co. v. Sarony, 111 U. S. 53.)

The term "engravings" refers to prints of figures produced by means of the impression of pictures engraved for the pur-

pose. "Lithographs" comprise the samples of any drawing or writing in a stone prepared for the purpose. (Rules and Reg's., Cop. Office.)

(k) *Prints and pictorial illustrations.*

In this class are included all pictures made by any kind of printing process. They may be, and usually are, reproductions of works of art, or of photographs. The word "illustrations" does not mean that the pictures must illustrate the text of a book. A design for playing cards has been deemed a print.

(l) *Dramatizations, translations, adaptations, collections, compilations, abridgments, arrangements, commentaries, critical studies, abstracts, versifications.*

This paragraph must be read in connection with paragraph (b) of Section 3, which gives to the proprietor of a copyright the exclusive right to make any translation or other version or extracts or arrangements or adaptations thereof.

(m) *Other articles and writings.*

This paragraph serves to bring within the protection of copyright any conceivable work which may not be classified under any of the foregoing paragraphs.

2. *What may not be copyrighted.*

Copyright is expressly prohibited in certain works under Sections 8 and 13 of the statute, which are as follows:

SEC. 8. No copyright shall subsist in the original of any work which is in the public domain, or in any publication and official document of the Philippine Government, or any reprint, in whole or in part, thereof, and in speeches, lectures, sermons, addresses, and dissertations pronounced or read in courts of justice, before administrative tribunals, in deliberative assemblies, and in meetings of public character.

SEC. 13. No immoral or unchaste work shall be copyrighted. If it shall be discovered, after a work has been copyrighted, that the said work is, in the opinion of the Attorney-General, of the nature indicated, the copyright secured shall become null and void, and the proprietor shall also be subject to criminal prosecution. Copies of the work deposited and instruments of writing in relation thereto filed with the Philippine Library and Museum shall be destroyed by the Director of the Philippine Library and Museum if so ordered by the Department Head.

Works originally published by the Government of the Philippine Islands, or reprints of such works, are not subject to copyright, but are free to be made use of by the public, unless copyright had already been obtained for them before the Gov-

ernment published them. On the same principle, speeches, lectures, sermons, addresses, etc., used before courts of justice and administrative tribunals may not be copyrighted.

Section 13 is a statutory confirmation of a recognized rule of copyright law, laid down in a number of decisions of courts in both England and America, that protection will not be accorded to works of an unchaste or immoral character. It is contrary to public policy to uphold property rights in such works. Notice may be taken of the fact that standards of both private and public morals change from time to time and that in such matters courts usually reflect the public opinion of the day. At present this opinion is a little broader in matters of personal morality.

Titles of works are not protected by copyright. The copyright law is applicable only to the substance of the work copyrighted, and not to its name. The question of the right to the use of a title is of great importance in relation to dramatic compositions and moving pictures, on account of the advertising value of the title. While the exclusive use to a title may not be protected under the copyright law, it may be protected, however, under unfair competition, where the owner of the work has acquired a species of "good will" which it would be unfair for another person to appropriate.

II. WHO IS ENTITLED TO COPYRIGHT

Article 2 of the Rules and regulations enumerates who may secure copyrights:

(a) The authors with respect to their works.

(b) The translators, with respect to their translations, if these has been made with the permission of the author of the original work, or in the absence thereof, under the sanction of existing legal provisions.

(c) The editors of unpublished works without known authors, of articles and other writings published without the name of the authors or under a pseudonym.

(b) The proprietor of a work. The word proprietor is here used to indicate a person who derives his title to the work from the author, like his heirs and assigns.

(e) The executors, administrators, and legal representatives of the persons mentioned in paragraphs (a), (b), (c), and (d).

Proprietor.—The statute uses the word proprietor (Secs. 3 and 10) in connection with the rights of one who secures a copyright. The term includes the author, inventor, or designer and his assigns. The owner of the incorporeal right, as dis-

tinguished from the owner of the physical object, such as a manuscript or a painting, is the proprietor entitled to copyright. Where an artist sold to one person a picture which he had painted, reserving all rights of reproduction, and afterward assigned the exclusive right of reproduction, publication, and copyright to another person, it was held that the latter person became the proprietor of the painting within the meaning of that term as used in the copyright law, and that the statutory copyright therein was properly secured by him. (Werckmeister v. Springer Lith. Co., 63 Fed. 808.)

The proprietor mentioned in the law cannot resort to the benefits of copyright unless the authors, translators, and editors from whom they have acquired their claim of copyright possessed all the necessary conditions required by law of a person who applies for registration.

Employer and employee.—"Assigns" include a person who employs another to prepare a work, becoming, by virtue of the contract of employment, and without any express assignment, the owner of the literary property therein. But the right of the employer to the copyright which may be had in the product of his employee is dependent on the contract of employment and an employer cannot be considered as the proprietor of what is produced by another independently of the duties for which the latter is employed and paid. Where there is an express agreement, its terms will of course govern. Where there is none, opinion is conflicting on the matter. In Dielman v. White (102 Fed. 892), it was held that "when an artist is commissioned to execute a work of art not in existence at the time when the commission is given, the burden of proving that he retains a copyright in the work of art executed, sold, and delivered under the commission rests heavily on the artist; when a patron gives a commission to an artist, a strong implication arises that the work of art commissioned is to belong unreservedly and without limitation to the patron, and that the patron has a right to make and print to any extent reproductions of the work of art sold to him."

A similar view has been held in England, in the following ruling of Lord Halsbury: "Where the author was in the employment of some other person under a contract of service and apprenticeship and the work was made in the course of his em-

ployment by that person, the person by whom the author was employed is, in the absence of any agreement to the contrary, the first owner of the copyright."

In Boucicault v. Fox (5 Blatchf. 89) however, it was held that "the title to literary property is in the author whose intellect has given birth to the thoughts and wrought them into the composition, unless he has transferred that title, by contract, to another."

It seems that when there is no express agreement, the better view would be to ascertain the intention of the parties from the attendant circumstances.

Anonymous works.—Sometimes a work is published without the name of the author, or under a fictitious name. Section 4 of the law provides that in such cases the article or writing is considered as the property of the publishers.

Married women as authors.—Under article 52 of the Spanish Marriage Law of 1870, the married woman cannot publish any literary or scientific work without her husband's consent. If this provision can be considered as subsisting, it follows that she cannot take out a copyright for a scientific or literary work without the prior consent of her husband. The bald statement is clearly repugnant to the liberal spirit which pervades the laws governing the rights of women today, especially when we consider the fact that the greatest advances made by women have been in the realm of intellectual pursuits. It is here, indeed, that women can truly claim equality with men. If the paraphernal law grants to the married woman the absolute right to the ownership and management of her separate property, to the exclusion of the husband, it would be safe to conclude that she may now publish literary and scientific works, and take out copyrights for them, without the consent of the husband, for it would be difficult to conceive of any property more separately and exclusively belonging to the woman than works produced and begotten by her own intellect.

Citizenship and residence is affecting right.—Under Section 2 of the statute, copyright may be secured by any citizen of the Philippine Islands or of the United States. This is supplemented by Section 10, which provides:

SEC. 10. The provisions of this Act shall extend to the work of a proprietor, who is not a citizen of the Philippine Islands or of the United States, only:

(a) When an alien proprietor shall be domiciled within the Philippine Islands at the time he makes application for copyright; or

(b) When the foreign state or nation of which such proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States or of the Philippine Islands the benefit of copyright protection substantially equal to the protection secured to such foreign proprietor under this Act; or

(c) When such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright and that the United States or the Philippine Islands may become a party thereto.

It is clear that the law makes no distinction between citizens and resident aliens. In order to constitute a person a resident of the Philippine Islands for the purposes of the copyright act, it is necessary that he shall take up his residence in this country with the intention of remaining and making it his home.

Non-resident aliens may also secure copyright under any of the last two conditions enumerated. This provision is similar to the provision of the statute in the United States on the matter, with this difference: in the United States the existence of either of the conditions aforesaid shall be determined by the President from time to time as the purposes of the Act may require. Thus, while the proclamation of the President declaring the existence of the reciprocal conditions specified does not create the right of non-resident alien authors to enjoy the privileges of the copyright laws, yet it is the conclusive and only evidence admissible on that point, and such proclamation is a necessary condition precedent to the exercise of any right under the copyright law by a non-resident alien. There being no provision in our law pointing out the office who shall determine the existence of such reciprocal conditions, it is presumed to be the officer in charge of the enforcement of the laws viz., the Governor-General. An appeal from his decision lies in the courts.

(To be continued)