THE LAW ON LITERARY PROPERTY

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(Continuation of the February number)

III. REQUIREMENTS FOR SECURING AND PRESERVING COPYRIGHT

Section 11 of the Copyright Law governs the requirements for securing and preserving copyright. It provides:

SEC. 11. Copyright for a work may be secured by the registration of the claim to such copyright in accordance with the provisions of this Act and by publication thereof with the required notice of copyright upon the front part or title-page of each copy thereof published or offered for sale by authority of the copyright proprietor and by depositing with the Director of the Philippine Library and Museum by personal delivery or by registered mail two complete copies of the copyrighted work or one copy of the issue or issues containing the work if it be a contribution to a periodical. No copyright in any work is considered as existing until the provisions of this Act with respect to the deposit of copies and registration of claim to copyright shall have been complied with.

Three steps, therefore, are necessary in order to bring any work within the protection of the law. These are: (1) registration of the claim with the Philippine Library; (2) publication of the work with the required notice of copyright; and (3) deposit of two copies, in case of books, and one copy, in case of periodicals, in the Philippine Library. The first and third requirements are by statute made indispensable for the existence of the copyright, that is, the copyright is not considered as subsisting until they have been complied with.

The application for copyright registration required to be sent with each work must state the following facts, without which no registration can be made:

(a) The name and address of the claimant or copyright.

(b) The complete name of the author of the work, together with the name of the country of which he is a citizen or subject.

(c) The title of the work.

(d) The name and address of the person to whom the copyright certificate is to be sent.

(e) The actual date (year, month and day) of publication in case of a work reproduced in copies for sale, or sold, or publicly distributed. The date of publication of a periodical is not necessarily the date stated on the title page. (Rules of the Copyright Office.)

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An error in specifying the statutory class to which the work belongs does not invalidate or impair the copyright.

"Publication with the required notice of copyright" means in the normal case the sale or public distribution of copies bearing the notice. Section 16 of the Copyright Act prescribes the form of the copyright notice. It provides:

> SEC. 16. The notice of copyright required by section eleven of this Act shall consist of the word "Copyright" accompanied by the name of the copyright proprietor and the year in which the copyright was registered.

The full name of the copyright proprietor need not be given; provided his surname is given in full, initials for the other names are sufficient. A trade name is also valid. The omission of the name, however, or the giving of a name other than that of the actual legal owner of the copyright, is fatal. An example of the last named fault is found in the history of Holmes' "Professor at the Breakfast Table," "first published in installments in the Atlantic Monthly, with only the general notice of copyright of that periodical in the name of the publishers, Tickner and Fields, but later published in book form with a copyright notice in the author's name. The United States Supreme Court held that "a previous copyright having been obtained in the name of the publishers, Tickner and Fields, the subsequent notice of copyright by Dr. Holmes in his book must be held insufficient." (Mifflin v. White, 190 U. S. Reports, 260.)

The second essential item in the notice is the year in which publication takes place. Its omission from the notice in a periodical was held to defeat the copyright, although the date of issue of the Periodical appeared just above a line below which the notice was printed. (Record and Guide Co. vs. Bromley, 175 Fed. Rep. 156.) Even post-dating the notice by one year invalidated the copyright in a book, according to another decision, the theory given for so holding being that the copyright owner had claimed, as against the public, a year more of protection than he was entitled to. (Baker v. Taylor, 2 Blatchf. 82.)

Section 11 specifies that the notice must be upon the front part or title page of each copy published or offered for sale. The copyright owner must take pains to guard his property by strict compliance with the requirements. Persons interested are not obliged to hunt all the way through the work to find a notice of copyright in some obscure place.

In the case of maps, photographs, reproductions of works of art, prints or pictorial illustrations, works of art, models or designs for works of art, and plastic works of a scientific or technical character, the notice may consist of the letter C, inclosed within a circle, thus (c), accompanied with the initials, monogram, mark, or symbol of the copyright proprietor. But in such cases the name itself of the copyright proprietor must appear on some accessible portion of the work, or on the mount of the picture or map, or on the margin, back, or permanent base or pedestal of the work. (Rules of Copyright Office, Art. 17.)

Should the notice be omitted from some copies of the work through mere inadvertence, the copyright is not invalidated, this contingency being covered by Section 17 of the Statute, which declares:

SEC. 17. The omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement thereof, against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct.

Section 21 imposes penalties for false or fraudulent notice or for removal of notice, that is, for the printing of a copyright work without it. A penalty is also provided for the issue, sale, or importation of a work bearing a copyright notice, which has not been copyrighted.

Section 22 prohibits the importation into the Philippine Islands, of any article bearing notice of Philippine copyright which in reality does not exist in the Philippine Islands, or of any piratical copies or likeness of any work copyrighted in the Philippine Islands unless imported with the authority of the copyright proprietor concerned, is prohibited except when imported under the following circumstances:

First. When imported, not more than one copy at one time, for strictly individual use only.

Second. When imported by the authority or for the use of the Philippine Government or of the United States Government.

Third. When imported, for use only and not for sale, not more than three copies of such work in any one invoice, in good faith for any religious, charitable, or educational society or insti-

tution duly incorporated or registered or for the encouragement of the fine arts, or for any State, school, college, university, or free public library in the Philippine Islands;

Fourth. When such works form parts of libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: Provided, however, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of Philippine copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

Section 23 empowers the Secretary of Jutice and the Secretary of Agriculture and Commerce to make rules and regulations for preventing the importation into the Philippine Islands of articles prohibited importation under section 22, and for seizing and condemning and disposing of the same in case they are discovered after they have been imported.

The deposit of copies with the Philippine Library is a condition precedent to the securing of copyright, along with the filing of registration claims. The copies must be complete and of the best edition published at the time. Attempts in the United States have sometimes been made to secure copyright registration by depositing incomplete copies, proof sheets, preliminary prints, or copies of books without the illustrations or maps which they are supposed to contain. Such deposits are not in compliance with the law and the Attorney General of the United States has so ruled. (28 Op. Atty. Gen. 176.)

Section 32 provides that all copies deposited and instruments in writing filed with the Philippine Library shall become the property of the government.

Section 15 requires that the application for registration must be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the Philippine Islands, stating where and in what establishments the work was made or performed and the date of the completion of the work or the date of publication and other requisites which the Director of the Philippine Library and Museum will hereafter determine subject to the approval of the Secretary of Justice. Any person making a false statement in his affidavit shall be deemed guilty of a crime punishable by a fine of not more than two thousand pesos, and all of his rights and privileges under said copyright shall thereafter be forfeited.

The section merely requires that the affidavit must state the establishments where the work was performed, and the date of its execution or publication. No where in the whole act can any requirement be found making it a condition precedent for securing copyright that the work must be performed here, as is the case in the United States, where a similar affidavit must also be filed. It seems that the requirement here is of no practical utility.

What has been said hitherto has been applicable to what may be called the normal method of securing copyright—that of publication with notice. Section 12 of the statute provides a different method, not applicable to all classes of works, but primarily to works which are not intended for publication in the usual way (by dissemination of copies). It reads as follows:

SEC. 12. Copyright may also be secured for a work not having copies reproduced by the deposit, with claim of copyright, of one complete copy of such work or of a photographic print or of a photograph or other identifying reproduction thereof which in the opinion of the Director of the Philippine Library and Museum is best for the protection of the public. But as soon as the work is reproduced in copies the provisions of section eleven shall apply.

The classes of works for which copyright may be obtained by deposit of a copy, or identifying material, under this section are lectures, dramatic, musical, and dramatico-musical works, motion pictures, photographs, works of art, plastic works and drawings. A work not reproduced in copies for sale or for other general distribution is a work not published. Copies of real works filed as deposits may be written or typewritten, but should be complete, neat and legible.

If the work is published in the usual manner after registration under section 12 has been made, the law requires that the same formalities shall be complied with as if the work had never been registered before. Not only must there be a deposit of copies, but there must also be a new registration, although there cannot be a new copyright, and the period of protection must be regarded as already having begun to run from the time of the registration of the unpublished work.

In some cases, the work may be composed of many volumes, or in a series. This is especially true in the case of law books, and in encyclopedias. May a copyright for the whole work be granted? Section 14 provides for just such a contingency. It says:

SEC. 14. For the purposes of this Act in case of works in series or having several volumes or component parts registered at intervals each series or volume or component part shall be considered as a distinct and separate work subject to copyright.

Section 30 of the statute provides for copyright registration, in the following language:

SEC. 30. A person registered as the claimant of the copyright shall be given a certificate of registration under the seal of the Philippine Library and museum whose contents, form and design shall be determined by the Director of the Philippine Library and Museum and the said certificate shall be admitted in any court as prima facie evidence of the facts stated therein.

Registration furnishes permanent evidence, in the records of the Philippine Library and in the certificate issued to the copyright proprietor; that the requirements of the law for securing copyright have been complied with. There is a prevalent misconception regarding copyright which takes the piece of paper—the printed and written certificate of the Philippine Library—for the Copyright itself. The difference between the copyright and the certificate of copyright registration is like that between ownership of a piece of land and the deed which testifies to that ownership.

Section 29 of the statute authorizes the Director of the Philippine Library, subject to the approval of the Secretary of Justice, to make such rules and regulations as he may deem best for the management, supervision, and disposition of the copyright office, and everything in it, and for the registration of claims to copyright as provided by this Act, and for the filing of any instrument in writing relating thereto, and shall provide and keep such record books and other office equipment in the Philippine Library and Museum as are required to carry out the provisions of this Act. In compliance with this Section the Director of the Philippine Library promulgated the "Rules and Regulations Governing Registration of Copyrights," with the approval of the Secretary of Justice, and was published in the Official Gazette of December 8, 1925.

In the United States, under a similar provision the question has been raised, but never conclusively answered, whether the Register of Copyrights (the Director of the Philippine Library here) is, in legal parlance, merely a "ministerial officer," required to perform, quasi-mechanically, the functions with which he is clothed by the statute; or whether he has discretion to decide that the law has or has not been complied with in the case

of any work presented for registration, and to grant or withhold registration accordingly. R. de Wolf, in his Outline of Copyright Law, answers the question thus:

"A compromise between the two extremes is probably the correct view. The nature of the Register's office demands the exercise of some discretion, within the spirit of the law, and it is to the advantage of copyright claimants and the general public that registrations should not be made in a haphazard and mechanical manner, thus diminishing the value of the certificate and the record as evidence of valid copyright. Such exercise of discretion by the Copyright Office is the more necessary because there is no provision in the copyright law, as there is in the patent law, for scrutiny of applications or copies, to determine questions of originality or authorship. For such matters the word of the applicant has to suffice."

By Section 32 the Copyright Office and everything in it are open to public inspection, subject to such safeguards and regulations as shall be prescribed by the Director of the Philippine Library and approved by the Secretary of Justice.

The following fees are charged, under Section 33:

(a) For the registration of any work subject to copyright, three pesos;

(b) For each assignment, license, or notice, or other instrument or writing filed, two pesos;

(c) For every certified copy issued, one peso.

Section 34 exempts from the payment of fees works on which, upon the approval of the Act (March 6, 1924), copyright already exists.

The Philippine Library cannot adjudicate the validity of any copyright or give advice in cases of litigation, as these are matters outside its province and authority.

IV. KINDS OF RIGHTS GRANTED BY THE COPYRIGHT ACT

The grant of rights to the proprietor is set forth in the Copyright Act in its third section:

SEC. 3. The proprietor of a copyright or his heirs or assigns shall have the exclusive right:

(a) To print, reprint, publish, copy, distribute, multiply, sell, and make photographs, photo-engravings, and pictorial illustrations of the copyrighted work;

(b) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design;

(c) To exhibit, perform, represent, produce, or reproduce the copyrighted work in any manner or by any method whatever for profit or otherwise; if not reproduced in copies for sale, to sell any manuscripts or any record whatsoever thereof;

(d) To make any other use or disposition of the copyrighted work consistent with the laws of the land.

These rights may be conveniently grouped under four heads:

(1) Rights of copying and dissemination of copies.

(2) Rights of modification, or transformation.

(3) Rights of performance, or representation.

(4) Rights to any other use or disposition consistent with the laws of the land.

The right of copying and dissemination copies are contained in subsection (a), and only there, except for the provision as to selling manuscripts or records of works not reproduced for sale, contained in sub-section (c). The right to "print, reprint, publish, copy and vend" is not restricted to any special classes of works, but is applicable to all of them, so far as the nature of the work permits. Printing means not only printing from type, or plates, but also typewriting, mimeographing and kindred duplicating processes. So the practice of mimeographing text books and offering them for sale is an infringement of the copyright over the text book. Copying has an even broader significance, including the making of manuscript copies. The right to copy includes the right to make alterations in size, or to change the medium of reproduction. A work of art is copied, in the sense of the law, when it is photographed. If the plot of a dramatic composition is copied in detail, although the names of the characters and even some of the speeches are changed, that is a copying of the drama. (Darn v. Kirke, 166 Fed. Rep. 589.)

The strict application of the law as to copying, however, is modified by what is known as the doctrine of fair use, which is, briefly, that any one may make such use of the work, if he has lawfully obtained a copy of it, as must have been reasonably expected by the copyright owner. This doctrine, long recognized and enforced by the courts in both England and America, was made statutory here in the following provision of Section 5 of our Copyright Law:

SEC. 5. Lines, passages, or paragraphs in a book or other copyrighted works may be quoted or cited or reproduced for comment, dissertation, or criticism.

News items, editorial paragraphs, and articles in periodicals may also be reproduced unless they contain a notice that their publication is reserved or a notice of copyright, but the source of the reproduction or original reproduced shall be cited. In case of musical works parts of little extent may also be reproduced.

A test applied to determine whether a growing amount of copying exceeds the limit of "fair use" is whether the demand for the original has been reduced. (Drone, Copyright, pp. 386 et seq.)

The right to vend, or sell, copies of the work is restricted, as to any particular copy, to a single act of sale. In other words, conditions as to the resale of the work cannot be imposed. The copyright owner has exercised his right, and exhausted it, when he has once sold the copy. (Bobbs-Merrill Co. v. Straus, 310 U. S. Rep. 339.)

The second class of rights which has been mentioned—rights of modification or transformation of the copyrighted work—is covered by subsection (b) above quoted. The making of translations, or "other versions", is a right extended to any literary work, and this means any work in words, including not only books, but dramatic compositions and lectures, sermons or addresses. This right also covers the making of moving pictures from non-dramatic works and the decision of the Supreme Court to that effect has added incalculably to the value of copyrighted works (Kalem Co. v. Harper Bros., 222 U. S. Rep. 55.) The exclusive right of dramatization is likewise given to the proprietor.

It is to be noted generally regarding this class of rights that their exercise usually results in the creation of a new work, which can in turn be copyrighted. Such secondary, or derivative copyrights, are the subject of the provisions of Section 7 of the Act, which is as follows:

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.

The third class of rights under consideration—rights of performance or representation—are granted by subsection (c), already quoted. It should be observed that this privilege does not extend to published books, but only to those unpublished works which are especially designed for oral delivery. Since, on publication, such works become books, within the meaning of the law, it would appear that the exclusive right of oral delivery is lost when they are published.

Public performance of copyrighted works, for charitable or educational purposes is, however, expressly permitted by Section 20 in this proviso:

> SEC. 20. Any person infringing any copyright secured by this Act or aiding or abetting such infringement shall be deemed guilty of a crime punishable by imprisonment not exceeding one year or by fine not less than two hundred pesos nor more than two thousand pesos or both, in the discretion of the court: Provided, however, That nothing in this Act shall be so construed as to prevent the performance of any work for strictly religious, charitable, or educational purposes and not for profit by any educational, charitable or religious institution or society.

The fourth kind of rights—the right to any other use consistent with the laws of the land—need not be discussed. It simply illustrates the broad grant of rights which the law extends to the author.

There is one other right granted to the author which cannot be included under any of the aforementioned classes. It is given in Section 9 of the law, to this effect: Copyright secured is not subject to levy and attachment. This provision is not found in the Copyright Law of the United States. Once more it serves to illustrate the intent of the legislator to give all rights possible to the author. It is a legal recognition of the fact that most authors, at least in the Philippines, are impecunious, and this provision of the law gives them perpetual protection, unless they choose to sell their privileges in their copyrights, against the threat of unsatisfied creditors to that which is the product of their intellect.

What has been said in this chapter so far relates to the kinds of rights granted to the proprietor of the copyright. We shall now touch on the scope of the right, which is provided for in Section 6, as follows:

> SEC. 6. The copyright provided for by this Act shall protect all the copyrightable component parts of the work copyrighted and all matter therein but without extending or diminishing the duration or scope of such copyright. The copyright upon composite works shall give to the proprietor thereof all the rights in respect thereto which he would have

if each part were individually copyrighted under this Act, but if the component parts or matters therein have already been copyrighted then the copyright secured for the former is subservient to the latter.

V. RENEWAL AND TRANSFER OF COPYRIGHT

When copyright has been secured, it lasts for a period of thirty years, which is computed from the date it is registered. But in case of works in series or having several volumes the duration of the right extends to forty years from the date of registration. At the end of the period a renewal of the copyright may be obtained for the term of the original period in each case. Section 18 of the Copyright Act, which relates to the duration and renewal of copyright reads as follows:

SEC. 18. The copyright secured by this Act shall endure for thirty years from the date it is registered. The proprietor of such copyright or his assigns or heirs shall be entitled to a renewal of the copyright for the further term of thirty years when application for such renewal shall have been made to the Philippine Library and Museum and duly filed therein within one year prior to the expiration of the original term of copyright. In default of the filing of such application for renewal the copyright in any work shall expire at the end of thirty years from the date it is registered. But in case of works in series or having several volumes or component parts registered at intervals the copyright shall endure for forty years from the time the copyright for the first series or volume or component part has been registered and may be renewed for the same period.

The law grants the right to ask for a renewal to the proprietor of the copyright or his "assigns or heirs." In American law the right of renewal may only be exercised by the proprietor who originally held the copyright, or his heirs, that is, not by a transferee of the right, or one who acquired the same subsequent to its registration. The theory behind this is that the renewal term is an entirely new grant of protection, not merely a continuation of the old grant. Consequently, the author or proprietor who has taken the original copyright cannot assign, *in futuro*, the rights to be secured under the renewal.

Two reasons strongly point to the conclusion that this prohibition does not obtain here. First, because our law, which was copied from the American Copyright Law, purposely omits the express provision found in the latter with regard to the persons who may exercise the right of renewal, and second, because our law expressly provides that the right may be exercised by either the proprietor or his "assigns" or heirs. It seems that the word "assigns" here has no other reference than to such individuals as may have acquired the rights from the orig-

inal proprietor by a subsequent transfer after the registration. Against this conclusion, the article in the Civil Code prohibiting the assignment or transfer of future property may be cited. There is no doubt that the right obtainable under a renewal is future property, but since the Copyright Act is a much more recent enactment compared to the Civil Code, it will perhaps be safe to assume that the Civil Code provision that we are citing is, as far as copyright is concerned, in that respect modified.

The renewal of copyright is absolutely dependent upon the filing of an application and registration of the renewal claim in the Philippine Library, within one year prior to the expiration of the original term. If the application arrives one day too late, the renewal copyright is lost. But if an application is filed in time, it would seem that it can be subsequently corrected, if it fails to state the renewal claimant's name and capacity correctly.

When does the renewal right become vested? Is it when an application has been filed and the renewal has been registered in the name of a beneficiary entitled to renew? Or is it, as the language of the statute implies, only on the expiration of the first term? Suppose the author is living at the beginning of the last year of the first term of copyright, and he files an application for renewal which was registered. But then, suppose he dies immediately afterward, before the first term of copyright runs out, and his widow also files an application? To whom does the renewal copyright go—to the author's estate, or to the widow absolutely? There is nothing in the statute which we can apply as a solution to this particular matter, and the question must remain unanswered until the question is brought before the courts.

The sections of the Copyright Act relating to assignments are as follows:

SEC. 25. The copyright is distinct from the property in the material object copyrighted, and the conveyance or assignment, by gift or otherwise, of the copyright shall not itself constitute a transfer of the material object.

SEC. 26. A copy of every assignment or conveyance of copyright or permission or license to use it or inherited right to it shall be filed with the Philippine Library and Museum upon payment of the prescribed fee within three calendar months after its execution in the Philippine Islands or within six months after its execution without the limits of the Philippine Islands, in default of which it shall be void as against any subsequent purchaser or mortgagee or assignee for a valuable consideration, without notice, whose assignment has been duly filed.

SEC. 27. A copy of the assignment, conveyance, license, permission, or statement of the inherited right to a copyright filed shall be returned to the sender with a certificate of assignment attached under the seal of the copyright office.

SEC. 28. When an assignment of the copyright secured for a specified work has been registered the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act.

The provision that the copyright is distinct from the property in the object copyrighted is applicable to situations arising in cases of works of art, which have themselves a large intrinsic value, in addition to the value of the right of reproduction. The painting or statue may go to one, the right to reproduce copies to another. Suppose the owner of the painting or statue refuses access to the reproducer, may the latter ask the courts to compel the former to allow him access to the object so that he may exercise the rights which are his under the law? If he is held to have that right, would it not then be an implied recognition that the ownership of the holder of the object is limited by, or subject to, the rights of the owner of the right to reproduce? Again, only the courts can answer the question. It is to be observed that, while the sale or conveyance of the object does not "of itself" constitute transfer of the copyright; yet in cases where the object is evidently intended only for reproduction, and where the author must be aware that his transfer of it was accepted for that purpose, the sale of the copyright would be implied from the sale of the object. (Dielman v. White, 102 Fed. Rep. 892.) The practical lesson to be drawn from a consideration of this section of the Act is that a contract of sale of an original work for which copyright has been or is to be obtained should clearly state the disposition of the copyright, as well as that of the work itself.

The provisions of Section 26 requiring the recording of assignments in the Philippine Library are not mandatory. It is not necessary to the validity of an assignment as between the parties that it shall be recorded. But failure to record an assignment within the statutory period allowed—three months after the date of its execution, if within the Philippine Islands, and six months if it is executed in a foreign country—nullifies the rights of the original assignee, if it is subsequently assigned to a third party who takes it in good faith, not knowing of the prior assignment. It is therefore to the interest of the assignee to have his assignment recorded promptly.

Section 27 speaks for itself. Section 28 allows the substitution of the assignee's name for that of the assignor, in the notice of copyright on the copies of the work, after the recording of the assignment. This is a further advantage in recording assignments, from the assignee's point of view.

Licenses.—A license is distinguishable from an assignment by the fact that the assignment changes the legal ownership of the copyright, while the license merely makes the doing of certain things by the licensee lawful. The copyright owner excuses the license from the penalties of infringement. The ordinary rule of law is that a licensee cannot sue, in his own name, for violation by another of rights which he has been permitted to exercise. This rule was successfully invoked in a case in which a magazine publisher had been given mere rights of publication by the copyright owner of a story which was infringed by publication in a newspaper. The magazine publisher, being merely a licensee, not an assignee, was not allowed to maintain the action (New Fiction Publishing Co. v. Star Co., 220 Fed. Rep. 998.)

Through a series of licenses the various rights included in a single copyright may be parcelled out among a number of different licenses, and this is a means of realizing the fullest value of a copyrighted work. In the case of a book, for example, the following series of rights may be the subject of separate dispositions by license: Right of serial publication; book publication; translation; dramatization, and the making of moving pictures. The copyright owner keeps the legal title to the patent copyright all the time, but he sells the right to use it in the various ways mentioned.

Inherited Copyright.—Regarding the passing of copyright by bequest or descent, no special comment is necessary. The rules governing personal property in general are applicable to copyrights upon the death of the owner.

VI. INFRINGEMENT

The Copyright Act nowhere defines infringement. Unless the kind of use which has been made of the author's work is one to which the statute exclusively entitled him, he has no redress under the statute. The text of the statute must be consulted to see whether some one or more of the rights which it grants exclusively to the author has been violated. Negatively, therefore, we may define infringement of copryright, or piracy,

which is a synonymous term in this connection, to be the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.

It is sometimes stated that a fair use of a copyrighted work is not an infringement, but that an unfair use of it is an infringement. This is not of much use as a test. All uses of a published work are legally "fair" and non-infringing which are not in violation of the rights reserved by the statute, and conversely, all uses which do violate the reserved statutory rights are "unfair" and infringing uses.

A test sometimes used to determine whether what has been done with the copyrighted work exceeds the limits of fair use is to inquire whether the demand for the original work has been diminished to a substantial extent through competition from the alleged infringement. In one case a compilation of "opera-stories" was published, giving brief synopses of the plots of the copyrighted works. These were held not to infringe. They were only such accounts as a critic might give in reviewing a performance. (G. Ricordi & Co. v. Mason, 201 Fed. Rep. 182.)

Still another test is laid down in the case of Dun v. Lumberman's Credit Association, (209 U. S. 20), where it was held:

"The true test of piracy is to ascertain whether the author of the alleged piratical work has in fact used the plan, arrangement, and illustration of the copyrighted work as the model of his own work, with colorable alterations or variations only, to disguise the use thereof or whether the work is the result of his own labor, skill, and use of common materials and common sources of knowledge open to all men, and whether the resemblances are either accidental or arising from the nature of the subject; in other words, whether, defendant's work is quoad hoc a servile or evasive imitation of the copyrighted work, or a bona fide and original compilation from other common and independent sources."

From the adjudicated cases, ways of committing piracy may be divided under two heads:

1. Reprinting the whole or a part of the book verbatim, or

2. Imitating or copying, with colorable alterations and disguises, the copy assuming the appearance of a new book.

A literal reproduction of the whole, or of substantially the whole, of a copyrighted work, if unauthorized, constitutes an

infringement. (G. & C. Merriam v. United Dictionary Co., 146 Fed. 354.) The amount of matter copied from the copyrighted work is an important consideration. On the principle of de minimis non curat lex it is necessary that a material and substantial part of it shall have been copied, it being insufficient that mere lines or words have been abstracted. The rule is vague. If so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially and to an injurious extent appropriated by another, that is sufficient in point of law to constitute a piracy. (Meccano v. Wagner, 234 Fed. 912.) It is ordinarily immaterial whether the piracy is committed by making a simple reprint without making any considerable additions, or by incorporating the copied and pirated matter in a larger work. Thus, if, in one of the large encyclopedias of the present day, the whole or a large portion of a scientific treatise of another author should be incorporated, it would be just as much a piracy upon the copyright as if it were published in a single volume. (Gray v. Russel, 1 Story 11.)

Making extracts, even if they are not acknowledged as such, appearing under all the circumstances of the case, reasonable in quality, number, and length, regard being had to the object with which the extracts are made and to the subjects to which they relate, is a fair and non-infringing use. (Williams v. Smythe, 110 Fed. 961.) If extracts and quotations are taken for the purposes of criticism, comment, or illustration, considerable license is allowed, for the selection of extracts for such purposes, so far from being injurious is often beneficial to the sale of the book from which they are taken. (Clark & L. Torts, 539.) Fair quotation is not infringement.

Where the entire work has been taken bodily, the situation is a simple one, but where only a part has been taken, or where the copying deviates more or less from exactitude, the questions may arise, whether what has been copied is a substantial part of the work and whether the alleged infringer has done more than amounts to "fair use," perhaps in building upon the suggestions of the copyrighted work a new work of his own. This is most often illustrated in dramatic works. Courts have taken notice, upon occasion, of the practice of playwrites to follow the fashion set by a successful play. At one time there is an epidemic of crook plays, at another of plays dealing with theories of telepathy, hypnotism, or other current hypotheses of psychology,

and at other times the socalled murder mystery or "terror" plays. Similarities necessarily exist among such works, and do not afford a basis for holding that infringement has taken place, for "an author cannot obtain control of a field of thought on a particular subject." (Bobbs-Merrill Co. v. Equitable Motion Pictures Corp., 232 Fed. 791.) Copyright protection does not go that far. The safest guide in deciding whether infringement exists, in the absence of direct evidence, is to determine what is the fundamental theme of the play and see if it has been appropriated. (Underhill v. Belasco, 254 Fed. 838.)

When it is possible to separate the infringing portions of a work from those which do not infringe, the infringer will not be restrained from the production, or dissemination, of the whole work, but will be permitted to go on with its exploitation after eliminating the parts which infrnge, although of course liable for damages for infringement up to the time when the matter is thus settled. If, however, such separation is not practicable, the entire work must be abandoned. Conversely, where a copyright proprietor has inextricably mingled copyright matter with matter which is free of copyright, he cannot obtain redress against one who copies the whole work, since by his own act he has made it impossible to distinguish the copyright from the non-copyright matter. These are applications of the rule in the law of personal property regarding "confusion of goods," that he who mingles his goods with those of another so that they cannot be separated must lose his part. (Stevenson v. Fox, 226 Fed. 990.)

Innocence of intention to infringe does not excuse an infringer, but it may mitigate his liabilities. Under Section 17 of the Copyright Act omission of the notice of copyright "shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct." Proof of the animus furandi aids the inference of piratical copying, and rebuts a claim of fair use, while evidence of innocent intention may have a bearing on the question of fair use.

The liabilities of a person infringing the copyright in any work protected under the Copyright Act are enumerated in Section 19 thereof, as follows:

(a) To an injunction restraining such infringement;

(b) To pay to the copyright proprietor or his assigns or heirs such damages as he may have suffered due to the infringement, as well as all the profits the infringer may have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages which to the court shall appear to be just and which shall not exceed the sum of ten thousand pesos nor be less than the sum of two hundred pesos, and shall not be regarded as a penalty;

(c) To such other terms and conditions which the court may deem wise and equitable.

The action must be brought by the proprietor of the copyright and in cases where the particular right infringed has been given to a licensee, the latter must also be made party plaintiff. Not so, however, where the licensee has no interest in the right violated, as in a decided case where the licensee had the right to produce a dramatic composition on the stage, while the infringer had produced it only by means of motion pictures. It was held that, as the copyright proprietor himself had not granted to the licensee the particular right infringed, such proprietor was the only person having an interest in it, hence the only possible plaintiff. (Tully v. Triangle Film Corp. 229 Fed. Rep. 297.)

The persons liable for infringement are, generally speaking, all those who have participated in it, whether they knew of the copyright or not. (Gross v. Van Dyke Gravure Co., 230 Fed. 412.) The printer, the publisher, the distributor of the infringing work are all liable, not only jointly, but severally, since copyright infringement is a tort and each person who has a share in it is liable to the full extent of the damages suffered by the copyright proprietor. (Haas v. Leo Feist, 234 Fed. 105.)

The court which has jurisdiction over actions for infringement, or any other action under the copyright act for that matter, is, by Section 24 thereof, made to be the Court of First Instance. It is also provided that the cause of action shall prescribe after two years from the time the cause of action arose.

The injunction which may be given under the statute is of two kinds: the preliminary injunction which may be issued at the time the complaint is filed, and the final or permanent injunction granted after hearing when the decision is for the plaintiff. The granting or withholding of a preliminary injunction rests in the sound discretion of the court. It depends chiefly on the extent of doubt as to the validity of the copyright, whether it has been infringed, the damages which plaintiff will

sustain if it is upheld, and defendant suffer if it is granted. (Boosey v. Empire Music Co., 224 Fed. 646.) As a general rule, where plaintiff has made a prima facie case in regard to the existence of the copyright and its infringement, and there is no great inequality between the injury which the defendant will possibly sustain if it is granted and the injury which plaintiff will sustain if it is denied, the court will grant a temporary injunction as to so much of the work at least as is a plain infringement of plaintiff's copyright. (Aeolian Co. v. Royal Music Roll Co., 196 Fed. 920.) In all really doubtful cases a preliminary injunction should be refused.

If the court is satisfied at final hearing that plaintiff has a valid copyright and that defendant has infringed it, a permanent injunction will be granted to restrain further infringement. If it is doubtful whether or not there has been an infringement of copyright, the court may in the exercise of its sound discretion, refuse to grant an injunction. Where an action at law cannot be maintained, an injunction will not be granted except in cases of threatened infringement which would be actionable if consummated. (Historical Pub. Co. v. Jones Pub. Co., (231 Fed. 638.)

If successful in his suit for infringement, the copyright proprietor recovers such damages as he has sustained, as well as the profits made by the infringer. But there are many cases in which it is difficult to prove actual damages and in which the infringer may not have made any profits. The statute provides that "in lieu of actual damages and profits" the copyright proprietor may recover "such damages which to the court shall appear to be just and which shall not exceed the sum of ten thousand pesos nor less than the sum of two hundred pesos."

A similar provision in the United States Copyright Act, regarding so-called "statutory damages" have been much discussed in judicial decisions. The question was at length carried up to the Supreme Court, where it was held that the statute means exactly what it says. The plaintiff is to have at least two hundred and fifty dollars in any case without being called upon to prove any damages whatever. (L. A. Westermann Co. v. Dispatch Printing Co., 249 U. S. Rep. 100.)

Section 20 makes criminal the act of infringing a copyright, and penalizes any person causing the infringement, or who aids or abets it, by imprisonment not exceeding one year or by fine not less than two hundred pesos nor more than two thousand

pesos, or both, in the discretion of the court. Exception is made in case of the performance of any work for strictly religious, charitable, or educational purposes and not for profit by any educational, charitable, or religious institution or society.

CONCLUSION

Act 3134 is complete and adequate for all the needs of a civilized nation. For its effective application, however, we must look to the interpretation that has been given by American courts to their statute, from which ours has been copied. There are numerous details that by their very nature cannot all be embodied in the law, and must rest on the courts for enforcement. It is to be regretted that the importance of copyright protection is not properly appreciated among the authoring class in this country, as witnessed by the fact that the main problem confronting the Copyright Office is how to make the authors of a vast number of works that have never been registered do so for their own good. In this connection it would be interesting to ask whether compulsory registration would be both a constitutional and a wise measure. If some legislation to this effect will be proposed, it is recommended that the requirement be limited only to the more important class of works, say books, because to make the requirement applicable to all classes, no matter how trivial, will both be ridiculous and irksome.