

[INDIAN] COPYRIGHT ACT.

ACT No. XX. OF 1847.

[Passed on the 18th December, 1847.

Recites doubts whether Copyright can be enforced either in Territories of the E. I. C. into which the Common Law has been introduced, or in other parts, according to the principles of equity and good conscience; also that, for the encouragement of learning, it is expedient Copyright should be established: and recites doubts whether the Act of Parliament, 5 and 6 V., c. 45, has made provision for the enforcement of the right against persons not being British Subjects.

Enacts—

1. That Copyright in every book published in India in the life time of the author, after the 28th August, 1833, shall endure for the natural life of the author and seven years after, or for 42 years if the seven years sooner expire; and any book published after said date and death of the author, shall endure for 42 years and shall be the property of the proprietor of the author's M.S.
2. Provides against the suppression of books of importance, by authorizing the G. G. in C. to grant a licence for the publication of any book after the death of the author, if the proprietor has refused to publish it.
3. Book of Registry and copyright to be kept in the office of the Sec. to the Government of India, and to be open to inspection and search on payment of eight annas, and copy of any entry to be given on payment of two rupees; and such copy to be evidence.
4. Wilfully making, &c., false entry in Registry, &c., or producing, &c., any paper in evidence falsely purporting to be copy of entry, to be a misdemeanour, and punishable with imprisonment, &c., not exceeding three years.
5. Proprietor of Copyright may have entry made in the Registry book of specified particulars on payment of two rupees; and registered proprietor may assign his interest, by making entry of such assignment, &c., in the name of assignee, &c., and such assignment, shall be of same force as if made by deed.
6. Person deeming himself aggrieved by entry in Registry may apply to Supreme Court or to Judge to order entry to be expunged; and Judge may make such order for expunging, varying, &c., as he may deem just, with or without costs, and Secretary of Government shall carry out such orders.
7. Any person who shall print, &c., for sale, &c., any book in which Copyright subsists, without consent in writing of proprietor, or who shall have in his possession for sale, &c., any such, shall be liable to special action on the case, or to suit in Zillah Court or other highest local Court.
8. In action in Supreme Court, brought under this Act, defendant to give notice in writing of the objection constituting his defence, and if the nature of his defence is a denial of the Plaintiff's Copyright, defendant shall specify in notice the name of person whom he alleges to be proprietor, name of book, &c., otherwise he shall not at the trial, &c., be allowed to prove plaintiff not the first proprietor, &c., and no other objection than is stated in the notice, &c., shall be given in evidence.
9. In action in Zillah or other local Court, such matters as above are required to be stated in notice, shall be stated in answer.
10. Any publisher, &c., of Encyclopaedia, Magazine, Periodical, or work published in parts, or series of books, who shall have projected, &c., but have employed others to compose the same, on the terms that the Copyright shall belong to such publisher, &c., shall enjoy the same right and term of Copyright as if he were the actual author, except that in case of Essays, &c., first published in reviews, &c., the right of publishing same in separate form shall revert to author, after twenty-eight years, for the remainder of the term of Copyright; and during the term of twenty-eight years projector, &c., not to publish such essays, &c., in separate form. Proviso in favor of rights expressly reserved by contract.

11. Proprietor of Encyclopaedia, Review, &c., entitled to all the benefits of registration, &c., by making specified entry in Registry Book.

12 and 13. All copies of registered books which have been unlawfully printed shall belong to registered proprietor of Copyright, who, after demand in writing, may sue for damages for detention thereof, or (13) within the limits of Supreme Court in action of detinue or trover, in Zillah or other local Court: in the usual form.

14. No proprietor of Copyright to maintain any legal proceedings under this Act for infringement of any but registered Copyright.

15. In actions in Supreme Court for any thing done in pursuance of this Act, defendant may plead general issue, and give special matter in evidence: and defendant succeeding to have his full costs.

16. All actions, &c., informations, &c., for any offence committed against this Act, to be brought within 12 calendar months after offence committed.

17. Saves all rights subsisting at time of passing the Act, and all contracts, &c., and remedies relating thereto. Schedules—No. 1, Original entry of proprietorship of Copyright. No. 2, Form of entry of assignment of registered Copyright.

An Act for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining and providing for the enforcement of the right called Copyright therein.

Whereas doubts may exist whether the right called Copyright can be enforced by the Common Law of England in those parts of the Territories subject to the Government of the East India Company into which the Common Law of England has been introduced:

And whereas doubts may exist whether the said right can be enforced by virtue of the principles of equity and good conscience in the other parts of the Territories subject to the Government of the East India Company:

And whereas, for the encouragement of learning, it is desirable that the existence of the said right should be placed beyond doubt, and that the said right should be made capable of easy enforcement in every part of the said Territories:

And whereas it is doubted whether the Act of Parliament, 5 and 6 Victoria, c. 45, entitled "An Act to amend the Law of Copyright," although such Act extends to every part of the British Dominions, has made appropriate and sufficient provisions for the enforcement in every part of the said Territories subject to the Government of the East India Company, of the said right by proprietors thereof: and whether the said Act of Parliament has made provision for the enforcement of the said right by or against any person not being subject to the jurisdiction of the Court established by Her Majesty's Charter:

I. It is therefore hereby enacted, that the Copyright in every book published in the life-time of its author within the said Territories, after the passing of the Act of Parliament, 3 and 4 Wm. 4, c. 85, entitled "An Act for effecting an arrangement with the East India Company, and for the better government of His Majesty's Indian Territories till the 30th day of April, 1854," shall endure for the natural life of such author and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the publication of such book, the Copyright shall in that case endure for such period of forty-two years; and that the Copyright in every book published after the death of its author, and after the passing of the Act of Parliament last aforesaid, shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the Proprietor of the author's manuscript, from which such book shall be first published, and his assigns.

II. And whereas it is expedient to provide against the suppression of books of importance to the public: It is enacted, that it shall be lawful for the Governor General in Council, on complaint made to them that the proprietor of the Copyright in any book published after the passing of this Act within the said Territories, has, after the death of its author, refused to republish, or to allow the republication of the same, and that by reason of such refusal, such book may be withheld from the public, to grant a licence to such complainant to publish such book in such manner and subject to such conditions as they may think fit, and it shall be lawful for such complainant to publish such book according to such licence.

III. And it is hereby enacted, that a Book of Registry wherein may be registered, as hereinafter enacted, the proprietorship in the Copyright of books and assignments thereof, and licences affecting such Copyright, shall be kept in the Office of the Secretary to the Government of India for the Home Department, and shall at all convenient times be opened to the inspection of any person on payment of Eight Annas for every entry which shall be searched for or inspected in the said book, and that such Officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, to any person requiring the same, on payment to him of the sum of Two Rupees, and such copies so certified shall be received in evidence in all Courts and in all summary proceedings, and shall be prima facie proof of the proprietorship or assignment of Copyright or licence as therein expressed, but subject to be rebutted by other evidence.

IV. And it is enacted, that if any person shall wilfully make, or cause to be made, any false entry in the Registry Book aforesaid, or shall wilfully produce, or cause to be tendered in evidence, any paper falsely purporting to be a copy of any entry in the said Book, he shall be guilty of a misdemeanour, and shall be punished with imprisonment, with or without hard labour, for a term not exceeding three years.
[Repealed by Act XVII., 1862.]

V. And it is enacted, that after the passing of this Act, it shall be lawful for the proprietor of Copyright in any book, published after the passing of the said Act of Parliament, 3 and 4 Wm. 4, c. 85, to make entry in the Registry Book of the title of such book, the time of the first publication, and the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the Copyright in the said book, or of any portion of such Copyright in the form in that behalf given in the Schedule to this Act annexed, upon payment of the sum of Two Rupees to the said Secretary, and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said Book of Registry of such assignment, and of the name and place of abode of the Assignee thereof, in the form given in that behalf in the said Schedule, on payment of the like sum; and such assignment so entered shall be effectual in Law to all intents and purposes whatsoever, without being subject to any sum or duty, and shall be of the same force and effect if such assignment had been made by Deed.

VI. And it is enacted, that if any person shall deem himself aggrieved by any entry made under colour of this Act in the said Book of Registry, it shall be lawful for such person to apply by motion to the Supreme Court of Calcutta, or, if the Court shall not be then sitting, to any Judge of such Court sitting in chambers, for an order that such entry may be expunged or varied, and that upon any such application to the said Court, or to a judge as aforesaid, such Court or Judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or Judge shall seem just, and the said Secretary shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same, according to the requisitions of such order.

VII. And it is enacted, that if any person shall after the passing of this Act print, or cause to be printed, either for sale or exportation, any book in which there shall be subsisting Copyright, without the consent in writing of the proprietor thereof, or shall have in his possession for sale or hire any such book

so unlawfully printed without such consent as aforesaid, such offender, if he shall have so offended within the local limits of the jurisdiction of any of the Courts of Judicature established by Her Majesty's Charter, shall be liable to a special action on the case in such Court, and if he shall have so offended in any other part of the Territories subject to the Government of the East India Company, to a suit in the Zillah Court within the jurisdiction of which he shall have so offended, which shall and may be prosecuted in the same manner in which any other action of damages may be brought and prosecuted there, and if he shall have so offended in any such last-mentioned part of the Territories subject to the Government of the East India Company in which there is no Zillah Court, to a suit in the highest local Court exercising original Civil jurisdiction in such part of the said Territories.

VIII. And it is hereby enacted, that after the passing of this Act in any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter under the provisions of this Act against any person, for printing any such book for sale, hire, or exportation, or for selling, publishing, or exposing to sale or hire, or causing to be sold, published, or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim Copyright, or is not the proprietor of the Copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the Copyright therein, then the defendant shall specify in such notice the name of the person whom he alleges to have been the author or first publisher of such book, or the proprietor of the Copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such Copyright as aforesaid, or that he was not the proprietor of the Copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the Copyright therein than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication, with the title, time, and place specified in such notice.

IX. And it is hereby enacted, that after the passing of this Act in any such suit or action as last aforesaid brought in any Zillah Court or other local Court as aforesaid the defendant shall state in his answer all such matters as he means to rely on, and which by the last preceding Section the defendant in any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter is required to give notice of in writing, otherwise such defendant shall be subject to the same consequences for any omission in his answer as a defendant is made subject to by the last preceding Section for any omission in his notice.

X. And it is hereby enacted, that when any publisher or other person shall, within the said Territories, before or at the time of the passing of the Act, but after the passing of the said Act of Parliament, 3 and 4 Wm. 4, c. 85, have projected, conducted, and carried on, or shall hereafter project, conduct, or carry on, or be the proprietor of any Encyclopaedia, Review, Magazine, Periodical work, or work published in a series of Books or Parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any Volumes, Parts, Essays, Articles, or Portions thereof, for publication in, or as part of the same, and such Work, Volumes, Parts, Essays, Articles or Portions shall have been, or shall hereafter be, composed under such employment, on the terms that the Copyright therein shall belong to such Proprietor, Projector, Publisher or Conductor, and paid for by such Proprietor, Projector, Publisher, or Conductor, the Copyright in every such Encyclopaedia, Review, Magazine, Periodical work, or work published in a series of Books or Parts, and in every Volume, Part, Essay, Article and portion so

composed and paid for, shall be the property of such Proprietor, Projector, Publisher, or Conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of Copyright therein as is given to the authors of Books by this Act. Except only that in the case of Essays, Articles, or Portions forming part of and first published in Reviews, Magazines, or other Periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act. Provided always, that during the term of twenty-eight years the said Proprietor, Projector, Publisher, or Conductor shall not publish any such Essay, Article or Portion separately or singly without the consent previously obtained of the author thereof or his assigns: Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or shall be so employed as aforesaid, to publish any such his composition in a separate form, who, by any contract, expressed or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right, shall be entitled to the Copyright in such composition when published in a separate form according to this Act, without prejudice to the right of such Proprietor, Projector, Publisher, or Conductor as aforesaid.

XI. And it is hereby enacted, that the Proprietor of the Copyright in any Encyclopaedia, Review, Magazine, Periodical work, or other work published in a series of Books or Parts shall be entitled to all the benefits of the Registration in the office of the Secretary to the Government of India for the Home Department, under this Act, on entering in the said Book of Registry the title of such Encyclopaedia, Review, Periodical work, or other work published in a series of Books or Parts, the time of the first publication of the first Volume, Number, or Part thereof, or of the first Volume, Number, or Part first published after the passing of this Act, in any such work which shall have been published heretofore, and after the passing of the said Act of Parliament, 3 and 4 William 4, c. 85, and the name and place of abode of the Proprietor thereof, and of the Publisher thereof, when such Publisher shall not also be the Proprietor thereof.

XII. And it is enacted, that all copies of any Book wherein there shall be Copyright, and of which entry shall have been made in the said Registry Book, and which shall have been unlawfully printed without the consent of the Registered Proprietor of such Copyright in writing under his hand first obtained, shall be deemed to be the property of the Proprietor of such Copyright, and who shall be registered as such, and such Registered Proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof.

XIII. And it is enacted, that if the case be within the Jurisdiction of any of the Courts of Judicature established by Her Majesty's charter, such Registered Proprietor shall be entitled to sue for and recover such copies, or damages for the detention thereof, in an action of Detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of Trover; and that if the case be within the Jurisdiction of any Zillah Court or other local Court as aforesaid, the Registered Proprietor shall be entitled to sue for and recover such copies, or damages for the detention or conversion thereof, in such form as is in use in the said Zillah or other local Courts for the recovery of specific personal property, or damages for the detention or conversion thereof.

XIV. And it is enacted, that no Proprietor of Copyright in any book first published after the passing of the said Act of Parliament 3 and 4 Wm. 4, c. 85, shall maintain, under the provisions of this Act, any action or suit at law or in equity, or any summary proceedings in respect of any infringement of such Copyright unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the Book of Registry at the Office of the said Secretary of such book, pursuant to this Act. Provided always, that the omission to make such entry shall not affect the Copyright in any book, nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof, under the provisions of this Act.

XV. And it is enacted, that if any action or suit shall be commenced or brought in any of the Courts of Judicature established by Her Majesty's Charter against any person or persons whomsoever, for doing, or causing to be done, any thing in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, or which he shall have the same remedy as a defendant in any case by Law hath in the said last-mentioned Courts.

XVI. And it is enacted, that all actions, suits, bills, indictments, informations, and other criminal proceedings for any offence which shall be committed against the Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of no effect.

XVII. Provided always and it is enacted, that nothing in this Act contained shall affect, alter, or vary any right subsisting at the time of passing this Act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act, and all remedies relating thereto, shall remain in full force, any thing herein contained to the contrary notwithstanding.

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SCHEDULE.

No. 1.

Original Entry of Proprietorship of Copyright of a Book.

Time of making the Entry.	Title of Book.	Name of Publisher and Place of Publication.	Name and Place of abode of the Proprietor of the Copyright.	Date of First Publication.

No. 2.

Form of Entry of Assignment of Copyright in any Book previously registered.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of the Copyright.
	(Set out the Title of the Book and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.)		

Transcribed by Nandita Saikia (2014) from 'The Legislative Acts of the Governor General in Council from 1834 to the End of 1867' [accessed via Google Books], compiled by William Theobald, Esq., and published by Messrs. Thacker, Spink & Co., Calcutta, 1868 | This transcription has been made available *as is* exclusively for academic purposes, and it may not be entirely accurate. It is not authoritative and should not be relied upon.