COPYRIGHT IN CANADA.

The present law in Canada, the Copyright Act, 1921, 11-12, Geo. V. Chap. 24, as amended by the Copyright Amendment Act, 1923, 13-14 Geo. V. Chap. 10, came into force on the first of January, 1924, and since then copyright has been obtainable only in accordance with its provisions.

Prior to that date copyright, varying in kind and extent, could be obtained in three different ways.

1st. Under the Canadian Copyright Act of 1875, R.S.C. 1906, Chap. 70, copyright in literary and artistic works could be obtained by registering the work in the Copyright office at Ottawa and printing and publishing, or in the case of works of art, producing the same in Canada. Dramatic and musical works were registerable as books but the performing rights of the same were not protected. With the application for registration it was necessary to deposit three copies of the work and a notice of the copyright had to be printed on all copies. The copyright could be obtained only by persons domiciled in the British Empire or citizens of a country having an international copyright treaty with the United Kingdom If, however, copyright was subsisting in the United Kingdom in any work, any person being the owner of such copyright could obtain copyright of the work under the Canadian Act.

The Copyright endured for twenty-eight years from the date of registration and might be renewed by registration for a further term of fourteen years.

2nd. Under certain acts of the Parliament of the United Kingdom, viz., the Dramatic Copyright Act, 1833, the Copyright Act, 1842, and the International Copyright Act, 1886, all of which applied to Canada, copyright in literary, dramatic and musical works could be obtained simply by making first publication of the work in any part of the British Empire. The copyright included the performing rights of dramatic and musical works and endured for the life of the author and seven years thereafter or for forty-two years from first publication of the work whichever period might be the longer. Public performance was deemed equivalent to publication of the work.

These acts did not apply to artistic works. Such works were

protected in the United Kingdom under the Fine Arts Copyright Act, 1862, which did not extend to Canada, *Graves* v. *Gorrie*.[1]

3rd. Under the Berne Convention 1886 (The International Copyright Union) which had the force of law in Canada by virtue of an Imperial order in council made in 1887 under the International Copyright Act, 1886, copyright in literary, artistic, dramatic and musical works including performing rights could be obtaned by first publication in any country of the Union.[2] Public performance was not deemed publication of the work.

With the exception of the United States all the countries of the world of any importance joined the Union. The copyright thus acquired could not endure beyond the term fixed by the law of the country of origin, viz., the country in which the work was first published.

By the British North America Act the Parliament of Canada was given full power to legislate on the subject of copyright. Such enactment Canada claimed gave her the exclusive right to legislate and to repeal prior Imperial legislation on the subject in so far as the same was operative in Canada. This claim was not upheld by the Courts but it was strenuously and persistently made by Canada and at the Imperial Copyright Conference held in 1910 was admitted by the Imperial authorities. By sec. 26 of the Imperial Copyright Act, 1911, the admission became effective.

By secs. 47 and 48 of the Canadian Act of 1921 all enactments of the Parliament of the United Kingdom in so far as they were operative in Canada and the Canadian Act Chap. 70 R.S.C. 1906 were repealed.

In the case of a work in which copyright subsisted immediately before the commencement of the Act of 1921 the broader right thereby given including the longer duration is substituted by sec. 41. The term of duration of the copyright under the Act of 1921 is except as otherwise expressly provided the life of the author and fifty years after his death.

The Berne Convention as revised in 1908 replaces the original convention and is set out in the second schedule of the Act of 1921, Canada's adherence to the Revised Convention became effective on the first of January, 1924.

Under s.s. 2 of sec. 4 of the Act of 1921 a certificate was issued effective on the first of January, 1924, extending the Act to the United States. The effect of such extension is understood, in so

[1] [1903] A.C. 496.
[2] *Hubert* v. *Mary*, 15 Q.R.K.B. 381; *Joubert* v. *Geracimo*, 35 D.L.R. 683.

far as the enjoyment in Canada of the rights conferred by the Canadian Act is concerned, to place United States citizens and their territory in the same position as Canadian citizens and their territory. At the same time a proclamation was issued by the President of the United States giving Canadian citizens the same privileges that are given to the United States citizens under the copyright legislation of their country.

A certificate was issued under s.s. 2 of sec. 25 of the Imperial Act 1911, also effective on the first of January, 1924, extending that Act to Canada in the sense of making residence or publication therein for the purposes of the Act equivalent to residence or publication in those parts of the Empire in which the Act is operative. As a result residence in Canada in the case of unpublished works and first publication therein in the case of published works gives copyright throughout the rest of the Empire.

It is to be observed that in both the Imperial Act of 1911 and the Canadian Act of 1921 publication means the issue of copies of the work to the public and does not include the public performance of a dramatic or musical work.

All the documents relating to Canada's adherence to the Revised Berne Convention, the reciprocal arrangement with the United States and the extension of the Imperial Act, 1911, are published in the appendix of the Report of the Commissioner of Patents for 1924, a blue book of which copies may be obtained on application to the Patent and Copyright Office or to the King's Printer at Ottawa.

The Act of 1921 gives the author all the rights that could in any way be acquired prior to its commencement and additional rights of which the principal is the sole right in the case of literary, dramatic or musical works to make any contrivance by which the work may be mechanically performed or delivered. Canada's lack of legislation in this regard caused a serious loss to Canadian composers. United States legislation has given this right for many years but that country refused to extend it to Canada as she was not in a position to reciprocate. Many popular Canadian compositions, notably war songs, were extensively pirated in the United States prior to the first of January, 1924.

Under the Canadian Act, 1921, copyright is given to all British subjects and residents in British territory, to all citizens or subjects of foreign countries belonging to the Copyright Union, and to the citizens or subjects of other foreign countries to which the Act is

extended as therein provided. First publication must be made within such territory or one of such countries.

All rights conferred by the Act are acquired by its mere operation without the observance by the author of any formality whatsoever. Registration is not necessary. It is optional and may be obtained on application made in accordance with the prescribed rules and forms, copies of which may be had by applying to the Patent and Copyright Office. Although registration is not necessary to acquire copyright it is advisable to make it as without registration in certain cases the only remedy for infringement is an injunction. Sec. 39 provides that no assignee or licensee can maintain an action under the Act without registration of his grant, a new condition.

In a case of the *Canadian Performing Right Society Ltd.* v. *Famous Players Canadian Corporation Ltd.*[3] an action for an injunction to restrain the respondents from performing two musical works and damages, the performing rights in the works having been assigned to the petitioners by the English Performing Right Society long before the passing of the Canadian Act and the assignments not having been registered, Mr. Justice Rose in delivering judgment at Toronto on March 7th, 1927, held that every assignment of copyright must be registered before the grantee could bring any action in Canada to restrain infringement of his rights. That judgment was upheld on appeal by the Supreme Court of Ontario.

In support of a petition to the Judicial Committee of the Privy Council for special leave to appeal from the judgment counsel on behalf of the petitioners urged:

> that the question whether an assignee of copyright could bring an action in Canada to protect his rights without having registered his assignment was of the gravest importance to owners of all Copyrights in the British Dominions and those foreign countries which were signatories to the Berne Convention. The construction put upon Section 39 (1) of the 1921 Act permanently deprived all assignees whose assignments had not been executed in duplicate, or in a form acceptable for registration in Canada, of all the benefits of their copyright there. Furthermore, such a construction was repugnant to the spirit of the Berne Convention, which prescribed that the enjoyment of copyright should not be subject to the performance of any formality. Special leave was granted.[4]

While the Canadian Act, 1921, has of course no extra-territorial

[3] [1927] 3 D.L.R. 931.
[4] *The Times*, Oct. 19, 1927.

effect its provisions have enabled Canada to obtain the benefit of the Imperial Act 1911 and the Revised Berne Convention through which copyright is acquired without any formality throughout the British Empire and all the countries of the Copyright Union. It has also, as previously stated, secured for Canada all the benefit of the copyright legislation of the United States. In that country however the copyright is obtained only upon compliance with local requirements the principal of which are registration and printing of the work in that country.

In order to obtain the benefit of the Imperial Act 1911 as above stated it was necessary to make the rights given by Canadian legislation substantially the same as those given by the Imperial Act. As a consequence in framing the Canadian Act 1921 the text of the Imperial Act was on the whole very closely followed. About the only marked departure from the Imperial Act is in sec. 13 of the Canadian Act which contains what are known as the compulsory licensing provisions. Under these provisions any person may obtain from the Minister charged with the administration of the Act a license to print and publish in Canada an edition of any copyright book if the author fails to have the book printed in Canada. Certain interests have for many years stoutly contended that printing in Canada of copyright works should be compulsory and it was through the efforts of these interests that the provisions were placed in the Act. It is needless to say that they were strongly opposed by the authors.

After the Act was passed and before it came into force it was found that these licensing provisions would conflict with the Revised Berne Convention and might prevent Canada from getting the benefit of the Imperial Act 1911. Consequently the amending act of 1923 was passed providing that the section shall not apply to works the authors of which are British subjects other than Canadian citizens or the subjects or citizens of a country belonging to the Copyright Union.

On two occasions bills have been introduced at the instance of the authors for the repeal of the provisions but without success.

Up to the present time there have been only two applications for a license and no license was granted thereon as the authors on being advised of the applications at once gave the prescribed undertaking to bring out a Canadian edition of the work and the Act provides that in such a case the license cannot be granted.

In view of the sameness of the texts of the two Acts commentaries on the Imperial Act 1911 and the jurisprudence resulting from its operation may advantageously be consulted in interpreting the Canadian Act 1921.

Take for instance the subject of *broadcasting*. There has been a great deal of discussion in Canada as to whether or not it is a performance within the meaning of the Canadian Act and consequently an infringement of copyright. The provisions of the two acts on the subject are identical, the sections of the Canadian Act having been copied verbatim from the Imperial Act. The matter has not been before the Canadian Courts but has been passed on by the Courts in other parts of the Empire where the Imperial Act is in force. The subject is dealt with and the jurisprudence referred to in the 1927 edition of Copinger, p. 154 et seq.

The Copyright Act 1921 like most general acts no doubt has its imperfections but whatever its defects may be it has certainly greatly improved the prior state of the law. To-day it is not necessary to go through numerous Imperial statutes to find out what the law is. The whole law may now be found under the covers of Canadian Statutes.

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TWELFTH MAN OUT.—The little mishap at Manchester Assizes the other day, when a jury was found to be one short of the full complement, might have been worse. On one occasion a similar discovery was not made at York Assizes until the case has been in progress a couple of hours. And when Mr. Justice Gould expressed his concern the foreman of the eleven good men and true bobbed up and said, "If you please, my lord, it's all right. He has gone about some business, but he has left his verdict with me."

Manchester Guardian.