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a co-sharer, but a third person. The case, therefore, is not governed by any of the above judicial decisions, and falls within the rule as interpreted by the cases in Macnaghten's Precedents, and which we think this Court ought to follow. Whether such a gift is void, or only invalid, as to which there would appear to be some difference of opinion between Mahomedan lawyers, is not a question which arises in this case, as there had been no partition, and defendant had not been put into possession of any specific portion of the house as her husband's share before her husband's death.

We must, therefore, vary the decree by declaring that the deed of gift of 30th May, 1883, is invalid; and by directing that the parties do pay their own costs of the suit and also of this appeal.

Decree varied.

Attorneys for the appellants:—Messrs. *Tyabji and Dayabhai.*
Attorneys for the respondent.—Messrs. *Chalk, Walker, and Smetham.*

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Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley

GANGAVISHNU SHRIKISONDAS (*Plaintiff*), *Respondent v.* MORESHVAR BAPUJI HEGISHTE AND OTHERS (*Defendants*), *Appellants.**
[12th March, 1889.]

Copyright—Annotated edition of an ancient religious work — Originality—Colourable mitation—Injunction—Damages—Account—Act XX of 1847, s. 12.

The plaintiff, a bookseller, in 1884 brought out a new and annotated edition of a certain well-known Sanskrit work on religious observances entitled "Vrtraj," having for that purpose obtained the assistance of Pandits, who re-cast and re-arranged the work, introduced various passages from other old Sanskrit books on the same subject, and added foot-notes. In 1885 the plaintiff registered the copyright of this work. In 1886 the defendant printed and published an edition of the same work, the text of which was identical with that of the plaintiff's work, which moreover contained the same additional passages, and the same foot-notes, at the same places, with many slight differences.

Held, that the plaintiff's work was such a new arrangement of old matter as to be an original work and entitled to protection, and that as the defendants had not gone to independent sources for their material, but had pirated the plaintiff's work, they must be restrained by injunction.

Held, also, that an account of the net profits made by the defendants by the sale of the plaintiff's book could be ordered notwithstanding the provisions of s. 12 of Act XX of 1847, as the result of the account would be to give to the plaintiff what he could have claimed as damages under that section.

ACTION for alleged infringement of copyright.

The plaintiff stated that some time prior to 1884 he resolved to publish a new and improved edition of an old religious Sanskrit work, entitled "Vrtraj," on religious observances, and with that object secured the assistance of two well-known Pandits who prepared the new edition, recasting and re-arranging the old materials, and adding valuable foot-notes. The work occupied the Pandits for two years, and was published in 1884. It was registered under Act XXV of 1867 in May, 1885.

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The plaintiff complained that about two years afterwards, (*viz.* in December, 1886), the defendants printed and published an edition of the same work and registered it. The following paragraphs of the plaint set forth the plaintiff's case:—

[359] "7. The plaintiff, having caused his own and the defendants' edition of the said work to be compared, finds that, with the exception of a few very immaterial changes in the foot-notes, noticing the different readings in slightly modified wording in Sanskrit, the defendants' edition is in all respects an imitation of his own; that it contains exactly the same alterations, omissions, and additions as are contained in the plaintiff's edition, but which changes are not to be found in any of the editions of the said work published before the plaintiff's edition; that even with regard to the foot-notes, the defendants' edition has foot-notes for the most part on words which have foot-notes in the plaintiff's edition (in case of lengthy foot-notes, ideas contained in them are put in an abridged form in the defendants' edition); and that the Sanskrit preface to the defendants' edition is, so far as the ideas are concerned, mainly a transcript of that to the plaintiff's edition.

"8. The plaintiff believes that the sale of his edition has, by this wrongful act of the defendants, been practically stopped since the time intending purchasers came to know of the preparation of the cheaper and pirated edition of the plaintiff's work.

"9. The defendants, by selling their copies of the said work at the reduced price of Rs. 3 *per* copy (the price of plaintiff's *per* copy being Rs. 5), by thus illegitimately appropriating the fruit of the plaintiff's expense and labours, by publishing an edition of the said work containing no original sentiment, producing no original result, and showing neither new arrangement and combination of the materials, nor careful revision and correction of the plaintiff's edition, so as to publish a *bona-fide* new edition, and by taking a substantial and material part of the plaintiff's work—by publishing, in short, an unauthorized imitation of the plaintiff's edition, have materially injured the plaintiff's copyright."

The plaintiff prayed that the defendants might be ordered to deliver up all the unsold copies of the defendants' book, and to pay to him the price of copies already sold; for an injunction and damages, &c.

[360] In their written statement the defendants stated that they carried on an old-established business as publishers of religious works in Sanskrit, and that the plaintiff was a customer of theirs.

The following paragraphs state the defence:—

"3. Certain editions of the said religious work, called 'Vrtraj' have, as in the plaint stated, been published and sold by the defendants prior to December, 1884. With a view to the bringing out of a new and revised edition of the said work the defendants retained a learned Shastri, one Vithal Shivram, to revise and correct their latest edition thereof. The plaintiff, hearing of this event, went to the said Shastri and surreptitiously and without the knowledge or consent of the defendants obtained from the said Shastri a rough draft of the defendants' said proposed new edition, and subsequently made use thereof and published the work, which he calls his edition of the said 'Vrtraj.' The defendants say that though some of the notes in the said draft contained were abbreviated, and some enlarged, the alterations made therein were trivial and unimportant, and made for the sake of appearance only, and that the plaintiff's said publication is substantially a reproduction of the defendants' revised edition, and a close and colourable imitation thereof; and the defendants submit that under the

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circumstances aforesaid the plaintiff has not acquired any valid copyright in the said edition of the 'Vrtraj' to the prejudice and detriment of the defendants. Save as above stated, the defendants do not admit the allegations in the first and second paras of the plaint contained.

"4. The defendants completed the revision of their older edition of the said work and published the same with additions and notes by the said Shastri, as is alleged in the fourth para. of the plaint, which is substantially correct. The defendants submit that they were and are entitled to publish their said edition, and that they are the proprietors of the copyright thereof, and that instead of the plaintiff being entitled to complain, the defendants, on the other hand, have found reason to find fault with the plaintiff for his said acts and conduct.

[361] "5. As regards the allegations in the 7th para of the plaint, the defendants deny that they in their said new edition have in any way borrowed from, or imitated, the plaintiff's alleged work, but say on the contrary that all resemblance between the said editions arises from the fact of the plaintiff having wrongfully used the defendants' said rough draft of the revised edition.

"6. The defendants deny the allegations in the 8th and 9th paras. of the plaint contained.

"7. The defendants deny that the plaintiff is the proprietor of the copyright, or that the persons in the plaint mentioned are the authors of the new matter in the plaintiff's said edition of the 'Vrtraj'. The defendants claim, on the contrary, that the author of the said notes is the Shastri Vithal Shivram above named, and that the defendants have the copyright therein, and that the plaintiff's said edition is a pirated one, and an infringement of the defendants' rights, and should be ordered to be discontinued and given up."

Farran and *Russell*, for the plaintiff.

Inverarity and *Jardine*, for the defendants.

Farran :—It is admitted that one book is almost a *verbatim* copy of the other. The plaintiff's book was printed in December, 1884, and registered in May, 1885. Defendants' book was not printed until December, 1886, and not registered until March, 1887. The plaintiffs are the presumptive owners, and the defendants must prove some other ownership —Act XX of 1847, s. 8. The plaintiff has expended much labour on his book. There are alterations and corrections on every page of the old work. All the corrections are made from old authorities. A work on which such labour has been expended, is a legitimate subject of copyright. The foot-notes in the defendants' edition, where not exactly the same as those of the plaintiff, have clearly been suggested by the plaintiff's book. The plaintiff has incurred great expense in bringing out his book, and has suffered loss hy the defendant's conduct. He cited *Morris* v. *Wright* (1).

Inverarity for defendants :—The defendants' case is that they originated the new edition. The work was really done by them. [362] The plaintiff was a book-seller, and got the draft manuscript from the Shastri employed by the defendants and used it. We say (1) the plaintiff has stolen our goods ; (2) the plaintiff cannot get an injunction, because there is nothing original in the work. Both parties went to the same sources for the additions they made to the old Sanskrit book. He cited *Pike* v. *Nicholas*(2) ; Seton on Decrees, p. 247.

(1) L.R. 5 Ch. Ap. 279.

(2) L.R. 5 Ch. Ap. 251.

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SCOTT, J.—This suit is brought under Act XX of 1847 against the defendant for having unlawfully republished, in a cheaper form, in 1886, a revised and annotated edition of the "Vrtraj", a well-known Sanskrit work on religious ceremonial, in which revised edition the plaintiff had a subsisting copyright as first publisher, registered on the 14th May, 1885, under Act XXV of 1867. The defendant replies that he, and not the plaintiff, compiled the annotations and revised matter in question, and that the plaintiff, having fraudulently obtained a copy of this compilation, published it as his own work. The defendant further raised an issue as regards the injunction staying his sale claimed by the plaintiff, to the effect, that even if the Court holds that the plaintiff has not wrongfully appropriated the defendant's book, still the work is an independent work, written without reference to the plaintiff's work, and that the resemblance is due only to the nature of the subject and the necessarily similar character of the quotations and the authorities cited. First, as regards the law applicable to the case. It is not a case of piracy from a wholly original work. The foundation of both plaintiff's and defendant's book is an old Sanskrit work on Hindu ceremonial, which is not the subject of literary property, but may be published by any one that likes to pay for the printing of it. The copyright claimed lies in the annotations, alterations, and additions to the original text, which the parties admit to be material and valuable, and in which the plaintiff claims copyright by reason of his prior publication and registration—*Cary* v. *Longman*(1). No doubt, the part improperly taken must be substantial—*Chatterton* v. *Cave*(2). But the [363] materiality of the additions was admitted by the defendant, as he says they were made under his direction, and "that they were an important improvement on the old work," and he claims, in consequence, an exclusive right in this edition of the "Vrtraj". It is quite clear, on the authorities, that although the sources of information from which a work is compiled are open to all the world, still a writer must go to those sources, and he is not at liberty to save himself that labour by simply appropriating the labour and industry of a previous compiler, with an existing copyright. The utmost he can do is to use the references of his predecessor. He must not merely copy. See *Kelly* v. *Morris* (3). *Morris* v. *Ashbee* (4), *Lewis* v. *Fullarton* (5), and *Pike* v. *Nicholas* (6). If, instead of searching into the common sources, and obtaining your subject-matter from thence, you avail yourself of the labour of your predecessor, adopt his arrangement entirely, or with only a colourable variation—this is an unfair use of the plaintiff's work. But a person may publish a work in the same general from, provided he does so from his own resources and makes the work his own by his own labour and industry—*Jarrold* v. *Houlston* (7). There is another point of law which bears upon the case. It often occurs in these cases of disputed compilations that there is some piracy, together with a good deal of original work. Where the piracy is material, the Court must still hold the case to be one of infringed copyright. This was distinctly laid down by Lord Eldon in a famous copyright case sixty years ago. See *Mawman* v. *Tegg*(8). "As to the hard consequences," says the Chancellor, "which would follow from granting an injunction, when a very large proportion of the work is unquestionably original, I can only say, that, if the parts, which have

(1) 1 East. 358. (2) 3 App. Cas. 483. (3) 1 Eq. 697.
(4) 7 Eq. 34. (5) 2 Bea. 6 (6) L.R. 5 Ch. Ap. 251.
(7) 3 K. & J. 708. (8) 2 Russ. 390.

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been copied, cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden [364] by the law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me ; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame." Now to come to the facts as proved by the evidence. (His Lordship then examined the evidence at length, and continued :—)That completes the evidence for the defendant, and I do not believe the story by which the alleged fraud is attempted to be proved. The mere dates almost put the defendant out of Court, and his explanation of the plaintiff's being so long first in the field is lame to a degree. Moreover, it is surprising he did not know of the plaintiff's work during its career of eighteen months. Sanskrit books, and Sanskrit booksellers, are not so very plentiful in Bombay. In short, I am forced to the conclusion that the defendant has proved no fraud, and his defence fails.

Then comes the subsidiary question, whether the defendant's edition is so much a reproduction of the plaintiff's work as to entitle the plaintiff to an injunction. I have not, of course, been able to compare the two works by reading them through. I proposed to ask, and the plaintiff was willing that I should ask, a first-rate Sanskrit scholar. Dr. Peterson, to compare them ; but the defendant demurred, as it might hamper him on appeal. However, a knowledge of Sanskrit is not necessary. The defendant in his written statement admits the plaintiff's works, so far as the text goes, to be similar in every respect to his own work, and, he says, the notes are only altered for the sake of appearance. I am not sure that he stated his own case fairly as regards the notes. But there is no doubt as regards the texts being the same. There is no doubt, too, as regards the amount of new matter. I have counted the number of emendations of the text—they are about 600 in the plaintiff's manuscripts, and, besides emendations, there are 33 considerable additions pasted in amongst which are various summaries in addition to long and important passages which have been translated and exhibited in the case. I am forced to the [365] conclusion the defendant has copied the plaintiff's emendations and additions. Consequently, I think the case comes within Lord Eldon's rule I have already cited. "If a man mixes what belongs to him with what belongs to me, and the mixture is forbidden by the law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion"(1). My judgment is, therefore, for the plaintiffs. A perpetual injunction must issue to restrain defendant from further selling or printing copies of his annotated "Vrtraj"—and an account must be taken of the net profits made by defendant by his sale, and the unsold copies of his edition must be handed over to plaintiff. All costs must be paid by defendant.

The defendants appealed.

Inverarity and *Jardine*, for the appellants.

Lang and *Telang*, for the respondent.

(1) 2 Russ. 390.

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JUDGMENT.

SARGENT, C. J.—The plaintiff in this suit prays for an injunction restraining the defendants from printing and selling copies of a certain religious Sanskrit work on religious observances entitled "Vrtraj". He alleges that some years ago he resolved to prepare and publish a new and annotated edition of this book, which is said to be an old book of high authority, and for that purpose obtained the assistance of Pandits, who recast and rearranged the work, introduced various passages from other old Sanskrit books on the same subject, and added foot-notes. The plaint states that the Pandits were for two years engaged in the preparation of this new edition, which was published in December, 1884. The copyright was registered, under Act XXV of 1867, in May 1885.

In 1886 the defendants printed and published an edition of the same work, and the plaintiff says that the defendants' edition is substantially a copy of his book; that the defendants have sold it at a reduced price, and have thus materially injured his copyright.

There is no dispute as to the character of plaintiff's work. It is a reproduction of an old book with valuable additions from [366] other works introduced, and foot-notes appended where they are considered necessary or desirable.

Now the first question which arises is, whether for such a work as this the plaintiff is entitled to a copyright at all. It has been argued that there is really nothing original in the plaintiff's book, and that he is, therefore, not entitled to copyright. It has, however, been decided that it is not necessary that the subject-matter of a book must be perfectly new. A new arrangement of old matter will give a right to the protection afforded by the law of copyright. In *Jarrold* v. *Houlston* (1) the question was raised as to whether the author of a school-book—Brewer's Guide to Science—was entitled to copyright. That was a book containing, in the form of question and answer, explanations collected from various scientific works of certain simple scientific doctrines. The Vice-Chancellor says: "That an author has a copyright in a work of this description is beyond all doubt. If any one by pains and labour collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those questions, and explantions of those phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading, or out of works consulted by him for the express purpose, the reduction of questions so collected, with such answers under certain heads and in a scientific form, is amply sufficient to constitute an original work of which the copyright will be protected. Therefore, I can have no hesitation in coming to the conclusion that the book now in question is in that sense an original work, and entitled to protection."

The present case is not precisely similar to *Jarrold* v. *Houls on* (1), but we think the principles laid down by the Vice-Chancellor cover it. We have in this case the republication of an old text, with a large number of passages from other old writings on the same subject interpolated, and a number of foot-notes added by the plaintiff or by those employed by him. The work must have involved a considerable amount of labour, and we have no [367] doubt that it is original in a sense that entitles the plaintiff to copyright.

(1) 3 K. & J. 708, (713).

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The next question is, whether the defendants have been guilty of infringing the plaintiffs' copyright. This was scarcely contested before us, that their work was not an infringement in form. In fact, the defendants' own case is that the plaintiff has copied their work with only colourable alterations by getting possession of the manuscript of their intended edition and anticipating them in the publication, and if that was so, then of course the plaintiff has no right to the relief he claims in this suit. But have the defendants proved this allegation? What is their evidence? (His Lordship examined the evidence at length, and continued :—) On the whole we think that the evidence in support of the plaintiff's case is more reliable than that for the defendants, and we hold that the plaintiff is entitled to recover. It has been argued on behalf of the defendants that the decree of the Court below, in directing an account to be taken of the net profits made by the sale by the defendants of the plaintiff's book, gives a relief which is not consistent with ss. 12 and 13 of Act XX of 1847 (1), under which it is said the plaintiff is only permitted to recover his books or damages for their detention. It has also been contended that the notice sent by the plaintiff **[368]** to the defendants on the 28th February, 1887, requiring them to deliver "all the unsold copies of your said work, together with the price of the copies already sold," is not such a notice as is required by s. 12. We think, however, that the notice was sufficient, although it demands the price of the sold copies instead of damages and that the decree is right in ordering an account to be taken. The result of the account will be to give to the plaintiff what he would have obtained as damages if the decree had given relief in that form. We confirm the decree with costs.

Decree confirmed.

Attorneys for the appellants :—Messrs. *Macfarlane, Edgelow, and Hemming.*

Attorney for the respondent :—Mr. *Khanderav Moroji.*

(1) Act XX of 1847, Section "12.—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 copy-right 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.

"13.—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 part who shall detain the same, or to sue for, and recover damages for the conversion thereof in an action of trover; and if the case be within the jurisdiction of any Zilla 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 zilla or other local Courts for the recovery of specific personal property, or damages for the detention or conversion thereof."