14 B. 586.

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ORIGINAL CIVIL.

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Before Mr. Justice Parsons.

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MUNSHI SHAIK ABDURRUHMAN AND ANOTHER (*Plaintiffs*) *v.* MIRZA MAHOMED SHIRAZI (*Defendant*).* [1st August, 1890.]

Copyright—Translation—Act XX of 1847—*Act XXV of* 1867.

A person who translates a book into another language is not thereby guilty of an infringement of copy-right.

[F., 19 B. 557 (567.]

SUIT to restrain an infringement of alleged copyright.

The plaint stated that in 1886 the second plaintiff published a book in the Urdu language called "Moontakhebate Bakiri" (*i. e.*, [587] Selections by Bakir), being a revised edition of the book published by him in 1885. In January, 1887, the said book was registered in the name of the first plaintiff under Act XXV of 1867, and the plaintiffs claimed to be entitled to the copy-right.

The following paragraphs of the plaint set forth the plaintiffs' case against the defendant:—

"4. The said book consists of receipts for chemicals, metals, dyes, &c., &c., for the purposes of art and manufactures, written, collected, translated, invented, recasted, and re-arranged by the second plaintiff at the sacrifice of considerable labour, time and money. It is divided into two parts. Part I treats of mineral products, and is divided into eight chapters, as follows:—

"Chapter 1st, on preparing artificial gems; 2nd, on gold alloys; 3rd on silver alloys; 4th, on copper alloys; 5th on tin and lead alloys: 6th, on iron and steel; 7th, on quicksilver; 8th, on the art of gilding.

"Part II treats of different arts and industries, and is divided into fifteen chapters, as follows:—

"Chapter 1st, on fire-works; 2nd, on inks of different colours; 3rd, on cement and glues; 4th, on enamelling; 5th, on varnish-making; 6th, on dyeing piece-goods; 7th, on soap-making; 8th, on preparing sealing wax; 9th, on book-binding; 10th, on extracting essential oils; 11th, receipt on hair dyes; 12th, preparing colour for plan-makers; 13th, on preparing matches; 14th, on preparing looking-glasses; 15th, consists of different receipts on different arts.

"5. The plaintiffs' said book has acquired a considerable reputation in India, and about five hundred copies were sold annually.

"6. The defendant in the month of March, 1889, published a book in the Persian language which he has called 'Moontakhebate Mahomedi', *i. e.*, Selections by Mahomed. The said book is almost an exact translation of a large portion of the said book of the plaintiffs. It is divided into two parts. Part II of the defendant's book bears the same headings and is divided into the same number of chapters, each bearing exactly the same headings as Part I of the plaintiffs' said book; and Part I of the defendant's said book bears the same headings and is divided into the same number of

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chapters each bearing exactly the same headings as Part II of the plaintiffs' said book. The text of the defendant's said book, including remarks, additions and alterations in the receipts, is identical with that of the plaintiffs', with the exception of the addition of twelve receipts taken from other books and the omission of some unimportant portions from the plaintiffs' book.

"The price of the plaintiffs' said book is a rupee per copy, while the price of the defendant's is eight annas a copy. The plaintiffs say that the publication and the sale of the said book by the defendant is a breach of their right, and they have been greatly injured thereby, as by this wrongful act of the defendant the sale of the plaintiffs' book has been practically stopped for the last two months."

The plaintiffs prayed (*a*) for an injunction restraining the defendant from selling any copies of his book, Moontakhebate [588] Mahomedi; (*b*) for the delivery to the plaintiffs of copies of the said book under the defendant's control; (*c*) for an account of the profits.

The defendant filed a written statement, of which the following are the material paragraphs:—

"2. The defendant is not aware and does not admit the exclusive copyright of the plaintiffs in the book called the Moontakhebate Bakiri in the plaint mentioned.

"3. The defendant believes that the said book is merely a translation into Urdu of parts of English books, and is not in any way an original compilation.

"4. The defendant does not believe or admit that the said book has acquired any reputation in India, or that five hundred copies of the same are annually sold in India as in fifth para. of the plaint alleged.

"5. The defendant admits having published in the Persian language the book called the Moontakhebate Mahomedi. The defendant, however, says that such book is an original compilation from English books of authority and other books, and is in no way copied from the plaintiffs' book, and is not any infringement of the plaintiffs' alleged copyright in his said book, although some of the matter having been abstracted from the same original sources for the plaintiffs' as well as the defendant's book is necessarily similar in substance."

The following were the material issues raised at the hearing:—

1. Whether the plaintiffs are entitled to the exclusive copyright of the work, Moontakhebate Bakiri?

2. Whether the plaintiffs' said work is an original compilation?

3. Whether the defendant's work Moontakhebate Mahomedi is an infringement of the plaintiffs' copyright?

Lang and *Vicaji*, for plaintiffs.—Of the four hundred receipts in the plaintiffs' book the defendant has copied two hundred and thirty, and has arranged them in the same order. Of the two hundred and thirty, about fifty are receipts invented by the plaintiffs. Seventy are translations from English, fifteen are taken from English books—being, however, not translations, but abridgments or re-arrangements. Fifteen have been supplied to the plaintiffs by their friends. The plaintiffs' order of arrangement is original. The defendant has copied that, slightly transposing parts. He has the same number of chapters and the same headings to them. Counsel

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cited *Jarrold* v. *Houlston* (1); *Scott* v. *Stanford* (2); [589] *Murray* v. *Bogue* (3); Act XX of 1847, s. 7; Act XXV of 1867, s. 1.

Inverarity and *Anderson*, for defendant.—Even if the subject-matter of defendant's book is identical with that of the plaintiffs' book, this is not an infringement of copyright, for, in that case, it is a translation and not a copy. It is made for a wholly different market and class of buyers, and, therefore, is no injury to the plaintiffs.

JUDGMENT.

PARSONS, J.—The point that is now taken in this case is this, *viz.*, whether there has been any infringement of plaintiffs' copyright, inasmuch as defendant's book, if identical with plaintiffs', is a translation of it into Persian—that is, into a different language, and, as such, not a copy and not an infringement?

I decide this point in the negative. It is admitted that the defendant's book is in Persian, whereas the plaintiffs' is in Urdu; so that the former is a translation and not a copy. Section 7 of Act XX of 1847, under which these proceedings are taken, says: "If any person shall print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright * * * * shall be liable, &c., &c." The use of the words "print or cause to be printed" only, and the omission of the word "translate" appear very important, considering the doubts that the Act was intended to remove. No definition of the term "book" is given in the Act. The definition given in 5 and 6 Vic., c. 45, does not mention translation. It is apparent that a translation and a copy stand on different footings; on the former the skill and time and labour of another have been employed, and a book has been produced available for a different class or race of readers. There is not necessarily any competition between the two. Under English law it appears that a translation has been always considered to be an original composition. It was on this view of the law that *Wyatt* v. *Barnard* (4) was decided. In the case of *Millar* v. *Taylor* (5) Yates, J., says distinctly that although publication of a composition does not give away the property in the book, yet that the [590] purchaser may improve upon it, imitate it, and translate it. In *Burnett* v. *Chetwood* (6) the Lord Chancellor, though he granted an injunction for other reasons, was clearly of opinion that a translation was not the same with the reprinting the original, on account that the translator had bestowed his care and pains upon it, and so that it was not within the prohibition of the Act. Sir J. L. K. Bruce, V. C., in *Prince Albert* v. *Strange* (7) says: "A work lawfully published, in the popular sense of the term, stands in that respect differently from a book which has never been in this situation. The former may be liable to be *translated*, abridged, analyzed, exhibited, complimented, and otherwise treated in a manner that the latter is not."

Neither, then, under English law nor under Act XX of 1847 can I hold that the defendant has infringed the plaintiffs' copyright by translating his book. It is unnecessary to refer to statutes later than 5 and 6 Vic., c. 45. It is not contended that the plaintiff can take advantage

(1) 3 Kay & J. 708.
(2) 3 Eq. Cas. 718.
(3) 1 Drury. 353.
(4) 3 V. & B. 77.
(5) 4 Burr. 2348.
(6) 2 Meriv. 441.
(7) 2 De G. & Sm. 693.

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of 15 and 16 Vic., c. 12, and I may remark that he has nowhere notified in his book that he has reserved the right of translation. I order that the suit be dismissed, with costs up to and including the hearing of yesterday. Each party is to bear his own costs of the hearing to-day.

Suit dismissed.

Attorneys for the plaintiffs:—Messrs. *Thakurdas, Dharamsi and Cama.*

Attorney for the defendant:—Mr. *Mirza Husen Khan.*

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APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

MALUKCHAND BIN GYANMAL (*Original Defendant*), *Appellant v.* SHAN MOGHAN VARDRAJ (*Original Plaintiff*), *Respondent.*[*]

[24th March, 1890.]

Power of attorney—Construction of—Power to dispose of property does not give authority to pledge.

A power of attorney authorized the holder "to dispose" of certain property in any way he thought fit.

[591] *Held*, that the word "dispose" was not used in any technical sense, and that the holder of such power had no authority to mortgage the property.

A power of attorney must be construed strictly.

[R., 6 C.L.J. 490 (516).]

APPEAL from the decision of Thomas Moore, First Class Subordinate Judge of Sholapur, in suit No. 644 of 1884.

The property in dispute belonged originally to one Ramaswami.

On the 9th August, 1864, Ramaswami executed a power of attorney in favour of Shivshankar R. Mudliar in the following terms:—"I do hereby authorize Mr. Shivshankar Ramaswami Mudliar to dispose of my bungalows situate in the camp at Sholapur in the way he thinks proper."

On the 12th October, 1864, Shivshankar mortgaged certain property, including the property in dispute, to the Land Mortgage Bank of India for Rs. 50,000. In effecting this mortgage Shivshanker professed to act, and the Bank dealt with him, as owner of the property, and not as agent of Ramaswami.

In 1870 the property in dispute was sold in execution of a decree obtained by one Rampertap against Ramaswami, and purchased by one Anaji, who obtained possession through the Court.

In 1871 Anaji sold the property to defendant No. 3, and put him in possession.

In 1872 the Land Mortgage Bank, in exercise of the power of sale contained in the mortgage-bond of 1864, sold by public auction their interest in the mortgaged property to the plaintiff.

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[*] Appeal No. 65 of 1888.