history to be supplemented by mere guesses. Nothing is said about the "proper course" to follow. Their Lordships merely dealt with the facts before them which were held to justify the finding of the District Judge in appeal. No rule was laid down as to the conclusions which other Judges of fact might draw from the evidence before them in cases with which they might have to deal. The words "proper course" quoted by the Second Class Subordinate Judge seem taken from the summary in the Index to the Judgments for 1887, and are not to be found in the judgment itself.

In a case like the present a serious difficulty undoubtedly arises in determining the amount of principal, but the Court must nevertheless endeavour to form its own opinion on the subject. As the law stands, mere guesses as to the sum of money actually advanced cannot be made in favour either of one side or the other. If there are no materials from which the Court can satisfy itself as to the amount which should be allowed on account of principal, whether under clause (*b*) or clause (*d*) of section 13 of the Act, it is open to it, as pointed out in *Máloji* v. *Vithu* [1], to have recourse to arbitration under the provisions of section 15

Under these circumstances, as the account has not been taken in accordance with the Act, we must reverse the decree of the lower appellate Court and remand the appeal for a fresh decision in reference to the above remarks.

Decree reversed.

(1) I. L. R., 9 Bom., 520.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

MACMILLAN AND OTHERS (PLAINTIFFS) *v.* KHÁN BAHÁDUR SHAMSUL ULAMA M. ZAKA (DEFENDANT).*

1895. *February* 25.

Copyright—Infringement—Translations—Jurisdiction—Statute 5 and 6 Vict., cap. 45—Order for books sent from Bombay to Delhi—Value payable post—Registration of copyright—Notice of disputed proprietorship—Act XX of 1847, *Sec.* 8—*Practice—Procedure.*

The plaintiffs were publishers in London. The defendant carried on a printing and publishing business at Delhi. Between the years 1869 and 1891 the defendant transla-

* Suit No. 607 of 1894.

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ted certain English works (*e. g.* Todhunter's Mensuration, Barnard Smith's Algebra, &c.) into the Urdu language for the use of native students, and sold and distributed copies of such translations in various parts of India. The plaintiffs alleged that they were the proprietors of the copyright in the said books, and they sued in Bombay for a declaration of their ownership, and that the said books printed and sold by the defendant were an infringement of the said copyright, and for an injunction, &c. It appeared that in June, 1894, the plaintiffs' agent, who was then in India, instructed the Bombay firm of Sunder Pándurang to order copies of the said translations from the defendant. A letter was accordingly sent by Sunder Pándurang to the defendant at Delhi requesting him to send the books to Bombay by value payable post, which the defendant did, and he received payment for them from the Post Office at Delhi. The defendant pleaded (*inter alia*) that the High Court of Bombay had no jurisdiction, and he denied that he infringed the plaintiffs' copyright.

Held, that no part of plaintiffs' cause of action arose in Bombay, and that the High Court of Bombay had no jurisdiction. The act of Sunder Pándurang in paying for and receiving the goods formed no part of the defendant's offence, which was completed when he posted the books at Delhi.

The English Copyright Act (Stat. 5 and 6 Vict., cap. 45) extends to all parts of India. Having regard to section 15 of that Act it is clear that a person who infringes copyright must be sued, if he offends in India, not only within the limits of that country, but also in that part of India in which the offence has been committed. See also section 13 of the Indian Act XX of 1847.

Held, also, that translations are not copies, and that the defendant by translating the books had not infringed the plaintiffs' copyright.

The plaintiffs had registered themselves as the proprietors of the copyright of the books in question both in London and in India. The defendant had not given notice of his intention to dispute the plaintiffs' copyright as required by section 8 of Act XX of 1847.

Held, that the plaintiffs' copyright in the book had been established.

SUIT to restrain the infringement of copyright.

The plaintiffs, who carried on the business of publishers in London under the name of Macmillan and Company, sued (through their attorney, R. Gilbert) the defendant, who resided at Delhi, to restrain him from printing and selling certain school books, of the copyright of which they were the registered proprietors in England and in India.

The plaint alleged that the plaintiffs were the proprietors of the copyright in the books in question, *viz.* (1) "Mensuration and Surveying for Beginners" by J. Todhunter, (2) "Algebra" by Barnard Smith; (3) "Arithmetic for Schools" by Barnard Smith; (4) "Elementary Lessons in Physical Geography" by

Geikie; (5) "Rudiments of Physical Geography" by Blandford, and that the defendant had printed or caused to be printed copies of the said books in the Urdu language, which he sold and distributed in different parts of India including the town and island of Bombay. In particular it was alleged that in the month of June, 1894, the defendant sold and delivered to one Sunder Pándurang, in Bombay, copies of the said books, which were piracies.

The plaint further stated that it was the intention of the plaintiffs themselves to publish the aforesaid books in the Urdu language.

The plaintiffs prayed for a declaration that they were the owners of the copyright in the said books, and that the books printed and sold by the defendant as aforesaid were an infringement of the plaintiffs' copyright; for an injunction and an account, &c.

The defendant filed a written statement as follows:—

"2. The defendant denies that he has printed or caused to be printed copies of the said books as in the 2nd paragraph of the plaint alleged; but with respect to the first three of the said books (*viz.* Mensuration and Surveying for Beginners by J. Todhunter, Algebra by Barnard Smith, and Arithmetic for Schools by Barnard Smith) the defendant admits that he has with the expenditure of much labour and skill translated the same into Urdu language, and has from time to time printed and published and sold copies of such translations in Delhi outside the jurisdiction of this Honourable Court. With respect to the fourth book in the said paragraph referred to (*viz.* Elementary Lessons in Physical Geography by Giekie), the defendant admits that he has composed and printed and published in Delhi aforesaid and there sold copies of a treatise in the Urdu language entitled 'Jugrophia Tobai' for the purpose of which he has borrowed and adapted certain information from the said book in common with other books of a kindred nature. The defendant denies that he has either translated or printed or published translations of the fifth book in the said paragraph referred to (*viz.* Rudiments of Physical Geography by Blandford). The defendant also denies that he has sold or distributed in the town or island of Bombay any copies, translations or adaptations of the said books whatsoever.

"3. With reference to the 4th paragraph of the plaint, the defendant says that on or about the 25th day of June, 1894, he received in Delhi an order for (*inter alia*) certain of his Urdu works from one Sunder Pándurang of Bombay, and that he on the same day executed the said order in Delhi by forwarding to the said Sunder Pándurang, by value payable post, in the ordinary course of business, such of the said works or translations as he was then able to supply. Translations of two only of

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the books referred to in the plaint, *viz.* the two works by Barnard Smith, were among the works he sent.

"4. The defendant submits that under the circumstances hereinbefore set out, no cause of action has accrued to the plaintiffs within the jurisdiction of this Honourable Court.

"5. Without waiving the contentions in the last preceding paragraph hereof raised, the defendant says, with reference to the book entitled Mensuration and Surveying for Beginners by J. Todhunter in the first paragraph of the plaint referred to, that in or about the year 1870 the defendant wrote to the said J. Todhunter asking permission to translate his works into the Urdu language, and that the same was then accorded to the defendant with the knowledge and consent of the plaintiffs, and that the plaintiffs have no right now to raise any question with respect thereto. A copy of a letter received by the defendant from the said J. Todhunter, dated the 18th of October, 1870, is hereto annexed.

"6. The defendant further says that on the 4th day of January, 1891, he sold and assigned all his rights in the treatise entitled 'Jugrophia Tobai,' in the second paragraph hereof mentioned, to one Lála Guláb Sing, Curator and Superintendent of the Punjáb Book Depôt at Lâhore, and that since that date he has neither printed, nor caused to be printed, nor had in his possession for sale or hire any copies or copy of the same.

"7. With reference to the 4th paragraph of the plaint, the defendant submits that, if and so far as the copyright of the books in the first paragraph of the plaint referred to is the property of the plaintiffs, the same has been in no way infringed by the defendant.

"9. With reference to the 6th paragraph of the plaint, the defendant submits that he has valuable and subsisting rights and interests in his aforesaid Urdu works or translations, and that the same can in no way be affected by any future intentions of the plaintiffs with respect to the said books.

"10. The defendant does not admit that the plaintiffs only became aware in the beginning of 1894, that the defendant had printed and sold or was printing and selling his said Urdu works or translations as in the first paragraph of the plaint alleged. The defendant says that he printed and published his translation of Mensuration and Surveying for Beginners by J. Todhunter, in fourteen editions, between the years 1870 and 1891, and his translation of Algebra by Barnard Smith, in three editions, between the years 1871 and 1884, and his translation of the Arithmetic for Schools by Barnard Smith, in twenty-one editions, between the years 1871 and 1893 without objection or claim on behalf of the plaintiffs, and that it would be inequitable now to restrain him from selling the same.

"11. The defendant submits that the claim of the plaintiffs is barred by limitation."

The following issues were raised at the hearing:—

1. Whether the Court has jurisdiction in respect of any and which of the matter complained of in plaint?

2. Whether plaintiffs are proprietors of copyright in any and which of the five books referred to in the first paragraph of the plaint?

3. Whether defendant has infringed the plaintiffs' copyright in any and which of the said books?

4. Whether plaintiffs' claim is not barred by limitation?

5. Whether plaintiffs are not precluded by delay from obtaining relief in the suit?

6. Whether with regard to the works of Todhunter, the defendant has not translated same with consent of Todhunter and plaintiffs?

Macpherson and *Inverarity* for plaintiffs:—They referred to Act XX of 1847; Act IX of 1871; Statute 5 and 6 Vict., cap. 45, secs. 15, 24 and 26; *Munshi Shaik Abdurruhman* v. *Mirzá Mahomed*(1); *Murray* v. *Bogue*(2); Scrutton on Copyright; *Nicols* v. *Pitman*(3); *Warne* v. *Seebohm*(4); *Hanfstaengl* v. *Empire Palace, &c.*(5); *Gonband* v. *Wallace*(6); Limitation Act (XV of 1877), Sch. II, art. 40.

Lang (Advocate General) and *Lowndes* for the defendant:—They cited *Wyatt* v. *Barnard*(7); *Millar* v. *Taylor*(8); *Burnett* v. *Chetwood*(9); *Prince Albert* v. *Strange*(10); *Macmillan* v. *Suresh Chunder Deb*(11).

FARRAN, J.:—This suit, which was heard on the 25th February last, raises questions of some interest as to jurisdiction in copyright actions, and as to whether unauthorised translations constitute an infringement of copyright.

The facts are these: The plaintiffs are publishers in London. They have brought out the following among other educational works:—(1) Mensuration and Surveying for Beginners, by Todhunter; (2) Arithmetic for Schools, by Barnard Smith; (3) Arithmetic and Algebra, by Barnard Smith. The plaint complains of the infringement, by the defendant, of the plaintiffs' copyright in two other works, but as admittedly the plaintiffs did not prove, at the hearing, any cause of action as to them

(1) I. L. R., 14 Bom., 586.
(2) 1 Dr., 353 at p. 367.
(3) 26 Ch. D., 374.
(4) 39 Ch. D., 73.
(5) L. R. (1894) 3 Ch., 109.
(6) 36 L. T., 704.
(7) 3 V. and B., 77.
(8) 4 Burr., 2344.
(9) 2 Mer., at p. 441.
(10) 2 DeG. and Sm., 692.
(11) I. L. R., 17 Cal., 951.

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cognisable by this Court, no further reference need be made to them in this judgment.

The defendant (who was formerly Professor of Vernacular Science and Literature in the Muir Central College at Allahabad, but now enjoys a pension from Government) resides at Delhi, and carries on a printing and publishing business there. In 1851 he began, for profit and in order to assist native students, to translate English mathematical works into the Urdu language. In 1869 he so translated Todhunter's Mensuration and Surveying. Of this he printed and published fourteen editions between that time and 1891. In or about the year 1871, he translated Barnard Smith's Arithmetic and Algebra, of which he printed and published three editions between 1871 and 1884, and in or about the year 1871 he translated Barnard Smith's Arithmetic for Schools, of which he printed and published twenty-one editions between 1871 and 1893.

Soon after publishing the translations of Todhunter's works in 1869, the defendant wrote to Dr. Todhunter at Cambridge, asking for his permission to publish it, and received a reply purporting to come from Dr. Todhunter, and to be written and signed by him. In it the writer states that he had consulted his publishers, and continues:—"They of course agree with me in the natural regret that the translation of books into a foreign language should bring no remuneration to those who have expended their time and capital in the original production of them. But of course, as we have no control over the circumstances, we cannot refuse the permission which you seek." He then went on to ask the defendant to send his (Dr. Todhunter's) publishers two copies of any translation of his works which the defendant might issue. The defendant says that he sent the copies asked for. This letter has been objected to by the plaintiffs on the ground that it has not been proved to have been written by Dr. Todhunter, but I have no doubt as to his having written it, and that it is admissible in evidence: Taylor on Evidence, para. 1864.

No objection was ever taken to the defendant's translations until that which I am about to refer to. In October, 1892,

Mr. John A. Stagg came out to India as plaintiffs' agent; and in December, 1893, when at Láhore, he learned that the defendant had been publishing the translations into Urdu, of which the plaintiffs complain. He saw the defendant on the subject at Delhi. The defendant admitted that he had published the translations, but contended that he had a right to do so. After this, a correspondence took place between the defendant and the plaintiffs in London, in which the defendant, with extreme courtesy, upheld his right to publish the translations in question, but the plaintiffs expressed their inability to accept his views, and their determination to enforce their legal rights. On the 22nd June, 1894, the plaintiffs' agent, Mr. Stagg, instructed the Bombay firm of Sunder Pándurang to order the translations published by the defendant. Sunder Pándurang accordingly wrote the following letter to the defendant at Delhi:—"Dear Sir,—Please send me the undermentioned books per value payable post, allowing the usual trade discount, and oblige." The list comprised, among others, the defendant's translations of the three works which I have named. The defendant, in reply, wrote: "I have despatched to your address a book-packet by value payable post containing the following books." The list comprised translations of the two works by Barnard Smith, but of a different work by Todhunter. Sunder Pándurang received, and paid through the post office for, the books which the defendant sent to Bombay by value payable post, and the defendant received the amount from the post office at Delhi.

The first question which arises on these facts is, "whether this Court has jurisdiction in respect of any, and which of the matters complained of in the plaint." The English Copyright Act, 5th and 6th Vict., cap. 45, extends (section 29) to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions; and (by section 2), British dominions include all parts of the East and West Indies. The Act, therefore, extends to all parts of India, which must, I think, be taken, for the purposes of the statute, not as a homogeneous whole, but as divided into parts. Section 15 deals with jurisdiction, and enacts "that if any person shall in any part of the British dominions after the passing of the Act print or cause to be printed either for sale or

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exportation any book in which there shall be subsisting copyright without the consent of the proprietor thereof * * * or shall sell, publish or expose to sale or hire *. * * or cause to be sold, published or exposed to sale or hire or shall have in his possession for sale or hire any such book so unlawfully printed * * * without such consent, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright to be brought in any Court of record in that part of the British dominions in which the offence shall be committed." It is to my mind clear that the offender must be sued, if he offends in India, not only within the limits of that country, but in that part of India in which the offence is committed. If, therefore, he offends in Delhi, he cannot, by virtue of the provisions of this statute, be sued in Bombay. He must, I think, if sued in a Court of record, be sued in that Court of record which has jurisdiction in that part of India where the offence is committed. If the aid of the Indian Act XX of 1847, section 13, can be used to explain the English statute, the case is clear beyond all doubt; but I think that even without such aid there can be no reasonable doubt as to construction of the statute. So far, therefore, as the suit relates to the translations of Todhunter's work, which are complained of in it, and which were not sent to Bombay, I am of opinion that the Court has no jurisdiction to hear it.

I now proceed to consider whether the sending, by the defendant, of the translations of Barnard Smith's works, by value payable post, to Sunder Pándurang in Bombay, gives rise to a cause of action here, assuming for this purpose that publication of such translations constitutes a breach of the plaintiffs' copyright. The unauthorised sale is the cause of action. The statute makes such unauthorised sale an offence. The question for solution, is where was that offence committed ?

Now, in the case of a sale of unascertained goods, the property in the goods does not pass: the sale is not completed until the goods are finally appropriated to the contract, but where they are so appropriated, the sale is complete, and the property passes: the obligation of the purchaser to pay the price, being the consideration for the

sale.[1] Where, from the terms of an executory agreement to sell unspecified goods, the vendor is to despatch the goods he. . . has the right to choose what the goods shall be; and the property is transferred the moment the despatch has commenced[2]. So far the law is, I think, clear. Cotton, L. J., in *Mirabita* v. *Imperial Ottoman Bank*[3], states it in the following words (p. 172): —"Under a contract for sale of chattels not specified, the property does not pass to the purchaser unless there is afterwards an appropriation of the specific chattels to pass under the contract, that is, unless both parties agree as to the specific chattels in which the property is to pass and nothing remains to be done in order to pass it. In the case of such a contract the delivery by the vendor to a common carrier * * is an appropriation sufficient to pass the property."

In the case, however, of a vendor shipping goods he may, by taking the bill of lading in his own name, reserve to himself what is commonly called a *jus disponendi*, in which case he shows his intention that the property shall not pass until the price is paid or some other condition is fulfilled by the purchaser—*Wait* v. *Baker*[4]; *Ogg* v. *Shuter*[5]; *Mirabita* v. *Imperial Ottoman Bank*[3]. Up to that time he can deal with the goods so as to defeat the purchaser's rights under his contract, leaving the latter to his action for damages for breach of contract. I think, however, that it must also be that, when delivering the goods to a common carrier, he could similarly, by sufficiently declaring his intention, prevent the property in the goods from passing. The question in each case is a question of intention. In the case of goods ordered to be sent by value payable post, I think that the intention must be that the property vests in the purchaser from the time the goods are posted. The vendor by posting them parts absolutely with the goods. He cannot reclaim them, nor does he, I think, retain any *jus disponendi* over them, and on the purchaser paying for the goods when the post office tenders them to him, the purchaser becomes absolutely entitled to receive them, a title which the vendor cannot, I think, defeat. The fact that

(1) Benjamin on Sales, Bk. II, Chaps. 2 and 5 (4th Ed.).

(2) Benjamin on Sales (4th Ed.), p. 320.

(3) 3 Ex. D., 164.

(4) L. R., 2 Ex., 1.

(5) 1 C. P. D., 47.

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the vendor retains through the post office a *quasi* lien over the goods or right to refuse delivery until payment, is not, in my opinion, sufficient to prevent the property in the goods vesting in the purchaser from the time of their appropriation.

If this be the correct way of regarding the transaction, as I think it is, it follows that the sale of the books in question took place at Delhi when the books were posted, and that the offence was complete there. Delivery to the purchaser and payment of the price in Bombay does not constitute the sale. Sale and delivery are two distinct acts, though the latter is the completion of the former. The common count for goods bargained and sold, as distinguished from the common count for goods sold and delivered, marks the distinction.

From this I think it also follows that no part of the plaintiffs' cause of action arose in Bombay so as to give them a right to sue under clause 12 of the Letters Patent. The act of Sunder Pándurang in paying for and receiving the goods forms no part of the defendant's offence, which, as I have showed, was, in my opinion, completed when he posted the books at Delhi. I have, therefore, come to the conclusion that the Court has no jurisdiction over the defendant in this matter.

The question is, however, such a doubtful one that I think that I ought to consider the other issues in the case in order to avoid a remand in case a higher Court should come to a different conclusion upon it. The defendant has raised an issue as to the plaintiffs' copyright in the books complained of. The plaintiffs have, however, registered themselves as the proprietors of the copyright in both London and India; and section 16 of the statute 5 and 6 Vict., cap. 45, and section 8 of Act XX of 1847 prevent the defendant from raising this question at the hearing without previous notice. The defendant in this case has given no such notice, but has, on the contrary, virtually admitted the plaintiffs' title previous to the suit. I must hold that the plaintiffs' copyright in the books in question has been established.

The important question still to be considered in this case is whether the defendant's translations into Urdu of Barnard Smith's two works are an infringement of the plaintiffs' copy-

right therein. It is strange that the question has not been long since authoritatively decided. The cases of *Stowe* v. *Thomas* in the United States in 1853 and of *Munshi Shaik Abdurruhman* v. *Mirza*[1] decided by Mr. Justice Parsons in this Court in 1890, are the only actual decisions upon the subject which have been cited to me: the only ones that, I believe, have been passed. They both determine the question in the negative. The text-book writers take the opposite view. Under these circumstances, and as the decision of Mr. Justice Parsons was upon the Indian Act and not under the English statute, I ought, I think, to come to an independent conclusion upon the subject.

Whether copyright existed at common law before the statute of Anne (8 Anne, cap. 19) has long been a question much debated by lawyers; but since the decision of the House of Lords in *Jefferys* v. *Boosey*[2], it must, I think, be assumed by Courts of law dealing with questions of copyright that no such right existed before that statute. The question must, therefore, depend upon the construction of the statutes for the time being relating to copyright, and by considering what rights they confer upon its proprietor without taking into consideration what benefits the author of a work ought or ought not to derive from the creation of his brain and pen. After publication, the works of a writer are *publici juris*, but the statutes confer upon him or his assignee certain exclusive privileges, the boundaries and extent of which are defined and limited by the statutes which confer them. The statute at present in force is 5 and 6 Vict., cap. 45, of which the Indian Act XX of 1847 is a reproduction with certain necessary alterations. It will be sufficient to consider the terms of the English statute. Copyright is defined by it to mean "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is therein applied"—copies for the purpose of this suit of any "book,"—and "book" includes every volume, part or division of a volume separately published. Section 15 makes it an offence giving rise to an action for any person to print or cause to be printed for sale or exportation, &c., any book in which there shall be subsisting copyright without the consent in writing of the proprietor thereof.

(1) I. L. R., 14 Bom., 586. (2) 4 H. L. C., 815.

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Section 23 enacts that all copies of any book wherein there shall be copyright, unlawfully printed or imported, shall become the property of the proprietor of the copyright. Translations of copyrighted books are not referred to in the Act. It is difficult to understand why they should not be mentioned in the Act if they were intended to be prohibited by it.

Two years subsequently, an International Copyright Act was passed, 7 and 8 Vict., cap. 12. Its 18th section provided that nothing in the Act should be construed to prevent the printing publication, or sale of any translation of any book, the author whereof and his assigns might be entitled to the benefit of the Act. This rather tends to show that, in the opinion of the Legislature of that time, different considerations applied to translations from those which applied to the making of mere copies. Judicial opinion certainly tended in the same direction. Before the passing of the statute, and when the Act of Anne was in force, Lord Macclesfield, in 1720, entertained a strong opinion that a translation might not be the same as the reprinting of the original on account of the translator having bestowed care and pains upon it, and so not within the prohibition of the Act—*Barnett* v. *Chetwood*[1]. In 1769, Lord Mansfield, in the case of *Millar* v. *Taylor*[2], said: "If any man should turn the Psalms or the writings of Solomon or Job into verse, the king could not stop the printing or sale of such a work. It is the author's work." Mr. J. Willis said: "Certainly *bonâ-fide* imitations, translations and abridgments are different, and in respect of the property, may be considered as new works;" and Aston, J., added: "The right of the copy (after publication) still remains in the author .... He (the purchaser) may improve upon it, imitate it, translate it, oppose its statements, but he buys no right to publish the identical works." In 1814, Lord Eldon treated translations as original works, but these were translations from foreign works not protected by the Copyright Act—*Wyatt* v. *Barnard*[3].

At the date of the Act of 1842 (Stat. 5 and 6 Vict., cap. 45), therefore, there had been a current of judicial opinions to the effect

(1) 2 Mer., 441. (2) 4 Burr., at pp. 2348, 2405.
(3) 3 Ves. and B., 77.

that translations were not copies, and that a person, by translating a work, did not infringe the author's copyright. It would be strange, then, if the Legislature in that year intended to prohibit translations, that they should not have used some apt words to effect their purpose. Soon after the passing of the Act, Vice-Chancellor Knight Bruce, in 1849, used similar language. A published work, he said, "may be liable to be translated, abridged, analysed, exhibited in morsels, complimented and otherwise treated in a manner that an unpublished manuscript is not"—*Prince Albert* v. *Strange*(1). In 1853, this was actually decided in the United States in the case of *Stowe* v. *Thomas*, already referred to.

In *Murray* v. *Bogue*(2) Vice-Chancellor Kindersley assumed that, if an English work protected by copyright had been translated into German and such German work had been re-translated into English, the latter translation would be an infringement of the original work. That is manifestly so, for it would still be a copy of it though made through the medium of a German translation. This assumption offers no assistance in coming to a decision in the present case. The case of *Nicols* v. *Pitman*(3) also does not touch the present question. There the defendant printed in short-hand characters a lecture which had not been "published" by the author. It was held that he had no right to print it at all. It would have made no difference, I think, if he had published it in German or Chinese. The lecture had not been given to the world. It was still the private property of the author.

The case of *Warne* v. *Seebohm*(4) is more nearly in point. There the defendant dramatised "Little Lord Fauntleroy." This, it was admitted, he was entitled to do. In doing this, he copied passages from the original work, and published a few of such copies. He was ordered to expunge the copied matter from his drama. The decision was in accordance with the earlier cases on the same subject. All were based upon the same ground, namely, that substantial parts of the plaintiff's book had been copied into

(1) 2 DeG. and Sm., 693.
(2) 1 Dr., 367.
(3) 26 Ch. D., 374.
(4) 39 Ch. D., 73.

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the new drama—*Timsby* v. *Lacey*(1) and *Reade* v. *Lacey*(2). It has always been held that the publication of an extract from a book, if used for an unauthorized purpose, is within the prohibition of the statute—*Rooney* v. *Kelly*(3). I have also considered the judgment in the case of *Hanfstaengl* v. *The Empire Palace*(4), but have not derived much assistance from it. No other cases have been cited to me. The current of judicial *dicta* since the passing of Act 5 and 6 Vict., cap. 45, has not, I think, changed from its previous direction. If we read the words of the statute in their ordinary, natural meaning, they do not, I think, cover translations. It would be a strained and unnatural use of language to say that translations are "copies". To my understanding they are essentially different productions—one is intellectual, the other mechanical. It may be—doubtless is—desirable to afford to authors protection in respect of translations of their works if they desire it; but, I think, that it must be conceded that such translations stand on a different footing from copies. They are rarely, if ever, made by the author of the original work: they circulate, as a rule, among a different class of readers, a class to which the original works are as completely sealed as if they had not been written. There is here a conflict of rights and interests; a conflict between the intellectual interests of the persons for whom the translations are intended, and the caprice or possible pecuniary interest of the proprietor of the copyright, if he shall not, or shall, intend to translate the work himself, or cause it to be translated. There is no hardship on him; he can always protect himself by being first in the field with a translation. In matters of copyright, the Legislature has always kept the interest of the public before it. Section 5 of the original Act, ch. 5 and 6 Victoria, shows this; and when the Legislature provided in the later International Copyright Acts 15 and 16 Vict., cap. 12, for translations, it took care (section 2) that the public should not be neglected by being left without them; and translations in this Act are dealt with in an entirely different manner from copies.

(1) 1 H. and M. 744.
(2) 1 J. and H., p. 524.
(3) 12 Ir. C. L., 158.
(4) 3 Ch. Div., 1894, p. 109.

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MACMILLAN v. KHA'N BAHA'DUR SHAMSUL ULAMA M. ZAKA.

I have read the text books on copyright cited to me on this subject—Drone, p. 445 *et seq.*; Copinger, p. 108; and Scrutton, p. 128. They, more especially the first, have not really dealt with the subject on the construction of the statute, but on *a priori* grounds have argued what the law ought to have been rather than considered what it was.

I must follow the ruling of Mr. Justice Parsons in *Munshi Shâik Abdurruhman* v. *Mirza Mahomed*[1], and dismiss the suit with costs.

Attorneys for plaintiff:—Messrs *Payne, Gilbert and Sayáni.*
Attorney for the defendant:—Mr. *M. H. Khán.*

(1) I. L. R., 14 Bom., 586.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

CURSANDA'S NA'THA AND OTHERS, PLAINTIFFS, *v.* LA'DKA'VAHU AND OTHERS, DEFENDANTS.*

1895. *February* 28.

Minor—Infant—Decree against minor—Review—Right of minor to impeach decree—Practice—Procedure.

One Kessowji Jádowji in his will directed his daughter-in-law Ládkávahu (defendant No. 1) to adopt his nephew Karamsi Mádhowji (defendant No. 2), and he devised the residue of his estate to him. The executors of Kessowji's will subsequently brought this suit to have the will construed and the rights of Karamsi Mádhowji in the testator's estate ascertained and declared. A decree was made on the 1st October, 1887, by which it was declared that Karamsi's adoption was a condition precedent to his inheritance, and that, unless he was adopted, he was not entitled to any part of the testator's property. On 22nd October, 1894, Karamsi Mádhowji (defendant No. 2) filed a petition of review, stating that at the date of the decree he was a minor and had only recently, *viz.*, on the 14th December, 1894, attained the age of eighteen years. He contended that there was error apparent on the face of the decree, inasmuch as it did not provide that he should have an opportunity of showing cause against it in so far as it affected his interests after he attained his majority.

Held, that the review could not be granted. The Courts in India after deciding an issue in which an infant, party to a suit, is interested, have no power to reserve to the infant the right of questioning such decision. At all events a decree is not erroneous for not containing such a provision when the issue in which the infant is interested has been fully gone into and argued before the Court. A decree passed against an infant properly represented is binding upon him like a decree passed against an adult, but it is open to the infant to impeach such decree by a suit in cases where his guardian has been guilty of fraud or negligence in allowing the decree to be passed against him.

* Suit No. 135 of 1887.