

ALLAHABAD HIGH COURT

S.K. Dutt

Vs.

Law Book Co.

Original Suit No. 9 of 1949

(B. Mukerji, J.)

08.12.1953

JUDGMENT

B. Mukerji, J.

1. Sri S.K. Dutt, an advocate practising in this Court, has filed this suit purporting to be one under Section 13, Copyright Act, 1914. The plaintiff alleges that he is the author and sole owner of the copyright in the work entitled "The Indian Partnership Act by Mukerji and Dutt". This work, the plaintiff alleges, he published in the year 1934 in collaboration with Sir Manmotho Nath Mukerji, an ex-Chief Justice of the High Court at Calcutta and an ex-Law Member of the Government of India. The plaintiff further alleges that the aforementioned book the Law of Partnership in India has earned a great reputation and it has had sales in the United States of America, in England and practically throughout this country. The plaintiff's case further is that defendant No. 2, namely, J.N. Bagga, published a work entitled "Law Book Company's Commentaries of Law and Practice of Partnership and Private Companies in India" in the year 1947. This rival publication, according to the plaintiff, contained numerous passages which had been pirated from the plaintiff's work. The said rival publication purports to be written by K.L. Gauba, Barrister-at-law, defendant No. 3. H.D. Suri, B.A.,LL.B., defendant No. 5, and S.K. Iyer, B.A.,B.L., defendant No. 4; the Law Book Company defendant No. 1, are the publishers of this work while defendant No. 2 is said to have had the book published for defendant No. 1, that is the Law Book Company. This book was published by the Law Book Company when it existed at Lahore. It may be noticed that the present location of this Company is at Allahabad.

2. The plaintiff's case further is that the defendants wrongfully infringed his copyright and that they did not refrain from discontinuing the sale of the infringed book even after notice had been served on them calling upon them to desist from such unlawful activity.

3. The plaintiff alleges that he got knowledge of his copyright having been infringed by the rival

publication sometime in July 1948. By the suit the plaintiff has claimed the following reliefs :

- (a) That an account of the profits be rendered or in the alternative damages be awarded to him - the plaintiff has tentatively valued this relief at Rs. 1,200/-.
- (b) That an order for the delivering up of all the copies of the rival publication or such part or parts thereof as may be found to infringe the copyright of the plaintiff's publication be made and that such of the infringing copies as are in the possession, custody or control of the defendants, their servants or agents, together with any plate, block or blocks of such infringing work be ordered to be delivered up to the plaintiff - this relief the plaintiff values tentatively at Rs. 200/-.
- (c) That a permanent injunction restraining the defendants, their agents or servants from continuing or repeating further or doing any act or acts to infringe or injure the plaintiff's copyright be granted this relief the plaintiff values at Rs. 100/-.
- (d) That costs of this suit and such other relief as the Court may deem fit be allowed.

4. The suit was contested by defendants 1 and 2 only and they filed a joint written statement. By this written statement the defendants did not admit the allegation of the plaintiff that he was the sole author of the book or that he had a copyright in the same. The defendants denied that their book was published in 1947 for they said that it was published in 1946. The defendants also denied having infringed any copyright that may subsist in favor of the plaintiff in the book entitled "The Indian Partnership Act". The defendants further alleged that their book contained much more material than was contained in the plaintiff's work. The defendants further denied that their publication contained numerous passages which could be said to have been pirated from the plaintiff's book. The defendants alleged in paragraph 14 of their written statement that their publication had a very good sale from the time of its publication and that when the plaintiff learnt that they wished to bring out a second edition he filed this suit in order to obstruct them from making profits out of the subsequent edition of the book which they contemplated publishing.

5. This suit was filed on 6-12-1949, and its hearing was delayed for several reasons, the main reason being, as I can see from the order sheets, that the plaintiff made numerous applications, many of them unsubstantial, and that these applications had to be decided before the case could finally be fixed for hearing.

6. This case was fixed for the settlement of issues for 23-9-1952, and issues were settled on that date. The following issues were struck in the case by a Bench of this Court of which I too was a member :

"1. Has the plaintiff got the sole copyright in the book entitled 'Indian Partnership Act' by Mukerji and Dutt and if so, to what extent ?

2. Have the defendants infringed the copyright of the plaintiff in his book and if so, to what

extent ?

3. Are the defendants liable for rendition of accounts ?

4. Are the defendants liable for delivering up to the plaintiff all copies of their book ?

5. To what damages, if any, is the plaintiff entitled and from which of the defendants ?"

(7) An order was made on the same date that the suit as against defendants 3 to 5 was to proceed 'ex parte', inasmuch as, those defendants did not enter appearance.

In his statement under Order 10, Rule 2, C.P.C., the plaintiff stated that his copyright had been infringed in "arrangement and in copying passages" from his book. He further stated that there had been an infringement of his copyright because the defendants had adopted his passages and had at some places used the same composition. The plaintiff was called upon by the Court, on an application made by the defendants, by an order dated 19-11-1951, to give particulars of such passage as according to him, had been pirated by the defendants from his book. The plaintiff was granted three weeks' time for this purpose.

On 7-12-1951, the plaintiff filed a chart of sorts along with an application. This chart is paper No. A28/2 of the record and a perusal of it will show that it is a perfectly useless chart, for, from this it is impossible to discover what was meant to be conveyed or illustrated. The plaintiff marked a large number of passages in his book which is Ex. 1 and in the defendants' book which is Ex. 2 to indicate piracies. These passages, according to the plaintiff's testimony, number 797.

8. A large number of applications were filed for eliciting further particulars by the plaintiff. Orders in regard to these are to be found either on the order sheet or on the applications themselves. Many of these particulars which were discovered on appropriate affidavit were not at all utilized by the plaintiff for the purposes of the case during the course of the hearing. They only helped in delaying the hearing of the suit and in swelling the costs of the cause.

9. The hearing of the suit was fixed for 28-9-1953, and the case was called for hearing before me on that date. The plaintiff made a request for the adjournment of the case on the ground that he was not ready to proceed with the case. The motion for adjournment was opposed on behalf of the defendants and was disallowed by me because no adequate reason for adjournment was given by the plaintiff. The plaintiff then entered the witness-box and examined himself and was thereafter cross-examined, at length, by Sri Jagdish Swarup appearing on behalf of the contesting defendants. In his statement the plaintiff said that every bit of his book, save the introduction and a little revision here and there, by Sir M.N. Mukerji, was his composition. The plaintiff further stated that he claimed a copyright in those passages also which he had quoted either from other text book writers or from decided cases. The plaintiff said that he claimed copyright in quotations or selections because he had made changes in them. A question was put to him by me in these words :

"Have you indicated in your book that you have made alterations of your own in the passages which you have quoted and which on a perusal of the book appear to be from other sources than your own ?"

To this the plaintiff answered as follows :

"By intelligent perusal of the book it will appear to anyone that there is difference between my selection and the original."

He was further asked as to what he meant by "intelligent perusal" and he answered thus :

"By a reference to the original."

He was further asked :

"Is there anything on the face of those quotations to indicate that you have modified or altered those quotations ?"

The plaintiff answered thus :

"At some places there is, but mostly not." The plaintiff was asked by me to indicate his point by one example. In answer he referred to page 208, note (a). To me this example did not illustrate what I wished him to illustrate. I, therefore, put him the following question : "I have looked at page 208, note (a), but I do not find any indication in it of what I asked you. Will you please explain ?"

To this the plaintiff returned the following answer :

"Please refer to line 3 of the quotation and refer to the two words in 'present Clause (i) which have been put in by me in square brackets there."

This answer did not, in my opinion, meet the point which I wished the plaintiff to clarify. In his evidence the plaintiff indicated the extent of the infringement of his copyright by saying this:

"I find that 797 passages have been infringed by way of copying and this includes 22 quotations, 9 appendices and 8 rules made under the Indian Partnership Act by the various Governments."

The plaintiff in his evidence felt satisfied by saying the above only in regard to his proof of the infringement of his copyright by the defendants.

10. The Court found considerable difficulty in assessing whether or not there were infringing

passages in the defendants' book -passages which in substance were infringements of the plaintiff's work and not passages which the plaintiff and the defendants could have borrowed from other works or from decided cases. It was to obviate this difficulty that the plaintiff had been ordered, long back, to file a chart indicating the various alleged infringements classifying them under appropriate heads. He was called upon to do this by an order of a Bench dated 22-9-1952. While in the witness-box I asked him the following question in order to make certain whether or not the chart which he was called upon to rule in Court had been filed by him :

"Did you file a chart as was required by the Court by its order dated September 22, 1952 ?"

"The plaintiff made the following answer :

"No, I did not file the chart because I thought, that the Bench before which the case went after the order dated September 22, 1952, would not want such a chart."

This answer clearly indicates, to my mind, the mentality which guided the plaintiff throughout the proceedings of this suit. Counsel for the defendants was, therefore, faced with the unenviable task of facing the plaintiff during cross-examination with every passage, and the total of such passages according to the plaintiff's computation was 797, which had been marked by the plaintiff in the two books Exs. 1 and 2, and asking him questions to demonstrate that there was no infringement. By far the largest number of these passages had been taken by the plaintiff himself from either standard commentaries on the law a partnership or from the statement of the law as found in Halsbury's Laws of England or from decided cases. If counsel for the defendants had been permitted to take all the passages one by one to show that the defendants did not take them from the plaintiff's book but from some other source which was open to them then the case would have dragged on for months and months. In order, therefore, to cut down the time of the Court and save parties' costs I called upon the parties to address me on the question whether the plaintiff's claim that once he quoted a passage in his book from either a decided case or a standard work then no one else had any right again to quote that passage was or was not correct. I heard arguments on this question on 29-9-1953, and after hearing arguments I decided that the proposition which was enunciated by the plaintiff was not a correct proposition. I refrained from giving all my reasons in my order of 29-9-1953, because I wished to incorporate the reasons which impelled me to come to that conclusion then in this judgment.

11. If what the plaintiff contended for was right then the defense of "common source" could never be available to anyone. The plaintiff based his contention on the ground that by quoting a passage from a decision or from another work he was in effect "selecting" the passage and since the copyright law protects selection he was protected and nobody else could thereafter make the same selection. I do not think the plaintiff was right in this contention of his. As I understand the law which protects selections I understand it to mean that only those selections are protected which the plaintiff makes for purposes of incorporating them in a "book of selections". It does not protect a selection which the plaintiff makes for purposes of explaining a legal or a scientific

proposition that he has to explain while writing a commentary for the other man who after the plaintiff writes a commentary on that subject must, 'per necessity' have to make the same selection. Decisions reported in law reports are 'common property' for commentators on the law, and they must per necessity have to have recourse to them because without reference to them no commentator can give to his readers a correct idea of the law. Counsel for the defendants drew my attention to several other commentaries on the law of partnership to show that the same selection of cases had been made by the respective authors of those books. Reliance was placed by the plaintiff on the case of *Macmillan and Co., Ltd. v. K. and J. Cooper*¹ It was contended on the authority of this case that an author gets a copyright if he makes a selection of passages from the works of others. I do not consider that this case on which the plaintiff relies supports any such general proposition. Their Lordships pointed out that the mere process of selecting passages from works readily accessible to the public is not protected, but what is protected is a selection that manifests skill sufficient to give the selection the character of an original literary work. Their Lordships further pointed out that the precise amount of the knowledge, labor, judgment or literary skill or taste which the author of any book or other compilation must bestow upon its composition in order to acquire copyright in it, within the meaning of Copyright

¹ AIR 1924 PC 75

Act of 1911, cannot be defined in precise terms. "In every case" their Lordships pointed out.

"it must depend largely on the special facts of that case and in each case be very much a question of degree."

I may here refer to the law in regard to this matter as stated in *Corpus Juris Secundum*, Volume 13, at 228, under the head "Law Books". This is what is stated there :

"Law Books of all kinds belong broadly to the class of compilations, and on a question of infringement the general rules stated supra this Section as to infringement of other kinds of compilations are fully applicable; but they also belong to the class of works treating of the art's and sciences, the publication of which implies consent to some use of them by subsequent writers, to the end that there may be progress in the particular art or science, and this affects the question of what constitutes infringement of law books."

It was further pointed out that "where the similarities and identities are due to coincidence and the necessities of the case" then there can be no question of copy.

I may further refer to what Lord Ellenborough said in the case of - '*Cary v. Kearsley*²', What his Lordship said was this :

"That part of the work of one author is found in another, is not of itself piracy, or sufficient to support an action; a man may fairly adopt part of the work of another; he may so make use of another's labour for the promotion of science, and the benefit of the

public; but having done so, the question will be : Was the matter so taken used fairly with that view, and without what I may term 'animus furandi' ?"

I may 'further refer to the decision of Vice Chancellor Kindersley in the case of - *Murray v. Bogue*³, and quote the following observations of the learned Vice Chancellor at p. 456 ;

"..... it is an extremely difficult thing to see how far, the subject being the same and the details necessarily to a great extent the same, the one has fairly or unfairly used the work of the other."

It was further pointed out that the real test in a matter like this is to see whether the defendant has done what Lord Cottenham called "the extraction of the vital parts of the book".

In Canada the position in regard to text books was stated by Putnam, J. in the case of - *Sampson and Murdock Co. v. Seaver-Radford Co*⁴., as follows :

"...it is clear that, under some circumstances and for certain purposes, a subsequent publisher may draw from the earlier publication its identical words,

²(1802) 170 ER 679 at p. 680

⁴(1905) 140 P. 539

³(1853) 22 LJ Ch 457

and make use of them. This is peculiarly so with reference to works in regard to the arts and sciences, using these words in the broadest sense, because, with reference to them, any publication is given out as a development in the way of progress, and to certain extent, by common consent, including the implied consent of the first publisher, others interested in advancing the same art of science may commence where the prior author stopped. This includes medical and legal publications, in which the entire community has an interest, and which the authors are supposed to give forth, not only for their own pecuniary profit, but for the advancement of science."

12. In order to be an infringement of a man's copyright there must be a 'substantial infringement' of the work. Fair dealing with any work has been kept out of the mischief of the Copyright Act.

13. It was pointed out in the case of - *Kartar Singh v. Ladha Singh*⁵, as follows:

"Every man can take what is useful from the original work, improve, add and give to the public the whole, comprising the original work, with the additions and improvements; and in such a case there is no invasion of any right."

It was pointed out in - *Hanfastaengal v. W.H. Smith and Son*⁶,

"a copy is that which comes so near to the original as to give to every person seeing it the idea created by the original".

It was pointed out by the House of Lords in 1895 in a case that this

"question may be solved by taking each of the works to be compared as a whole and determining whether there is not merely a similarity or resemblance in some leading feature or in certain of the details, but whether keeping in view the idea and general effect created by the original, there is such a degree of similarity as would lead one to say that the alleged infringement is a copy or reproduction of the original".

14. It was in order to make it possible for me to apply the tests which previous authorities have laid down in regard to judging such matters that I insisted upon the plaintiff supplying to the Court a chart of the infringements. I asked the plaintiff to classify the infringements so as to show which infringements were infringements of his original composition and which were infringements in regard to arrangement and selection. The plaintiff, as I have already stated, did not put in this chart till much after he had left the witness-box so that counsel for the defendants could not cross-examine him in regard to this chart. During the course of his submissions I asked the plaintiff to give me instances specific instances of passages which, according to him, were his original compositions and which had been copied by the defendants. The plaintiff gave me in all 17 such

⁵ AIR 1934 Lah 777

⁶(1905) 1 Ch 519

illustrations. The matter contained in the entire list of illustrations would be covered in very much less than half the number of composed pages. This is but one aspect of the matter. The other aspect of the matter was that when I started comparing the passages in the two books I discovered that there was obvious difference in regard to at least 9 of these 17 illustrations. I may point out one particular instance to show that what the plaintiff called his own composition was really a copy of what was stated in Halsbury on the subject. This was in regard to what is stated at page 17, note (f) in the plaintiff's book, the corresponding portion in the defendant's book being at page 50, note (6). I may point out two other illustrations taken by the plaintiff from page 11, notes (e) and (g) of his book. These passages the plaintiff claimed as his original, but it was shown by learned counsel for the defendants that they were taken from Lind-ley's book on Partnership, page 93.

15. As I have pointed out earlier, the plaintiff contented himself by stating in his evidence that as many as 797 passages of his work had been pirated by the defendants. The plaintiff did not in his evidence refer specifically to any of these passages, but he was cross-examined on behalf of the defendants in regard to many of these. A large portion of the alleged infringements consists of passages which occur in reported decisions. Attempt was made, naturally, by counsel for the

defendants to show that the plaintiff himself did not select these passages from the decisions but got those passages, or at any rate a clue to those passages, from other commentators on the law of partnership. Questions were put to the plaintiff to demonstrate that he could not possibly have had the time and the opportunity to examine and read all the cases which he has cited in his book. I shall now quote some of these questions and the answers returned by the plaintiff to examine the effect of the plaintiff's evidence on this assertion of the defendants. The following are some of the questions and answers which would assist in determining this matter :

"Q. Did you have time and opportunity of consulting the English authorities and the reports from which you purport to have quoted so largely in your book ?

A. Yes.

Q. Did you read each and every case which you have referred to in your book ?

A. Yes.

Q. Do you possess these books in your library ?

A. No. I consulted them in other libraries.

Q. How much time did you take in accumulating the material for your book ?

A. I cannot tell you that.

Q. Did you check up and read all the cases referred to in Mew's Digest on partnership ?

A. I read all the cases referred to in the Mew's Digest.

Q. Did you read all the cases on partnership referred to in Halsbury's Laws of England ?

A. Yes."

16. It was contended on the above evidence of the plaintiff that the plaintiff's claim to having read the entire material himself was a false claim because it was not possible for the plaintiff, handicapped as he was for want of a library of his own and the short time within which he brought out his book, to do all that he claims to have done. It is, in my view, not easy to say that what the plaintiff said he did was an impossible task, but from other parts of his evidence, as also from intrinsic evidence available in the plaintiff's book, it looks to me that the plaintiff's claim of having read all the cases himself before he made use of them was not a correct claim.

17. The plaintiff in his illustrations showing infringements showed such passages also which 'prima facie' appear to have been taken from judgments. The plaintiff was asked this question.

"Q. Have you or have you not marked passages in, the defendant's book which have been taken from judgments ?

A. No. There may be a few passages."

18. After the it fore quoted answer had been returned by the plaintiff learned counsel for the defendants demonstrated by asking certain other questions to the plaintiff that this assertion of his was not well founded. I shall now refer to a few questions to indicate how the plaintiff insisted on saying that there was infringement of his work in respect of certain passages even though by his

cross-examination it was made clear that his case in regard to these infringements was without substance. Counsel for the defendants took up a passage appearing in the plaintiff's book at page 157, note (a), and a corresponding passage which was alleged to be an infringement in the defendant's book at page 323, note 6, and showed that the passage which the defendants had in their book was from a judgment. It was also pointed out to the plaintiff that there was a difference - an obvious difference - in the two passages and then he was asked whether or not he still insisted in saying that the defendants had copied the passage from his book. To this the plaintiff answered that the infringement was on the ground of arrangement. It would be interesting to quote some of the questions and the answers on which I have made the above observation. They are as follows :

"Q. Is it or is it not a fact that the judgment says that false entries had been made in accounts and the defendant's book also says so ?

A. Yes.

Q. Is it or is it not a fact "that these lines do not occur in your book but in the defendant's book ?

A. These lines do not occur in my book but they occur in the defendant's book.

Q. Will you please still say that this passage has infringed your copyright ?

A. I have already said that the infringement is in arrangement ?"

Counsel for the defendants took another passage and put it to the plaintiff thus :

"Q. Will, you kindly see page 347 of the defendant's book and page 177 of your book and tell the Court the source from which you got this passage ?

A. So far as I remember the principle has been culled out from the rulings cited and the statement is in my own language."

19. After the aforementioned answer was returned by the plaintiff the following question was put to him by me :

"Q. The reading of the two passages will indicate or will it not that the two authors wrote the respective passages independently ?

A. No."

20. Counsel for the defendants then put this question to the plaintiff :

"Q. I say that you have taken this passage from 1 Bombay Law Reporter and the defendant's passage is a faithful reproduction of that. Is it or is it not a fact ?"

The plaintiff had to answer in the affirmative.

21. The plaintiff was further asked this :

"Q. Is it or is not a fact that you have changed the word 'management' into 'arrangement' whereas in the judgment the word 'management' occurs ?"

The plaintiff answered in the affirmative.

22. He was asked this :

"Q. Is it or is it not a fact that in the defendant's book the word 'management' occurs ?"

23. He again answered in the affirmative and then he was asked :

"Q. Do you still say that this passage has been copied from your book ?"

24. To this the plaintiff returned the following answer :

"A. Yes, I still maintain that this passage has been copied from my book. I say so because I used the word 'surviving' and the defendant too has used the word 'surviving', a word which has not been used in the judgment."

The use of the word 'surviving' by both the plaintiff and the defendants in their respective books does not appear to me to be of any real consequence because the use of that word was natural to the context and the word was not such an uncommon word as to lead anyone to the conclusion that because that word appears in the two passages the one passage must have been the copy of the other.

25. Counsel for the defendants put another question to the plaintiff in these words :

"Q. Kindly have page 317 of the defendant's book, note 3, and the corresponding passage in your book at page 155, note (f), and please tell the Court if you will admit that the language is not entirely different ?"

26. The plaintiff returned an answer in the affirmative to this question. Learned counsel for the defendants then asked him this question :

"Q. I put it to you that in 25 Bombay the words are exactly what have been used by the defendant and not used by you. Is it so ?

A. Here I have complained of the arrangement."

27. The plaintiff then volunteered and said that he had made a mistake and that he cannot give an answer to this question.

28. The plaintiff claimed originality in respect of several passages and counsel for the defendants naturally attempted to show that such a claim was unjustified. I should like to refer to some questions and answers to show that the plaintiff was severely shaken in his cross-examination in regard to this matter. The plaintiff was asked these questions :

"Q. Yesterday you told the Court that you have never consulted the Century Digest in writing your book. Do you still maintain that position ?

A. I did not consult the Century Digest.

Q. Have you not taken the passage appearing in your book at page 178, note (f), from the Century Digest which I have shown to you ?

A. No, although the passages are exactly identical."

29. The witness while thus cornered in cross-examination volunteered by saying that if there was coincidence in similarity of expression between him and Sanjiva Rao the author of the Century Digest then he could give no adequate reason why there could not be similarity of expression between him and the defendants This statement which was volunteered by the plaintiff, to my mind, indicated that he gave up his stand which he had taken in regard to those passages which could be found in other books also.

30. A good deal of emphasis was laid by the plaintiff on what he called 'his arrangement' and which, according to him, was the subject-matter or his copyright and which further, according to him, had been infringed by the defendants. It, therefore, became necessary for counsel for the defendants to ask the plaintiff some questions to clarify the position. The plaintiff was asked :

"Q. Will you kindly tell the Court what do you mean by arrangement in a book ?

A. Arrangement means 'order'." He was then asked :

"Q. Will you kindly explain what do you mean by the word 'order' ?

A. Order of notes, by which I mean the notes indicating the passages or the passages indicating notes."

32. I must say that I do not understand what exactly the plaintiff meant by the answer that he gave. Learned counsel for the defendants also did not appear to understand the plaintiff sufficiently and, therefore, he seems to have asked him the following questions :

"Q. Do you mean to say that an order or arrangement is indicated by your sub-headings ?

A. It is not indicated in my sub-heading."

The plaintiff was then asked :

"Q. Do you mean to say that the cases cited under a particular Section go to constitute an order or arrangement ?

The plaintiff answered in the affirmative."

The plaintiff was then asked :

"Q. Do you or do you not expect that any commentator on any particular Section will cite all the relevant case law under that Section ?

A. Of course, yes." He was thereafter put this question :

"Q. Would it not then be in this case that the cases cited by you would be the same as the cases cited by the defendant under a particular Section ?"

The plaintiff answered in the affirmative.

32. From what I have quoted above it appears to me that the plaintiff's claim to his copyright in regard to arrangement having been infringed must fail. It may further be pointed out that arrangement of a book is, to my mind, best indicated by the headings and the sub-headings under which the author deals with the subject-matter. A comparison of the two works would make it perfectly clear that the defendants in their book have a much larger number of headings and sub-headings than the plaintiff has. The plaintiff was asked whether or not the headings and sub-headings of the defendant's book were largely different from those in his book, but the plaintiff did not admit this. In my view this denial of the plaintiff must be held to be futile because it would be clear to anyone on a comparison of the two works that it is so. The plaintiff was asked this question :

"Q. Is it or is it not a fact that the defendant's book has a large number of sub-heads which do not find place in your book ? A, May be, I am not challenging that."

33. This answer of the plaintiff, to my mind, clearly demonstrates that "though vanquished he could argue still". Counsel for the defendants just chose another line to attack this part of the plaintiff's claim.

The plaintiff was asked this :

"Q. If the defendant has dealt with the question of goodwill under Section 14 and you have dealt with that subject under a different Section, could you still say that the defendant has copied your arrangement ?

A. No."

34. After learned counsel for the defendants obtained the above admission from the plaintiff he put him this question :

"Q. Will you kindly turn to pages 108 to 111 of the defendant's book and compare them with your page 37 and say whether or not the arrangement is the same with respect to the subject-matter of goodwill?"

A. It is different."

The plaintiff was again asked this question:

"Q. Will you please refer to Section 26 as dealt with in the defendant's book and compare it with your book and say whether any of the headings are common?"

The plaintiff answered "No". The plaintiff was further asked this :

"Q. Please tell the Court whether or not the headings in the defendant's book have been suggested from the words of the Section itself?"

The plaintiff answered thus :

"I have not considered this matter at all and I cannot answer it."

35. It appears to me that the plaintiff by refusing to answer that question gave up this part of his case more or less in sheer despair. I shall only take a few more passages from the plaintiff's statement on this matter to show how utterly hopeless his contention in regard to it was.

The plaintiff was asked this :

"Q. Will you kindly look at Section 13, Clause (c), and say whether the subject matter falling under this Clause has been dealt with in the defendant's book under 1, 2, 3, 4, 5, 6, 7 and 8 different headings ?

A. Yes."

The plaintiff was then asked by me this question :

"Q. Do you still maintain that there has been a copy of your arrangement by the defendant ?'

The plaintiff returned an audacious reply in these words :

"I do maintain that still."

36. I may here state that during his opening argument the plaintiff claimed that the book of the defendant followed precisely the same arrangement which had been followed by him. He, however, whittled down this very general statement of his during the course of the proceedings of the case. Even so, I cannot hold, on the evidence either of the plaintiff as given by him in the witness-box or on a comparison of the two books, that there was any substance in this claim. It would be appropriate at this stage to notice an old decision of the Court of Chancery in -

*'Barfield v. Nicholson'*⁷, where it was pointed out that "the sameness of the thing delineated must produce similarity in delineation". It was further pointed out that mere fact of resemblance is not in itself evidence of piracy where the subject dealt with is the same.

37. The plaintiff based his contention that his "work was original" within the meaning of the Copyright Act even though he had merely made compilations and selections from available sources on the strength of the decision in - 'AIR 1924 PC 75'. In this case it was
7(1824) 2 LJ Ch 90

held by the Judicial Committee of the Privy Council that

"a publication of which the text consists of a reprint of passages selected for use in schools from a work which does not enjoy the protection of copyright may be entitled to copyright if the selection of the passages would require, for the purpose of effecting the object in view, accurate scientific knowledge, sound judgment, and literary skill".

but in the same case it was pointed out that the question

"what amount of such knowledge, judgment, and skill is necessary in order to acquire copyright is a question of degree."

In every case it must depend largely on the special facts of that case and must in each case be very much a question of degree; bearing this principle in mind it cannot, in my judgment, be stated that the selection that the plaintiff made of cases for the purposes of his commentary if the arrangement that he followed was the result of any such outstanding judgment or skill - a judgment or skill that was not within the ordinary reach of any other commentator which the plaintiff brought to bear on his work.

38. Reliance was placed by the plaintiff on the decision in - '*Corelli v. Gray*'⁸, to support his contention that he had a copyright in his book. In my opinion this case in no way assisted the plaintiff's contention but went contra to it. It was pointed out in this case that there was no absolute monopoly given to authors analogous to that conferred on inventors of patents. It was further pointed out that it was possible to produce two precisely similar works wholly independently of one another. The right which an author appeared to have under the Copyright Act was merely a negative right to prevent the appropriation of the labors of an author by another. This case is also an authority for the view that the onus of establishing such appropriation rested upon the plaintiff. There is no denying the fact, on the strength of the authorities, that several persons may originate similar works in the same general form without anyone infringing the law in regard to copyright. The infringement comes in only when it can be shown that someone has, instead of utilizing the available sources to originate his work, appropriated the labours of another by resorting to a slavish copy or mere colorable imitation

thereof. The 'animus furandi', that is, an intention to take from another for purposes of saving labor, is one of the important ingredients to be found against a defendant before he can, in a suit under the Copyright Act, be damnified.

39. It was contended by the plaintiff that the defense of "common source" was not available to the defendants, inasmuch as, the defendants did not take that defense specifically in their written statement nor did they assert such plea in any evidence. It is no doubt true that the defendants have not in so many words taken the plea of "common source" in their written statement, but a reading of the additional pleas of their written statement makes it clear to me that the defendants in substance and in effect raised a plea of "common source." None of the defendants entered the witness-box, but that, to my mind made no difference to the defendants' case because the burden lay on the plaintiff to

⁸(1912-13) 29 TLR 570

satisfy the Court that the defendants had in fact infringed his copyright. The plaintiff's contention further was that a plaintiff in a copyright case discharged the burden that lay on him by merely stating on oath that the defendant had infringed his copyright and thereafter the burden shifted to the defendant to show that he had not done so. Great emphasis was laid to the plaintiff on the fact that none of the defendants stepped into the witness-box to deny his assertion on oath. It may here be pointed out that the alleged authors mentioned on the title page of the defendants' book were K.L. Gauba, H.D. Suri and S.K. Iyer. A written-statement was filed on behalf of defendants 1 and 2 to the suit only, namely, the Law Book Company, who published the book, and J.N. Eagga, who had the book published. The other defendants did not choose to put in any appearance. In such circumstances the publishers had to face the trial under great handicaps. The only method by which the publishers could meet the plaintiff's case was by breaking the assertions of the plaintiff by his cross-examination and by referring to the sources from which the materials in the defendants' book had been taken. I have already referred quite extensively to the plaintiff's statement and I have also referred to many of the sources to which reference was made on behalf of the defendants to show that the defendants obtained the materials for their book not from the plaintiff's book but from other sources.

40. In deciding the question whether one book is a copy of the other or not the Court has, in my view to keep in mind the two features of the two books, namely, the external and the internal features. By external features I mean the get-up and the 'overall' scope of the publication. By internal features I mean the general lay out of the subject-matter, the manner of the treatment of the subject matter and the amount of material contained in the book. In the external features the two books, one of the plaintiff and the other of the defendants, have no similarity at all. The title of the plaintiff's book is "The Indian Partnership Act" while the title of the defendants' book is "Law and Practice of Partnership and Private Companies in India". The plaintiff's book is a volume of 311 pages while the defendants' book covers 862 pages (barring the index in both the books). The get-up of the two books is also entirely different.

41. In the internal features too there is a marked dissimilarity. The plaintiff was cross-examined to indicate that the subject-matter dealt with in the defendants' book was far in excess of what was dealt with in his book. The plaintiff was asked this question :

"Is it or is it not a fact that the defendants book has a large number of sub-heads which do not find place in your book ?"

The plaintiff answered thus :

"May be, I am not challenging that".

The plaintiff tried to correct himself the next morning by returning a negative answer to the question, but even then he had to admit that there were a much larger number of subjects dealt with in the defendants' book than in his book. The plaintiff attempted to argue that even though the defendants' book covered a much wider field and had very much more material condensed in it yet the defendants' book infringed his copyright. It, therefore, became necessary for the defense to pursue the cross-examination of the plaintiff to demonstrate that the plaintiff's assertion was a vain assertion. I do not propose to quote from the plaintiff's statement to show that he really failed to substantiate his assertion. A reading of the plaintiff's statement from pages 29 to 38 would clearly demonstrate this.

42. It was pointed out that in the plaintiff's book there are only about 1500 cases cited while in the defendants' book no less than 3000 cases have been cited. It was also pointed out that in the plaintiff's book there are no "marginal notes" whereas in the defendants' book there are extensive "marginal notes".

43. Sri Jagdish Swarup, appearing for the defendants argued that out of the total of 797 passages marked by the plaintiff as infringements, 114 such marked passages related to footnotes and these footnotes were only references to cases in respect of which, it was stated by Sri Jagdish Swarup, the plaintiff could have no copyright. The plaintiff filed a chart indicating in particular certain instances of infringements. This chart was subjected to careful scrutiny and I need only state here the conclusion to which I arrived, namely, that the scrutiny did not reveal that there was any real infringement by the defendants of the plaintiff's copyright.

44. For the purposes of his argument counsel for the defendants classified the alleged infringements into seven groups, (1) consisted of passages which had been taken verbatim from Lindley on Partnership, (2) passages which had been taken from other standard authors, (3) passages which had been taken from judgments reported in law reports, (4) passages which had been taken from digests, (5) passages which the plaintiff had put down in his book by paraphrasing similar passages from authors like Lindley, (6) passages which on the face of them

were dissimilar, and (7) passages in respect of which the plaintiff claimed original composition. In respect of the first six classes there could be 'prima facie' no infringement unless the plaintiff was able to show that he brought to bear any special skill or judgment in their incorporation in his book. I have already held that the plaintiff did not satisfy me as to his having exercised any special skill or judgment in the appropriation of these passages in his book. Many of the passages in respect of which the plaintiff claimed originality of composition could not stand the test of cross-examination and I am constrained to hold that the plaintiff has failed to prove originality of composition in respect of such passages.

45. Lastly, the plaintiff stated that in the defendants' book you could find the same mistakes which appeared in the plaintiff's book and it was, therefore, contended that these mistakes, could never have appeared in the defendants' book if the passages had not been copied or taken from the plaintiff's book. This argument would have been substantial to support the plaintiff's contention that, at least, in respect of these passages there was an infringement of his copyright, if he had succeeded in showing that there were a large number of such passages, at least such numbers as could eliminate the element of chance that always is there in such matters. On a scrutiny of these passages it was discovered that there were only three mistakes common both to the plaintiff's book and the defendants' book. In my judgment this number is much too small to lead one to the conclusion that there was necessarily a copying of these passages from the plaintiff's book. Before a plaintiff is entitled to relief he is bound to show that there has been a substantial taking by the other side from his book; no such substantial taking has been proved in this case. I must, therefore, hold that the plaintiff has failed to prove that there has been any substantial infringement of his work by the defendants. From a perusal of the defendants' book it is clear that when the defendants' book was being compiled the authors had before them the plaintiff's work also - I say this because I find at one or two places in the defendants' book an acknowledgement having been made of the use which the authors made of the plaintiff's book. This acknowledgement by the authors of the fact that they found use from the plaintiff's material leads me to the conclusion that had the authors made any other use of the plaintiff's book for compiling their own book, they would have acknowledged the same. I cannot presume, on the facts which were laid before me in this case that the defendants made any substantial or unfair use of the plaintiff's work.

46. Many other matters were argued on behalf of the plaintiff, but I consider a reference to these unnecessary for, in my judgment, they were not really pertinent to the main issues which called for determination.

47. The plaintiff having failed to establish any infringement of his copyright, no question of granting any relief to the plaintiff could arise. It may here be noted, however, that there was on behalf of the plaintiff, no evidence to indicate what damage, if any, accrued to him, assuming that there was an infringement of his copyright by the defendants.

48. Before, I come to the operative part of my judgment I should like to state that the trial of this case took a long time and that a good deal of the time could have been saved if the plaintiff had followed some proper sequence and had not chosen to digress into unnecessary and unimportant things. The plaintiff resorted to many a delaying tactics to which I had occasion to refer in my order dated 2-11-1953. I also think it proper at this stage to acknowledge the assistance that I got from Sri Jagdish Swarup who very fairly laid everything before the Court in order to assist it to arrive at a correct decision.

49. For the reasons that I have indicated earlier I dismiss this suit with costs to the answering defendants.

Suit dismissed.