

Macmillan and Company, Limited - - - - - *Appellants*

v.

K. and J. Cooper - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER, 1923.

Present at the Hearing :

LORD ATKINSON.

LORD SHAW.

LORD WRENBURY.

LORD CARSON.

SIR ROBERT YOUNGER.

[*Delivered by* LORD ATKINSON.]

The action out of which this appeal has arisen was brought by the appellants to restrain the respondents, K. and J. Cooper, a firm carrying on in Bombay the trade and business of publishers of educational books, from printing, distributing or otherwise disposing of copies of a certain book published by them hereinafter described, and to recover damages and other relief. The ground on which this relief was claimed was that the appellants were entitled to the copyright of a certain book entitled "Plutarch's Life of Alexander. Sir Thomas North's Translation. Edited for Schools by H. W. M. Parr, M.A.," and that the respondents by the publication subsequently in the year 1918 of their aforesaid book entitled "Plutarch's Life of Alexander the Great, North's Translation, edited with Introduction, Marginalia, Notes and Summary by A. Darby, M.A.," had infringed the copyright to which the appellants were entitled in the earlier compilation.

The text of the appellants' book consisted of a number of detached passages, selected from Sir Thomas North's translation, words being in some instances introduced to knit the passages together so that the text should, as far as possible, present the form of an unbroken narrative. The passages so selected were, in the original translation, by no means contiguous. Considerable printed matter in many instances separated the one from the other. North's translation consisted of 40,000 words; the text of the appellants' book contained half of them, *i.e.*, 20,000 words, while the book published by the respondents contained not only the aforesaid 20,000 words but 7,000 words in addition.

In addition to this text comprising the 20,000 words, the appellants' book contained much printed matter which was omitted from the respondents' book, namely, marginal notes, an introduction dealing with North's translation and Alexander's place in history, an analysis of the book's contents, a chronological table setting forth the principal dates in Alexander's life, and a few short notes introduced into the text styled transition notes. The text was divided into six chapters; notes bearing on the text and a glossary were appended.

On the 14th October, 1917, notice had by order of the Syndicate of the Bombay University been published prescribing certain text-books in English which were required to be used for the Matriculation Examination to be held in this University in the year 1919. The appellants' book was included in that list. The title of the appellants' book gives an indication of the purpose for which it was compiled; but it does not clearly appear from the evidence what was the precise purpose or object of the appellants in limiting the text to 20,000 words and compressing it as they did. It may possibly have been that its length was so limited in order that its contents might be mastered in the time available for its study, and it also may have been limited because the appellants desired to exclude everything from it which might be of an indecent or indelicate character, or which it might be thought undesirable for school boys to peruse or study. It did not, it would appear to their Lordships, require great knowledge, sound judgment, literary skill or taste to be brought to bear upon the translation to effect any of these objects as the passages of the translation which had been selected are reprinted in their original form, not condensed, expanded modified or reshaped to any extent whatever.

In or about the month of November, 1917, the respondents published a handbill headed, "Bombay Matriculation, 1919. Now Ready. Poetical Series, etc." The last book mentioned in the list was the respondents' entitled as already set forth, with an announcement that it would soon be ready. The following sentences were then added:—

"In response to . . . should bring out reliable annotated editions of English Texts prescribed for the Bombay Matriculation examination, we have this time published such editions, in the confident hope that they will prove equally useful both to teachers and pupils.

“ These editions will be found more useful than any published in England as having been specially prepared for Indian pupils, by those competent to understand their needs ; and in every respect more reliable than similar editions brought out in this country by editors more or less incompetent for the task they undertake.

“ As all our English Text-books will be ready in the beginning of the next month, teachers will be able to use at least some of them in the Pre-Matriculation Class.

“ K. & J. Cooper, Educational Publishers, Bombay.”

The respondents' publication is formed on precisely the same general plan as was that of the appellants'. Its text consisted of a number of detached passages taken from North's translation joined together, the preceding to the succeeding, by a few words where needed so as if possible to give to the whole text the appearance of a consecutive narrative. Notes were also contained in the respondents' book which were in many instances servilely copied from those contained in the book of the appellants.

The learned Judges in the Court of Appeal were of opinion that the respondents intended and designed to publish a book which the student of the University would buy in preference to the book of the appellants, and that Mr. Cooper's evidence to the contrary was obviously false. Their Lordships entirely concur with the learned Judges of the Court of Appeal in the opinion they have formed on this point.

If the appellants were not entitled to a copyright in their book, or any material part of it, then the respondents were entitled to do what they have done. If, on the contrary, the appellants were entitled to a copyright in their book, or any material part of it which the respondents had practically copied, then the respondents were admittedly guilty of infringement. It is obvious, therefore, that the primary question to be determined on the appeal is whether the appellants were entitled to a copyright in the text of their book and in those notes attached to it which latter the respondents had in many instances in effect copied.

During the course of the argument much discussion arose as to the result that would follow if North's translation of Plutarch's Life was a publication which was actually the subject of copyright, or was capable of becoming so. These are interesting and rather difficult questions to solve ; but their Lordships do not feel themselves called upon to attempt to solve them, because on the facts of this case, they do not arise. North's translation of Plutarch's Life of Alexander does not and never did—and, as the law stands, never can—enjoy the protection of copyright ; and the questions which arise for decision must be dealt with upon that assumption.

The books both of the appellants and the respondents have in the proceedings been styled abridgments. In the true sense of that word this is an absolute misnomer.

Strictly speaking, an abridgment of an author's work means a statement designed to be complete and accurate of the thoughts, opinions, and ideas by him expressed therein, but set forth much

more concisely in the compressed language of the abridger. A publication like that of the appellants or respondents, the text of which consists of a number of detached passages selected from an author's work, often not contiguous, but separated from those which precede and follow them by considerable bodies of print knit together by a few words so as to give these passages, when reprinted, the appearance as far as possible of a continuous narrative, is not an abridgment at all. It only expresses, in the original author's own words, some of the ideas, thoughts and opinions set forth in his work. And it is obvious that the learning, judgment, literary taste and skill requisite to compile properly and effectively, an abridgment deserving that name would not be at all needed merely to select such scraps as these taken from an author and to print them in a narrative form.

This point is well brought out in the following passages from the editions of Copinger's "Law of Copyright," published in 1904 and 1915 respectively, *i.e.*, before and after the Copyright Act of 1911. The passages are supported by the authorities relied upon in those editions. The first passage runs thus (p. 39):—

"To constitute a true and equitable abridgment, the entire work must be preserved in its precise import and exact meaning, and then the act of abridgment is an exertion of the individuality employed in moulding and transfusing a large work into a small compass, thus rendering it less expensive and more convenient both to the time and use of the reader. Independent labour must be apparent, and the reduction of the size and work by copying some of its parts and omitting others confers no title to authorship, and the result will not be an abridgment entitled to protection. To abridge in the legal sense of the word is to preserve the substance, the essence of the work in language suited to such a purpose, language substantially different from that of the original. To make such an abridgment requires the exercise of mind, labour, skill and judgment brought into play, and the result is not merely copying."

That passage is practically reprinted at p. 64 of the edition of 1915. At pages 148 and 566 the following paragraphs are added. The first runs thus:—

"To constitute a proper abridgment, the arrangement of the book abridged must be preserved, the ideas must also be taken and expressed in language not copied but condensed. To copy certain passages and omit others so as to reduce the volume in bulk is not such an abridgment as the Court would recognise as sufficiently original to protect the author."

and the second thus:—

"From the above cases it seems possible to draw the conclusion that the mere process of selecting passages from works readily accessible to the public is not, but that difficulty in obtaining access to the originals or skill manifested in making or arranging the selection is sufficient to give the character of an 'original literary work' to the selection."

The cases referred to in support of these statements included most of those which had been previously decided: *Lamb v. Evans* [1893], 1 Ch. 219 and *Walter v. Lane* [1900], A.C. 539 amongst them.

The learned judges in the Appellate Jurisdiction apparently came to the conclusion that a publication, the text of which

consisted merely of a reprint of passages selected from the work of an author could never be entitled to copyright. Their Lordships are unable to concur in that view. For instance, it may very well be that in selecting and combining for the use of schools or universities passages of scientific works in which the lines of reasoning are so closely knit and proceed with such unbroken continuity, that each later proposition depends in a great degree for its proof or possible appreciation upon what has been laid down or established much earlier in the book, labour, accurate, scientific knowledge, sound judgment touching the purpose for which the selection is made, and literary skill would all be needed to effect the object in view. In such a case copyright might well be acquired for the print of the selected passages.

The 31st section of the Copyright Act of 1911 provides that no person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this statute or any other statutory enactment for the time being in force. Copyright is therefore a statutory right. Sec. 1, subsection 1, of the Act enacts in respect of what it may be acquired. Subsection 2 of the same section defines its meaning, Section 2 deals with the methods by which it may be protected, and the moral basis on which the principal of those protective provisions rests is the Eighth Commandment, "Thou shalt not steal." It is for this reason that Lord Halsbury begins his judgment in *Walter v. Lane* [1900], A.C. 539 at p. 545 with the following words: "I should very much regret if I were compelled to come to a conclusion that the state of the law permitted one man to make a profit and to appropriate to himself what has been produced by the labour, skill and capital of another. And it is not denied that in this case the defendant seeks to appropriate to himself what has been produced by the skill, labour and capital of others. In the view I take of this case the law is strong enough to restrain what to my mind would be a grievous injustice." It will be observed that it is the product of the labour, skill and capital of one man which must not be appropriated by another, not the elements, the raw material, if one may use the expression, upon which the labour and skill and capital of the first have been expended. To secure copyright for this product it is necessary that the labour, skill and capital expended should be sufficient to impart to the product some quality or character which the raw material did not possess, and which differentiates the product from the raw material. This distinction is well brought out in the judgment of that profound and accomplished lawyer and great and distinguished Judge, Mr. Justice Story, in the case of *Frederick Emerson v. Chas. Davies*, decided in the United States and reported in Story's United States Reports, vol. 3, p. 768. Some of the points decided are stated in the head note to be first, that any new and original plan, arrangement or combination of material will entitle the author to copyright therein, whether the materials themselves

be old or new. Second, that whosoever by his own skill, labour and judgment writes a new work may have a copyright therein, unless it be directly copied or evasively imitated from another's work. Third, that to constitute piracy of a copyright it must be shown that the original has been either substantially copied or to be so imitated as to be a mere evasion of the copyright. The plaintiff in the case had compiled and published a book entitled "The North American Arithmetic," described as containing Elementary Lessons by Frederick H. Amson, the purpose and object of the publication being to teach children the elements of arithmetic. The complaint was that the defendants on a date named had without the plaintiff's consent exposed for sale and sold fifty copies of the plaintiff's said work, purporting to have been composed by the defendant Davis, and had subsequently sold 1,000 copies of the same. The main defence was that the book, copies of which were sold by the defendants, was composed by themselves, and that neither it nor any part of it was copied, adopted or taken from the plaintiff's book or any part thereof. At p. 778 of the report the learned Judge expressed himself thus:—

"The book of the plaintiff is, in my judgment, new and original in the sense in which those words are to be understood in cases of copyright. The question is not whether the materials which are used are entirely new and have never been used before, or even that they have never been used before for the same purpose. The true question is whether the same plan, arrangement and combination of materials have been used before for the same purpose or for any other purpose. If they have not, then the plaintiff is entitled to a copyright, although he may have gathered hints for his plan and arrangement or parts of his plan and arrangement from existing and known sources. He may have borrowed much of his materials from others, but if they are combined in a different manner from what was in use before . . . he is entitled to a copyright. . . . It is true that he does not thereby acquire the right to appropriate to himself the materials which were common to all persons before, so as to exclude those persons from a future use of such materials; but then they have no right to use such materials with his improvements superadded, whether they consist in plan, arrangement, or illustrations or combinations, for these are strictly his own. . . . In truth, in literature, in science and in art there are and can be few, if any, things which, in an abstract sense, are strictly new and original throughout."

The learned Judge then deals at length with many, indeed most, of the English authorities, and winds up with a remark in these words, which is singularly applicable to the present case: "I have bestowed a good deal of reflection upon this case, and at last I feel constrained to say that I am unable to divest myself of the impression that in point of fact the defendant Davis had before him, when he composed his own work, the work of the plaintiff, and that he made it his model and imitated it closely in his title or section of Addition and in a great measure in that of Subtraction also."

This decision is, of course, not binding on this tribunal; but it is, in the opinion of the Board, sound, able, convincing and helpful. It brings out clearly the distinction between the materials upon which one claiming copyright has worked and the product of the application of his skill, judgment, labour

and learning to those materials ; which product, though it may be neither novel nor ingenious, is the claimant's original work in that it is originated by him, emanates from him, and is not copied.

It was by confounding the materials with the product that Mr. Upjohn endeavoured to sustain the argument that if the appellants obtain copyright in their book any reprint of North's translation would be an infringement of it under Section 8 of the Act of 1911.

Mr. Upjohn also contended as their Lordships understood him that Sir Arthur Wilson did not, in his judgment in the case of *Macmillan v. Suresh Chunder Deb* (I.L.R. 17 Cal. 951), decide the question of the existence of copyright in the anthology entitled "The Golden Treasury of Songs and Lyrics" ; but that assuming copyright existed he decided merely the question of the infringement of it. That is an extraordinary error. In the long head note of the case it is stated :—

"That the suit was instituted on the 27th February, 1896, and that the plaintiffs complained that the publication of the defendant's book constituted a breach of their copyright, and prayed for the usual relief by way of injunction and damages. They contended that, although the copyrights of the works of the original authors had long lapsed, they were entitled to the copyright in the selections made by P. (i.e., Mr. Palgrave). It was contended, on behalf of the defendant, that there could be no copyright in such a selection, and that if any existed the defendant's book had not infringed it."

The question of the existence of copyright in the anthology was therefore distinctly raised by the defendant ; and Sir Arthur Wilson is at p. 961 reported to have expressed himself thus concerning it :—

"And first I have to consider whether there is copyright in a selection. There has not, as far as I know, been any actual decision upon this question, but, upon principle, I think it clear that such a right does exist, and there is authority to that effect as weighty as anything short of actual decision can be."

He then proceeds to state the law, as he conceived it to be, dealing with the existence of copyright in such work as the Golden Treasury, in the following words :—

"In the case of works not original in the proper sense of the term, but composed of or compiled or prepared from materials open to all, the fact that one man has produced such a work does not take away from anyone else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But, as the law is concisely stated by Hall, V.C., in *Hogg v. Scott* (L.R. 18 Eq. 444 at 458), the true principle in all these cases is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work ; that is, in fact, merely to take away the result of another man's labour or, in other words, his property."

Sir Arthur Wilson then points out that this principle applies to maps, guide books, street directories, dictionaries, to compilations of scientific work and other subjects, and considers that it applies to a selection of poems. He then gives the reason why

it applies to Mr. Palgrave's Golden Treasury in the following words :—

“Such a selection as Mr. Palgrave has made obviously requires extensive reading, careful study and comparison, and the exercise of taste and judgment in selection. It is open to any one who pleases to go through a like course of reading, and by the exercise of his own taste and judgment to make a selection for himself. But if he spares himself this trouble and adopts Mr. Palgrave's selection he offends against the principle.”

He then proceeds to quote the following passage from Lord Eldon's judgment in *Longman v. Winchester*, 16 Ves. 269, 271, approved of by Lord Hatherley in *Spiers v. Brown*, 6 W.R. Eng. 352, 353. “A work consisting of a selection from various authors, two men might perhaps make the same selection, but that must be by resorting to the original authors, not by taking advantage of the selection already made by another.” Sir Arthur Wilson then adds :—

“I am of opinion that the selection of poems made by Mr. Palgrave and embodied in the Golden Treasury is the subject of copyright, and that the defendant's book has infringed that right.”

So far, therefore, from Sir Arthur Wilson not having decided the question whether or not the plaintiffs were entitled to copyright in the Golden Treasury, he expressly stated it was the first question he had to consider. He devoted the best part of a page of his judgment to dealing with it. He states explicitly that he was of opinion Mr. Palgrave's selection embodied in the Golden Treasury was the subject of copyright and that the defendants had infringed his right, and, as was his custom and method, he expressed in clear, precise and appropriate language what were the grounds upon which this decision rested.

The contention to the contrary is in their Lordships' view wholly unsustainable.

In *Moffat and Paige, Limited, v. George Gill & Sons, Ltd., and Francis Marshall*, 86 L.T., 465, Collins, M. R., as he then was, in the course of his judgment at p. 470, after quoting from Lord Eldon's Judgment in *Longman v. Winchester*, the passage which Sir Arthur Wilson had quoted, proceeds to say :—

“Then there is also the authority of the gentleman who was well known in these Courts before he went to India, and who afterwards became a distinguished Indian Judge (Sir Arthur Wilson), in which the very point is raised and decided in the case of *Macmillan v. Suresh Chunder Deb* (I.L.R. 17 Calcutta Series 951). In that case the matter in question was the well-known series called the Golden Treasury, which is a series of quotations put together by Mr. Palgrave, and the defendant had reproduced his work practically, super-adding notes of his own ; and the learned Judge upheld or sustained a claim for infringement. It seems to me that that is precisely what the defendant, Mr. Marshall, did in the present case.”

Stirling, L.J., does not expressly mention Sir Arthur Wilson's decision, but Cozens Hardy, L.J., said that, as he entirely agreed with all that had fallen from his brethren, he did not think it

necessary to add anything. It is clear, therefore, that Sir Arthur Wilson's decision in the Golden Treasury case was approved of and acted upon by the Court of Appeal in this case and treated, as in their Lordships' view it deserved to be, as a sound decision.

From the preface to the Golden Treasury it would appear that the poems in Book IV correspond to the half century just ended at the time of the publication, and that the proprietors of any copyright pieces which were included in this Book IV gave their permission to Mr. Palgrave for their insertion in his work.

In *Walter v. Lane* ([1900] A.C. 539) all the relevant authorities on the question of acquisition of copyright down to 6th August, 1900, appear to have been cited, and it was held that a person who makes notes of a speech delivered in public and transcribes them and publishes in a newspaper what purports to be a verbatim report of the speech, is the "author" of the report within the meaning of the Copyright Act of 1842, and is entitled to the copyright in the printed report, and can assign it.

Lord Halsbury, in his judgment at p. 547, when dealing with the true meaning of the word "author" used in the statute of 1842, points out that every man has a proprietary right in his own literary composition, and that copyright is the exclusive privilege of making copies of it created by this statute which are two wholly different things, and should not be confounded, and restates the question for decision in these words: "The question here is solely whether this book, to use the words of the statute, printed and published and existing as a book for the first time, can be copied by some one other than the producers of it (I avoid the word author), by those who have not produced it themselves but have simply copied that which others have laboured to create by their own skill and expenditure." And again he, at p. 349, seems to express the view that if the skill, labour and accuracy of which he speaks be exercised to reproduce in writing spoken words in a book form, it is, as far as copyright in the written words is concerned, immaterial whether they be wise or foolish, accurate or inaccurate, of literary merit or of no merit at all.

Lord Davey in his judgment pointed out that copyright is merely the right of multiplying copies of a published writing, and has nothing to do with the originality or literary merits of the author or composer, and that the appellant in that particular case only sought to prevent the respondents from multiplying copies of this (the appellant's own report of the speech of Lord Rosebery) and availing himself for his own profit of the skill, labour and expense by which that report was produced and published.

The only other authority on the point of the acquisition of copyright to which it is necessary to refer is this case of *University of London Press, Ltd., v. University Tutorial Press, Ltd.* [1916], 2 Ch. 601, in which Mr. Justice Peterson, dealing with the meaning of the words "original literary work"

used in Section 1, subsection 1, of the Act of 1911, at page 608 says :—

“The word ‘original’ does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the origin of ideas, but with the expression of thought; and in the case of ‘literary work,’ with the expression of thought in print or writing. The originality which is required relates to the expression of the thought; but the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author.”

In their Lordships’ view this is the correct construction of the words of Section 1, subsection 1, and they adopt it.

What is the precise amount of the knowledge labour, 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 the Copyright Act of 1911 cannot be defined in precise terms. 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. But their Lordships have no hesitation in holding that there is no evidence in the present case to establish that an amount of these several things has been applied to the composition of the text of the appellants’ book, as distinguished from the notes contained in it, to entitle them to the copyright of it. As to the notes it is altogether different. Their Lordships do not take the view that these notes are trifling in their nature or are useless. On the contrary, they think that the notes make the book more attractive, the study of it more interesting and informing, enhance its efficiency and consequently increase its value as an educational manual. Mr. Upjohn contended that these notes were useless because everything in them was to be found in Lempriere’s Classical Dictionary or some other classical dictionary. As if the heads of Indian pupils at school and students about to present themselves for a matriculation examination in the Bombay University were as well stored with classical lore of this nature as are these dictionaries, and that these youths had so keen a recollection of all the matters set forth in these substantial volumes that they did not require to refer to them! If the recollection of the contents of these dictionaries was so faint that they needed to refer to them, it was obviously of advantage to have the information at hand in the notes so that they might dispense with the reference.

Their Lordships are quite of opinion these notes were well chosen, were neatly condensed, were sufficiently copious, were accurate and must have required for the framing of them classical knowledge, literary skill and taste, labour and sound judgment as to what was fitting and useful to be brought to the notice of schoolboys and students about to enter the University. Well, the respondents have not only copied but servilely copied many of these notes. There is no other way of accounting for the absolute verbal identity of some of the notes in both books.

In the case of *Black v. Murray* (9 Sc. Sess. Cas. (3rd Ser.), 341), which dealt with the alleged infringement of the copyright in a volume entitled "Minstrelsy of the Scottish Border," the original edition of which was no longer protected by copyright, but a new edition was published to which valuable notes were added, Lord Kinloch, in delivering judgment, dealt with the question of the effect of these notes upon the edition in which they were printed, in a very clear and forcible judgment. He said at p. 355 of the report:—

"I think it is clear that it will not create copyright in a new edition of a work of which the copyright has expired merely to make a few emendations of the text or to add a few unimportant notes. To create a copyright by alterations of the text these must be extensive and substantial practically making a new book. With regard to notes, in like manner they must exhibit an addition to the work which is not superficial or colourable, but imparts to the book a true and real value over and above that belonging to the text. This value may perhaps be rightly expressed by saying that the book will procure purchasers in the market on special account of these notes. When notes to this extent and of this value are added I cannot doubt that they attach to the edition the privilege of copyright. The principle of the law of copyright directly applies. There is involved in such annotation and often in a very eminent degree, an exercise of intellect and an application of learning which place the annotator in the position and character of author in the most proper sense of the word. . . . In every view the addition of such notes as I have figured puts the stamp of copyright on the edition to which they are attached. It will still, of course, remain open to publish the text which *ex hypothesi* is the same as in the original edition. But to take and publish the notes will be a clear infringement."

In *Jarrold v. Houlston*, 3 K. & J. 7 and 8, the plaintiffs were the publishers of a book written by Dr. Brewer called the "Guide to Science." The Vice-Chancellor, Sir W. Page Wood, having fully ascertained the object with which this book was compiled and published and the sources from which Dr. Brewer obtained the information necessary to enable him to write it, stated these matters in the following passage and laid down the principle of law applicable to the facts. He said:—

"If anyone by pains and labour collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those questions and explanations of those phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading or out of works consulted by him for the express purpose, the reduction of the questions so collected with such answers under certain heads and in a scientific form, is amply sufficient to constitute an original work of which the copyright will be protected. Therefore I now have no hesitation in coming to the conclusion that the book now in question is in that sense an original work and entitled to protection."

The defendants were publishers of a book called "The Reason Why," which was published in parts styled lectures. The Vice-Chancellor held that the second lecture contained piratical

matter, as did also apparently all the lectures from Nos. 5 to 25 inclusive. The Vice-Chancellor made the following order:—

“ First, the plaintiff do bring such action at law against the defendants as they may be advised for the publication of the book called ‘ The Reason Why ’ and that they undertake to abide by any order that this Court may make with reference to any damage occasioned by this order, in the event of the jury finding in favour of the defendants. And also on plaintiffs undertaking to bring such action to restrain defendants from publishing the book called ‘ The Reason Why ’ containing the lectures numbered 2, 3 and from 5 to 25 both inclusive, or any passage or passages copied, taken or colourably altered from the book called ‘ The Guide to Science,’ in the plaintiffs’ Bill mentioned.”

Following that precedent, their Lordships having come to the conclusion that the appellants are not entitled to a copyright in the text of this book extending from page 1 to page 82 thereof both inclusive, but are entitled to copyright in the notes printed in pages 83 to 94, both inclusive, they will therefore humbly advise His Majesty that the decree of the High Court in its Appellate Jurisdiction, dated the 13th October, 1921, should be set aside with costs, and that the decree of Mr. Justice Fawcett, of the 10th March, 1921, should be amended by inserting after the words “ mentioned in the plaint herein ” the words “ containing the notes and glossary printed on pages 83 to 94, both inclusive, of the said book or any of them, or any portion or portions of the said notes or any passage or passages from the same,” and directing that the respondents should pay to the appellants all the costs of the hearing of the action before that Judge, and that subject to these amendments that the decree of the first Court ought to be affirmed.

Under the circumstances the parties will bear their own costs of this appeal.

In the Privy Council.

MACMILLAN AND COMPANY, LIMITED,

of

K. AND J. COOPER.

DELIVERED BY LORD ATKINSON.

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1923.