

A case study on:
Copyright in Abridgement

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Intellectual Property Rights – University Elective
Project

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CHAPTER - 1

INTRODUCTION

COPYRIGHT LAW OF INDIA

- The Copyright Act, 1957 (as amended by the Copyright Amendment Act, 2012) gives rights to the creators of literary, dramatic, musical and artistic works and the producers of cinematographic films and sound recordings. These rights include the rights of reproduction of the work, communication of the work, adaptation of the work and translation of the work.
- These rights are different from rights like right to equality or freedom etc., these rights are basically negative rights which prohibit others from reproduction, communication, adaptation and translation of the works. Unfair use of these works amounts to copyright infringement.

COPYRIGHT IN ABRIDGEMENT

- A genuine abridgement of a literary work is an original work and can be the subject of copyright.
- An abridgement of a literary work, is entitled to copyright if it is new and original and the author has bestowed sufficient skill and labor upon it. In *Macmillan & Co. v Cooper* Lord ATKINSON stated: "An abridgement 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, 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 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 words. And it is obvious that the learning, judgment, literary taste and skill requisite to compile properly and effectively an abridgment, deserving that name, could not be at all needed merely to select such scraps as those taken from an author and to print them in a narrative form.

CHAPTER - 2
TABLE OF CASES

1. Macmillan and Company Ltd vs. K and J Cooper [MANU/PR/0118/1923]
2. Neetu Singh Vs. Rajiv Saumitra
3. Eastern Book Company and Ors. Vs. Navin J. Desai and Anr

CHAPTER - 3
NEETU SINGH VS. RAJIV SAUMITRA

CASE NOTE:

- The plaintiff Neetu Singh filed a case seeking to restrain the Defendants from reproducing/selling her literary work ‘English for General Competitions’ with the cover featuring her artistic work. Neetu Singh claims to be a renowned author in the field of education, training and educational consultancy, and provides coaching services as well. There are basically two defendants: 1. Her husband and 2: Paramount Coaching Centre. Her husband manages this coaching centre. The Plaintiff incorporated the Coaching Centre with the Defendant in 2009 and was a Director of the company from 2012 to 2014. The facts are disputed as to which party had initially founded the Centre.
- The Plaintiff authored a number of books from 2012-2014, one among which is ‘English for General Competitions – From Plinth to Paramount’ which is also published as is ‘English for General Competitions’ (to the left). She published these books through her proprietary concern – ‘Paramount Reader Publication’, and the obtained copyright registration in her name.
- In December 2015, she learned that the Defendant No. 1 was illegally publishing books authored by her and filed a police complaint – which lead to 6000 copies being seized by the Police. In June 2016, the Plaintiff then discovered that the Defendant No. 1 published Paramount Coaching Centre’s first book: “English for General Competitions – From Plinth to Paramount”, on which there was no mention of an author. The Plaintiff claims that this book is a verbatim copy of her original book, under identical title and illustrations on the front cover, with only a slight variation in colour. Further, it was submitted that the Defendant was selling the infringing books at half the price of her original work.

HELD:

- While the Court accepted that the Plaintiff was working as a Director of the company from 2012 to 2014, it noted that the Defendants had failed to prove that the literary work was authored as part of her duties and obligations as a Director. Following the Ram Pershad decision, it was held that in the absence of an agreement, or the articles/memorandum of the company that might lay down the terms and conditions of employment – the Plaintiff was held to own the copyright in the works.
- The Court briefly touched upon fair use in the context of the famed *The Chancellors, Masters and Scholars of University of Oxford & Ors. v. Rameshwari Photocopy Service & Ors.* The Court distinguished works in the course of instruction that under Section 52 and works that were commercial in nature. Holding the present use of the Plaintiffs work to be commercial in nature, and with a profit motive – the Court granted an interim injunction in favour of the Plaintiff.

DEFENDANTS' ARGUMENTS:

- Plaintiff is not the exclusive author of the books, as she allegedly authored the books while working in her capacity as Director of the company and co-authored them with a team in the Coaching Centre. The Defendants rely on an admission by the Plaintiff in an earlier suit where the Plaintiff has demanded salary from the Defendant claiming to be an employee. It was further argued that since the Plaintiff served as a Director of the company, she owed a fiduciary duty to the Coaching Centre.
- The Defendants relied on the Supreme Court decision of Ram Pershad and V.T Thomas for this argument, where it was held that a director of a company is not a servant but an agent of the company as a company acts through its directors. Further, this case noted that the nature of employment may be determined by the articles of association of a company and/or an agreement, if any, under which the contractual relationship between the Director and the company has been laid down.

PLAINTIFFS' ARGUMENTS:

- On the other hand, the Plaintiff argued that since there was no contract of service between the two parties, she is the author of the book. Further, it was contended that the copyright registration serves as prima facie- evidence of the same. It was alleged that the book was copied verbatim, so much so that even the printing errors in the Plaintiff's book were reproduced.

SECTION 17 OF THE COPYRIGHT ACT:

- Section 17(c) of the Copyright Act inter alia provides that if a work was made by an author in the course of employment under a contract of service or apprenticeship – the employer shall be the owner of copyright, in absence of any agreement to the contrary.

FINAL NOTE:

Our case at hand clarifies that when the ownership of copyright is disputed between an employer and an employee – it is the terms of employment of the employee that have to be looked into. It must be determined that the work was created by the employee as part of the terms of employment for the employer to claim ownership over the same. The case even clarifies what is to be looked into to determine the terms of employment – in the case of a Director, it is any subsisting agreement, or the AOA/MOA of the company. This decision could be applied to other forms of employment by simply looking at any agreement between an employer and an employee.

CHAPTER - 4
EASTERN BOOK COMPANY AND ORS. VS. NAVIN J. DESAI AND
ANR

CASE NOTE:

- Plaintiffs published a book containing case notes and summaries for many cases of Supreme Court. They also published a software “Case Finder” for the same cases.
- The defendants published other softwares named “The Laws” and “Grand Jurix”. They were having more cases than the plaintiffs on the software and there were some extra features like advanced search for the case. Also, the defendants’ software contained cases from the time 1950 onwards, although plaintiffs’ software contained cases from 1969 onwards.
- The plaintiffs claimed copyright in the headnotes to the judgments as well as in the selection, arrangement and copy-editing of the judgments.
- Plaintiffs claimed that certain mistakes made by them in their software were also made by the defendants in their software, which shows that they copied it slavishly.
- The plaintiffs had sued the defendants for a declaration that the defendants had infringed their copyright and caused incalculable harm to the business, reputation and goodwill of the plaintiffs by selling the same software at a very cheap price than the plaintiffs.

HELD:

- An ex parte interim injunction was granted, the defendants were not allowed to sell their software with the copied headnotes of the plaintiffs till the judgement of the case. This order remained till the applications of both the parties were finally disposed of by the impugned order.
- There is no copyright in the judgement of the court. Anyhow, the plaintiffs were not claiming copyright in the text of the judgements.
- Although, the plaintiffs cannot claim monopoly for the published work and cannot stop the defendants from making the work public. Because, just by adding mere commas and correcting grammar mistakes, adding paragraph numbers, the work doesn’t pass as original literary work, therefore no copyright can be claimed for the same.
- In Macmillan and Company Limited Vs. K. and J. Cooper, it was held that 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. In this case, the judgements written in the form, are not subject to copyright.

JUDGEMENTS:

- The Judge dismissed the applications of the plaintiff for interim relief in both the cases and an ex parte interim injunction was granted, the defendants were only allowed to sell their software with their “own” headnotes.
- In the final judgement, the applications of the plaintiffs for interim relief in both the cases were vacated.

CHAPTER - 5

MACMILLAN AND COMPANY LTD VS. K AND J COOPER

CASE NOTE:

- Plaintiffs published an abridged edition of a non-copyright book called "North's Translation of Plutarch's Life of Alexander. “
- The defendants published another abridgment of North's book; omitted side notes and transitional notes, but utilized the notes appended to the plaintiffs’ abridgment.
- The plaintiffs having sued for a declaration that the defendants’ book was an infringement of their copyright

HELD:

- Plaintiffs were not entitled to copyright in the text of their book not having; spent sufficient knowledge, labor, judgment or literary skill upon it, they still were entitled to copyright in the notes they had appended to their edition.
- The precise amount of knowledge, or labor cannot be defined. It highly depends on the specificity of the case.
- The act does not require the expression in original form but it should not be copied from others’ work.

JUDGEMENT:

Judgement no. 6 –

- The defendants' 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 defendants' book which were in many instances serially copied from those contained in the book of the appellants.

Judgement no. 8 –

- The primary question to be determined on the appeal is whether the plaintiffs were entitled to a copyright in the text of their book and in those notes attached to it which latter the defendants had in many instances in effect copied.

Judgement no. 11 –

- An abridgment means a statement designed to be complete and accurate of the thoughts, opinions, and ideas by author expressed therein, but set forth concisely in the compressed language of the abridger.

- A publication which consists of detached passages selected from an author's work knit together by a few words so as to give these passages the appearance of a continuous narrative, is not an abridgment at all.

Judgement no. 12 –

- To constitute an equitable abridgment, the entire work must be preserved in its exact meaning, and an exertion of the individuality employed in rendering it less expensive and more convenient both to the time and use of the reader
- Copying some of its parts and omitting others confers no title to authorship.

Judgement no. 16 –

- 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, labor, 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

Judgement no. 17 –

- Plaintiff does not acquire the right to appropriate to himself the materials which were common to all persons before
- The defendants have no right to use such materials with plaintiffs' improvements superadded, whether they consist in plan, arrangement, or illustrations or combinations, for these are strictly his own

Judgement no. 23 –

- 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.

Judgement no. 33 –

- 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

Judgement no. 34 –

- 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 originality 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 Act does not require that the expression must be in an original or novel form, but the work must not be copied

Judgement no. 36 –

- What is 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 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
- 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

Judgement no. 37 –

- Their Lordships are quite of opinion these notes were well chosen, were neatly condensed, were sufficiently copious, were accurate
- Must have required for the framing of them classical knowledge, literary skill and taste, labor 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

Judgement no. 39 –

- If anyone by pains and labor 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 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.

Judgement no. 41 –

- 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

APPENDIX

Below is a list of the useful websites that were used in the making of this assignment under the guidance of the concerned faculty.

1. manupatra.com – for the actual case and the judgement