

ORIGINAL CIVIL.

Before Remfry J.

KAMALA BOOK DEPOT, LIMITED

v.

SOUREENDRANATH MUKHERJI.*

1934

June 26, 27 ;
July 4.

Copyright—Assignment—Sale of the first edition of a book—Infringement.

A sale of the first edition of a book amounts to an assignment of an interest in the copyright until the last copy of that edition is sold.

Sweet v. Cater (1) followed.

In re *Jude's Musical Compositions* (?) discussed.

ORIGINAL SUIT.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

S. C. Ray and *S. C. Mitter* for the plaintiff.

S. Ghose for the first defendant.

S. N. Banerjee and *S. R. Das Gupta* for the second defendant.

Cur. adv. vult.

REMFRY J. In this case the plaintiff seeks an injunction restraining the defendants from publishing or selling a work called *Soureendra Granthābali*, containing a novel called *Nāree* or *Nishitha Dip*.

It appears that, on the 16th of April, 1930, the first defendant, an author, sold to the plaintiff the first edition of his new novel, *Nishitha Dip*, which was to consist of 1,100 copies in twelve forms in double crown size, the amount to be paid by the plaintiff to the first defendant being Rs. 200 if it was priced at Re. 1-8 or Rs. 225 if it was priced at Rs. 2.

*Original Suit, No. 2497 of 1932.

(1) (1841) 11 Sim. 572 ;
59 E. R. 994.

(2) [1906] 2 Ch. 595 ;
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Thereafter, on the 15th August, 1932, the first defendant arranged with the second defendant that the latter should publish the same novel as part of a collection of the former's novels, and the second defendant so published it.

The plaintiff has only sold about 250 copies of the first edition which was priced at Rs. 2 a copy and the collection which contained eleven or twelve novels was published by the second defendant at Rs. 2 a copy.

The only contested point was the legal effect of the earlier agreement. The plaintiff claims that the publication of the collection is an infringement of his rights and that the author could not publish the novel in any form at all until the whole of the first edition was sold. The defendants contend that the author only sold a right to print and sell 1,100 copies in a particular form and did not assign the copyright, and that the author was entitled to publish the novel separately or in a collection with other novels provided he did not publish it in twelve forms in double crown size.

It was admitted that whether the second defendant knew of the earlier agreement or not, the question of infringement depended on the effect of that agreement.

For the somewhat startling proposition that the plaintiff only purchased a right to publish the novel in a particular form the defendants cited *In re Jude's Musical Compositions* (1). There the question was whether the publisher was entitled to enter his name in the register as the assignee of the copyright. The agreement gave the publisher the right to publish and sell a collection of hymns, on a royalty. Some of the learned Judges certainly described his right as a right to publish these hymns in a particular form, and it was held that he was not the assignee of the copyright. The Court, however, did not decide what would constitute an infringement of the publisher's

(1) [1906] 2 Ch. 595; on appeal [1907] 1 Ch. 651.

rights, and, as I read the judgment, I find no suggestion in it that a publication in a different form would not be an infringement of his rights.

Reliance was also placed on the decision of Jessel M. R. in *Warne v. Routledge* (1). There a lady arranged with a publisher that he should publish a novel on a royalty. The decision was that it was a partnership and that as the lady had ended the partnership and as there were no terms as to the number of copies, which the publisher could sell, or as to the time in which he had an exclusive right to sell, therefore, as in any other partnership, no terms could be implied, and, once the partnership ended, the authoress could publish her novel through another firm. The publisher had not a contract which entitled him to claim that no publication could be allowed until he had sold the last copy of the novel which he had printed.

The plaintiff relied on *Sweet v. Cater* (2). In that case, the tenth edition of Sugden's *Vendors and Purchasers* was sold to the plaintiff, the edition to consist of 10,000 copies, the book to be published in a particular form and at a fixed price. The publisher brought an action for infringement against a third party and the question was what was the plaintiff's exact position. It was held that he was the assignee of an interest in the copyright which lasted until the last of the 10,000 copies was sold, and was entitled to the exclusive right to the copyright for that period.

In my opinion, in the case before me, the sale of the first edition of 1,100 copies amounts to an assignment of an interest in the copyright until the last copy of that edition is sold. Until then the purchaser has the exclusive right to the copyright, at any rate, as far as the right to publish the novel in any form is concerned. I need not consider whether his right extends any further, for instance, to the right to dramatize the novel. As a right to property was

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sold, the second defendant is not entitled to infringe that right.

The arguments of the defendants in my opinion, overlook that the author sold the first edition of 1,100 copies. I see no force whatsoever in the argument that the plaintiff only bought the right to sell the novel published separately in a volume. That appears to me to be as convincing as if the author had contracted that his photograph should appear on the cover, and then contended that he was entitled to publish his novel in a plain cover.

In my opinion it is the defendant and not the plaintiff who seeks to imply a term into the contract. The contract was for the sale of the first edition of 1,100 copies. To imply a term that that meant a reasonable time only for such sale, or that the author could publish the book in any other form, seems to me to contradict the contract.

There will be an injunction restraining the two defendants, their servants or agents from publishing or selling the novel in any form or shape or in any collection of novels until the last copy of the first edition is sold or disposed of.

That, in my opinion, is sufficient and the plaintiff is not entitled to any copies of the collection.

As regards damages the parties arranged that there should be an enquiry: that must be on the basis laid down in *Juggi Lal Kamalapat v. Swadeshi Mills Company, Ltd.* (1), and unless the parties can agree to some figure, the question of damages will be referred to such officer as the Registrar may select.

The costs of the suit will be paid by the defendants, and the costs of the reference, if any, reserved

Attorneys for plaintiff: *K. K. Dutt & Company.*

Attorney for first defendant: *A. N. Das.*

Attorney for second defendant: *S. C. Ghose.*

Suit decreed.

(1) (1928) I. L. R. 51 All. 182; L. R. 56 I. A. 1.