

to such objects. I would, therefore, accept this appeal and setting aside the decree of the trial judge decree the plaintiffs' suit with costs throughout.

MONROE J.—I agree.

P. S.

1934

PREM NATH

v.

HARI RAM.

JAI LAL J.

*Appeal accepted.*

**APPELLATE CIVIL.**

*Before Tek Chand and Agha Haidar JJ.*

KARTAR SINGH GIANI (DEFENDANT) Appellant

1934

*versus*

LADHA SINGH (PLAINTIFF)  
GURDIAL SINGH AND OTHERS } Respondents.  
(DEFENDANTS)

April 20.

**Civil Appeal No. 433 of 1932.**

*Copyright Act, 1911 (1 and 2 Geo. V Chap. 46), Sections 1 (2), 2 (1): Copyright—Definition of and infringement of—principles applicable.*

K, the defendant-appellant, who had written a life sketch of *Sri Guru Gobind Singh Ji* in Punjabi poetry, and had given it the name of *Dashmesh Parkash*, in 1915 sold his copyright in the said book to the plaintiff and undertook that in future he and his heirs "shall have no right to get the above-mentioned book printed in any language or to alter its subject-matter or to change its name." In 1917 K began to write a series of books on the lives of the *Sikh Gurus*, one of which was styled *Dashmesh Partap* which was also a life sketch of *Sri Guru Gobind Singh Ji*. While this last mentioned work was in the press, the plaintiff brought the present suit against the author, the publisher and the printer of it, alleging that the same infringed the plaintiff's copyright and praying for an injunction prohibiting the defendants from publishing the new work. It was admitted in the course of arguments in the

1934

KARTAR  
SINGH GIANI  
v.  
LADHA SINGH.

High Court that the agreement did not confer on the plaintiff any higher rights than he had already under the general law of copyright.

*Held*, that the new work, though also a biography of *Sri Guru Gobind Singh Ji*, being a much longer work and introducing, as a result of further study and research, much extra material and a large number of new incidents was not a colourable imitation or copy of the earlier work and did not infringe the plaintiff's copyright, as defined in section 1 (2) of the Copyright Act, 1911.

*Held also*, that all laws which put a restraint upon human activity and enterprise must be construed in a reasonable and generous spirit. Under the guise of copyright a plaintiff cannot ask the Court to close all avenues of scholarship and research and all frontiers of human knowledge.

*Matthewson v. Stockdale* (1), *Hanfstaengl v. W. H. Smith and Son* (2), *Hanfstaengl v. Bains and Co.* (3), and *Garrold v. Heywood* (4), relied upon.

*First Appeal from the decree of Mr. G. C. Hilton, Additional District Judge, Lahore, dated 16th December, 1931, granting the plaintiff a decree against all the three defendants.*

BADRI DAS and CHARAN SINGH, for Appellant.

MEHR CHAND Mahajan and H. C. KUMAR, for (Plaintiff) Respondent.

AGHA HAIDAR J.

AGHA HAIDAR J.—This is a defendant's appeal, arising out of a suit brought by the plaintiff for the alleged infringement of his copyright. The facts leading up to this litigation may be briefly stated as follows:—

*Bhai Kartar Singh Giani*, defendant No. 1, appellant, is a *granthi* of the Darbar Sahib at Amritsar and is a poet of some repute. He had written a life

(1) (1806) 12 Vesey's Reports 270.

(3) 1895 A. C. 20.

(2) (1905) 74 L. J. R. Ch. D. 304, (N. S.).

(4) (1870) 18 W. R. 279.

sketch of *Sri Guru Gobind Singh Ji* in *Punjabi* poetry and had given it the name of *Dashmesh Parkash*. This book is Exhibit P/1. On the 6th July, 1915, under a deed of transfer, Exhibit P/2, defendant No. 1 conveyed to the plaintiff, for a consideration of Rs. 500 his copyright in the said book and undertook that in future he and his heirs "shall have no right to get the above-mentioned book printed in any language or to alter its subject-matter or to change its name." In 1917 defendant No. 1 began to write a series of books containing the lives of the various *Sikh Gurus*, calling it *Akali Jot*. Exhibits D/2 and D/3 These were published in 1920 by the plaintiff—a firm of book-sellers and publishers of Lahore. *Dashmesh Partap*, Exhibit D/1, is one of the series noted above. While this last mentioned work was in the press in 1930 the plaintiff brought the present suit alleging that defendant No. 1 had, maliciously and deliberately and without any just cause, infringed the plaintiff's copyright in *Dashmesh Parkash*, Exhibit P/1, by publishing *Dashmesh Partap*, Exhibit D/1, and praying that the defendants be restrained by issue of a permanent injunction from proceeding with the publication of the second life sketch of *Sri Guru Gobind Singh Ji* and that the "forms" of the books, which have so far been printed, be taken possession of by the Court and dealt with according to law.

*Bhai Kartar Singh Giani*, defendant No. 1, is the contesting defendant, defendants Nos. 2 and 3 being the publishers and printers, respectively, of the work *Dashmesh Partap*, Exhibit D/1. Defendant No. 1, while admitting the assignment of the copyright in *Dashmesh Parkash*, under Exhibit P/2, to

1934

KARTAR  
SINGH GIANI  
v.  
LADHA SINGH,  
AGHA HAIDAR J.

1934

KARTAR  
SINGH GIANI  
v.  
LADHA SINGH.  
AGHA HAIDAR J.

the plaintiff, pleaded that he did not agree that he would never in future publish any life sketch of *Sri Guru Gobind Singh Ji* and that the present book was entirely different from *Dashmesh Parkash* in volume, size, material, language and form of verse. He further urged that the present book had been newly compiled by him after a great deal of original research and labour and was based upon entirely new materials which were not used in the previous work. Various other pleas were raised in the written statement, but we are not concerned with them, because they were not raised in the present appeal.

The plaintiff's suit having been decreed by the Additional District Judge, Lahore, defendant No. 1 has come up to this Court in appeal and we have heard counsel on both sides at considerable length.

*Dashmesh* means 'the tenth *guru* and *Parkash* means 'light.' *Partap* means *iqbal* an Urdu word which is difficult to translate faithfully into English. I accept the interpretation of the learned Additional District Judge who has held the word *Partap* corresponds to the Latin word *felix* as applied to the Roman General Sulla and connotes 'prestige resulting from success and good fortune.' According to *Bhai Kartar Singh Giani*, both the words *Partap* and *Parkash* means 'light' and are intended to convey the might of *Guru Gobind Singh*. "Copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (section 1, sub-section (2) of the Copyright Act, 1911) and the "copyright in a work" shall be deemed to be infringed by any person, who, without the consent of

the owner of the copyright, does anything, the sole right to do which is conferred on the owner of the copyright (section 2, sub-section (1) of the same Act). There are numerous decisions on the subject and the general principles are well-understood. The difficulty, however, in some cases arises in applying the law to the facts of a particular case. The trial Judge has found, and the position was not contested by the counsel for the parties, that the agreement, Exhibit P/2, did not confer any higher rights upon the plaintiff than he already had under the general law of copyright.

*Dashmesh Parkash* is the life history of *Sri Guru Gobind Singh Ji* and has been written by defendant No. 1 for the benefit of the Sikh public who are the followers of the said *Guru*. This book covers about 568 pages. *Dashmesh Partap*, Exhibit D/1, is a larger book and, according to the author (defendant No. 1), it would cover, when completed, eight or nine hundred pages. *Dashmesh Parkash* and *Dashmesh Partap* are both biographies of *Sri Guru Gobind Singh Ji*. They purport to be historical works in a sense, although they are interlarded with considerable matter which cannot be called authentic history, being based upon popular legends prevalent among the followers and believers of the *guru*. I have been impressed favourably with the statement of defendant No. 1 as D. W. 4, who has frankly admitted that his earlier work contained a number of errors and that, as a result of subsequent study of history for a period of ten years or so, he has been able to ascertain that he had made mistakes in his earlier work on the subjects. The narrative in the earlier as well as in the later work is, as already stated, founded upon works

1934

KARTAR  
SINGH GJANI  
v.  
LADHA SINGH.  
AGHA HAIDAR J.

1934

KARTAR  
SINGH GIANI  
v.  
LADHA SINGH.  
AGHA HAIDAR J.

to which the writer had had recourse. The metre is almost the same, but there are six entirely new incidents in the fragment of about 104 pages (Exhibit D/1) which had been printed at the date of the suit and in the eight pages subsequently produced. According to the author (defendant No. 1), when the whole work is complete it would incorporate 76 new incidents which are not to be found in the earlier work. Many of the works which the author has used when writing his books had already been in existence and the writer is indebted to the works of Sundar Singh, Parem Singh, Vir Singh and others which had been published after Exhibit P/1 and which throw new light on the story of *Guru Gobind Singh*. Defendant No. 1 in his evidence has stated that he had not read the *Suraj Parkash* before he wrote *Dashmesh Parkash*, Exhibit P/1, and that the *Suraj Parkash* referred to in *Dashmesh Parkash* was not the commonly known *Suraj Parkash* but the *Twareekh Suraj Parkash* by *Bhai Gian Singh* which is also called *Wartik Suraj Parkash*. He has further stated that the additional episodes, which are to be introduced in the new book, Exhibit D/1, were taken from the *Suraj Parkash* and the *Kalghi Dhar Chamatkar* of *Bhai Vir Singh*. This *Suraj Parkash* had not been read by defendant No. 1 when he wrote *Dashmesh Parkash*. This is a different book written by *Bhai Santokh Singh* and is not the *Suraj Parkash* of *Bhai Gian Singh* referred to in Exhibit P/1. The result, therefore, is that the new book is a work which defendant No. 1 has produced after further studies and represents the result of ten years of research work.

In some of the leading cases on the subject the formula which has been adopted is whether the later

work, which forms the subject-matter of the suit, is a colourable imitation or copy of the earlier work. Now in the two books which purport to be biographies, the dates and the principal events in the life of *Guru Gobind Singh* would naturally be common. The fling at the Mohammadan rulers of India and particularly at the Moghul Emperor Aurangzeb and his high judicial officers and other dignitaries was, of course, inevitable in a work of this description, written by a Sikh poet who is also a Sikh priest when writing for the Sikh public. Equally inevitable was the appearance of supernatural phenomenon at the birth of *Guru Gobind Singh* even though authentic history is completely silent about them. Unfortunately my knowledge of the *Punjabi* language in which the two books, Exhibits P/1 and D/1, are written is somewhat scanty. But the plaintiff and the defendant No. 1 were both present in Court throughout the hearing of the case and long quotations were recited by them from the two works and were translated in the presence of each other for my benefit. There cannot be any manner of doubt that the later work represents a maturer art and a greater wealth of details in depicting the various incidents. The imagery of the later work is of a superior type when compared with *Dashmesh Parkash*, Exhibit P/1. There are fresh incidents and details which are the result of researches made by the author into works which had existed before as well as those which came into existence after Exhibit P/1 had been written and published.

*Bachitar Natak* is the autobiography of *Guru Gobind Singh* which is sure to be mentioned in every book purporting to be the life story of the *Guru*. In *Dashmesh Parkash*, Exhibit P/1, *Bachitar Natak* is

1934

---

 KARTAR  
 SINGH GIANI  
 v.  
 LADHA SINGH.  


---

 AGHA HAIDAR J.

1934

KARTAR

SINGH GIANI

v.

LADHA SINGH.

AGHA HAIDAR J.

merely relegated to a foot-note while in *Dashmesh Partap*, Exhibit D/1, the subject-matter of *Bachitar Natak* has been versified and is interspersed over a great portion of the book, dealing with the ancestry of *Guru Gobind Singh*.

For the purpose of determining whether *Dashmesh Partap* is a copy or a colourable imitation of *Dashmesh Parkash*, certain reported cases are helpful, though I have not been able to find a case which is exactly on all fours with the present case. The case reported as *Matthewson v. Stockdale* (1) is instructive. In this case the dispute was as regards a certain list which was maintained in the India House and had been published by the plaintiff. It was alleged that the defendant had copied that list and had thereby infringed the plaintiff's copyright. The Court, however, held that all human events were equally open to all who wished to add to or improve the materials, already collected by others, thus making an original work, and no man could monopolise such a subject. The judgment goes on to say that 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. But a copy, much less a servile copy, of a work cannot be allowed. In the present case defendant No. 1 had used certain historical works while writing Exhibit P/1. He carried on his researches afterwards and found out some of his mistakes and tapped other sources of knowledge and eventually embodied the result of his labour, skill and

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(1) (1806) 12 Vesey's Reports 270.



judgment in Exhibit D/1. There are undoubtedly common incidents, but they are clothed in a different poetical garb, and it cannot be said that the one is a copy, much less a servile copy of the other.

I have studied the case reported as *Hanfstaengl v. W. H. Smith and Son* (1). The learned Judge in that case has adopted the definition of a "copy" from an earlier decision which runs as follows:—

"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."

He has quoted the following passage from the House of Lords case—*Hanfstaengl v. Bains and Co.* (2) "The 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." In my opinion after carefully following the lengthy quotations read out and translated in Court by the parties from the two works it cannot be said that Exhibit D/1 is a "copy" of Exhibit P/1. As I have already said, certain historical or legendary incidents to be found in the earlier work are sure to be portrayed in the later work but they are far from being copies from the original work and the introduction of a number of entirely new incidents, of course, further strengthen the defendant's case that the two works are substantially different from each other.

1934

KARTAR  
SINGH GIANI  
v.  
LADHA SINGH.

AGHA HAIDAR J.

1934

KARTAR  
 SINGH GIANI  
 v.  
 LADHA SINGH.  
 AGHA HAIDAR J.

The test laid down in *Garrold v. Heywood* (1), lends support to the defendant's contention. The dispute was in respect of certain scientific books. The plaintiffs alleged that the defendant's books had been copied from their books, while the defendant pleaded that his books were the result of his individual labour and skill. The principle enunciated by the learned Judge was as follows:—

“ If any part of a work complained of is a transcript of another work or with colourable additions and variations and prepared without any real independent literary labour such portion of the work is piratical. But it is impossible to establish a charge of piracy when it is necessary to track mere passages and lines through hundreds of pages or when the authors of a work challenged as piratical have honestly applied their labour to various sources of information.”

This is precisely the case before us. A few lines here and there in Exhibit D/1 might be reminiscent of similar lines in Exhibit P/1 but, as already observed, the sources made use of by the author being in some cases common, such a result was inevitable. Students of Shakespeare are aware that in his Roman plays there are passages which seem to have been bodily taken from North's *Translation of Plutarch's Lives*. The same may be the case with certain passages in *Dashmesh Parkash*, Exhibit P/1, and *Dashmesh Partap*, Exhibit D/1, which bear resemblance to each other on account of their common origin. All laws which put a restraint upon human activity and enterprise must be construed in a reasonable and generous spirit. Under the guise of the copyright,

a plaintiff cannot ask the Court to close all the avenues of research and scholarship and all frontiers of human knowledge. In my opinion, interpreting the law in a just and liberal spirit, *Dashmesh Partap*, Exhibit D/1, is quite a distinct work from *Dashmesh Parkash*, Exhibit P/1, and the plaintiff cannot obtain the injunction prayed for. But, as frankly admitted by defendant No. 1, *Dashmesh Parkash* and *Dashmesh Partap* practically mean the same thing, and as there is a considerable phonetic similarity between the two titles, in my judgment the word *Dashmesh Partap*, Exhibit D/1, might mislead the public and easily pass off as *Dashmesh Parkash*, Exhibit P/1. This would naturally reduce the sale of the plaintiff's book in the book market. Defendant No. 1 very properly admitted that he was prepared to change the name of the book, Exhibit D/1, so that the plaintiff may not suffer any loss by the purchasers buying Exhibit D/1, mistaking it for Exhibit P/1.

I would accordingly accept the appeal in the main and, setting aside the decree of the Additional District Judge, Lahore, grant an injunction to the plaintiff, merely restraining defendant No. 1 from using the name *Dashmesh Partap* for Exhibit D/1. As defendant No. 1 has substantially succeeded, I allow him costs in both the Courts.

TEK CHAND J.—I agree.

TEK CHAND J.

P. S.

*Appeal accepted*

1934

KARTAR  
SINGH GIANI—  
v.  
LADHA SINGH.  
AGHA HAIDAR J.