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previous suit, it had clearly been found that Bahawal and Shahamad could neither assert their title against *Mussammat* Daulan and Alia nor against *Mussammat* Panah Bibi, and it was obviously their duty to appeal against that order if they wanted to escape its consequences.

I would, accordingly, hold that the question of *Mussammat* Panah Bibi's title having once been decided in her favour by a competent Tribunal cannot now be reopened. As a result, I would dismiss this appeal. In view of the complicated question of law involved in the case, however, I would leave the parties to bear their own costs before us.

COLDSTREAM J. COLDSTREAM J.—I agree.  
 A. N. C.

*Appeal dismissed.*

#### APPELLATE CIVIL.

*Before Tek Chand and Abdul Rashid JJ.*

YEATS (PLAINTIFF) Appellant,

*versus*

DICKINSON AND OTHERS (DEFENDANTS)

Respondents.

Civil Regular First Appeal No. 420 of 1936.

*Indian Copyright Act, III of 1914, Sch. 1, SS. 5, 6, and 7 — Assignment of Copyright — Publishing agreement — Damages for conversion under S. 7.*

By a written agreement, the plaintiff, an author, granted to a publishing Company the sole and exclusive license to print, publish and sell, in book forms, his poetical non-dramatic works in a volume entitled 'Collected Poems.' The published price of the book was fixed in the agreement, and the Company agreed to pay to the author 20 *per cent* of the published price on all copies of the book which they might sell. All rights in the book other than those granted to the Company were reserved by the author, and it was expressly stated that the entire copyright of the book would remain

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the property of the author. The first defendant compiled, and the second defendant published, a selection of poems entitled 'Recession of English Poetry' in which two poems from 'Collected Poems' were included without the plaintiff's permission. In an action by the author of the two poems founded on the alleged infringement of copyright, the defendants challenged the *locus standi* of the plaintiff to bring the action in view of his agreement with the publishing Company.

*Held*, that the agreement was not an assignment of the copyright, but a mere publishing agreement and that, therefore, the plaintiff had *locus standi* to sue.

*Messenger v. British Broadcasting Company, Ltd.* (1), distinguished.

*In re Jude's Musical Compositions* (2), relied upon.

*Held further*, that though the remedies given by ss. 6 and 7, Sch. I of the Copyright Act are cumulative and not alternative, yet it must often happen that where an owner of copyright obtains damages under the former section he can recover nothing further in respect of damages under the latter.

*Sutherland Publishing Company, Ltd. v. Carlton Publishing Company, Ltd.* (3), followed.

*First appeal from the decree of R. B. Lala Dawarka Parshad, Additional District Judge, Lahore, dated 18th July, 1936, granting the plaintiff an injunction, etc.*

ISHAR DAS KHANNA, for Appellant.

BISHAN NATH and H. S. RAY, for Respondents.

ABDUL RASHID J.—In the year 1933 a book entitled 'A Recession of English Poetry' was published by Messrs. Uttar Chand Kapur and Sons, Lahore. This book contains a large number of poems by various authors from the earliest times up to the present day. Mr. Eric Dickinson, Senior Professor of English,

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(1) (1929) L. R. A. C. 151. (2) (1907) L. R. 1 Ch. D. 651.

(3) (1936) 52 T. L. R. 230.

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Government College, Lahore, is the author of this compilation of English Poetry. The book contains two poems by Mr. William Butler Yeats, the plaintiff in this case, entitled 'Adam's Curse' and 'The Stolen Child.' On the 23rd August, 1934, a letter was addressed by the Acting Manager of Messrs. Macmillan and Co., Ltd., to Messrs. Uttar Chand Kapur and Sons enquiring as to who had given them permission for including Mr. Yeats' poems 'Adam's Curse' and 'The Stolen Child' in the book entitled 'A Recession of English Poetry' by Dickinson. In the concluding sentence of this letter it was mentioned by Messrs. Macmillan and Co., Ltd., that they had the copyright of these poems.

The suit, which has given rise to the present appeal, was instituted by Mr. Yeats on the 19th July, 1935. Messrs. Macmillan and Co., Ltd., did not join Mr. Yeats in instituting the suit. Mr. Dickinson author of 'A Recession of English Poetry' was defendant No. 1 and Guran Ditta Kapur and Uttar Chand Kapur were also made defendants on the ground that the former was the printer and the latter the publisher of the work in question. It was alleged in the plaint that the plaintiff was a well known poet and was the author of numerous poems in the English language and that two of his poems entitled 'The Stolen Child' and 'Adam's Curse' had first been published in 1889 and 1904, respectively. It was further stated that Messrs. Macmillan and Co., Ltd., had the exclusive right to print all poetical works written by the plaintiff, that Messrs. Macmillan and Co., Ltd., had published a book entitled 'The collected poems of W. B. Yeats,' and that the defendants had infringed the copyright of the plaintiff by including two of his poems in the book entitled 'A Recession of English Poetry.'

The defendants pleaded, *inter alia*, that the plaintiff had no *locus standi* to sue as he had assigned the copyright in his poems to Messrs. Macmillan and Co., Ltd., by an agreement, dated the 15th March, 1933. It was further pleaded that copyright does not exist in individual poems, that the defendants had not infringed any copyright belonging to the plaintiff and that the plaintiff was not entitled to any damages.

On the pleadings of the parties the trial Court framed the following issues:—

1. Is the plaintiff entitled to bring the suit in view of Macmillan's letter and allegation in the plaint that that firm is entitled to print and publish solely the poems of the plaintiff.
2. Is there no copyright in individual poems?
3. To what damages, if any, is the plaintiff entitled?
4. Is plaintiff entitled to the injunction sought?
5. Whether the defendants have not infringed the copyright of the poems 'Stolen Child' and 'Adam's Curse'?

On the first issue it was held by the trial Court that the plaintiff had a *locus standi* to bring the present suit, as the agreement, dated the 15th March, 1933, was a publishing agreement only and not an assignment of copyright. It was also held that copyright exists in individual poems and that the defendants had infringed the copyright of the plaintiff by including the poems 'The Stolen Child' and 'Adam's Curse' in their book entitled 'A Recession of English Poetry.' The trial Court also found that Mr. Dickinson, defendant No. 1, had included the two poems of Mr. Yeats in his book owing to a *bona fide* mistake as he was under the impression that he had

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obtained permission from Messrs. Macmillan and Co., Ltd., for the inclusion of these poems in his book. On these findings the trial Court awarded the plaintiff a decree in the following terms :—

(a) for an injunction restraining the defendants from infringing the plaintiff's copyright in the two poems ' The Stolen Child ' and ' Adam's Curse,'

(b) for an injunction restraining the defendants from printing, producing or publishing these two poems,

(c) for Rs.25 to be paid as damages by the defendants,

(d) for an order that the defendants shall extract from the copies of their work at present unsold these two poems and make them over to the plaintiff along with printed proof sheets, pages or other papers designed to be or prepared as parts of any work in connection with the publication of these two poems. The plaintiff was also granted proportionate costs.

Against the decision of the trial Court the plaintiff has preferred an appeal to this Court praying that the damages granted by the trial Court may be enhanced and that the decree may be modified so as to include damages for conversion under section 7 of the Act in addition to the penalties leviable under section 6. The defendants have filed cross-objections under Order 41, rule 22 of the Civil Procedure Code, praying, *inter alia* that the suit of the plaintiff may be dismissed as he had no *locus standi* to sue.

The first question for consideration in this case is whether the agreement, dated the 15th March, 1933, between the plaintiff and Messrs. Macmillan and Co., Ltd., amounts to an assignment of copyright in:

favour of the latter. The relevant provisions of this agreement may be reproduced *in extenso* :—

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1. That the author (W. B. Yeats) shall grant the publishers the sole and exclusive license to print, publish and sell in book form in the English language in the United Kingdom of Great Britain, its Colonies and dependencies and in Ireland a volume containing all the poetical non-dramatic works written by him and at present entitled ' Collected Poems ' and he shall also grant to the publishers a license to sell the said volume in book form in the English language in any other part of the world except the United States of America.

2. That the published price of the said volume shall be fixed by the publishers at or about ten shillings and six pence (10-6d.) net and they shall pay to the author a royalty of twenty *per cent* of the published price on all copies of the said volume which they may sell.

5. That all rights in the said volume other than those herein granted are reserved by the author.

11. That the entire copyright of the said volume is to remain the property of the author and at the expiration of five years from the day on which it is first published in book form by the publishers or at the expiration of any subsequent period of one year thereafter this agreement may be terminated by either party on giving six months' notice to that effect.

It was contended by the learned counsel for the respondent that clause (1) of this agreement amounts to a complete assignment of the copyright in favour

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of Messrs. Macmillan and Co., Ltd., and that clause (11) which lays down that the entire copyright of the said volume is to remain the property of the author cannot be so construed as to cut down the plain grant which is embodied in clause (1). It was further urged by the learned counsel for the respondent that if the agreement in question amounts to an assignment of the copyright in favour of Messrs. Macmillan and Co., Ltd., the mere use of the word 'license' and 'Licensee' in the agreement cannot alter the legal effect of the various terms of this document. Reliance was placed in this connection on a ruling of the House of Lords in the case of *Messenger v. British Broadcasting Company, Ltd.*, (1). In the reported case the plaintiff appellant Messenger was the composer of the music in a play known as *Les Petites Michus* and two other persons were the authors of the play. The authors and the composer granted a license to Mr. George Edwardes of Daly's Theatre in London giving him the sole and exclusive right of representing or performing the play in the United Kingdom of Great Britain and Ireland, America and the British Colonies and Dominions. Clause (2) of the agreement provided that 'the copyright in the *music of the play* shall remain the property of the said Andre Messenger and he shall be at liberty to use the English lyrics for sale with the music.' The British Broadcasting Company in pursuance of permission granted to them by the licensee gave a broadcast performance of the play at their studio in London. In an action brought by Messenger for infringement of copyright it was held that the agreement as a whole amounted to an absolute assignment of the performing rights of the play within the prescribed area and was not a mere

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(1) (1929) L. R. A. C. 151.

license, that it was not limited to representation on the stage of a theatre and that the defendants had, therefore, not infringed the copyright of the plaintiff. This ruling is not applicable to the facts of the present case as by clause (2) of the agreement the copyright in the *music of the play* remained the property of the plaintiff Messenger, but so far as the rights of representing or performing the play were concerned the agreement amounted to a complete assignment in favour of the licensee. Lord Sumner in his judgment indicated that clause (2) stated what rights had not been included in the grant. In the present case it is definitely laid down in the agreement, dated the 15th March, 1933, that the entire copyright of the said volume is to remain the property of the author and that all rights in the said volume other than those therein granted are reserved by the author. In these circumstances the agreement between Mr. Yeats and Messrs. Macmillan and Co., Ltd., amounts merely to a publishing agreement and cannot be regarded as an assignment of copyright in the poems of Mr. Yeats. Reference may be made in this connection to the case of *Jude's Musical Compositions* (1). The trial Court was right, therefore, in holding that the plaintiff had a *locus standi* to institute the present suit.

The plaintiff has examined two witnesses on commission who have stated it as their opinion that five Guineas (5 Gns.) would be a reasonable fee to charge for the publication of each of the poems. Mr. Francis, Manager of Messrs. Macmillan and Co., Ltd., was, however, compelled to admit that only 2 Gns. had been charged for the reproduction of a poem of Mr. Yeats by the Karnatak Press, Bombay. This fee was collected by Messrs. Macmillan and Co., Ltd., on behalf

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of Mr. Yeats, and, therefore, the amount of the fee charged was within the personal knowledge of Mr. Francis. I am of the opinion that in the present case also a sum of 2 Gns. would be a reasonable fee for permission to publish each of the two poems which form the subject matter of the present litigation. It was contended by the learned counsel for the appellant that in addition to damages under section 6 of the Copyright Act the plaintiff should be awarded a substantial sum for conversion under section 7 of the Act. Reference was made in this connection by the learned counsel to the case of *Sutherland Publishing Company, Ltd. v. Carlton Publishing Company, Ltd.* (1). It was held in that case that the remedies given by sections 6 and 7 of the Copyright Act respectively whereby damages can be recovered for the infringement of copyright and for conversion of any infringing copies are cumulative and not alternative. It was, however, observed by their Lordships that though the remedies given by section 6 are not alternative to those given by section 7, it must often happen that where an owner of copyright obtains damages under the former section he can recover nothing further in respect of damages under the latter. In my opinion if a sum of 4 Gns. be awarded to the plaintiff in the present case under section 6, he would not be entitled to any damages under section 7, as 4 Gns. would be the price of the permission given by him to the defendants to publish the two poems.

For the reasons given above, I would accept this appeal only in so far as to enhance the amount of damages from Rs. 25 to Rs. 56. I would dismiss the cross-objections. The parties will bear their own

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(1) (1936) 52 T. L. R. 230.

costs in this Court. The order of the trial Court regarding costs in that Court will stand.

TEK CHAND J.—I agree.

A. N. K.

*Appeal accepted in part.*

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**APPELLATE CIVIL.**

*Before Coldstream and Din Mohammad JJ.*

JALLU AND OTHERS (DEFENDANTS) Appellants,

*versus*

SHAHU (PLAINTIFF)

MIRZA AND OTHERS (DEFENDANTS) } Respondents.

**Regular Second Appeal No. 65 of 1937.**

*Punjab Pre-emption Act (I of 1913) S. 4: Pre-emptor having preferential right over the vendee — Vendee removing defect pendente lite — whether affects pre-emptor's suit — Re-sale — whether second vendee can defeat suit by removing defect in his status pendente lite.*

Three of the proprietors of *patti mutfarrag* of a village sold some land to three other proprietors of the same *patti*, and two proprietors of a different *patti*. The plaintiff, a proprietor in *patti mutfarrag*, sued the vendees for pre-emption on the ground that as two of the vendees were not proprietors in *patti mutfarrag* he had a preferential right of pre-emption. During the pendency of the suit, but more than a year after the sale, the two vendees, who were not proprietors in *patti mutfarrag*, transferred their rights under the sale to the other vendees who were proprietors in the *patti*.

*Held*, that if a vendee, the sale to whom is otherwise open to attack, is able to defeat the pre-emptor's title by removing the defect *pendente lite* and clothing himself with a *status* equal to that of the pre-emptor at any time before the decision of the pre-emptor's suit, the pre-emptor has no preferential right at the time of the passing of the decree and his suit must fail.

*Hayat Bakhsh v. Mansabdar Khan* (1), followed.

*Jas Raj v. Gokal Chand* (2), distinguished.