JUNE 27, 1859.

MORRISON KYLE and Miss ELIZA COOK, *Appellants*, *v.* CHARLES JEFFREYS and Mandatory, *Respondents*.

Copyright—Evidence—Assignation—Deed—Certificate of Registration—Act 8 Anne, c. 19—Statutes 54 Geo. III. c. 156—5 and 6 Vict. c. 45—*A publisher claimed the property of the words of a song, alleged to have been transferred to him by the author prior to the* 5 *and* 6 *Vict. c.* 45. *He adduced in evidence a certificate of registration in Stationers' Hall, in his own name as owner, a receipt by the author for the price of the copyright, and parole evidence.*

HELD (affirming judgment), (1) *That the certificate of registration was* primâ facie evidence *of ownership, and might be supplemented by the other evidence;* (2) *that the Statute* 54 *Geo. III. c.* 156, *repealed the provisions of the Act* 8 *Anne, c.* 19, *requiring, as evidence of the transfer of copyright, a formal instrument of assignation attested by two witnesses.*[1]

The suspender, who was a publisher in London, applied for an interdict against the respondent Miss Eliza Cook, the authoress of a song called "The Old Arm Chair," and against the other respondent, a publisher in Glasgow, to prevent the latter from printing and exposing to sale the words of the song, and in particular, the words printed in a publication known by the name of "The Musical Bouquet." He averred that he was the proprietor, "by sale, gift, or transfer from Miss Cook, of the copyright of the words of the song, along with Mr. G. H. Davidson of London, and that the respondent Kyle had been, and still was, acting in contravention of the Act 5 and 6 Vict. c. 45, and infringing the suspender's copyright, by publishing and selling the words of the song in the publication above mentioned."

The respondent admitted that he published and sold the song, and denied that the complainer possessed the copyright.

The note of suspension being passed, the case was tried before the Lord President and a jury in July last, on the following issue:—

"It being admitted that the respondent Miss Eliza Cook is the authoress of the words of a song entitled 'The Old Arm Chair:'

"Whether the suspender Charles Jeffreys is proprietor of the copyright of the words of the said song?"

In evidence of the copyright the suspender tendered a certificate of registration in which the entry was made, 16 Feb. 1853, and the publisher and proprietor of the copyright of "The Old Arm Chair, written by Eliza Cook, the music by Henry Russell," were stated to be Charles Jeffreys, 21 Soho Square, Westminster.

He also adduced Mr. Davidson, publisher of music in London, who stated, that in dealing with him in regard to the copyright of some of her songs, Miss Cook had, in 1845, stated to him that, "she had not command of the copyright of 'The Old Arm Chair,'" as she had disposed of it to Mr. Jeffreys. The witness exhibited a book of Miss Cook's songs, which, he deponed, she had given to him, with such of her songs as she had disposed of, marked. It contained a mark at the song of "The Old Arm Chair;" that he had afterwards got leave from Jeffreys to publish a cheap edition of that song, for which he had paid £10, and had got a receipt, which he identified. Several letters were also identified by the witness as written by Miss Cook to him in connexion with his edition of her song, and an engraving of her portrait which was prefixed to it.

Mr. Cruikshank, artist, was also adduced, and deponed to having been employed by the last witness to make the portrait of Miss Cook.

The suspender also put in evidence a holograph receipt from Miss Cook to himself, in the following terms:—

"Receᵈ., May 14th 1841, of Mr. Chˢ. Jefferys, the sum of Two Pounds Two Shillings for Copyright of words of a Song written by me, entitled 'The Old Arm Chair.' Music by Mr. Jasˢ. Huie." (Signed) "ELIZA COOK."

"£2."

Counsel for the respondents objected to any evidence of the pursuers' (suspenders') right of proprietorship, without production of a formal deed of assignment, attested by two witnesses, as a certificate of registry applicable to assignments, which the certificate produced was not.

---

[1] See previous reports 18 D. 906; 28 Sc. Jur. 408. S. C. 3 Macq. Ap. 611: 31 Sc. Jur. 566.

The Judge overruled the objection.

It was objected to parole evidence proposed, that it was incompetent, in respect of being an attempt to set up a right of copyright by parole. The evidence was allowed in the mean time.

The charge of the presiding Judge was excepted to, "in so far as it was laid down, that in the event of *primâ facie* evidence being rebutted, the pursuer might still support his title without production of a formal instrument of assignation, attested by two witnesses."

The jury gave a verdict in favour of the suspenders.

The Court of Session afterwards disallowed the exceptions, discharged the rule for a new trial, and gave judgment for the suspenders.

The respondents (in the suspension) appealed, maintaining, in their *printed case*, that the judgment of the Court was erroneous,—1. Because it disallowed the exception to that part of the charge of the presiding Judge, wherein he told the jury, that, in event of the *primâ facie* evidence of title afforded by a copy certificate of registration in Stationers' Hall being rebutted, the respondent might still support his title without a formal deed of assignment attested by two witnesses. 2. Because it admitted, in proof of the respondents' title, as evidence of assignment, a receipt in writing, without any stamp impressed thereon;—and also a certificate of registration wanting in an essential statutory requirement, and inapplicable to the nature of the right on which the respondents' case was actually founded. *Power* v. *Walker*, 3 M. & S. 7; *Clementi* v. *Walker*, 2 B. & C. 861; *Davidson* v. *Bohn*, 6 C.B. 456; *Power* v. *Walker*, 4 Camp. 9; *Latour* v. *Bland*, 2 Stark, 382; *Jeffreys* v. *Boosey*, 4 H.L.C. 994. The *respondents* (suspenders in the Court of Session) in their *printed case* supported the interlocutors complained of, on the following grounds:—1. Because, whatever may have been the state of the law in reference to property in copyright held by derivative title before the passing of the Act 54 Geo. III. c. 156, it is not necessary under the provisions of that act, that such title, in the case of compositions printed and published after its date, should be attested by two witnesses; much less does that act exclude all evidence whatever in support of such title, unless an instrument so attested—8 Anne, c. 19. 2. Because by the Act 5 and 6 Vict. c. 45, under which the respondent, Mr. Jeffreys, sought his remedy, it is competent to support a derivative title to copyright to the effect of obtaining the remedy given by the act otherwise than by an assignment attested by two witnesses. 3. Because none of the statutes creating copyright require a formal deed of assignment to vest copyright in a party not the author: much less do they absolutely exclude all other evidence in support of the title of such a party. 4. Because it is competent to refer to any other evidence, in support of a derivative title to copyright, than a formal deed of assignment attested by two witnesses, and there is no statute, decision, or legal principle which could justify a Judge in ruling that actual production of such assignment is absolutely indispensable. 5. Because there is nothing in any statute, decision, or legal principle, sanctioning the law laid down in the exception. 6. Because, so far as it seeks review of the judgment refusing a new trial, the appeal is incompetent on any grounds other than misdirection of the Judge at the trial in matter of law, or the undue admission or rejection of evidence; has not been properly taken in reference to those grounds on which alone it would have been competent; and, even if properly taken, must be disposed of in the same way and on the same grounds with the exception itself. 7. Because, even assuming the competency, it appears from the Judge's notes of the evidence, that the verdict was conform to the evidence, as well as in accordance with the justice of the case.

Knowles Q.C., and *Quain* Q.C., for the appellants, contended that the exception to the admissibility of other evidence than a formal assignment attested by witnesses was a good exception, and ought to have been sustained. The state of the law in 1841, previous to the Statute 5 and 6 Vict. c. 45, must regulate the question. By the previous Statutes 8 Anne, c. 19, and 41 Geo. III. c. 107, an assignment attested by two witnesses was necessary to pass the copyright—*Davidson* v. *Bohn*, 6 C.B. 456. It was not sufficient to evade that rule by producing an unstamped receipt for copyright money, coupled with an admission of the authoress, for the admission was confined to the receipt as its sole foundation, and the receipt was valueless. The Statute 54 Geo. III. c. 156, did not alter the rule as to witnesses being required to an assignment —*Jeffreys* v. *Boosey*, 4 H.L.C. 994, *per* LORD ST. LEONARDS. It is true, the exception does not very clearly bring out the exact ground of objection; but to construe these exceptions strictly would discourage Scotch appeals.

Forsyth Q.C., and *Webster*, for the respondents, were not called upon.

LORD CHANCELLOR CAMPBELL.—My Lords, this case comes before your Lordships on a bill of exceptions, tendered to the ruling of the learned Judge who tried the case in the Court of Session. A bill of exceptions must be strictly construed, and we can only look at what is stated in the record to enable us to see whether the ruling of the learned Judge was correct. Now, what is laid down by the learned Judge is, that "in the event of *primâ facie* evidence being rebutted, the pursuer might still support his title without production of a formal instrument of assignment, attested by two witnesses." That, it is admitted, is perfectly correct, as a general rule; and there is nothing in the record to shew that the rule was wrongly applied. If that is so, the question is at an end. I think it is of the last importance that we should give a strict

construction to such exceptions. In coming to the conclusion that the exception was properly disallowed, it is satisfactory to think, that, from all that appears, the plaintiff Jeffreys was clearly the proprietor of this copyright; and though the objection to the exception is formal, still the result is in accordance with the justice of the case. In England we have very much abandoned these bills of exceptions, and I hope that a similar course will be followed in Scotland, so as to enable the real merits of the case to be fully brought out. A much better course consists in adopting special verdicts and special cases; and if these are not yet competent in Scotland, I will be ready to assist in any change which may require to be made in order to effect so great an improvement.

LORD BROUGHAM.—My Lords, I agree with my noble and learned friend on the woolsack. It is very important that so long as bills of exceptions continue to be adopted, they should be dealt with very strictly. The exception in this case is loosely drawn, and it would have been better if learned counsel in Scotland attended more to the course of practice in England, where jury trial is much better understood. It is clear that an exception ought, as Lord Mansfield once said, to hit the bird in the eye. It must shew what part of the ruling or of the Judge's observations it was that is excepted to. If, in the present case, the whole charge of the learned Judge had been set out, we could have seen whether anything wrong had been laid down. But, as far as we can see, the charge was unexceptionable. I think it is very desirable that the practice of having special cases should be introduced into Scotland: I do not recollect whether the late Court of Session Act allows them, at least it ought to have done so. In conclusion, I do not regret at all that the exception should fail in the present instance on a point of form, for the justice of the case seems to be with the respondent.

LORD CRANWORTH.—My Lords, I only remark, that whether or not special cases may be had in Scotland, there may, at all events, be special verdicts, of which we have had lately some examples. That would have been a better course here than to have dealt with the case as seems to have been done. I entirely agree with my noble and learned friends on the point now before us.

LORD WENSLEYDALE.—My Lords, I also am of opinion that the appellant has lost nothing by not having taken his exception properly. I quite agree with LORD ST. LEONARDS in the view which he expressed as to the construction of the statutes in the case of *Jeffreys* v. *Boosey*, in this House.

LORD CHELMSFORD.—My Lords, I am also glad of the opportunity of shewing the necessity of adhering to great strictness in dealing with bills of exceptions, which ought always to raise the precise point in question; and here the justice of the case is fully met by the decision we come to on the informality of this exception.

Interlocutors affirmed.

Appellants' Agent, J. Leishman, W.S.—*Respondents' Agent*, J. Robertson, S.S.C.

JUNE 30, 1859.

SCOTS MINES CO. and WILLIAM GEDDES BORRON, *Appellants*, *v.* THE LEADHILLS MINING CO. and Others, *Respondents*.

Appeal to House of Lords—Process—Competency—Interlocutory judgment—*A plea involved the whole merits of the cause, but was so disposed of in the Court of Session as merely to establish the pursuer's title to sue; and the case was then ordered to be proceeded with.*

HELD, *This interlocutor was not subject to appeal, being merely interlocutory within the meaning of* 48 *Geo. III. c.* 151, § 15.[1]

The Scots Mines Co. appealed against the interlocutors of the Court of Session, and maintained (in their appeal case) that they should be reversed, because,—1. The respondents had no title to pursue, and, in particular, they had not the title libelled on. 2. The alleged assignation by Thomas Horner, of the lease of 1808, and agreement of 1817, upon which the respondents founded, was invalid, in respect he was not in right of the lease or agreement. 3. Even if the respondents were in right of the lease of 1808, no right was given by it to the water or water-course in question; at least, no right which could compete with that of the appellants. 4. By virtue of written titles, which the respondents could not controvert, the right of

[1] See previous reports 18 D. 594; 28 Sc. Jur. 107; S. C. 3 Macq. Ap. 743: 31 Sc. Jur. 567.