

(2001) 01 DEL CK 0022

In the Delhi High Court

Case No : IA. No"s. 3149 of 2000, 6978 of 2000 in Suit No"s. 624 of 2000 and
IA. No"s. 3577-78, 3581, 4610 of 2000 in Suit No"s. 758 of 2000

Eastern Book Company and Others

APPELLANT

Vs

Navin J. Desai and Another, D.B. Modak and Another

RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Citation : AIR 2001 Delhi 185 : (2001) 2 RCR(Criminal) 352

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Mr. P. Chidambaram, Mr. Praveen Anand, Ms. Gitanjali Duggal, Mr. Sudhir Chandra and Mr. G. Natarajan, for the Appellant; Ms. Pratibha, M. Singh, Mr. P.N. Lekhi Mr. S.K. Mohanti, Mr. H.P. Singh, for the Respondent

Judgement

S.K. Mahajan, J.—plaintiffs are engaged in the business of printing and publishing of various books relating to the field of law. plaintiffs claim to have expertise in the field of legal publishing and claim to be a respectable publishing group in India and abroad. The plaintiffs also claim to have copyright in around 500 titles. Beside having printed and published legal commentaries, digests and journals, the plaintiffs are also publishing law reports under the name and style of "Supreme Court Cases", Supreme Court Cases (Criminal), Supreme Court Cases (Labour and Services) and Administrative Tribunal Cases", as also the Law Journals "Lucknow Law Times" and "Current Central Legislations". The law reports being published under the name and style of "Supreme Court Cases" (hereinafter referred to as the SCC) started its publication in 1969 and reports reportable and non-reportable judgments of the Supreme Court of India. The publication is allegedly used by virtually all the practitioners in the Supreme Court as well as practicing in the High Courts and District Courts. The edition of the SCC is allegedly being distributed in about 567 cities in India and abroad. It is claimed that the Editorial Board of the SCC consists of eminent personalities in the legal field. plaintiff No.3 is reportedly undertaking the task of processing of judgments for reporting and preparing the head notes and indices as well as the

task of supervision of the composing, proof-reading and publishing by the publishers. It is claimed that for all these tasks, plaintiff No.3 is paid royalty on the subscriptions collected and sale of back volumes by plaintiff No.1.

2. The plaintiffs have also allegedly published the data base package, available on CD-ROM for finding Supreme Court rulings on any point of law. This software is known as "SCC Online Supreme Court Case Finder" and is easily compatible on most frequently used Microsoft Windows programme. The "Case Finder" includes over 84,000 case notes based on the published in the plaintiffs' journal SCC and the pre-1969 digest notes prepared by plaintiff No.3 and included in "The Complete Digest of Supreme Court Cases" in 16 volumes, published by plaintiff No.1. As a complementary product to the "Case Finder 2000", plaintiff has also developed and released "Supreme Court Cases Full Text on CD-ROM".

3. plaintiffs have claimed copyright in the head notes, in the selection, manner of arrangement and in the manner of presentation of the judgments in both printing and electronic form in the introductory line appended by them before each judgment which reads "The judgment of the Court was delivered by", in the paragraph numbering introduced by the editorial staff, in the copy-edited portions judgment of the Supreme Court and in the style and form of printing adopted by them for publication of the judgments of Supreme Court of India in the law reports. It is claimed that the head notes comprise of two portions namely, the "short note" consisting of catch words written in bold and the "long note" comprised of a brief discussion of the facts and the relevant extracts from the judgment of the Court. It is alleged that the editors go through the entire judgment and draft the head notes according to the various issues, propositions, statutes and provisions of the law involved which allegedly require considerable amount of skill, labour and expertise. The plaintiffs while are not claiming copyright in the text of the judgment have claimed copyright in the head notes and in the final version which is finalised by them incorporating the various editorial and copy-editing inputs made by the plaintiffs. The plaintiffs claim that even if the head notes were to be interpreted as abridgement of the text of the judgment, they were owners of the copyright in the head notes as it was well established that abridgements also constitute original literary works entitled to copyright protection. It is submitted that the introductory line "The following judgment of the Court was delivered by" bears the stamp of plaintiff No.3's editorial judgment, inasmuch as the plaintiffs have varied this introductory remark, introduced capital letters in respect of the word "judgment" and the "Court" and it is also amended if there are more than one judgments. plaintiffs state that the judgments received from the Supreme Court invariably did not carry any paragraph numbers and on the rare occasion when they do contain paragraph numbers, the same may require change. The placing and introduction of paragraph numbers, according to the plaintiffs, requires a careful reading of the judgment and exercise of editorial judgment since in many cases the editor may feel that the passage typed as a paragraph need not be numbered as an independent paragraph and vice versa. Even in the style and form of printing

copyright has been claimed. It is submitted that editors of the plaintiffs have evolved, after due deliberation study and discussion, a style of printing which has become a peculiarity associated with the SCC alone.

4. The defendants in S.No.624/2000 have developed a software package called "THE LAWS", published in two CD ROMs. While the defendants in S.No.758/2000 have developed a software package called "GRAND JURIX" published in three CD-ROMs. It is alleged by the plaintiff that the short notes and head notes of the defendants' software in both the cases were identical to the short notes and head notes published in the plaintiffs S.C.C. and the defendants had not only slavishly copied the head notes, but had also copied the entire text of the copy-edited judgments verbatim as published in the plaintiffs' law report SCC Along with and including the style and formatting, the copy editing, the paragraph numbers, footnote numbers, the cross references etc. These acts of the defendants of reproducing the head notes and the text of the copy edited judgments by electronic means without their permission, authorisation or license, express or implied, are alleged to be the infringement of the copyright of the plaintiffs. The plaintiffs in order to illustrate the alleged copying of the head notes of the defendants have given certain examples in paragraph 21 of the plaint in S.No.624/2000 and in paragraph 28 of the plaint in S.No.758/2000. Some of the comparisons as quoted by the plaintiffs in the aforesaid suits are as under:-

plaintiff'S head notes DEFENDANT'S head notes

Tamil Nadu Entertainments Tax, Act, 1939 - S.5(A) (as amended by Act 40 of 1989), 5-B and 4 - Methods of taxation - Taxation on the basis of admission to entertainments (admission system) and on the basis of gross collection capacity (composition system) - While theatres situate in the areas covered by municipal corporations and special grade municipalities governed by admission system, those situate within the areas covered by inferior grade municipalities and gram panchayats governed by the more convenient composition system of taxation. Tamil Nadu Entertainments Tax, Act, 1939: S.5(A) (as amended by Act 40 of 1989) S.5B S.4; While theatres situate in the areas covered by municipal corporations and special grade municipalities governed by admission system, those situate within the areas covered by inferior grade municipalities and gram panchayats governed by the more convenient composition system of taxation: Methods of taxation: Taxation on the basis of admission to entertainments (admission system) and on the basis of gross collection capacity (composition system).

By amendment of S.5A (1) by Act 40 of 1989, theatres situated within 5 kilometre 'belt' abutting the corporations and special grade municipal areas which were hitherto governed by the composition system brought over to admission system - Consequently theatres situated within local areas of the lesser grade municipalities or gram panchayats getting categorised into two classes viz. those falling within the belt of 5 kilometres and those outside it - Held, classification reasonable and has nexus with the object sought to be

achieved-Moreover under both the systems tax collected is made over to the State and the mere fact that in the composition system any particular exhibitor is able to save a part of the tax cannot be treated as confirmed of benefit - By the change over to the admission system, right under Art. 19 (1) (g) of exhibitors in the theatres situated within the belt not infringed. By the change over to the admission system right under Article 19 (1) (g) of exhibitors in the theatres situated within the belt not infringed: Held classification reasonable and has nexus with the object sought to be achieved: By amendment of S.5-A (1) by Act 40 of 1989, theatres situated within 5 kilometre `belt" abutting the corporations and special grade municipal areas which were hitherto governed by the composition system brought over to admission system: Moreover under both the systems tax collected is made over to the State and the mere fact that in the composition system any particular exhibitor is able to have part of the tax cannot be treated as conferment of benefit: Consequently theatres situated within local areas of the lesser grade municipalities or gram panchayats getting categorised into two classes viz. Those falling within the belt of 5 kilometre and those outside it:

Theory of legislative *** expectation that the theatres situated within the belt would not be brought over to admission system, cannot be invoked to invalidate the legislative amendment - Exemption from the change over to open air theatres and temporary theatres situated within the belt not discriminatory as these theatres constitute a separate class -Hence amended S.5-A (1)(g) - Tamil Nadu Cinemas (Regulation) Act, 1955 - Constitution of India, Arts. 14, 19(1)(g) and 205 Exemption from the change over to open air theatres and temporary theatres situated within the belt not discriminatory as these theatres constitute a separate class. Theory of legislative *** expectation that the theatres situated within the belt would not be brought over to admission system, cannot be invoked to invalidate the legislative amendment: Hence amended S.5-A(1) valid and not violative of Tamil Nadu Cinemas (Regulation) Act, 1955, Art.: 14, S.19(1) (g) Constitution OF India Art.14 Art.18(1)(g) Art.205

Constitution of India - Article 14 - Treating unequals as equals discriminatory - Impugned legislation considered if offending this test Treating unequals as equals discriminatory - Impugned legislation considered if offending this test. Constitution of India -Article 14.

Constitution of India - Art 14 - impugned legislation can be supported by long standing prevalence of similar legislation in adjoining state. Constitution of India Art. 14 Impugned legislation can be supported by long standing prevalence of similar legislation in adjoining state.

Legislative Expectation - Theory of - Legislation cannot be invalidated on the basis of though the theory may be invocable to invalidate administrative action - Administrative Law - Administrative Action - Constitution of India, Art.245. Legislation cannot be invalidated on the basis of though the theory may be invocable to invalidate administrative action. Administrative Law: Administrative

action: Theory of Legislative Expectation:

Constitution of India - Art. 14 - "Equality before law and "equal protection of "laws" - Meaning - Different meaning of "law" in the two expressions - Words and phrases. Meaning: Words and phrases Constitution OF INDIA: Different meaning of law in the two expressions: Equality before law and `equal protection of laws".

Constitution of India - Arts.14 & 38 - Equality before law - State is obliged to usher in an equal society as contemplated by Art.38. State is obliged to usher in an equal society as contemplated by Art. 38 Constitution OF INDIA Art.265 Art.14 Art.38

Constitution of India - Arts.265, 14 and 38 - Taxation - Besides generating revenue object is also to reduce inequality by placing greater tax burden on the affluent class apart from raising revenue - Legislature is Therefore allowed greater freedom in the matter of tax legislation. Art.265: Besides generating revenue object is also to reduce inequality by placing greater tax burden on the affluent class apart from raising revenue: Legislature is Therefore allowed greater freedom in the matter of tax legislation.

Navganbhi Somabhai and Others

v.

State of Gujrat

1993CriLJ1103 Grand Jurix 1993CriLJ1103

Penal Code, 1860 -- S.149 r/w S.304 Pt. I--Constructive liability--Proof Attack by a group of 13 or 14 variously armed persons causing multiple injuries to the deceased and two witnesses -- Penal Code, 1860 - Sec. 149 r/w 304 Part I - Constructive liability - Proof - Attack by a group of 13 of 14 variously armed persons causing multiple injuries to the deceased and two witnesses - Penal Code (45 of 1960), Ss.326, 34,m 149 - Common intention to cause grievous hurt - Accused numbering about 13, 14 and variously armed - Deceased and injured witnesses taking shelter in a house.

SUKHWINDER SINGH

Versus

STATE OF PUNJAB

1994CriLJ1117 Grand Jurix 1994CriLJ1117

Penal Code, 1860 - Sc.397/511 and 307 - Terrorist and Disruptive Activities (Prevention) Act, 1987 - S.3 - Robbery with attempt to cause death... Offence falls under Ss397/511 simplicities - Sentence of 10 years" RI reduced to minimum sentence of 5 years", RI prescribed under S.3, TADA Act- Arms Act, 1959, S.25 Penal Code, 1860 - Secs. 397/511 & 307 - Terrorist and Disruptive

Activities (Prevention) Act, 1987 - Sec.3 - Robbery with attempt to cause death ... Offence falls U/ss.397/511 and not u/s.397 simplicities - Sentence of 10 years" RI reduced to minimum sentence of 5 years" RI prescribed u/s.3, TADA Act. Penal Code (45 of 1860) Sc.397, 511 - Terrorist and Disruptive Activities (Prevention) Act (28 of 1987), S.3 - Persons to whom money was demanded were not injured though accused persons fired at them nor any money taken from them.

BOLINEEDI VENKATARAMAIAH AND OTHERS

Versus

STATE OF A.P.

1994CriLJ61 Grand Jurix 1994CriLJ61

Penal Code, 1860 - Sc.149/302, 148 & 149 or 34 - Constructive liability ... It cannot be said that since other accused have been acquitted same evidence cannot be accepted against such three accused. Penal Code, 1860 - Penal Secs. 149/132, 148 & 149 or 34 - Constructive liability ... It cannot be said that since other accused have been acquitted same evidence cannot be accepted against such three accused. Penal Code (45 of 1860), Sc.34, 149 - Common intention - Constructive liability.

MAHADEV BAPUJI MAHAJAN (DEAD) AND OTHERS

Versus

STATE OF MAHARASHTRA

1994CriLJ1389 Grand Jurix 1994CriLJ1389

A. Criminal Procedure Code, 1973 -- S.195(1)(b)(ii) -- Offence under S.471 IPC committed before the start of the proceedings -Complaint by court concerned not necessary either in the old Code or in the new Code - Cr.PC, 1898 - Sc.466, 468, 471 r/w S.120 and Prevention of Corruption Act, 1947 - S.5(1)(d) - Sentence... Offences committed during the year 1958-59 - Both the accused very much aged now - Sentence of accused L reduced from one year"s RI to six months" RI and sentence of accused T reduced from two years" RI to one year"s RI. Criminal Procedure Code, 1973 - Sec. 195(1)(b)(ii) - Offence u/s. 471 IPC committed before the proceeding commenced - No complaint is necessary by the Court concerned either in the old Code or in the new Code. Penal Code, 1860 - Secs.466, 468, 471 r/w S.120 -Prevention of Corruption Act, 1947 - Sec.5(1)(d) - Sentence -Offences committed during the year 1958 and 1959 - They are very much aged now - Sentence of one year"s RI reduced to six months RI. Criminal P.C. (2 of 1974), Section 195(1)(b) - cognizance of offence - Offence of forging documents committed before start of proceedings before revenue court.

MAFATLAL INDUSTRIES LTD.

Versus

UNION OF INDIA

[1995]2SCR224 Grand Jurix AIR - Not reported

Sales Tax - Refund - Tax paid under mistake of law - If a "mistake" under S.72 of Contract Act, 1872 - assessed if entitled to recover such amount - Rule laid down by five-Judge Bench in Kanhaiya Lal case whether approved by seven Judge Bench in Aluminium Industries Ltd. case - Matter referred to still larger Bench. Sales tax - Refund - Tax paid under mistake of law, whether comes within the word "mistake" in S.72 of Contract Act, 1872 - Whether assessed entitled to recover such amount - Rule laid down by five Judge Bench in STO Vs. Kanhaiya Lal Mukundlal Saraf whether approved by seven Judge Bench in State of Kerala Vs. Aluminium Industries Ltd. - Matter referred to still larger Bench.

CHAND RANI (SMT.(DEAD) BY LRS

Versus

KAMAL RANI (SMT)(DEAD) BY LRS.

AIR1993SC1742 Grand Jurix AIR1993SC1742

Specific Relief Act, 1963 - Ss.9 & 10 and 16 -- Vendee's suit for specific performance of contract for sale of immovable property - Whether time was essence of the contract - No presumption exists - Can be ascertained from express provisions of the contract, nature of the property and surrounding circumstances - Contract stipulating "Rs.98,000... will be paid by the second party to the first party within a period of ten days only" ... vendee not willing to pay the same unless vacant delivery of possession of part of the property given - In view of the express term of the contract coupled with the conduct of vendee, held, time was essence of the contract and vendee was not ready and willing to perform the contract Specific Relief Act, 1963 - Secs. 9 & 10 and 16 - Suit for specific performance of contract - presumption of time in case of sale of immovable property - Does not exist- Court may infer that it is to be performed in a reasonable time - Depending upon the express terms of the contract, nature of the property and from the surrounding circumstance- Contract expressing that Rs.98,000 to be paid by the second party to the first party only within 10 days - Vendee not willing to pay unless vacant delivery of possession of part of property given - Time was essence of the contract in view of the terms of the contract Specific Relief Act (47 of 1963), S.16 - Agreement to sell immovable property - Intention of parties to make time essence of the contract - Purchaser not willing to make part payment of amount within specified time without fulfillment of some conditions.

SURENDRA NATH MOHANTY AND ANOTHER

Versus

STATE OF ORISSA

1999CriLJ3496 Grand Jurix 1999CriLJ3496

Criminal Procedure Code, 1973 - S.320(9) ... Offence under S.326 IPC Considering the fact that parties have settled their dispute and 10 years have elapsed from the date of the incident and further fact that the appellants have already undergone 3 months" imprisonment, sentence reduced to the period already undergone with fine of Rs.5000 on each accused. Criminal Procedure Code, 1973 - S.320(9)... Offence u/s.326 IPC - Considering the fact that the parties have settled their dispute outside the Court and the fact that 10 years have elapsed from the date of the incident and the further fact that the appellants have already undergone 3 months" ... the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs.5000 on each of the accused u/s. 326 r/w S.34 IPC. Criminal P.C. (2 of 1974), S.320(9) - Penal Code (45 of 1860), S.326 - Compounding of offence - Offence under S.326, IPC - Not compoundable

MOHD.MUSA MIA ALLIAS MOHD. MUSA

Versus

STATE OF W.B.

JT1992(2)SC426 Grand Jurix AIR-Not reported

Penal Code, 1860.- Sc. 302 and 34 - Common intention - Proof of -Appellant going to the spot with a knife, catching hold of the deceased to enable stabbing by another and then himself stabbing the deceased - In such circumstances, the appellant, held, shared the said other person"s intention to murder the deceased - Hence, conviction under Ss. 302/34, upheld Penal Code, 1860 - Sections 302 and 34 - Common intention - Proof of - Appellant went to the scene spot with a knife and caught hold of the deceased in order to facilitate other P to stab the deceased and thereafter the appellant also stabbed the deceased with a knife which he had carried with him - Under these circumstances, appellant had shared the intention of P in murdering the deceased.

ANAND DAGADUJADHAV AND OTHERS

Versus

RUKMINIBAI ANANDJADAV (SMT.) AND ANOTHER

Grand Jurix AIR-Not reported

Penal Code, 1860 - S.494 - Sentence under - Quantum of - Offence committed about 18 years ago and the accused facing the proceedings for over 17 years - In such circumstances, substantive sentence of 5 years of imprisonment reduced to the period already undergone... Penal Code, 1860 - Section 494 - Sentence under - Quantum of -Offence was committed about 18 years ago and that the appellants have undergone the order of the proceedings well over for a period of 17 years - In these circumstances, ends of justice would be met by reducing the

substantive sentence imposed on the first appellant to the period already undergone-

Penal Code, 1860 - Sc.494 and 109 -Abetting the offence of bigamy -Sentence - quantum of imprisonment till the rising of the court and fine of Rs.500 - Upheld (Para 1). Penal Code, 1860 - Sections 494 and 109 - Abetting the offence of bigamy - Sentence - Quantum of - Imprisonment till the rising of the Court and fine of Rs.500 justified

RAGHBIR SINGH AND OTHERS

Versus

GURCHARAN SINGH AND OTHERS

JT1992(1)SC110 Grand Jurix AIR-Not reported

Partnership "Act, 1932 - S.44 - Dissolution of firm - Winding up proceedings - Receiver appointed by order of Supreme Court to effectuate winding up and complete the business which was in the pipeline by carrying on day to day business of the firm - Receiver alleged to be undertaking new business as evident from sudden rise in stock-in-trade - In order to ensure scrupulous observance of Court's order, instead of removing the Receiver, appointment of a Co-receiver along with him directed Partnership Act, 1932 - Section 44 - Dissolution of firm - Winding up proceedings - Supreme Court directed that.... as a Receiver .. to effectuate winding up and complete the business which was in the pipeline without undertaking any new business whatsoever - Receiver instead of carrying on day-to-day business which was in the pipeline was undertaking new business as was obvious from the sudden rise in the stock-in-trade - In order to ensure scrupulous observance of Court's order, instead of removing the Receiver, appointment of a co- receiver Along with him directed

STATE OF U.P.THROUGH THE SECRETARY, U.P. VIDHANSABHA, LUCKNOW

Versus

ONKAR NATH TANDON AND OTHERS

1993 Supp (3) SCC 202 Grand Jurix AIR 1993 SC 1171

Service Law - Seniority Supersession by junior on merits Service Law - Seniority - Supersession by junior on merits Constitution of India, Art. 311 - Seniority - Junior employee Superseding senior on merit basis

ST.JOSEPH TEXTILES

VERSUS

UNION OF INDIA AND ANOTHER

AIR1993SC1692 Grand Jurix AIR1993SC1692

Railways Act, 1890 Ss.77, 72 and 73 Bar under S.77(2) -- Effect -- Goods, delivery of which was not taken for more than seven days after the termination of transit, delivered to a wrong person against a non-genuine railway receipt -- Railways, held, not liable for the loss so caused to the consignor. Railways Act, 1890 - Sections 77, 72 and 73 -- Bar under S.77(2) - Effect - Delivery of goods, delivery not taken for more than seven days after the termination of transit, - Goods delivered to a wrong person against a non-genuine railway receipt - Railway not liable for the loss so caused to the consignor. Railways Act (9 of 1890), S.77(2) - Applicability - Delivery of goods not taken within 7 days after termination free time allowed for removal of goods - Goods delivered thereafter to wrong person - Railways not liable for damages.

COMMISSIONER, SALEM MUNICIPALITY

Versus

T.KURALMANI AND ANOTHER

1995(6)SCALE217 Grand Jurix AIR - Not reported

Service Law - Administrative Tribunals Act, 1985 -- Ss.15 and 22 .. Summary disposal -- Summary disposal of a case without considering the rival contentions which the background of the facts of the case required to be gone into, held, unjustified. Service Law - Administrative Tribunals Act, 1985 - Secs.15 & 22 - Summary disposal - Summarily disposing of the matter without considering the rival contentions which in the back ground of the facts of this case, ought to be gone into, held, unjustified.

STATE OF ASSAM

Versus

P.C.MISHRA, I.A.S. AND OTHERS

AIR1996SC430 Grand Jurix AIR1996SC430

Administrative Law - Administrative action - Persons holding high public office -- Must exercise their powers in public interest and for public good. Administrative Law - Administrative action - Persons holding high office - It is incumbent for each occupant of every high office to be constantly aware that the power invested in the high office he holds is meant to be exercised in public interest and only for public good. Constitution of India, Art, 162 - Administrative Action - Claim by two high ranking officers to be Chief Secretary - No clarification issued by Govt. about their ranks and positions - Proper functioning of State administration jeopardized due to ego clashes of two officers - Supreme Court observed that high officials should be aware that power should be exercised for public good and not for personal benefit.

LAXMI (SMT) ALLIAS ANANDI AND OTHERS

Versus

C.SETHARAMA NAGARKAR AND OTHERS

AIR1996SC268 Grand Jurix AIR1996SC268

Rent Control and Eviction - Bona fide requirement of landlord - Revision - Landlord originally taking the plea that the premises required for his mother - Mother expiring during pendency of the proceeding - Landlord then taking the plea that he required the premises for his own occupation Karnataka Rent Control Act, 1961 (22 of 1961) S.21(1)(h). Rent Control & Eviction - Karnataka Rent Control Act, 1961 - Sec.21(1)(h) - Bona fide requirement of landlord - Revision - Original plea of the landlord was that he required the suit premises for his mother's residence... Mother expired during the pendency of the proceedings - The landlord had then taking the plea that he wanted the suit premises for his own occupation. Karnataka Rent Control Act (22 of 1961), S.50 - Revision-Eviction of tenant sought on ground that premises required for landlord's mother's residence - Death of mother during pendency of proceeding - Subsequent plea by landlord as to bona fide need of premises for his own occupation - Requiring investigation on facts - Cannot be entertained in revision.

YASHOMATI HARSUKHLA LATHIA (SMT) AND OTHERS.

Versus

SAURASHTRA KUTCHSTOCK EXCHANGE AND OTHERS.

[1995]3SCR217 Grand Jurix AIR-Not reported

Education - Saurashtra University Act, 1965 - S.43(i) Expln. [as amended by Gujarat Secondary Education (Amendment) Act, 1978 (32 of 1978)] .. Appellant having passed metric equivalent to eleventh standard in Saurashtra region, held, fulfilled the qualifications of twelfth standard prescribed for membership of Stock Exchange. Education-Saurashtra University Act,1965 - S.43(i) Expln. [as amended by Gujarat Secondary Education (Amendment) Act, 1978].. Appellant having passed metric equivalent to eleventh standard fulfilled the qualifications of twelfth standard prescribed for consideration of her membership of the Stock Exchange.

RAMBAHU VYANKUJI KHERAGADE

Versus

MAHARASHTRA ROAD TRANSPORT CORPORATION

(1996)IILLJ733SC Grand Jurix AIR

Labour Law - Industrial Disputes Act, 1947 -- Ss.2_A and 15 --Effective date of dismissal after domestic enquiry -- Labour Court finding the enquiry to be unfair and as such giving the employer an opportunity to prove the charge and finally upholding the dismissal -- Since the defects Constituting the basis for the said finding in the instant case did not go to the root of the case so as to render the enquiry void and non est, held, the order of dismissal would take effect from the

date on which it was originally passed and not from the date of award. Labour Law - Industrial Disputes Act, 1947 - Secs.2A and 15 -Effective date of dismissal after domestic enquiry - Labour Court finding that enquiry held against appellant was neither fair nor proper and as such it gave an opportunity to the Corporation to prove charge ... and finally the Labour Court upheld the dismissal of the appellant - Defects on the basis of which the domestic enquiry was held to be unfair did not go to the root of the case and as such it is not possible to hold that the said enquiry was void and non est, held, the order of dismissing the appellant could only be effective from the date on which it was originally passed and not from the date of the award. Dismissal Order - When becomes effective, whether from the date of an order of dismissal based on a defective domestic enquiry or from the date of award of labour court passed after opportunity was given to the employer to prove the charge -Domestic enquiry held against the employee did not suffer from so serious or fundamental defects as to render the same non est - Hence dismissal took effect from the date of dismissal order.

5. It is submitted that certain mistakes inadvertently made by the plaintiffs in their journals are also found in the defendants' software. The defendants have alleged to have copied the plaintiffs entire scheme of presentation including the form, features, strokes, characteristic and the distinctive style allegedly developed for the SCC. It is submitted that the defendants have allegedly lifted from the plaintiffs original literary work, the material for their software package. Certain features appearing in the judgments printed in the SCC were absent in the raw sources and were incorporated by the plaintiffs in their journal and those features were allegedly lifted by the defendants verbatim from the journals of the plaintiffs. Instances of those have been given in the plaint. The repetition in errors, the insertion of words to complete authorities, reference etc appearing in the journal of the plaintiffs and in the software package of the defendants, it is submitted, cannot be said to be a mere co-incidence, but demonstrate that the defendants had slavishly imitated and reproduced the head notes, the format, the standardised text, etc. copyright wherein allegedly vests with the plaintiffs. The plaintiffs have alleged that the defendants have brazenly copied the short notes, the head notes and the copy edited portion of the text of the judgments published in their journal.

6. By the aforesaid acts, the defendants, it is alleged by the plaintiffs, were causing and bound to cause incalculable harm and injury to the business, goodwill and reputation of the plaintiffs. The loss and damage suffered and to be suffered by the plaintiffs is alleged to be on account of (i) the loss of sales of the plaintiffs, (ii) actual profits earned by the defendants; (iii) loss of royalty and (iv) loss of plaintiffs' reputation and goodwill of the broad market occasioned by the low sales price of the defendants' products which had virtually destroyed a certain portion of the plaintiffs' marketing. It is submitted that while the software package of the plaintiffs cost Rs.72,000/-, the defendants software costs only Rs.10,000/- and the defendants by infringing the copyright and piracy were causing incalculable loss to the plaintiffs since the customers would be

reluctant to pay higher price for the plaintiffs' software packages, but will purchase defendants' products on lower price. On these grounds, the plaintiffs filed the present suit for injunction restraining the defendants from infringing the copyright of the plaintiffs in the head notes and the copy editing and copy edited text of the judgments appearing in SCC.

7. Along with the suit, plaintiffs also filed an application for grant of an ad-interim injunction till the decision of the suit. By an ex-parte order of injunction passed on 19th April, 2000, this Court had granted an injunction in S.No.624/2000 and on 28.4.2000 in S.No.758/2000 restraining the defendants from infringing the copyright of the plaintiff in the head notes, copy editing and copy edited text of the judgments, the format and the typographic arrangements in the publications of SCC, the Supreme Court Case Finder and Supreme Court Digests whether in print or in the form of a software.

8. The defendants on being served, filed an application under Order 39 Rule 4 CPC in Suit No.624/2000 for vacation of the stay. It was stated in the application that the defendants had started their efforts of creating a software package on CD ROM for finding Supreme Court judgments by engaging computer engineers, lawyers, proof readers and other professionals and the CD-ROM was launched in April, 1999. It is submitted that the salient features of the defendants' work were as under :-

a) Approximately 27,000 judgments of the Hon'ble Supreme Court from 1950 till March 2000 are contained with complete text.

b) All Central Acts and Rules framed there under are available.

c) There are various search mechanisms which have been provided in this work. These searches include subjectwise searching, search by name of parties, by names of advocates, by the names of the High Court, by the name of the Act, by the name of the Judge, by the date of the judgment, by the name of the impugned judgment, etc.

d) All cross reference for each judgment are provided viz., if the user arrives at one judgment, all the various citations of the reports where the said judgment is reported, are immediately available;

e) Details regarding judgments that have been reversed, overruled, cited, followed, referred etc. have also been provided;

f) the most important features of this work is the feature of Hyperlinking. This is a unique feature which is available on the defendants' work which is not available in any other work available in the market for Supreme Court judgments. In this feature of hyperlinking, when a user arrives at some provision, say for example, Section 27 of the India Contract Act, a hyperlink is provided to the said provision contained in the CPC and a list of all the various judgments which have dealt-with this provision appears on the screen.

9. It is submitted that the defendants' work was created with investment of enormous amount of labour, money, time and skill and was an independent creation/work and was by itself entitled to copyright protection. Some of the major differences between the two works set out by the defendants in its application, are as under:-

Particulars SCC The Laws

- a) Supreme Court 1969-2000 1950-2000 Judgments (Period)
- b) No. of Judgments 20900 Appx. 26000 Appx.
- c) Central Acts Nil 1,000
- d) Rules on Central Nil 700 Appx. Acts
- e) Regulations Nil 100 Appx.
- f) Orders Nil 200 Appx.
- g) Schemes Nil 30 Appx. SCC Online differences
- h) Hyperlinking Feature Nil Yes
- i) Text of judgment Contains only Contains text Head-notes (full also since text CD Roms have launch been recently introduced)
- j) Equivalents Equivalent Equivalent Judgments for 10 for 45 Journals journals.

10. The defendants also alleged that their work was much wider in scope than the plaintiffs' work and the main reason to file the present suit by the plaintiffs was to curb the healthy competition from the defendants and to retain a monopoly in relation to publication of Supreme Court judgments in CD-ROM form. It is also submitted that judgments of courts are in public domain and were not capable of exclusive appropriation by any one party. The format and style of presentation of the defendants is also stated to be completely different from that of the plaintiffs. It is also stated that there could not be any copyright in mere typographical arrangement and standard formats. Copyright is granted in relation to an original literary work and merely typographical arrangements of judgments would neither be said to be an original literary work nor entitled to any copyright protection. It is submitted by the defendants that the plaintiffs had selectively quoted some features which were common between the plaintiffs and the defendants' work and had failed to disclose that at least 15,000 head notes contained in the defendants' work had been independently prepared by the defendants. It is submitted by the defendants that as a principle of public policy, no party could be allowed to monopolise the publication of the judgments which were in the public domain and there could not be a separate protection of copy edited texts or any other pattern or styles specified by the plaintiffs. It is alleged that the plaintiffs were selling the data base at an extremely high price and they did not wish that any other trader should compete with them especially by selling the data base on a lower price. The defendants, Therefore, wanted the ex-parte

order granted by the Court to be vacated at the earliest.

11. On a statement made by the defendants on 17th July, 2000, this Court permitted the defendants to sell their CD-ROMs with the text of the judgments of the Supreme Court Along with their own head notes which were not in any way copy of the head notes and text of the plaintiffs. By this order, I propose to dispose of the injunction applications of the plaintiffs in both the suits as well as the application of the defendants for vacation of stay.

12. Before I deal with the factual matrix of the case, it will be useful to note as to in which type of publication a person can claim a copyright. u/s 17(d) of the Copyright Act 1957 (hereinafter referred to as the Act), in case of a Government work, the Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein. Government work has been defined in Section 2(k) as a work which is made or published by or under the direction or control of (i) the Government or any department of the Government (ii) any legislature in India and (iii) any Court/Tribunal or other judicial authority in India. u/s 52(1)(q) of the Act, the reproduction or publication of any judgment or order of a Court or other judicial authority, unless the reproduction or publication of the same is prohibited by the Court or judicial authority, as the case may be, shall not constitute an infringement of copyright. As there cannot be any copyright in the judgment of the Court, the copyright has been claimed by the plaintiff in the format, selection of cases and head notes.

13. plaintiffs claim that there can be a copyright even in the selection of cases, namely, which cases of the Supreme Court are to be reported in the journal. They also claim that their law reports are the result of addition/contribution of original material to a pre-existing work so that the end product is a transformation or adaptation of the pre-existing work. According to the plaintiff, a law report qualifies to be a compilation or data base. The plaintiffs allegedly select, collate, arrange and coordinate the numerous judgments pronounced by the Courts which effort requires tremendous input of skill, labour, discretion, judgment and expenditure. It is for this reason that the law reports, according to the plaintiff, qualify for copyright protection and the plaintiffs claim to be the owner of copyright in the law report SCC. It is contended that the plaintiffs go through an extensive process of selection, arrangement, collation and coordination in publishing SCC. They through their efforts impart a thin layer to the already existing work, which is capable of protection. According to the plaintiffs, u/s 2(o) of the Act, literary work includes computer programmes, tables and compilations including computer data base and in view of Section 13 of the Act subject to provisions of that Section and other provisions of the Act, copyright shall subsist throughout India in original literary work. Law reports, according to them, Therefore, are original literary work in which plaintiffs have a copyright. It is submitted that by copy-editing the judgments, the plaintiffs impart the required level of original work to the judgments by virtue of which they acquire a thin layer of copyright in the end result due to the exercise of

their skill, labour, discretion, expertise and expenditure. Original judgments, according to the plaintiffs, are carefully reviewed and at times provisions of law not mentioned therein are mentioned specifically in the head notes, individually or in combination with other provisions actually referred to. This, according to the plaintiffs, involves not only reviewing the judgment but also the actual statute to determine the relevant provisions that were applicable. Head notes are then prepared which are summary of the main finding of law in the particular case. Foot notes are added wherever required and short notes are added for ease of reference which summarise both the facts and the law laid down in the case. It is submitted that cross references and cross citations have been added for judgments relied upon, dissented from or distinguished by the Judge in his judgment. Typographical errors which appear in the official copy are corrected and appropriate corrigenda obtained from the Supreme Court. According to the plaintiff, the layout and pagination of the judgments reported by the plaintiff are totally different not only from the original judgment but also from the other law reports. According to the plaintiff, their editorial policy in terms of paraphrasing, abbreviations, addition of comments wherever appropriate or necessary, numbering of paragraphs, language of head notes and footnotes are strictly adhered to. The judgments/orders are stated to be arranged in a specific sequence as determined by the editors. Inclusion of a judgment in a particular volume is based on several factors including the topicality and importance of the judgment. As a result, a later judgment may be reported earlier and vice-versa. A specific style of expression that is now recognised as the plaintiffs house style is used to indicate whether the judgment was unanimous or whether there were separate concurring or dissenting judgments. A uniform style of giving the date is adopted in all volumes of the plaintiffs reports. The method of identification of quoted portions in a judgment are allegedly peculiar to the plaintiffs. The method of presentation is stated to be uniform. It is stated that the manuscripts are given three readings in each of which the raw sources are checked for spelling mistakes, grammatical/ typographical/ clerical errors. Statutory provisions are stated to be cross-checked and reference to citations is also scrutinised. The text is then allegedly standardised and formatted, head note is drafted by a team of editors, and the approved copy edited text is composed in the established format and the printouts are again proof read thrice. The proof read printouts are then compiled and collated and finally published in the form of weekly edition of SCC. All these features, according to the plaintiff, involve tremendous expenditure in terms of collection of judgments, selection of judgments, editorial skill, analysis, proof reading, drafting of head notes and foot notes. The plaintiffs thus allege that with all these efforts put in by the plaintiff, their work is original literary work in terms of Section 2(o) of the Act and is, Therefore, entitled to protection under Sections 13, 14 and 17 of the Act.

14. According to the plaintiffs, the defendants have allegedly copied the plaintiffs work and are thereby infringing their copyright. It is stated that the contents of the plaintiffs law reports have been copied verbatim and copying is not only of

the text but also of the head notes, foot noted, mode of citation, arrangement of sequencing of judgment/orders and typographical errors which, according to the plaintiffs, leads to only one conclusion that the defendants have infringed the plaintiffs copyright. Instances of certain pages of the law reports have been given by the plaintiff to show that the defendants have copied their text because the errors which are appearing in their judgments appear in the defendants programme as well.

15. Reliance is placed by the plaintiff upon the judgments reported as Macmillan and Another Vs.Suresh Chunder Deb, 2nd 17 Calcutta 951; University of London Press Limited Vs.University Tutorial Press Limited, 1916(2) Chancery Division 601; Ladbroke (Football) Limited Vs.William Hill (Football) Limited [1964] 1 All ER 465 ; Shyam Lal Paharia and Another Vs. Gaya Prasad Gupta "Rasal", and Ganga Vishnu Shrikisondas Vs.Moreshvar Bapuji Hegishte 13 Bom 358.

16. In Macmillan and Another Vs.Suresh Chunder Deb (Supra), M/s.Macmillan and Company had published a book called "The Golden Treasury of the Best Songs and Lyrics" which was a selection made by Professor Palgrave from the poems of numerous English authors of various periods. The book was first published on 19th July, 1861 since which date there had been several editions, one of which was published in 1882. The book of the defendant called "Select Short Poems, Part X, with copious notes, criticisms, and question paper, etc. prescribed for the B.A. Examination of the Calcutta University, 1890, and for the first B.A.Examination of the Bombay University" was published in Calcutta on or about 15th January, 1889. This was alleged by Macmillan and company to be an infringement of their copyright. Dealing with the question as to whether or not there could be a copyright in a selection, the Court held as under:-

"In the case of works not original in the proper sense of the term, but composed of or compiled or prepared from materials which are open to all, the fact that one man has produced such a work does not take away from any one else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But, as the law is concisely stated by Hall, V.C., in Hogg V.Scott (1), "the true principle in all these cases is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work, that is, in fact, merely to take away the result of another man's labour, or, in other words, his property." I think it unnecessary to refer in detail to the cases; it is enough to say that this principle has been applied to maps, to road books, to guide books, to street directories, to dictionaries, to compilations on scientific and other subjects. This principle seems to me clearly applicable to the case of a selection of poems. Such a selection as Mr.Palgrave has made obviously requires extensive reading, careful study and comparison, and the exercise of taste and judgment in selection. It is open to any one who pleases to go through a like course of reading, and by the exercise of his own taste and judgment to make a selection for himself. But if he spares himself this trouble and adopts Mr.Palgrave's selection, he offends against the

principle. In *Longman V. Winchester* (2) at p.271, Lord Eldon laid down the principle I have stated, and referred to various cases to which it had been applied or was applicable, and said:- "So in the instance mentioned by Sir Samuel Bomilly, a work consisting of a selection from various authors, two men might perhaps make the same selection; but that must be by resorting to the original authors, not by taking advantage of the selection already made by another." And this passage is cited as an authority by Lord Hatherley, then Vice-Chancellor, in *Spiers V. Brown* (1). I am of opinion that the selection of poems made by Mr. Palgrave and embodied in the *Golden Treasury* is the subject of copyright, and that the defendant's book has infringed that right."

17. In *University of London Press Limited Vs. University Tutorial Press Limited* (Supra), it was held that the papers set up by the examiners were literary work within the meaning of the Copyright Act, 1911. The Court in this case was concerned with the question as to whether the question paper set up by the examiners was original work of the plaintiffs in that case. According to the Court, the word original did not in that 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. It was held that the plaintiffs in that case had proved that they had thought out the questions which they set and that they made notes or memoranda for future questions which they set. The papers which they prepared originated from themselves and were within the meaning of the Act, original. Countering the arguments that the questions in the elementary papers are of common type, the Court held that most elementary books of mathematics may be said to be of a common type, but that fact would not give impunity to a predatory infringer. The book and the papers alike originate from the author and are not copied by him from another book or other papers. After all, there remains the rough practical test that what is worth copying is *prima facie* worth protecting.

18. In *Ladbroke (Football) Limited Vs. William Hill (Football) Limited* (Supra), the facts were that the respondents were well-known bookmakers who had done business for many years in fixed odds football betting sending out to their clients each week during the football season a fixed odds football coupon. The coupon was a sheet of paper on which were printed sixteen lists of matches to be played each week; each list was headed with an appropriate name and offered a variety of wagers at stated odds and contained explanatory notes. One of the lists contained the full list of matches to be played at the end of the week this list being determined by the Football League who owned the copyright in it. The other lists were shorter lists of matches selected by the respondents from the full list. Altogether the coupon offered 148 varieties of wager at widely differing odds. A great deal of skill, judgment, experience and work had gone into devising the coupon for the respondents had to select from the very great variety of possible wagers those that would appeal to the punter while being profitable to the respondents, and had then to arrange and describe the selected wagers in

an attractive way on the coupon. The respondents had not altered their coupon since 1951, though the selection of matches in the lists was necessarily changed each week. Some of the wagers offered by the respondents were commonly offered by other bookmakers. The appellants, who were also well-known bookmakers, decided to enter the field of fixed odds football betting in 1959, and in devising their coupon for the 1960/1961 season they copied from the respondents coupon fifteen out of the sixteen lists arranging them in the same order as they appeared in the respondents coupon, in many cases with the same headings and almost identical varieties of wager, and with similar explanatory notes. They did not copy the odds offered by the respondents but worked these out for themselves and since the respondents and the appellants coupons were published simultaneously each week there was no copying of matches selected by the respondents. The respondents claimed copyright in their coupon and alleged infringement by the appellants. By the Copyright Act, 1957 S.2(1) copyright subsisted in every "original" literary work, a literary work included, by virtue of S.48(1), a compilation. Under S.2(5)(a) and S.49(1) copyright gave the exclusive right to reproduce a substantial part of the work in any form. Though the appellants admitted copyright in the respondents selection of matches and statement of odds (neither of which they had copied) they denied copyright in the rest of the coupon. It was not disputed that, as regards a compilation (such as the coupons), the originality requisite to render a work original for the purposes of S.2(1) was a matter of degree depending on the amount of skill, judgment or labour that had been involved in making the compilation.

19. On these facts, the House of Lords held that the correct approach in deciding if there was infringement of copyright in a literary compilation was first to determine whether the work as a whole was entitled to copyright, and, second, to enquire whether the part reproduced by the defendant was a substantial part of the whole; but it was not the correct approach to dissect the work into fragments and, if the fragments were not entitled to copyright, to deduce that the whole compilation could not be so entitled.

20. In *Shyam Lal Paharia and Another Vs. Gaya Prasad Gupta "Rasal"* (Supra), it was held that the expression literary work means not only such work which deals with any particular aspect of literature in prose and poetry but also indicates a work which is literature i.e. anything in writing which could be said to come within the ambit of literary work. A compilation derived from a common source falls within the ambit of literary work. In this case, the mistakes appearing in the plaintiffs book were also appearing in the defendants book and commenting on that aspect of the case, it was held that it was true that the mere fact that the defendant had the plaintiffs book with him will not by itself lead to an irresistible inference that he had copied the calculations from the plaintiffs work. But from the fact that the mistakes committed by the plaintiff in certain calculations in his book were found in defendants book in similar calculations, it must be held that the defendants had copied the calculations from the plaintiffs book and must be deemed to have infringed the copyright of the plaintiff with regard to such

calculations.

21. In *Ganga Vishnu Shrikisondas Vs. Moreshtar Bapuji Hegishte* (Supra), the plaintiff had brought out a new and annotated edition of a certain well-known Sanskrit work on religious observances entitled "Vratraj", having for that purpose obtained the assistance of Pandits, who recast and rearranged the work, introduced various passages from other old Sanskrit books on the same subject and added foot notes. In 1885 the plaintiff registered the copyright of this work. In 1886, the defendant printed and published an edition of the same work, the text of which was identical with that of the plaintiff's work, which moreover contained the same additional passages and the same footnotes, at the same places, with many slight differences. Dealing with the case, it was held by the Court that the plaintiff's work was such a new arrangement of old matter as to be an original work and was thus entitled to protection and as the defendant had not gone to independent sources for the material, but had pirated the plaintiff's work, they must be restrained by injunction.

22. A perusal of the above judgments clearly show that the principle laid down in all these cases was that the fact that one man has produced a compilation from material which is open to all will not take away from any one else the right to produce another work of the same kind and in doing so to use all the materials open to him, he will not be at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work, that is, in fact, merely to take away the result of another man's labour, or, in other words, his property. He may by the exercise of his own taste and judgment make a selection of himself but he cannot pirate the work of another person and if he does so, he has to be enjoined.

23. In case, the publication of the plaintiff's is held to be their original literary work entitled to protection under the Copyright Act, defendants may have to be enjoined from reproducing the same. The only question, Therefore, is whether the plaintiff's work is an original literary work and is entitled to protection under the Copyright Act. As already stated above, it is not denied that u/s 2(k) of the Copyright Act, a work which is made or published under the direction or control of any Court, tribunal or judicial authority in India is a Government work. u/s 52(q), the reproduction or publication of any judgment or order of a Court, Tribunal or other judicial authority shall not constitute infringement of copyright of the Government in these works. It is thus clear that it is open to everybody to reproduce and publish the Government work including the judgment/order of a Court. However, in case, a person by extensive reading, careful study and comparison and with the exercise of taste and judgment has made certain comments about judgment or has written a commentary thereon, may be such a comment and commentary is entitled to protection under the Copyright Act. It is in this background that the Court has to examine as to whether or not i) the work produced by the plaintiff is an original literary work; and ii) it is entitled to protection under the Copyright Act.

24. In terms of Section 52(1)(q) of the Act, reproduction of a judgment of the Court is an exception to the infringement of the copyright. The orders and judgments of the Court are in the public domain and anyone can publish them. Not only that being a Government work, no copyright exists in these orders and judgments but no one can claim copyright in these judgments and orders of the Court merely on the ground that he had first published them in his book. If there are some typographical mistakes in a judgment or an order of the Court, can it be said that merely because the first publisher of these judgments and orders has corrected those mistakes or has inserted certain commas or full stops and dates therein, a copyright will exist in the person who has corrected such mistakes in the judgment published by him? The answer, in my opinion, has to be in the negative. Changes consisting of elimination, changes of spelling, elimination or addition of quotations and corrections of typographical mistakes are trivial and hence no copyright exists therein.

25. In *Bellsouth Advertising & Publishing Corporation Vs. Donnelley Information Publishing INC and Another*, 33 IPR 587, it was held that the common errors in the BAPCO and Donnelley listings prove only that Donnelley admittedly copied the name, number, address, and type of business from every BAPCO listing. The presence of common errors is not probative of whether the portions of the BAPCO directory copied by Donnelley included the copyrightable elements of original selection, coordination and arrangement. The facts in the case were that the BellSouth Advertising and Publishing Corporation (BAPCO) prepared, published and distributed telephone directories, including a classified directory. Its 1984 Greater Miami classified directory was divided alphabetically into business classifications. Each subscriber to a business rate service was entitled to be listed in alphabetical order in one appropriate category free of charge. The subscriber could also purchase larger advertisements or cross-listings in other applicable classifications. BAPCO registered the copyright in the directory, but not the business classifications.

26. Donnelley set out to publish a competing directory. It marked up copies of BAPCO's directory with two alphanumeric codes; one indicating the size and type of advertisement purchased by the advertiser and the other indicating the type of business the advertiser was listed under. Donnelley sent copies of BAPCO's directories to Appalachian Computer Services Inc (ACS), a data entry company. ACS created a computer database consisting of the name, address and telephone number of the subscriber as well as the codes corresponding to business type and unit of advertising for each entry in BAPCO's directory. From the database, Donnelley printed sales lead sheets containing all the above information for each subscriber and used these to contact business subscribers to solicit advertising. It then collated and published its own directory, which had a number of differences in layout and appearance.

27. BAPCO sued for infringement of its copyright. Donnelley conceded subsistence of copyright, but denied infringement. The district court ruled that

Donnelley infringed BAPCO's copyright by (1) the entry of subscriber information into the computer database based created - by ACS; (2) printing out the sales lead sheets; and (3) publishing its directory. The circuit Court upheld the district court's ruling. Subsequently, however, the Circuit Court granted Donnelley leave for a rehearing en banc.

28. In appeal before the United States Court of Appeals, it was held that Donnelley copied no original element of selection, coordination or arrangement by copyright the name, address, telephone number, business type and unit advertising. The arrangement of BAPCO's classified directory, like Rural Telephone's residential directory, was entirely typical of its type. As a matter of law, the elements of selection, coordination and arrangement said to be infringed did not display the originality required to merit copyright protection. It was further held that:-

(i) The acts of selection relied on by the district court were not acts of authorship, but techniques for the discovery of facts. Copyright does not protect industrious collection and affords no shelter to the resourceful, efficient or creative collector. The protection of copyright must inhere in a creatively original selection of facts and not in the creative means used to discover the facts.

(ii) The arrangement and coordination of BAPCO's directory into an alphabetical list of business types was "entirely typical". Because this is one way of construct a useful business directory, the arrangement has "merged" with the idea of a business director and was uncopyrightable.

(iii) There was insufficient evidence that Donnelley had copied BAPCO's headings list. Donnelley established its own heading list and the alphanumeric code corresponded to its heading, not BAPCO's.

(iv) Further, BAPCO did not prove that its headings structure constituted original expressions warranting copyright protection. There was evidence that many of BAPCO's headings were standard industry practice, others were obvious. Any expressive act in including a category would merge with the idea of listing such entities as a class of business. Further, costumers, not BAPCO, selected the relevant classification. The headings that appeared in the directory did not owe their origin to BAPCO and BAPCO has not claimed copyright in the larger universe of headings offered to subscribers.

(v) A comparison of the two competing products did not support a conclusion of infringement. In the case of a factual compilation, a comparison of the copyright holder's work with that of the alleged infringer must distinguish similarities attributable to ideas, which are unprotected per se, or to expression not owned by the copyright holder, from those similarities resulting from the copying of the compiler's original elements. Donnelley did not copy the text or graphic material from the advertisements in BAPCO's directory, the positioning of the advertisements, the typeface or BAPCO's textual material.

29. It is thus clear that protection of copyright must inhere in a creatively original selection of facts and not in the creative means used to discover the facts. In the present case, all that has been argued by learned counsel for the plaintiff is that the manuscripts of the judgments are obtained from the raw source, they are carefully reviewed, corrections made, cross references and cross citations added, lay out and pagination is done, arranged in a specific sequences and after giving a uniform style of dates, is printed and published in the journal. None of this, in my opinion, is a creatively original selection by the plaintiff and at best can be said to be a reproduction of the judgments of the Court by giving paragraph numbers and correcting the mistakes, if any, therein. The judgments of the Court are available to every person and just because another person instead of obtaining the judgments from the raw source has copied them from the publication of the plaintiff will not mean that the work has become the original literary work of the publisher who published it for the first time. There being no copyright in the judgments of the Court, the plaintiffs cannot claim copyright therein merely by first publishing them in their journal.

30. Under the United States Constitution, protection is granted to promote the progress of science and art by giving limited time to authors the exclusive right to the copyright work. Article 1, 8, clause 8 of the US Constitution mandates originality as a pre-requisite for copyright protection. The constitutional requirement necessitates independent creation plus a modicum of creativity. Whether the compilation of facts in a directory constituted the original literary work of the author came up for consideration in the United States Supreme Court in a case reported as *Feist Publications, Inc. Vs. Rural Telephone Service Company* (1991) 499 U.S. 340. The facts in this case were that the Rural Telephone Service Company was a certified public utility that provided telephone service to several communities in northwest Kansas. It was subject to a state regulation that required all telephone companies operating in Kansas to issue annually an undated telephone directory. Accordingly, as a condition of its monopoly franchise, Rural published a typical telephone directory, consisting of white pages and yellow pages. The white pages listed in alphabetical order the names of Rural's subscribers, together with their towns and telephone numbers. The yellow pages listed Rural's business subscribers alphabetically by category, and feature classified advertisements of various sizes. Rural distributed its directory free of charge to its subscribers, but earned revenue by selling yellow pages advertisements.

31. As the sole provider of telephone service in its service area, Rural obtained subscriber information quite easily. Persons desiring telephone service must apply to rural and provide their names and address; rural then assigned them a telephone number. Feist was not a telephone company, let alone one with monopoly status and, Therefore, lacked independent access to any subscriber information. To obtain white pages listings for his area-wide directory, Feist approached each of the 11 telephone companies operating in north-west Kansas and offered to pay for the right to use its white pages listings.

32. Of the 11 telephone companies, only rural refused to license its listings to Feist. Rural's refusal created a problem for Feist as omitting these listings would have left a gaping hole in its area-wide directory, rendering it less attractive to potential yellow pages advertisers.

33. Unable to license Rural's white pages listings, Feist used them without Rural's consent. Feist began by removing several thousand listings that fell outside the geographic range of its area-wide directory, then hired personnel to instigate the 4,935 that remained. These employees verified 499 U.S. 340 the date reported by Rural and sought to obtain additional information. As a result, a typical Feist listing included the individual's street address; most of Rural's listing did not. Notwithstanding these additions, however, 1,309 of the 46,878 listings in Feist's 1983 directory were identical to listings in Rural's 1982-83 white pages. App., 54 (15-16), 57. Four of these were fictitious listings that Rural had inserted into its directory to detect copying.

34. Rural sued for copyright infringement in the District Court for the District of Kansas, taking the position that Feist, in compiling its own directory, could not use the information contained in Rural's white pages. Rural asserted that Feist's employees were obliged to travel door-to-door or conduct a telephone survey to discover the same information for themselves. Feist responded that such efforts were economically impractical and, in any event, unnecessary, because the information copied was beyond the scope of copyright protection. The District Court granted summary judgment to Rural, explaining that "Courts have consistently held that telephone directories are copyrightable" and citing a string of lower court decisions. 663 F.Supp.214,218 (1987). In an unpublished opinion, the Court of appeals for the Tenth Circuit affirmed "for substantially the reasons given by the district court". In appeal to the Supreme Court, it was held that it may seem unfair that much of the fruit of the compiler's labour may be used by others without compensation. However, that was not some unforeseen by product of a statutory scheme. It was rather the essence of copyright and a constitutional requirement. The primary objective of copyright was not to reward the labour of authors, but to promote the progress of science and useful arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. Protection for the fruits of such research may, in certain circumstances, be available under the theory of unfair competition. But to accord copyright protection on that basis alone distorts basic copyright principles in that it creates a monopoly in public domain materials without the necessary justification of protecting and encouraging the creation of writings by authors: There will be some fact-based works in which the selection, coordination, and arrangement are not sufficiently original to trigger copyright protection. After observing all these principles, the Court held that :-

There is no doubt that Feist took from the white pages of Rural's directory a substantial amount of factual information. At a minimum, Feist copied the

names, towns, and telephone numbers of 1,309 of Rural's subscribers. Not all copying, however, is copyright infringement. To establish infringement, two elements must be proven (1) ownership of valid copyright, and (2) copying of constituent elements of the work that are original. See *Harper & Row* 471 U.S. 548. The first element is not at issue here; Feist appears to concede that Rural's director, considered as a whole, is subject to a valid copyright because it contains some forward test, as well as original material in its yellow pages advertisements.

The question is whether Rural has proved the second element. In other words, did Feist, by taking 1,309 names, towns and telephone numbers from Rural's white pages, copy anything that was "original" to Rural? Certainly, the raw data does not satisfy the originality requirement. Rural may have been the first to discover and report the names, towns, and telephone numbers of its subscribers, but this data does not "ow[e] its origin" to Rural. *Burrow-Giles*, 111 U.S. at 58. Rather, these bits of information are uncopyrightable facts; they existed before Rural reported them, and would have continued to exist if Rural had never published a telephone directory. The originality requirement "rule(s) out protecting...names, addresses and telephone numbers of which the plaintiff, by no stretch of the imagination, could be called the author."

Rural essentially concedes the point by referring to the names, towns and telephone numbers as "preexisting material". Brief for respondent 17. Section 103(b) states explicitly 499 U.S. 340 that the copyright in a compilation does not extend to "the preexisting material employed in the work."

The question that remains is whether Rural selected, coordinated, or arranged these uncopyrightable facts in an original way. As mentioned, originality is not a stringent standard; it does not require that facts be presented in an innovative or surprising way. It is equally true, however, that the selection and arrangement of facts cannot be so mechanical or routine as to require no creativity whatsoever. The standard of originality is low, but it does exist. ("While this requirement is sometimes characterized as modest, or a low threshold, it is not without effect") (internal quotations omitted; citations omitted). As this Court has explained, the Constitution mandates some minimal degree of creativity, see *The Trade-mark cases*, 100 U.S. at 94 and an author who claims infringement must prove "the existence of intellectual production, of thought, and conception."

The selection, coordination, and arrangement of Rural's white pages do not satisfy the minimum constitutional standards for copyright protection. As mentioned at the outset, Rural's white pages are entirely typical. Persons desiring telephone service in Rural's service area fill out an application, and Rural issues them a telephone number. In preparing its white pages, Rural simply takes the data provided by its subscribers and lists it alphabetically by surname. The end product is a garden-variety white pages directory, devoid of even the slightest trace of creativity.

Rural's selection of listings could not be more obvious, : It publishes the most

basic information - name, town, and telephone number - about each person who applies to it for telephone service. This is "selection" of a sort, but it lacks the modicum of creativity necessary to transform mere selection into copyrightable expression. Rural expended sufficient effort 499 U.S. 340 to make the white pages directory useful, but insufficient creativity to make it original.

We note in passing that the selection featured in Rural's white pages may also fail the originality requirement for another reason. Feist points out that Rural did not truly "select" to publish the names and telephone numbers of its subscribers; rather, it was required to do so by the Kansas Corporation Commission as part of its monopoly franchise. See 737 F.Supp. at 612. Accordingly, one could plausibly conclude that this selection was dictated by state law, not by Rural.

Nor can Rural claim originality in its coordination and arrangement of facts. The white pages do nothing more than list Rural's subscribers in alphabetical order. This arrangement may, technically speaking, owe its origin to Rural; no one disputes that Rural undertook the task of alphabetizing the names itself. But there is nothing remotely creative about arranging names alphabetically in a white pages directory. It is an age-old practice, firmly rooted in tradition and so commonplace that it has come to be expected as a matter of course. See Brief for Information Industry Association et al. as Amici Curiae 10 (alphabetical arrangement "is universally observed in directories published by local exchange telephone companies"). It is not only unoriginal, it is practically inevitable. This time-honoured tradition does not possess the minimal creative spark required by the Copyright Act and the Constitution.

We conclude that the names, towns, and telephone numbers copied by Feist were not original to Rural, and therefore were not protected by the copyright in Rural's combined white and yellow pages directory. As a constitutional matter, copyright protects only those constituent elements of a work that possess more than a de minimis quantum of creativity. Rural's white pages, limited to basic subscriber information and arranged alphabetically, fall short of the mark. As a statutory matter 17 U.S.C. 101 does not afford protection 499 U.S. 340 from copying to a collection of facts that are selected, coordinated, and arranged in a way that utterly lacks originality. Given that some works must fail, we cannot imagine a more likely candidate. Indeed, were we to hold that Rural's white pages pass muster, it is hard to believe that any collection of facts could fail.

Because Rural's white pages lack the requisite originality, Feist's use of the listings cannot constitute infringement. This decision should not be construed as demeaning Rural's efforts in compiling its directory, but rather as making clear that copyright rewards originality, not effort. As this Court noted more than a century ago, "great praise may be due to the plaintiffs for their industry and enterprise in publishing this paper, yet the law does not contemplate their being rewarded in this way."

35. In *S.K. Dutt Vs. Law Book Co. and Others*, , it was held that an author of a

law commentary cannot claim that once he quoted a passage in his book from either a decided case or a standard work then no one else has any right again to quote that passage. Otherwise the defense of "common source" can never be available to anyone. It was held that it cannot be contended that by quoting a passage from a decision or from another work, he was in effect selecting the passage and since the copyright law protects selection he was protected and nobody else can thereafter make the same selection. Only those selections were protected which the author made for purposes of incorporating them in a book of selections. It did not protect a selection which he made for purposes of explaining a legal or a scientific proposition that he had to explain while writing a commentary for the other man who after the plaintiff wrote a commentary on that subject must per necessity had to make the same selection. Decisions reported in law reports are common property for commentators on the law and that must per necessity have to have recourse to them because without reference to them no commentator can give to his readers a correct idea of the law.

36. In *Matthew Bender & Company Inc. and Another Vs. West Publishing Company and Another* (1999) 47 IPR 228, it was held that a compilation is protected by copyright only to the extent of the material contributed by the author and two elements must be proved to establish infringement of a copyright in a compilation, namely, i) ownership of a valid copyright; and ii) copying of constituent elements of the work which are original. It was further held that the originality requirement means that the work must have been independently created and that it possesses at least some minimal degree of creativity. The insertion of page breaks and page numbers, according to this judgment, did not entail even a modicum of creativity, the volume and page numbers were not original components of the compilation and would not be protected by the compilation copyright. It was, Therefore, held that these aspects could have been copied by another person without infringing the copyright. The facts in this case were as under:-

Defendants-appellants West Publishing Co and West Publishing Corp (Collectively "West") create and publish printed compilations of federal and state judicial opinions. plaintiff-appellee Matthew Bender & Company, Inc and Intervenor-plaintiff-appellee Hyper Law, Inc (collectively "plaintiffs") manufacture and market compilations of judicial opinions stored on compact disc-read only memoranda (CD-ROM) discs, in which opinions they emded (or intend to emded) citations that show the page location of the particular text in West's printed version of the opinions (so-called star pagination). Bender and Hyper Law seek judgment declaring that star pagination will not infringe West's copyrights in its compilations of judicial opinions. West now appeals from a judgment of the United States District Court for the Southern District of New York (Martin J), granting summary judgment of non-infringement to Bender and partial summary judgment of non-infringement to HyperLaw.

West's primary contention on appeal is that star pagination to West's case reporters allows a user of plaintiffs' CD-ROM discs (by inputting a series of commands) to "perceive" West's copyright-protected arrangement of cases, and that plaintiffs' products (when star pagination is added) are unlawful copies of West's arrangement. We reject West's argument for two reasons.

A. Even if plaintiffs' CD-ROM discs (when equipped with star pagination) amounted to unlawful copies of West's arrangement of cases under the Copyright Act, (i) West has conceded that specification of the initial page of a West case reporter in plaintiffs' products (parallel citation) is permissible under the fair use doctrine, (ii) West's arrangement may be perceived through parallel citation and thus the plaintiffs may lawfully create a copy of West's arrangement of cases, (iii) the incremental benefit of star pagination is that it allows the reader to perceive West's page breaks within each opinion, which are not protected by its copyright, and (iv) Therefore star pagination does not create a "copy" of any protected elements of West's compilations or infringe West's copyrights.

B. In any event, under a proper reading of the Copyright Act, the insertion of star pagination does not amount to infringement of West's arrangement of cases.

Background

West creates "case reports" of judicial opinions by combining (i) certain independently authored features, such as syllabi (which summarise each opinion's general holdings), head notes (which summarise the specific points of law recited in each opinion), and key numbers (which categorise the points of law into different legal topics and subtopics), with (ii) the text of the opinions, to which West adds parallel citations to other reporters, information about the lawyers, and other miscellaneous enhancements. West then publishes these case reports (first in paperbacked advance sheets, and then in hardbound volumes) in various series of "case reporters". These case reporter are collectively known as West's "National Reporter System", and include (as relevant to this case): the Supreme Court Reporter, which contains all Supreme Court opinions and memorandum decisions; the Federal Reporter, which contains all federal court of appeals opinions designated for publication, as well as tables documenting the disposition of cases that are unpublished; the Federal Rules Decisions and Federal Supplement, which contain selected federal district court opinions; and the New York Supplement, which contains selected New York State case reports. Cases appearing in West's case reporters are universally cited by the volume and page number of the case reporter series in which they appear. One citation guide recommends - and some courts require - citation to the West version of federal appellate and trial court decisions and New York State court decisions. See the Bluebook; A Uniform System of Citation, 16th ed, 1996, at pp165-7.200-1; see eg Third Cir R 28.3(a); Eleventh Cir R 28-2(k); see also The University of Chicago Manual of Legal Citation 15 (1989) ("When citing to a state case, indicate the volume and first page of the case for both the official and

commercial reporters)".

Bender markets a series of CD-ROM discs called "Authority from Matthey Bender". One product in this series - the "New York product" - consists of three elements: (i) "New York Law and Practice" (one disc), which contains New York statutory and treatise materials; (ii) "New York Federal Cases" (three discs), which contains cases from the Second Circuit and New York's federal district courts from 1789 to the present; and (iii) "New York State Cases" (four discs), which contains cases from the Second Circuit and New York's federal district courts from 1789 to the present; and (iii) "New York State Cases" (four discs), which contains New York State judicial opinions from 1912 to the present (the New York State Court of Appeals cases begin in 1884). These CD-ROM discs contain published opinions and unpublished opinions and orders from these courts.

Bender obtains the text of the judicial opinions through a license from LEXIS (an on-line database containing legal and non-legal data), and stores these opinions and orders on the discs arranged by court and date, which is also the order in which they would be seen by a user who for some reason browses through the discs without sorting the case reports in a search. For each case that appears in West's case reporters. Bender intends to insert (and in some cases already has inserted) a parallel citation (eg 100 F 3d 101) to the West case reporter at the beginning of the opinion and a citation to the successive West page numbers at the points in the opinion where page breaks occur in the West volume (eg * 104 or 100 F 3d 104)

Bender uses the FOLIO file retrieval program, which allows a user to access opinions in several ways, including in the order in which they are stored on the disc, or through term searches, or through a West or LEXIS parallel or page citation. In addition, citations appearing within judicial opinions are "hot linked", so that a user may retrieve the cited case by clicking the mouse on the case citation.

West claims (and for the purposes of this summary judgment motion, we accept as true) that the FOLIO retrieval system permits a user of Bender's product to view (and print) judicial opinions in the same order in which they are printed in a West volume by repeating the following steps : (i) a user activates the jump feature in the program to go to the first page in a West case reporter volume, (ii) pages through to the bottom of the case, (iii) finds the last star pagination reference, and (iv) activates the jump cite feature to retrieve the case beginning on the same or next West page number.

Hyper Law markets "Supreme Court on Disc", an annual CD-ROM disc containing opinions of the United States Supreme Court since 1991, and "Federal Appeals on Disc", a CD-ROM quarterly disc containing nearly all opinions (published and unpublished) of the federal courts of appeals since January 1993. "HyperLaw currently obtains the text of its opinions directly from the courts and includes in

its "Federal Appeals" CD-ROM disc many more cases than published by West. The opinions are organized on the CD-ROM disc in an order that is "approximately chronological". HyperLaw includes parallel citations to West's case reporters for all cases appearing in the Supreme Court Reporter and the Federal Reporter, and intends to add star pagination as well.

Bender's complaint sought a judgment declaring that star pagination to West's case reporters will not copy West's arrangement or infringe West's copyright. HyperLaw intervened seeking the same relief. All parties then moved for summary judgment. The district court granted summary judgment to plaintiffs on the star pagination issue, concluding that the insertion of star pagination to West's volumes on the CD-ROM version of the cases would not reproduce any, protectable element of West's compilation. The Court noted that "the protection extends only to those aspects of the compilation that embody the original creation of the compiler" and that "where and on what particular pages the text of a court opinion appears does not embody any original creation of the compiler, and therefore..... is not entitled to protection." The court further ruled that star pagination would be permitted under the fair use doctrine even if West's pagination were copyrightable."

37. On the above facts, it was held by the United States Court of Appeals that the compilations were copyrightable but the copyright extended only to the material contributed by the author of such works as distinguished from the pre-existing material employed in the work. Works of the Government were not subject to copyright protection although they may be included in a compilation.

38. Relying upon the judgment of the United States Supreme Court in *Feist Publications, Inc. Vs. Rural Telephone Service Company* (Supra), it was further held in *Mathew Bender Company's* case that because the internal pagination of Feist case reports did not entail even a modicum of creativity, the volume and page numbers were not original components of Feist compilations and were not thus protected by Feist compilation copyright. As a constitutional matter, copyright protects only those constituent elements of a work that possess more than a de minimis quantum of creativity. Because the volume and page numbers were unprotected features of Feist compilation process, they could be copied without infringing Feist copyright. It was also held that star paginations, volume and page numbers merely convey unprotected information and that their duplication did not infringe Feist's copyright.

39. A reading of the aforesaid judgments clearly show that a matter in public domain cannot be a private property. Under the Copyright Act, 1957 except under the provisions of the Act, there cannot be a copyright under the common law. u/s 16 of the Act, no person is entitled to copyright or any similar right in any work whether published or unpublished otherwise than in accordance with the provisions of the Act. u/s 13 of the Act, copyright subsists in the original literary, musical and artistic work, cinematograph films and sound recordings and literary work includes computer programmes, tables and compilations including

computer data base. It is the contention of learned counsel for the plaintiffs that since the publication of the plaintiffs is their original literary work which includes computer programmes as well, reproduction of the same by the defendants in a data base programme is clearly an infringement of their copyright subsisting in their publications.

40. u/s 17 of the Act, author of a work shall be the owner of a copyright provided that in the case of a Government work, Government shall in the absence of any contract to the contrary, be the first owner of the copyright therein. The act of reproduction of any judgment or order of the Court, Tribunal or any other judicial authority, u/s 52(q) of the Act, is not an infringement of the copyright. As already mentioned above, the judgment of the Court after it is delivered is available to any person on his being made an application to the Court for the purpose. The plaintiffs are admittedly not the authors of the judgments. The judgments are delivered by the Courts. Any person, Therefore, can publish judgments of the Courts. The plaintiffs may have happened to have first published the judgments but the same will not mean that it can have a copyright therein. In my considered opinion, no person can claim copyright in the text of the judgment. Merely because the plaintiffs have made certain corrections in the judgments will not give them a right to claim copyright therein. What has been done by the plaintiffs is to correct the typographical mistakes in the judgments, insert commas and full stops wherever necessary and give paragraph numbers to the judgments. Almost all journals give their own paragraph numbers and paragraph numbers of the plaintiffs publication as well as the publication of other publishers are almost similar. Even if the paragraph numbers are different, it will not mean that the plaintiffs can claim copyright in the paragraphs or the mistakes which have been made in the judgments of the Courts which are in public domain. Nimmer on Copyright has observed that the changes consisting of elimination, changes of spelling, elimination or addition of quotations and corrections of typographical mistakes being trivial are not copyrightable. I am fully in agreement with the observations of Nimmer mentioned above. It is claimed by the plaintiffs that there is uniformity in style of writing and they have, Therefore, a copyright in their style of writing. I am unable to agree with the plaintiffs. As already held, the judgments published in the journal of the plaintiffs are only reproduction of the judgments of the Courts with certain additions of commas, full stops, correction of errors, etc. in which, in my opinion, the plaintiffs cannot claim any copyright.

41. There being no copyright in the text of the judgments, can the plaintiff claim copyright in the head-notes? This is the only question which remains for consideration. A genuine abridgment of judgments of the Court is an original work and can be the subject-matter of infringement of a copyright even if the amount of originality is very small. However, in case the head-notes are verbatim extracts from the judgments of the Courts, there is no amount of skill or labour involved in preparing the head-notes and no person can claim a copyright therein. I have not gone through the head-notes of each and every judgment

published in the journal of the plaintiffs nor I have gone through each and every head note of the judgments in the data base of the defendants and I am, Therefore, not in a position at this stage to comment as to whether or not these head-notes are verbatim extracts from the judgments of the Court or whether any labour or skill of the plaintiffs is involved in preparing the head-notes. But, in case, the head-notes have been prepared by the plaintiffs with their own labour and skill and there is originality and creativity in the preparation of head-notes, there cannot be any dispute that the party which has produced the head-notes will have a copyright therein. Re-production of either a few sentences from the judgments of the Court or the entire paragraph or the joining together of some of the sentences of the judgment in the head-note, in my opinion, cannot be said to be either the creative or the original work or the abridgment of the judgment of the Court.

42. In Lord Atkinson in *Macmillan and Co. v. Cooper*, AIR 1924 PC 75 , 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. 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 a few words so as to give these passages, when reprinted the appearance as far as possible of the 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 work. And it is obvious that the learning, judgment, literary taste and skill requisite to compile properly and effectively an abridgment deserving that name would not be at all needed merely to select scraps taken from an author and to print them in a narrative form.

43. To constitute a true and equitable abridgment the entire work must be preserved in its precise import and exact meaning and then the act of abridgment is an exertion of the individuality employed in moulding and transfusing a large work into a small compass rendering it less expensive and more convenient both to the time and use of the reader. Independent labour must be apparent, and the reduction of the size and work by copying some of its parts and omitting others confers no title to authorship and the result will not be an abridgment entitled to protection. To abridge in the legal sense of the word is to preserve the substance, the essence of the work in language suited to such a purpose, language substantially different from that of the original. To make such an abridgment requires the exercise of mind and labour, skill and judgment brought into play and the result is not merely copying.

44. To constitute a proper abridgment the arrangement of the book abridged must be preserved, the ideas must also be taken and expressed in language not copied but condensed. To copy certain passages and omit others so as to reduce the volume in bulk is not such an abridgment as the Court would recognise as

sufficiently original to protect the author.

45. The mere process of selecting passages from works readily accessible to the public is not, but difficulty in obtaining access to the originals or skill manifested in making or arranging the selection is sufficient to give the character of an "original literary work" to the selection.

46. A publication, the text of which consists merely of a reprint of passages selected from the work of an author can be entitled to copyright. For instance, it may very well be that in selecting and combining for the use of school 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 on possible appreciation upon what has been laid down or established much earlier in the book: labour, 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.

47. It is the product of the labour, skill and capital of one man which must not be appropriated by another, not the elements, the raw material, if one may use the expression, upon which the labour and skill and capital of the first have been expended. To secure copyright for this product it is necessary that the labour skill and capital expended should be sufficient to impart to the product some quality of character which the raw material did not possess, and which differentiates the product from the raw material.

48. Any new and original plan, arrangement or combination of material will entitle the author to copyright therein, whether the materials themselves be old or new. Whosoever by his own skill, labour and judgment writes a new work may have a copyright therein unless it be directly copied or evasively imitated from another's work. To constitute piracy of a copyright it must be shown that the original has been either substantially copied or to be so imitated as to be a mere evasion of the copyright.

49. 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 any one the right to produce another work of the same kind, and in doing so to use all the material open to him. The true principle in all the cases is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at, for the purpose of introducing his work; that is, in fact, merely to take away the result of man's labour or, in other words, his property.

50. What is the precise amount of the knowledge, labour, judgment or literary skill or task 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 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.

51. It will not create copyright in a new edition of a work of which the copyright has expired merely to make a few emendations of the text or to add a few important notes. To create a copyright by alterations of the text there must be extensive and substantial practically making a new book. With regard to notes, in like manner they must exhibit an addition to the work which is not superficial or colourable but imparts to the book a true and real value over and above that belonging to the text. The value may perhaps be rightly expressed by saying that the book will procure purchasers in the market on special account of these notes. When notes to this extent and of this value are added they attach to the edition the privilege of copyright. The principle of the law of copyright directly applies. There is involved in such annotation and often in a very eminent degree, an exercise of intellectual and an application of learning which place the annotator in the position and character of author in the most proper sense of the word.

52. It is, Therefore, clear that mere re-production of a part of the judgment in the head-note is not an abridgment of the judgment and no copyright can be claimed therein. Since the Supreme Court Cases runs into more than 170 volumes, contain more than 25000 judgments running into more than 1,25,000 pages, it is just not possible for this Court to look into each and every head-note to find out as to whether the head-notes in these judgments are re-production of passages selected from the judgments itself or these head-notes have been prepared by the plaintiffs with their own thoughts, ideas setting forth concisely in their own compressed language under the principles laid down in the judgment. It is also not possible for the Court, at this stage, to find out as to which head-note in the judgments published in S.C.C. have been copied by the defendants and whether the plaintiffs will have a copyright in those judgments, if not in the whole journal. In case, the head-notes qualify the standard laid down by me above, the plaintiffs will definitely have a copyright therein. But in case, they are only re-production of a few passages of the judgment detached from each other, no copyright can be claimed. The defendants have however, made a statement in Court that they will not re-produce the head-notes of the publications of the plaintiffs and with this statement, in my view, nothing survives in favor of the plaintiffs even in respect of the head-notes appearing in their journal.

53. It is also the case of the defendants in Suit No.624/2000 that the plaintiffs in this suit have not come to the Court with clean hands and have suppressed material facts from the Court and the suit is also barred by delay and laches inasmuch as the defendant is in the business of developing a software data base since March, 1999 of which the plaintiff was aware and it was only when the defendant brought down the cost of its software from Rs.40,000/- to Rs.10,000/- in March, 2000 that the plaintiffs being afraid of loosing their business have filed the present suit mala fide and as such the plaintiffs will not be entitled to the equitable relief of injunction. For the view I have taken in this judgment, I have

not considered this argument of the defendant since, in my view, the plaintiffs are otherwise not entitled to any injunction.

54. From the foregoing discussion, it is clear that a copyright is a limited monopoly having its origin in protection. But there cannot be any monopoly in the subject matter which the author has borrowed from public domain. Others are at liberty to use the same material. Material in which no one has a copyright is available to all. Every man can take what is useful from them, improve, add and give to the public the whole comprising the original work with his additions and improvements. Under the guise of the copyright, the plaintiffs cannot ask the Court to restrain the defendants from making this material available to public. I am, Therefore, of the opinion that the judgments/orders published by the plaintiffs in their law reports "Supreme Court Cases" is not their original literary work but has been composed of, compiled and prepared from and reproduction of the judgments of the Supreme Court of India, open to all. I am also of the opinion that merely by correcting certain typographical or grammatical mistakes in the raw source and by adding commas, full stops and by giving paragraph numbers to the judgment will not their work as the original literary work entitled to protection under the Copyright Act. plaintiffs, Therefore, have no copyright in the judgments published in their law reports. There being no copyright in the plaintiffs, there is no question of the defendant infringing any alleged copyright. plaintiffs have failed to make out any prima-facie case in their favor and are, Therefore, not entitled to any relief in the application.

55. Both the applications of the plaintiffs are, accordingly, dismissed and the application of the defendant under Order XXXIX Rule 4 CPC is allowed. Interim orders passed earlier stand vacated. Any expression of opinion in this judgment is only a prima-facie view of the Court and the same will not in any manner affect the merits of the case.