

sale which they may have carried through in the exercise of their powers may depend upon other considerations. We cannot in this form determine that a sale which trustees have already carried into effect is good or bad.

The Court refused the petition.

Counsel for Petitioner—Cooper. Agents—Auld & Stewart, S.S.C.

HOUSE OF LORDS.

Thursday, June 7.

(Before the Lord Chancellor (Lord Herschell) and Lords Watson, Ashbourne, and Shand.)

LESLIE v. YOUNG & SONS.

(*Ante*, July 20, 1893, vol. xxx. p. 910, 20 R. 1077.)

Copyright — Infringement — Railway Monthly Time-Table—Interdict.

The proprietor of a monthly local railway time-table complained that the proprietors of a rival time-table had published (1) the same tables of trains between the same selected stations, in the same order, and in some instances the same statements of mileage; (2) four pages of information regarding excursions, which, with slight alterations on one page, he had copied literally from the complainer's time-table.

Held (1) (*aff.* the decision of the First Division) that the respondents' train tables were not in all respects a copy of the complainer's work, but represented a certain amount of original labour, and therefore, in view of the nature of the complainer's compilation, there was not such appropriation of his work as to warrant interdict; (2) (*rev.* the decision of the First Division) that the complainer's guide to excursions was a compilation resulting from a considerable amount of original trouble in collecting and abridging information useful to the locality, and being independent work was protected by the copyright law; and interdict granted against the four pages complained of.

This case is reported *ante*, July 20, 1893, vol. xxx. p. 910, and 20 R. 1077.

The complainer appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, this is an appeal from a judgment of the Inner House which recalled an interdict of the Lord Ordinary (Low) and assoilzied the defenders. The action was brought in respect of an alleged infringement by the defenders of the copyright claimed by the pursuer in certain time-tables which were published by him at Perth. The work alleged to have been pirated contains time-tables, and certain other information to

which I will more particularly allude presently. The piracy complained of consisted of an alleged improper use of certain time-tables published by the pursuer in his monthly time-table relating to railway trains and also relating to ferries and steamers and coaches. The Lord Ordinary came to the conclusion that the defenders had pirated a part of the pursuer's work in which he had a copyright, in the matter contained in pages 40 to 52 or 53 of the defenders' work, with the exception of a certain time-table, and also in certain other pages which he specified, and in respect of those he granted an interdict. The Inner House, as I have said, recalled that interlocutor, coming to the conclusion that there had been no piracy at all.

The time-tables which are to be found on the earlier pages which I have mentioned, namely, 40 to 52 and part of 53, consist of tables in the usual form which are found in all railway time-tables, taking Perth in the main as the starting point, this being a periodical published at Perth for the information of persons coming to or going from (more particularly going from) that place. The information in these time-tables was of course derived by the pursuer from a source which was as open to the defenders as to himself, and he does not and cannot claim any right to the information as such; he can only claim copyright in them if they are the result in some respect or other of independent work on his part, and if there has been an advantage substantially taken by the defenders of that independent labour. The mere publication in any particular order of the time-tables which are to be found in the railway guides and the publications of the different railway companies could not be claimed as a subject-matter of copyright. Proceedings could not be taken against a person who merely published that information which it was open to all the world to publish and to obtain from the same source.

My Lords, as regards some of these tables there is really nothing more to be said against what the defenders have done than that they have published the same table between the same stations in the same order as the pursuer; but then those tables with all those stations and all those times of the trains are to be found in the companies' books, and neither party would have anything more to do than to copy them in order to arrive at the information which is to be found in both books. It is true that in some cases the mileage has been taken, and is admitted by the defenders to have been taken from the pursuer's book. As regards other of these tables, it is said that they were not mere copies of tables to be found in the railway guides, but that there was a certain selection of stations, the smaller stations being omitted and a selection of trains, some of the trains also being omitted. That applies no doubt to some of the tables. But, my Lords, looking at these tables as a whole, and having regard to the fact that it is admitted that the defenders' work is, as regards these tables, not in all respects by

any means a copy of the pursuer's work— that it is not denied that there was a certain amount of original work done by them in compiling these tables, and that there are the differences which have been pointed out, although there are also respects in which they are similar—I do not think it can be said that as regards these tables there has been an appropriation by the defenders of the pursuer's work such as to entitle the pursuer to complain, and to obtain the interdict which he claims. The real truth is, that although it is not to be disputed that there may be copyright in a compilation or abstract involving independent labour, yet when you come to such a subject-matter as that with which we are dealing it ought to be clearly established that, looking at these tables as a whole, there has been a substantial appropriation by the one party of the independent labour of the other before any proceedings on the ground of copyright can be justified. I do not therefore see my way to differ from the conclusion at which the Inner House has arrived on this part of the case, that the interdict of the Lord Ordinary ought not to stand.

But, my Lords, there is another part of the case which strikes me as of a very different character. It is not separately dealt with by the Inner House, although it was specifically mentioned by the Lord Ordinary. It strikes me as the only part of the work which can be said to indicate any considerable amount of independent labour, and to be entitled to be regarded as an original work, and that is the part on pages 63, 65, 67, and 69, containing the information with regard to excursions. It seems to me that this was a compilation containing an abridgement of information of a very useful character, and such as was likely to be taken advantage of by those who were travelling in the neighbourhood of Perth. Now, those pages have been, the first, with some slight variation, and the others absolutely literally, copied by the defenders from the pursuer's book. My Lords, it is said that they form only a small portion of the whole book—four pages, it was said, out of forty—and that the first part consisted of an ABC time-table, which was wanting in the work of the appellant. But I do not think that that is a just way of regarding the matter in point of law, because a compilation of this kind contains several independent features of different merit, of different advantage to the public, and likely to operate to a different extent in promoting the sale of the work. It may be that one part of a work of this kind, though containing only a few pages, may be of such value that the presence or absence of it would most largely promote or retard the sale of the work. Therefore, although these pages are but few, it seems to me that, nevertheless, they may be properly treated as an independent work and protected by the copyright law. If that be the proper conclusion, it seems to me impossible for your Lordships to resist the further conclusion that there has been

in this case a piracy, and a substantial appropriation of the pursuer's work by the defenders, and that therefore there is a right to an interdict on the part of the pursuer.

My Lords, for these reasons I think that the interlocutor appealed from ought to be recalled, and that in place thereof the interlocutor of the Lord Ordinary ought to be varied by restricting and confining the interdict to the matter printed on pages 63, 65, 67, and 69, and that the interdict should be against printing, publishing, selling or exposing for sale, circulating or distributing the time-tables, or any other work containing the matter printed on pages 63, 65, 67, and 69 of the defenders' Perth time-tables.

My Lords, there remains the question of how the costs ought to be dealt with. The appellant was in the right in coming to this House, because the respondents had obtained an interlocutor which your Lordships think cannot be supported, and therefore I see no reason why the ordinary rule should not be followed in accordance with which the respondents would pay the cost of this appeal. But then we come to the question of the costs below. There the present respondents were of course partly in the right in their appeal from the interlocutor of the Lord Ordinary. On the other hand, the appellant was partly in the wrong in putting forward too large a case, and it was that very large case which involved very great expense in the proof. A great part of the proof was occupied with this question upon these time-tables, some of which, as I have said, really were not an abridgment at all, but were matters regarding which, as it seems to me, it was impossible that the pursuer could reasonably complain of an invasion of copyright. It is therefore clear that a large part of the expense of taking the proof before the Lord Ordinary has resulted from the pursuer insisting upon a contention which I believe all your Lordships think, and which the Inner House also thought, it impossible to support. For these reasons I believe all your Lordships think that justice as to costs will best be obtained by ordering the respondents to pay the costs of this appeal, and ordering that the pursuer shall have one-third of his taxed costs of the proceedings at the trial, and in the Inner House. I move your Lordships accordingly.

LORD WATSON—My Lords, I am of the same opinion. Upon the argument which was addressed to us for the appellant I have no difficulty in coming to the conclusion that the reasoning of the learned Judges of the First Division of the Court of Session was right, with, I ought to say, the exception of a few sentences which related to those pages of his book which refer to tourist arrangements and to Saturday excursions, and that for the reasons assigned in their judgments there is no ground for granting any interdict against the respondents. But those two points to which I have already alluded were some-

what overlooked, as it seems to me, by those learned Judges, possibly because they were not pressed upon the attention of the Court. Upon that part of the case I have as little difficulty in holding that an interdict ought to issue. I am not prepared to say that every line or even every page of a compilation such as this carries with it a right to protection as copyright; I should be very sorry to affirm that as universally true; but it appears to me that, taking it as a whole, a copyright does attach, and that in this case the respondents have taken the bulk of that portion of the work which carries that right. If there are any parts of this work which really involve such merit as to entitle them to have the protection of copyright, I think these are chiefly to be found in the same pages which have been copied by the respondents without a single alteration.

Now, my Lords, I think it would be impossible in these circumstances for the respondents effectively to dispute that they have pirated the work to that extent, except by showing that that part of the work had no protection. The argument suggested that such was the case; but, my Lords, I do not think there can be upon that point the slightest doubt that a work of this kind, showing that a considerable amount of original trouble was taken in bringing all the information together in the form of an abstract for the use of a particular locality, is entitled to protection; and those parts of the work which have been appropriated here are especially of that character.

LORD ASHBOURNE—My Lords, I concur. The portions of this book referred to by my noble and learned friend upon the woolsack, and my noble and learned friend who has just spoken, are, I think, clearly entitled to protection. They are a substantial part of the book; they contain a great deal of very useful information, the result of careful work and accurate compilation, and I can myself well believe that a great many purchasers would be influenced in making their purchases by the existence of those pages, and of those pages alone, not heeding the other information which was very accessible and easily obtainable. Although for the purposes of the order of the House attention is confined to those particular pages, I am myself of opinion from what I have heard in the able arguments which have been addressed to the House, and from my own examination of the books, that the respondents have very largely availed themselves of the labour and general ability shown by the appellant here, and although attention is necessarily confined in the order of your Lordships' House to the particular pages referred to by my noble and learned friend on the woolsack, still one cannot, in measuring and in considering the question of costs, forget the bearing and the general merits of the rest of the book. I have no doubt, my Lords, that the order proposed to be made is one which is fully in accordance with the justice of the case, and I entirely concur in the portion of the order with reference to costs.

LORD SHAND—My Lords, I concur also in the opinions which have been delivered, and in thinking that your Lordships should grant to the appellant the relief to the extent to which it is now proposed to be given. So far as the time-tables are concerned, which really embrace a considerable proportion of the book in point of length, it is to be observed that the information there given is derived from common sources accessible to everyone. I mean that there is no information there given which is not to be found in the ordinary railway time-tables which are issued by each of the railway companies, particularly the Caledonian and the North British, whose railways are the subject on which information is given in these books. The only particulars in which I think it is said that some advantage is gained by the use of those time-tables is that there is a convenient arrangement for people starting from Perth, and a selection of the more prominent stations instead of giving the whole list of stations as they appear in the time-tables issued by the railway companies. It does not appear to me that there has been either such labour or such ingenuity shown with reference to either of those matters as properly to make them the subject-matter of a copyright. Therefore I am of opinion with your Lordships that so far as the mere time-tables are concerned there should be no interdict granted. As regards the other matter, the list of towns which has been selected, which is also no doubt taken from the tables of the railway companies, there has not only been a selection but also a condensation and an arrangement which would be of very considerable value to the travelling public. It is clear that those have been simply copied word for word in the publication which is complained of, and I cannot doubt that that forms a material part of the pursuer's book, and that he is entitled to the remedy which he asks for. I am of opinion, therefore, that the interdict which has now been proposed should be granted; and I concur entirely in the view that has been taken with regard to the expenses which ought to be paid to the pursuer in this case.

Their Lordships granted interdict against publishing the time-tables containing the guide to local excursions.

Counsel for the Appellant—The Solicitor-General for Scotland (T. Shaw, Q.C.)—Wilson—Trotter. Agents—Keeping & Gloag, for Clark & M'Donald, Edinburgh, and St Clair, Swanson, & Company, Glasgow.

Counsel for the Respondents—Campbell—Graham Stewart. Agents—Alex. Morrison, S.S.C.—Cochrane Young, Solicitor, Perth.