

before the House of Lords sitting as a final court of appeal. He said: "I should very much regret if I were compelled to come to the conclusion that the state of the law permitted one man to make profit and to appropriate to himself the labor, skill, and capital of another. And it is not denied that in this case the defendant seeks to appropriate to himself what has been produced by the skill, labor, and capital of others. In the view I take of this case, I think the law is strong enough to restrain what, to my mind, would be a grievous injustice. The Copyright Act confers what it calls 'Copyright,' which means the right to multiply copies which it confers on the authors of the books first published in this country. That the publication in question, namely, 'Reports of Lord Rosebery's Speeches,' are simply copies of what was first printed in *The Times*, is not denied. And further, it has not been, and cannot be, denied that they were originally as in *The Times*, a sheet or sheets of letterpress, and came within the definition of the Act as a book. The speeches, therefore, and the sheets of letterpress in which they were contained, were books first published in this country, and, I confess, upon looking at the definition and the right conferred, I am wholly unable to discover why they are not protected by the statute from being pirated by unauthorized persons.

"I do not understand the explanation the Court of Appeal gives the application of the word 'author' to such publications as directories, red books, maps, etc. If the maker of a directory, red book, or map is an author, one has to analyze what the distinction between the author, as thus referred to, and the author of a spoken speech. If the producer of such a book can be an author within the meaning of the Act, I am unable to understand why the labor or reproducing spoken words into writing or print and first publishing it as a book does not make the person who has so acted as much an author as the person who writes down the names and addresses of the persons who live in a particular street.

PROPRIETARY RIGHT AND COPYRIGHT.

"The judgment of the Court of Appeal rests solely on the use of the word 'author,' and I cannot help thinking that some confusion has been created between two very different things. One, the proprietary right of every man in his own literary composition, and the other the copyright, that is to say the exclusive privilege of making copies created by the statute. The question is solely whether this book (to use the language of the statute), printed and published and existing as a book for the first time, can be copied by someone else than the producer of it by those who have not produced it themselves, but have simply copied that which others have labored to create by their own skill and expenditure.

"It is admitted, apparently, by the Court of Appeal (and, indeed, insisted on as part of the reasons for their judgment), that the owner of an unpublished manuscript, although not the author of it, acquires copyright in it by first publishing it. And I observe that it is said Lord Rosebery had no copyright in his speech, and although he could have acquired copyright in it by putting it into writing and printing and publishing it, he did not do so. Here again

the implied proposition is that the only person who could gain copyright in his speech is the person who spoke it, and that the word 'original' must by construction be read into the statute, that the true analogy is the true and first inventor of the patent laws. I think the analogy is a false one. But if it were strictly pursued I think it would not be favorable to the defendant. An importer of a foreign invention is, for the purpose of the patent laws, an inventor, and, as Lord Brougham said, there were two species of public benefactors—the one, 'those who benefit the public by their ingenuity, industry and science, and invention and personal capability; the other, those who benefit the public without any ingenuity or invention of their own by the appropriation of the results of foreign inventions. Now the latter is a benefit to the public incontestably, and, therefore, they render themselves entitled to be put upon somewhat, if not entirely, the same footing as inventors.'

REPORTERS AND IMPORTERS.

"I might paraphrase Lord Brougham's language by asking whether those who preserve the memory of spoken words which are assumed to be of value to the public are not entitled to the analogous merit which Lord Brougham attributes to the importer of foreign inventions? I have not insisted upon the skill and accuracy of those who produce in writing or print spoken words, it is not because I think the less of those qualities, but because, as I have endeavored to point out, neither the one nor the other are conditions precedent to the right created by the statute. That right, in my view, is given by the statute to the first producer of a book, whether that book be wise or foolish, accurate or inaccurate, of literary merit or of no merit whatever.

"It is said that in the view I have suggested there would be as many copyrights as reporters. I don't see the difficulty. Each reporter is entitled to report, and each undoubtedly would have a copyright in his own published report. But where is the difficulty? Suppose a favorite view—a dozen artists take independently their own representation of it. Is there any reason why each should not have his own copyright, or even a photograph where each photograph is taken from the same point, and in the same state of the light, would be identical in all respects. There is, of course, no copyright in the view itself, but in the supposed picture or photograph there is. It may be there is a confusion of thought between the difficulty of proof of the piracy and the existence of piracy. There, as I have said before, no such difficulty arises, since it is admitted that the report of these speeches is not the result of independent labor, but is taken from *The Times*. I think the judgment of Mr. Justice North was right, and that the only answer sought to be given to it by the Court of Appeal was the restricted use of the word 'author,' with which I have endeavored to deal. I, therefore, move your lordships that the judgment of the Court of Appeal be reversed with costs, and the judgment of Mr. Justice North restored."

Lords Davey, James and Brampton concurred in the view taken by the Lord Chancellor, and read judgments in