

that where a person obtains information in the course of a confidential employment the law does not permit him to make any improper use of the information so obtained, and an injunction is granted, if necessary, to restrain such use; as, for instance, to restrain a clerk from disclosing his master's accounts, or an attorney from making known his client's affairs, learnt in the course of his employment. This principle requires a relationship to support it, and while it would justify the reproduction of a stolen sketch or a photograph produced by that modern instrument of torture, an instantaneous pocket camera, it involves that the breach of confidence be in the scope of the relation. Would it apply, for example, to a barrister publishing a sketch of his client surreptitiously taken in the course of the trial? Mr. Justice North's second ground, based on the principle which, as he says, is clear that a breach of contract, express or implied, can be restrained by injunction, takes up the position 'that the case of a photographer comes within the principles upon which both these classes of cases depend,' and the learned judge proceeds to give his reasons as being that 'the object for which the photographer is employed and paid is to supply his customer with the required number of printed photographs of a given subject. For this purpose the negative is taken by the photographer on glass, and from this negative copies can be printed in much larger numbers than are generally required by the customer. The customer who sits for a negative thus places in the hands of the photographer the power of reproducing the subject, and, in my opinion, the photographer who uses the negative to produce other copies for his own use, without authority, is abusing the power confidentially placed in his hands merely for the purpose of supplying the customer.' Further, the learned judge holds that the bargain between the customer and the photographer includes by implication an agreement that the prints taken from the negative are to be appropriated to the use of the customer only. As the learned judge points out, no case has been decided as to the negative of a photograph, and cites several cases in the books

which he considers analogous, on two of which he mainly relies. The first is *Murray v. Heath*, 9 Law J. Rep. (o.s.) K. B. 119, in which an engraver, to use the words of Lord Tenterden, took a certain number of impressions from a plate which he had contracted to engrave for the use of another. In other words, he stole some 'proofs before letter,' a very grievous breach of his duty and injury to his employer, but not very closely analogous to the negative of a photograph, of which the last, and not the first, impressions appear to have been taken. The engraver's plate belongs to the employer, and is returned to him or is broken up, but the negative belongs to the photographer. *Tuck & Sons v. Priestcr*, 56 Law J. Rep. Q.B. 553, the second case, was an action between a publisher and a printer of engravings, and it was held that for the printer to strike off copies for himself, and thus enter into competition with a publisher, was a breach of the contract between them. *The Duke of Queensbury v. Shebbeare*, 2 Eden. 329; *Prince Albert v. Strange*, 18 Law J. Rep. Chanc. 120, and 'the well-known principle, that a student may not publish a lecture to hear which he has been admitted,' by which reference is no doubt made to Lord Eldon's celebrated series of fluctuations, terminating in a decision in favour of Mr. Abernethy, and against the *Lancet*, in the case of *Abernethy v. Hutchinson*, 3 Law J. Rep. (o.s.) Chanc. 209, are also referred to by the learned judge.

The photographer's position bears hardly a sufficiently close analogy to this class of case, and Mr. Justice North outdoes Lord Eldon by fortifying his position not only by relying on the breach of a confidential relation and a breach of contract, but on the right of property in the plaintiff common to the cases on which he relies by way of analogy, and he points out that a person whose photograph is taken by a photographer is not deserted by the law. It is quite true that by sections 1 and 4 of the Fine Arts Copyright Act (25 & 26 Vict. c. 68) the negative of the photograph is the copyright of the person for whom it is executed for a valuable consideration, if it is registered before the infringement takes place. That this Act does not allow subse-