ployment, acquire an inchoate right of property in that play[1]. This rule holds, even though the employer may have suggested the subject[2], or, though the employé may be an actor in the service of the employer, and the agreement provides that the play is to be acted at the theatre of the employer, and that the employé is to act in it himself as long as it will run, receiving a share of the profits as a compensation[3].

[1] *Levy* v. *Rutley* (1871) L.R. 6 C.P. 523.

In *Shepherd* v. *Conquest*, (1856) 17 C.B. 427, the proprietors of a theatre employed an author to compose for them a dramatic piece, paying him a weekly salary and travelling expenses. There was no contract in writing, nor any assignment or registry of the copyright; but a mere verbal understanding that the plaintiffs were to have the sole right of representing the piece in London. *Held*, that the plaintiffs were not assignees of the copyright, nor had they such a right of interest therein as to entitle them to maintain an action for penalties under the 3 & 4 W. 4, c. 15, which gives the sole liberty of representing or causing to be represented at any place of dramatic entertainment, to the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece of entertainment (extended to musical compositions by 5 & 6 Vict. ch. 45, §§ 20, 21). It was held that, though the jury had found there was an agreement between the plaintiffs and the author by which the piece when composed was to be the property of the plaintiffs, who had agreed to pay for it, that finding was immaterial; because the effect of the Statute was that, if the composition was solely that of the person so employed to produce it, he was the sole proprietor of the copyright and right of representation, and, in the absence of any assignment in writing, those who employed him could not set up any right in respect of such composition. Jervis C.J. said: "We do not think it necessary in the present case to express any opinion whether, under any circumstances, the copyright in a literary work, or the right of representation, can become vested *ab initio* in an employer other than the person who had actually composed or adapted a literary work. It is enough to say, in the present case, that no such effect can be produced where the employer merely suggests the subject, and has no share in the design or execution of the work, the whole of which, so far as any character of originality belongs to it, flows from the mind of the person employed. It appears to us an abuse of terms to say, that, in such a case, the employer is the author of the work to which his mind has not contributed an idea; and it is upon the author in the first instance that the right is conferred by the statute which creates it."

[2] See cases cited in the last note.

[3] *Boucicault* v. *Fox* (1862) 5 Blatch. 87 (employé held entitled to take out the copyright, even after the play had been acted). The Court said: "The title to literary property is in the author whose intellect has given birth to the thoughts and wrought them into the composition, unless he has transferred that title, by contract, to another. In the present case, no such contract is proved. The most that could possibly be said, in regard to the right of Stuart, or his trustee, in the play, is, that the arrangement entitled them to have it performed at the Winter Garden as long as it would run. There is not the slightest foundation upon which they, or either of them, can rest a claim to the literary property in the manuscript. That property was in the plaintiff, subject, at most, to a license or privilege, in