

must be the result of a preconcerted joint design. Mere alterations, additions, or improvements by the employer, whether with or without the sanction of the employé, will not entitle the former to claim to be "joint author" of the work².

Under some circumstances, however, the employer may acquire, by virtue of the contract, the rights of a prospective "proprietor" of the work to be produced, and become entitled in this capacity to the protection of the Acts. This situation is predicable, whenever it is a reasonable inference that the parties intended that the ownership of the work was to vest in the employer, as soon as it should come into existence. Their intention in this regard may be established either by express evidence bearing directly upon the point³, or implied from the contract⁴. Where the rights of the parties are to be determined on the latter footing the effect of the contract, is ascertained from a consideration not merely of its provisions, but also of the nature of the stipulated work. The question to be decided is one of fact, and each case must be dealt with on its own merits⁵.

Cases of the kind with which we are now concerned are not

² *Levy v. Rutley* (1871) L.R. 6 C.P. 523. There the plaintiff, the lessee of a theatre, employed one W. to write a play for him, suggesting the subject. W. having completed it, the plaintiff and some members of his company introduced various alterations in the incidents and in the dialogue, to make the play more attractive, and one of them wrote an additional scene. *Held*, that these circumstances did not make the plaintiff joint author of the play with W.

The play being finished, a sum of £4 15s. was paid to W. on account, and he signed a receipt, drawn up by the plaintiff's attorney, as follows: "Received of Mr. L. (the plaintiff) the sum of £4 15s. [on] account of 15 guineas for my share, title, and interest as co-author with him in the drama intituled, etc.; balance of 15 guineas to be paid on assigning my share to him." The balance was never paid, nor was any assignment executed by W. *Held*, no evidence that the plaintiff was either "joint author" or assignee of the author.

³ See, for example, *Trade Auxiliary Co. v. Middlesborough & Co. Asso.* (1889) 40 Ch. D. 425; *Lawrence v. Dana* (1869) 4 Cliff. 1; *Mallory v. Mackays* (1897) 86 Fed. 122.

⁴ For cases explicitly recognizing the principle that it is not necessary to show that the contract embraced express words, conferring the copyright upon the employer, see the following cases cited in § 12, *post*, *Sweet v. Benning* (1855) 10 C.B. 459; *Lawrence v. Aflalo* (1904) A.C. 17; *Lamb v. Evans* (1893) 1 Ch. 218. The same principle is taken for granted in most of the other cases cited in the following sections.

⁵ Lord Davey in *Lawrence v. Aflalo* (1904) A.C. 17.