

B. LITERARY WORK OF EMPLOYÉS.

7. When an employer is entitled to the results of literary or artistic work performed by the employé. Generally.—One who employs another person to perform literary or artistic work is not deemed to be, within the meaning of the Copyright Acts, the "author" of what is produced by the labour of his employé,¹ unless the contract is one which provides that he shall participate in the work to an extent sufficient to entitle him to be regarded as a "joint author." In order to constitute such authorship it

corporation would agree beforehand, not to carry out the alleged contract, but to do something entirely different. He thus repudiated the contract which he now claims that he is entitled to the benefit of, and put himself in an attitude of hostility to his employer, indeed defying his employer, if he used the language attributed to him. And the jury, if this was so, might properly consider the dismissal justified."

The statement in the text is also sustained by the decision in *Clark v. Fernoline Chemical Co.* (1889) 23 N.Y.S.R. 964.

¹ In *Nottage v. Jackson*, (1883) 11 Q.B.D. (C.A.) 627, A. and B. carried on business in copartnership as photographers under the firm of the L. Company. They did not take photographs themselves, but employed managers and a large staff of photographic artists and assistants. One of their managers, thinking that the photograph of the Australian Cricketers would sell well, arranged for the photographs to be taken without any payment being made for taking them and sent one of the artists in the employ of the firm to take the negative. From this negative the photograph was in the usual way produced and sold by the firm in the ordinary course of business; and A. and B. registered themselves under the Copyright Act, 1862, in their individual names as the "proprietors and authors" of the photograph. In an action by the firm to restrain the pirating of their copyright in the photograph; *Held*, that A. and B. were not the "authors" of the photograph, and that the registration was not a good one under the Act, 25 & 26 Vict. ch. 63, although the statement that the partners were "proprietors" was correct. Lord Esher said, "We understand that all the selling photographers have come to the conclusion that they are the authors of the photographs they sell—that is, the people who pay the servants—that they are the only persons who are interested in the photograph at the time it is done—they think that they are the authors of the photograph because the photograph is made and formed by the work of their mere servants. I cannot tell whether the person who drew this Act of Parliament had that idea or not; but I am not satisfied in my mind that he had, because it is full of difficulties." It was intimated, but not expressly decided, that the person who took the negative was the "author."

To the same effect, see *Kendrick v. Lawrence* (1890) 25 Q.B.D. 99, where a registration as "author" by a person who had employed an artist to make a drawing which he was himself incapable of making was held to be void.

See also the cases cited in the next three sections.

The American doctrine is the same. See *Pierpont v. Fowle* (1846) 2 Wood & M. 23 (p. 46); *Apwell v. Ferrett* (1846) 2 Blatch. 39; *Little v. Gould* (1852) 2 Blatch. 362.