

## STORY ET AL. V. DERBY ET AL.

{4 McLean, 160;<sup>1</sup> 4 Leg. Int. 39.}

Circuit Court, D. Ohio.

July Term, 1846.

COPYRIGHT—INJUNCTION—EXTENT OF  
INFRINGEMENT.

Before granting an injunction on a charge of an infringement of copyright, the court will, generally, refer the matter to a master, with instructions to report the extent of the infringement, if any, that the court may act on the case.

{This was a bill for an injunction by Sarah W. Story and others against H. W. Derby and others.}

Mr. Walker, for complainant.

Gholson & Holcomb, for defendant.

MCLEAN, Circuit Justice. This is an application for a preliminary injunction, which, having been argued, the court adopted the following order: This day came the parties, by their solicitors, and the motion on behalf of the complainants for a preliminary injunction to restrain the publication of the book of the respondent, named in the bill, and answers, and affidavits; and having heard the arguments of counsel, and deliberated on the same, do order that the injunction prayed for be not granted. And it is further ordered, that the case stand referred to Master Commissioner Mansfield, for examination and report—that is to say:

1. Whether the book of Mr. Holcombe contains any portion, and if so, what portion, of the commentaries of the late Justice Story, described in the bill, showing fully the similarities or coincidences of the book of the respondents, with the commentaries, as well in arrangement and plan as in matter; and whether, in the points of coincidence between the two books, in the matter, plan, or, arrangement, in which the similarity,

if any, is found, was original in the commentaries of Judge Story.

2. Whether the book of the defendants is a fair and bona fide abridgment of the commentaries of the complainant, or a colorable one, calculated to supersede the use of the commentaries to any considerable extent.

3. Upon such other matters, relating to the matters in controversy, as either party may request him to examine and report upon. And in making said report, the said master may use the original papers on file, or such as either party may place on file, and may, in aid of his examination, summon such persons as he may deem expedient, and report the testimony so taken, if any, to the next term of this court. The said master may proceed to said examination at any time agreed upon by the parties; or, in case no such agreement is entered into, then at such time as the said master may fix, giving the amount of the parties at least ten days' notice of such time. Either party may proceed to take testimony for the final hearing of the cause, as they might do if this order of reference had never been made. And for the coming in of the report, and further proceedings in the premises, this cause stands continued.

{The master reported, and the complainants filed exceptions. The cause was argued and decided on its merits. Case No. 13,497.}

<sup>1</sup> [Reported by Hon. John McLean, Circuit Justice.]

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