ELLEN G. WHITE ESTATE

The Ramik Report (Plagiarism/ Copyright Issue)

Vincent L. Ramik

The Ramik Report (Plagiarism/Copyright Issue)

Ellen G. White

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Overview

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About the Author

Ellen G. White (1827-1915) is considered the most widely translated American author, her works having been published in more than 160 languages. She wrote more than 100,000 pages on a wide variety of spiritual and practical topics. Guided by the Holy Spirit, she exalted Jesus and pointed to the Scriptures as the basis of one's faith.

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Memorandum of Law

Literary Property Rights

1790 - 1915

August 14, 1981

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Chapter 1—Early History

"The right of an author, irrespective of statute, to his own productions and to a control of their publication, seems to have been recognized by the common law." [1] "At common law an author had a property in his manuscript and might have redress against any one who undertook to realize a profit from its publication without authority of the author. Wheaton v. Peters, 33 U.S. (8 Pet.) 591, 659 (1834)." [2]

"There was much contention in England as to whether the common law recognized this property in copyright before the Statute of Anne." [3] It was not "until the eighth year of Queen Anne, when the first copyright act was passed, giving authors a monopoly in the publications of their works for a period of from fourteen to twenty-eight years. Notwithstanding this act, however, the chancery courts continued to hold that, by the common law and independently of legislation, there was a property of unlimited duration in the printed books.... thereafter the House of the Lords ... declared that the common law right had been taken away the statute of Anne, and that authors were limited in their monopoly by the act." [4] While the propriety of these decisions (Donaldsons v. Becket, 4 Burr. 2408 [1774] and Wheaton v. Peters, supra) has been the subject of a good deal of controversy among legal writers, it seems now (1899) to be considered the settled law of this country and England that the right of an author to a monopoly of his publications is measured and determined by the copyright act—in other words, "that while a right did exist by common law, it has been superseded by statute." [5]

[1] Endnotes Holmes v. Hurst, 174 U.S. 82, 19 S. Ct. 606, 43 L. Education, 904, 13-16 C.O. Bull. 1267, 1269 (1899).

[2] Bobbs-Merrill Co. v. Straus et al, 210 U.S. 339, 28 S. Ct. 722, 52 L. Ed. 1086, 13-16 C.O. Bull. 364, 368 (1908).

[3] American Tobacco Company v. Werckmeister, 207 U.S. 284, 28 S. Ct. 72, 52 L. Education, 208, 13-16 C.O. Bull. 39, 42 (1907).

[4] Holmes v. Hurst, 1269.

[5] Holmes v. Hurst, 1269, 1270.

Stated otherwise, "No proposition is better settled than that a statutory copyright operates to divest a party of the common-law right." [6]

[6] Bobbs-Merrill Co. v. Straus et al, 147 F. 15, 13-16 C.O. Bull. 350, 354.

Chapter 2—Early Statutes

"In this country it is well settled that property in copyright is the creation of the Federal statute passed in the exercise of the power vested in Congress by the Federal Constitution in Art. I, § 8, 'to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'" [1] Pursuant to the latter section of the Constitution, Congress passed the first Copyright Act of May 31, 1790, ch. 15 (1 Stat. 124) which provided that an author "shall have the sole right and liberty of printing, reprinting, publishing and vending such... book or books for the term of fourteen years." This law further required the following acts to transpire in order to secure the copyright, namely, (1) the title of the book must be deposited with the clerk of the District Court and the record he makes must be inserted on the first or second page, (2) public notice in the newspapers must be given, and (3) within six months after the publication of the book, a copy must be deposited in the Department of State. "These acts are absolutely essential to the title of the author." [2]

The Act of April 29, 1802, ch. 36 (2 Stat. 171) added as a pre-requisite to obtaining the benefits of the Act of 1790 the requirement that the information published in the newspapers "be inserted in full length in the title-page or in the page immediately following the title-page of every such book or books."

Under the Act of July 8, 1870, ch. 230 (16 Stat. 212), the subject matter of copyright was broadened, still included "any book" and the right was "granted for the term of twenty-eight years from the time of recording the title thereof." This Act further provided that "if any person—without the consent of the proprietor of the copyright—sell or expose to sell any copy of such book, such offender is liable to 'damages as may be recovered in a civil action.'"

[1] American Tobacco Company v. Werckmeister, 42-43.

[2] Wheaton v. Peters, 33 U.S. (8 Pet.) 591, 659 (1834), 13-16 C.O. Bull. 2901.

Under the Act of March 3, 1891, ch. 565 (26 Stat. 1106), the privileges of United States copyright law was for the first time extended to foreign authors or proprietors of books.

Within the time span of this memorandum, Congress passed the Act of March 4, 1909, ch. 320 (35 Stat. 1075) which specifically "protect(s) all of the copyrightable component parts of the work copyrighted," while specifically defining "no copyright shall subsist in the original text of any work which is in the public domain." Specific mention is also made to the prohibition of importation into the United States "of any piratical copies" of books during the existence of a copyright therein. The Act of March 4, 1909 essentially codified existing law.

Chapter 3—Rights Secured By Copyright

Justice Story is recognized as the most influential judge in the area of copyright law in the era in question, and concluded that the copyrightable merit of a book is that subject matter which is "new and original, in the sense in which those words are to be understood in cases of copyright. The question is not, whether the materials which are used are entirely new, and have never been used before; or even that they have never been used before for the same purpose. The true question is, whether the same plan, arrangement and combination of materials have been used before for the same purpose or for any other purpose. If they have not, then the plaintiff is entitled to a copyright, although he may have gathered hints for his plan and arrangement, or parts of his plan and arrangement, from existing and known sources. He may have borrowed much of his materials from others, but if they are combined in a different manner from what was in use before, and a fortiori, if his plan and arrangement are real improvements upon the existing modes, he is entitled to a copyright in the book embodying such improvement." [1]

The United States Supreme Court in Holmes v. Hurst, 174 U.S. 82, 19 S. Ct. 606. 43 L. Education, 904, 13-16 C.O. Bull. 1267, 1270 (1899) defined with perhaps like exactitude the nature of the right secured by copyright as follows:

> "The right thus secured by the copyright act is not a right to the use of certain words, because they are the common property of the human race, and are as little susceptible of private appropriation as air or sunlight; nor is it the right to ideas alone, since in the absence of means of communicating them they are of value to no one but the author. But the right is to that arrangement of words which the author has selected to express his

[1] Emerson v. Davies et al., 8F.Cas. 615 (No. 4436), 13-16 C.O. Bull. 850, 855, 856 (1845).

ideas. Or, as Lord Mansfield describes it, 'an incorporeal right to print a set of intellectual ideas, or modes of thinking, communicated in a set of words or sentences, and modes of expression. It is equally detached from the manuscript, or any other physical existence whatsoever.' 4 Burr. 2396. The nature of this property is best defined by Mr. Justice Erle in Jefferys v. Boosey, 4 H.L.C. 815, 867 (1855): 'The subject of property is the order of words in the author's composition; not the words themselves, they being analogous to the elements of matter, which are not appropriated unless combined, nor the ideas expressed by those words, they existing in the mind alone, which is not capable of appropriation.'"

Chapter 4—Piracy

The meaning of "piracy," "piratical," and equivalents vary throughout the decisions from a liberal comparative definition ("what is original and what is borrowed or pirated," Banker v. Caldwell, 3 Minn. 94, 13-16 C.O. Bull. 96, 199 [1859]) to a more explicitly legal definition expressing protection afforded literary property "against infringement by piracy." [1] In Simms v.

[4] Stanton et al, 75 F. 6, 13-16 C.O. Bull. 2406, 2407 (1896), "pirated and infringed" are used conjunctively, and properly so. In Maxwell v. Goodwin, 93 F. 665, 13-16 C.O. Bull. 1727 (1899), one finds the intermingling of "the test of piracy," "the issue of infringement or piracy," "the charge of piracy," and the synopsis of the case, the "Test of Infringement." Perhaps the most precise statement that could be made is that a person who "passes" the test of piracy/copyright infringement to be defined hereinafter is guilty of the act of literary piracy in the performance thereof, and to the extent that such literary piracy is also legal piracy, such a piratical appropriation would "amount to piracy" of copyright. [2]

[1] Henry Bill Publishing Co. v. Smythe, 27 F. 914, 13-16 C.O. Bull. 224, 227 (1886).
[2] Emerson v. Davies et al., 866.

Chapter 5—Plagiarism

"Literary crimes are difficult to define accurately: for example, piracy and plagiarism often overlap. Perhaps one may venture to mark the difference roughly by saying that the plagiarist always hopes that he will not be found out, whilst the pirate makes no secret of his crime." [1] The major distinction between the two (piracy and plagiarism) from a legal stand-point is in the intention of the subsequent writer, as is perhaps best evidenced by the following statement from Farmer v. Elstner, 33 F. 494, 13-16 C.O. Bull. 970, 971 (1888):

> "We have felt considerable difficulty in reaching a satisfactory conclusion in this case from the fact that the piracies, though numerous, are not extensive, and from the further fact that defendant's pamphlet was evidently not intended to supersede or in anyway interfere with the sale of, the elaborate and instructive work of the plaintiff. Where defendant's publication is designed to rival or compete with plaintiff's in the market, courts are astute to protect the technical rights of the plaintiff to his composition, and will even enjoin an imitation of his general plan and arrangement, though there be no plagiarism or sentences or ideas. Where defendant has been guilty of a complete or substantial reprint of plaintiff's work, no difficulty is encountered in granting an injunction; but where the alleged violation consists in excerpts from the plaintiff, the court is bound to consider not only the quantity and quality of the matter appropriated, but the intention with which such appropriation is made, the extent to which the plaintiff is injured by it, and the damage to the defendant by an injunction."

[1] Literary Ethics by H. M. Paull, 1928, p. 45.

And further in the same case:

> "Regarding the intent with which the appropriation is made, it is obvious that the use of a certain amount of an author's production may be perfectly fair and legitimate in one case, while the use of a similar amount in another case might be unlawful." (emphasis the courts)

[5] Thus, the manner of taking, the extent of the taking, the intent involved, and the damage done are all factors from which might be determined the existence or nonexistence of plagiarism. However, the intention of the appropriator is of no moment relative to the legal issue of piracy/copyright infringement.

Chapter 6—Statutory Copyright Infringement

A most definitive and often quoted statement defining that which constitutes the infringement of a copyright/piracy is the following by Justice Story from the decision of Emerson v. Davies, et al., supra, 864, 865:

> "So that, I think it may be laid down as the clear result of the authorities in cases of this nature, that the true test of piracy (infringement of copyright) or not is to ascertain whether the defendant has, in fact, used the plan, arrangements and illustrations of the plaintiff, as the model of his own book, with colorable alterations and variations only to disguise the use thereof; or whether his work is the result of his own labor, skill, and use of common materials and common sources of knowledge, open to all men, and the resemblances are either accidental or arising from the nature of the subject. In other words, whether the defendant's book is, quoad hoc, a servile or evasive imitation of the plaintiff's work, or a bonafide original compilation from other common or independent sources."
>
> "There must be such a similitude as to make it probable and reasonable to suppose, that one is a transcript of the other, and nothing more than a transcript."
>
> "The question is, therefore, in many cases, a very nice one, what degree of imitation constitutes an infringement of the copyright in a particular work."

Much the same views were earlier expressed in Folsom et al., v. Marsh et al., 9 F. Cas. 342 (No. 4904), 2 Story 100, 13-16 C.O. Bull. 991 (1841) cited with approval somewhat later (1858) in Greene v. Bishop, 10 F. Cas. 1128 (No. 5763), 1 Cliff. 186, 13-16 C.O. Bull. 1128, 1138 (1858) as follows:

> "all the authorities agree that it is not necessary that the whole, or even the larger portion, of a work, should be taken in order to constitute an invasion of a copyright; and they affirm the doctrine, that if so much is taken that the value of the original is sensibly and materially diminished, or the labors of the original author are substantially to an injurious extent appropriated by another, that such taking or appropriation is sufficient in point of law to maintain the suit."

In the decision of Drury et al., v. Ewing et al., 7 F. Cas. 1113 (No. 4095), 1 Bond 540, 13-16 C.O. 803, 809 (1862), the Court cited as authority both Folsom et al., v. Marsh et al., and Emerson v. Davies et al., followed by Judge Woodbury's comment from the former decision that the true inquiry in these cases is:

[6]

> "whether the book of the defendant, taken as a whole is substantially a copy of the plaintiffs'; whether it has virtually the same plan and character throughout, and is intended to supersede the other in the market with the same class of readers and purchasers by introducing no considerable new matter, or little or nothing new except colorable deviations."

In Lawrence v. Dana et al., 15 F. Cas. 26 (No. 8136), 4 Cliff. 1, 13-16 C.O. Bull. 1545, 1606 - 1607, (1869) Justice Storrow acknowledged:

> "Few judges have devised safer rules upon the subject than Judge Story. He held that, to constitute an invasion of copyright, it was not necessary that the whole of a work should be copied, nor even a large portion of it, in form or substance; that if so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient in point of law to constitute infringement; that, in deciding questions of this sort, courts must 'look to the

> nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale or diminish the profits, or supersede the objects of the original work.'"

Further variations or comments regarding copyright infringement, but all generally including the same common thread as the expressed in Emerson v. Davies et al., are quoted chronologically hereinafter with necessary brevity:

> "The question is correctly stated by the learned counsel for the complainant to be whether the defendants have used the plan, arrangements and illustrations of the complainant as the model of their own book with colorable alterations and variations only to disguise the use thereof, or whether the work is the result of their own labor, skill and use of common materials and common sources of knowledge, and the resemblances are either accidental or arising from the nature of the subject." [1]
>
> "These are not mere colorable differences, made for the purpose of concealing a literary piracy, but they are substantial, and forbid the conclusion that the defendant has copied the plaintiff's books." [2]
>
> "These methods spring from the necessities of the case and the character of the information intended to be conveyed; and their use by the defendant is not sufficient to constitute his book a servile imitation of the plaintiff's books. Notwithstanding the similarity of the methods visible in these books, it still remains true, that the defendant's book 'is the result of his own labor, skill and use of common materials and common sources of knowledge, open to all men, and the resemblances are either accidental or arising from the nature of the subject.'" [3]

[1] Lawrence v. Cupples et al., 15 F. Cas. 25 (No. 8135), 13-16 C.O. Bull. 1543, 1544 (1875).

[2] Bullinger v. Mackey, 4 F. Cas. 649 (No. 2127), 15 Blatchf. 550, 13-16 C.O. Bull. 469, 475, 476 (1879).

[3] *Ibid.*

[7] "True, the defendant has not copied the whole, and perhaps not the larger portion, of either of the works of the plaintiff's. He has, however, incorporated in his book material portions of each, and this constitutes infringement." [4]

"It follows that to infringe this right (copyright) a substantial copy of the whole or of a material part must be produced." [5]

"The sole liberty is invaded when any material part of what is the author's own work is appropriated." [6]

"the matter and language of said books is the same as the complainant's in every substantial sense." [7]

"If defendants have reproduced, in substance and effect, the general characteristics of the original, though some minor particulars are intentionally avoided, then there is an infringement." [8]

"Probably the most accurate, and at the same time concise, statement of the test of piracy is that laid down by Mr. Circuit Justice Story in Emerson v. Davies, 3 Story 768, 8 F. Cas. 615 (No. 4436) (C.C.D. Mass. 1846), a leading case in this country on the law of copyright. He says:

"'It may be laid down as the clear result of the authorities in cases of this nature that the true test of piracy or not is to ascertain whether the defendant has, in fact, used the plan, arrangements and illustrations of the plaintiff, as the model of his own book, with colorable alterations and variations, only to disguise the use thereof; or whether his work is the result of his own labor, skill, and use of common materials and common sources of knowledge, open to all men, and the resem-

[4] Reed et al., v. Holliday, 19 F. 325, 13-16 C.O. Bull. 2149, 2151 (1884).

[5] Perris v. Hexamer, 99 U.S. 674 25 L. Education, 308, 13-16 C.O. Bull. 2050, 2051 (1878).

[6] Gilmore v. Anderson et al., 38 F. 846, 13-16 C.O. Bull. 1072, 1075 (1889).

[7] Belford v. Scribner, 144 U.S. 488, 12 S.Ct. 734, 36 L. Education, 514, 13-16 C.O. Bull. 201, 213 (1892).

[8] Springer Lithographing Co. v. Falk, 59 F. 707, 13-16 C.O. Bull. 2438, 2443 (1894).

> blances are either accidental or arising from the nature of the subject. In other words, whether the defendant's book is, quoad hoc, a servile or evasive imitation of the plaintiff's work, or a bona fide original compilation from other common or independent sources.'" [9]

Thus, the law as first, last, and substantially identically quoted is best reflective of the test of copyright infringement in the time period under consideration.

[9] Simms v. Stanton et al., 75 F. 6, C.O. Bull. 2406, 2408 (1896).

Chapter 7—Evidence of Copyright Infringement/Piracy

Though seemingly obvious, the evidence necessary to determine the existence or nonexistence of copyright infringement is rarely direct and most usually requires a comparison between the literary works under consideration.

[8] "It must be further shown, that the resemblances (upon comparison) in those parts and pages are so close, so full, so uniform, so striking, as fairly to lead to the conclusion that the one is a substantial copy of the other, or mainly borrowed from it. In short, that there is substantial identity between them. A copy is one thing, an imitation or resemblance another." [1] "Copied errors are, as many learned judges have said, one of the surest tests of copying." [2] "Coincidence of citation is also evoked by the complainant as evidence as copying." [3] However, common errors, common passages, etc. may not establish infringement of copyright, noting the following from Simms v. Stanton et al., supra, 2417:

> "The errors which complainant claims have crept into respondent's work, tending to show that she must have copied from him works, are not important enough, in my opinion, to establish the fact of servile copying or piracy. As to the repetitions, all that can be said is that repetitions in a work such as that on the subject of physiognomy must necessarily occur."
>
> "It is my opinion that, while the respondent did consult and use complainant's work, she has not drawn from them to a substantial degree; that such use as she

[1] Emerson v. Davies et al., 861.

[2] Hartford Printing Co. v. Harford Directory & Publishing Co., 146 F. 322, C.O. Bull. 1202, 1204 (1906).

[3] Lawrence v. Dana et al., 15 F. Cas. 26 (No. 8136). 4 Cliff. 1, 13-16 C.O. Bull. 1545, 1601 (1869).

> did make may properly come within the designation of fair use; that, as to other features of these rival works common to all of the books, she obtained these from sources other than complainant's works, and to which the latter had no copyright."

And citing from Emerson v. Davies, et al., supra, 858-859:

> "he (plaintiff) refers to divers pages of his own book in comparison with divers pages of the book of the defendants. Now, I say that it is wholly immaterial whether each of these particulars, the arrangement of the tables and forms of the lessons, the gradation of the examples to precede the tables, the illustrations of the examples by unit marks, had each existed in a separate form in different and separate works before the plaintiff's work, if they had never been before united in one combination or in one work, or on one page in the manner in which the plaintiff has united and connected them."

And, also from Simms v. Stanton et al., supra, 2415, citing with authority Pike v. Nicholas, L.R. 5 Ch. 251 (1870), the court stated:

> "although the defendant had borrowed some from plaintiff's work, still he had not made such use of plaintiff's book as to entitle the latter to an injunction; that an author who has been led by a former author to refer to older writers may, without committing piracy, use the same passages in the older writers which were used by the former author; and that an author has no monopoly in any theory propounded by him."
>
> "The question is, therefore, in many cases, a very nice one, what degree of imitation constitutes an infringement of a copyright in a particular work." [4]

[9]

[4] Emerson v. Davies et al., 861.

Chapter 8—Fair Use

"Great difficulty attends every attempt to define in precise terms the privilege allowed by law to a subsequent writer to use without consent or license the contents of a book or treatise antecedently made, composed and copyrighted by another author; or to mark the boundaries of the privilege of such subsequent writer to borrow the materials in a book like the annotated editions of the complaint, where the materials have been selected from such a variety of sources, and where the materials so selected are arranged and combined with certain chosen passages of the text of the original work, and in a manner showing the exercise of discretion, skill, learning experience and judgment. Decided cases are referred to where the principal criterion of determination is held to be the intent with which the person acted who is charged with infringement." [1]

"Examined as a question of strict law, apart from exceptional cases, the privilege of fair use accorded to a subsequent writer must be such, and such only, as will not cause substantial injury to the proprietor of the first publication." [2]

[1] Lawrence v. Dana, 1606.

[2] *Ibid.*, 1607.

Chapter 9—Quotations

Justice Story, from Folsom et al., v. Marsh, et al., supra, 1001, cites with authority the following from Wilkins v. Aikin, 17 Ves. 422, 424 (1810):

> "There is no doubt that a man cannot, under the pretense of quotation, publish either the whole or a part of another's book, though he may use, what in all cases it is difficult to define, fair quotation."
>
> "Bonafide quotations from a book do not constitute such an infringement." [1]

And from Story v. Holcombe, supra, 2476:

> "no one is allowed under the pretense of quoting, to publish either the whole or the principal part of another man's composition." [10]

Quite simply, if there is copyright infringement, the use of quotations does not "avoid liability for taking them to make up another work." [2] Legitimate or bonafide quotations are one specific aspect of "fair use," the presence or absence of which would appear to be of no consequence insofar as concerns a determination of the issue of copyright infringement, though the absence of quotations could obviously go to the issue of the intent of a subsequent author.

[1] Chapman v. Ferry, et al., 18 F. 539, 13-16 C.O. Bull. 594, 596 (1883).
[2] Gilmore v. Anderson et al., 38 F. 846, 13-16 C.O. Bull. 1072, 1075 (1889).

Chapter 10—Ellen G. White's Writings

The following are representative statements made by others relative to comparisons between the writings of Ellen G. White and her predecessors:

> "She copied a great deal more than six. In fact, we have confessed and I'll read it to you that she used 88 different authors and 400 references in *The Great Controversy* alone. So, it's not a small amount." [1]
>
> "She used *The Great Teacher* by John Harris, 1835, which they've admitted. She used *The Life of Christ* by William Hanna, 1863, which they've admitted. She used *The Life of Christ* by Farrar, which they have admitted, and others which they have admitted. My book will give a further list of those that she used. *The Acts of the Apostles*, she used *The Life and Epistles of the Apostle Paul* by Conybeare and Howson, *The Life of Paul* by Farrar, *The Great Teacher* by John Harris, *Night Scenes of the Bible* by Daniel March, and *The Life of Paul* by McDuff. And *The Great Controversy* I've read to you from Willie White, that in the new edition the reader will find more than 400 references to 88 authors and authorities, page 24, Willie White, General Conference, 1911. *Patriarchs and Prophets*, she used *Paradise Lost* by Milton Clarks Commentary, *Night Scenes of the Bible* by March, Edersheim's *Old Testament*, and even *The Aprocrypha* which F. D. Nichol talks about in his book published in 1951. So far, I have found William Hanna, John Harris, Fleetwood, Farrar, Andrews, and others. I have gotten that, by the way, from a list that Bob Olson from the White Estate has published on 'Mrs. White and Uninspired Sources.' Underwood, Gordon, Hanna,

[1] White Lies, transcript, p. 13, February 14, 1981, Walter Rea.

> Krummacher, Cole, Jackson, Trall, Stowe, Broadman, Miller, Taylor, Kirk, Horace Mann and Able Stevens and others." [2]

Donald R. McAdams notes Ellen G. White's "use of historians for her passages on historical events," and acknowledges "historians as the major source for her historical descriptions and details." [3]

From A Comparison Of Chapter Xxiii Of *The Great Controversy*, 1911 Ed. By Ellen G. White And Uriah Smith's 2nd Ed. Of *The Sanctuary And The Twenty-Three Hundred Days Of Daniel Viii*, 14 by Delmer Alonzo Johnson, 1980, the following: [11]

> "In general it cannot be said that Ellen White 'copied' from Smith. The correlation, at most, reveals a close paraphrase or summary of his entire book. Some sentences in the thirteen page GC (*Great Controversy*) chapter appear to be loose paraphrases of *The Sanctuary*; some tight paraphrases and some seem to be original. Not one sentence, other than the Biblical texts, is exactly identical to a sentence in *The Sanctuary*." (page 18)
>
> "Nevertheless, there are numerous instances of clear literary correlation which proves conclusively that Ellen White made use of some of the words, phrases, ideas and thought sequences in LC." (*The Life of Christ*). [4]
>
> "As indicated earlier these are the clearest examples of possible literary dependency on Hanna we have found in the second half of *The Desire of Ages*. Their total number does not constitute a large part of the second half of the volume. Whatever borrowings occur are in the nature of words and phrases.
>
> "There are many paragraphs, however, that are parallel in thought to Hanna, in which use is made of some

[2] *Ibid*., pp. 22-23.

[3] Ellen G. White And The Protestant Historians: The Evidence From An Unpublished Manuscript On John Huss by Donald R. McAdams, March 1974, revised October 1977.

[4] The Literary Relationship Between The Desire Of Ages, By Ellen G. White And The Life Of Christ, By William Hanna, Part I by Raymond F. Cottrell.

identical words and phrases. More often, though, the resemblance between paragraphs between the two authors is one of ideas rather than literary structure. The occurrence of identical words and phrases in our two authors is not by itself sufficient evidence of the literary depending of the later on the earlier. One must note whether they are in common use, or whether they are unusual ones." [5]

"The material in Mrs. White's book on Paul drawn from Conybeare and Howson was equivalent to less than 4 per cent of this English book, for it was a large book. And that drawn from Farrar was equivalent to less than 2 per cent of his book, for it also was a large work. As to *The Great Controversy* (1911 edition) only 4 per cent of the material is borrowed from other authors. But this 4 per cent is drawn from a number of works, with only a very small per cent being drawn from any particular work. The same would be essentially true of the 1888 edition and the 1884 edition." [6]

[5] The Literary Relationship Between The Desire Of Ages, By Ellen G. White And The Life Of Christ by William Hanna, Part II by William F. Specht.

[6] Ellen G. White and Her Critics, Francis D. Nichol, 1951, p. 427.

Chapter 11—Library Of Congress [12]

Copyright Records

Under the Act of 1790, copyrights for books were obtained by, among other conditions, depositing a printed copy of such book "in the clerks office of the District Court where the author or proprietor shall reside." It was not until the Act of 1870 that "all records and other things relating to copyrights—shall be under the control of the librarian of Congress and kept and preserved in the Library of Congress." Therefore, any exact information in regard to copyrights from 1790 through 1869 could only be obtained by searching the records of the District Courts of the various states and/or territories, an obviously monumental project. Limited copyright records are available on micro-film at the Library of Congress which have been collected from the various District Courts of the states and territories between 1790 and 1869, and these are available for state-by-state, District Court-by-District Court searching to determine with a "fair" degree of certainty whether a particular item has been copyrighted between 1790 and 1869. A review of the microfilm records at the Library of Congress would constitute an overwhelming task, and since the results would be questionable such was not done (except for the territory of Michigan which surprisingly developed a copyright registration [No. 330] in the name of "Uriah Smith" for "Smith's Adjustable Weekly Calender" [Feb. 14, 1863]).

A search was, however, conducted through the General Index at the Copyright Office of the Library of Congress between 1870 and 1897 which lists the works by title and/or author. The search was continued from 1898 through 1937 listing the works only by author or claimant. The search was directed toward essentially determining whether the earlier writings, and particularly those referenced by Walter Rea, were copyrighted or uncopyrighted, and the result of this investigation is as follows with the copyrighted and uncopyrighted works being simply listed hereinbelow under appropriate headings:

Copyrighted

Walks with Jesus by Daniel, March 1888, 36 988; *Dawn to Dark* by Daniel, March 1878, 5900; *Ministry of Healing* by A. J. Gordon, 1882, 2418; *Sanctuary of the Bible* by J. N. Andrews, 1889, 38390; *Spiritual Gifts* by White, 1882, 21796; *Spirit of Prophecy* by White, 1884, 20667; *The Christian's Secret of a Happy Life* by Hanna W. Smith, 1883, 3840; *God's Will Known and Done* by Underwood, 1885, 7338; *The Higher Christian Life* by W. E. Broadman, 1871, 5443; and *Parables of Our Savior* by Taylor, 1886, 26936.

Uncopyrighted

The Sanctuary and the Twenty Three Hundred Days of Daniel VIII, 14 by Uriah Smith; *The Life of Christ* by William Hanna; *Paul* by F. W. Farrar; *The Great Teacher* by John Harris; *The Life and Times of Jesus the Messiah* by A. Edersheim; *Old Testament* by A. Edersheim; *Elijah the Prophet* by A. Edersheim; *Night Scenes of the Bible* by Daniel March; *Sketches From the Life of Paul* by Conybeare and Howson; *History of the Sabbath* by J. N. Andrews;
[13] *Elijah the Tishbite* by Krummacher; *Life Incidents* by James White; *Life of William Miller* by James White; *History of Waldenses* by Wylie; *Origin and History of the Books of the Bible* by Calvin Stowe; *History of the Reformation* by D'Aubigne; *Philosophy of Health* by Coles; *Paradise Lost* of Milton Clark's Commentary; *The Life and Epistles of the Apostle Paul* by Conybeare and Howson; *The Life of Paul* by McDuff; *The Apocrypha* by Stowe; and *The Life of Christ* by Farrar.

Chapter 12—Ellen G. White Was Not A Copyright Infringer

The "right of an author to a monopoly of his publications is measured and determined by the copyright act." [1] Accordingly, "unless the copyright laws were complied with, publication works an abandonment of all further right." [2] Thus, all of the books listed earlier herein which were published and uncopyrighted which may have been used as sources by Mrs. White could not give rise then or now to any proper or responsible accusation of "copying," "piracy," or "plagiarism." These books included, for example, *The Life of Christ* by Hanna, *The Great Teacher* by Harris, *Sketches from the Life of Paul* by Conybeare and Howson, and the remainder of the uncopyrighted works earlier listed herein under the caption "Library of Congress."

A "book—becomes (when not protected by copyright) public property by the act of publication." [3] Accordingly, all of the earlier noted published, uncopyrighted works were from the time of publication dedications or gifts to the world at large for anyone or all to use legally, freely and unhesitatingly as they wished to any degree and in any manner, with or without acknowledgements.

Assuming, however, that all of these earlier works noted herein were copyrighted, could a successful suit have been brought against the early Seventh-day Adventist writer? The answer is again in the negative.

The issue of copyright infringement, quite simply, is "whether the book of the defendant, taken as a whole, is substantially a copy of the plaintiff." [4] No critics have in any of the comparisons set forth earlier herein alleged nor could they have equitably alleged than any

[1] Holmes v. Hurst, p. 1267, 1270.

[2] Nebraska v. State General Co., citing Corlies v. Walker, 75 F. 436 (1893).

[3] *Ibid.*

[4] Drury et al., v. Ewing et al., 7F. Cas. 1113 (No. 4095) 1 Bond 540, 13-16 C.O. Bull. 803, 809 (1862).

book of Ellen G. White's, taken as a whole, is legally substantially a copy of her predecessors. The meaning of "substantially a copy" is well expressed in law and requires that the value of or effort involved in an original work be "sensibly diminished," or the "labors of the original author (be) substantially to an injurious extent, appropriated," that in effect the life, body and meaning of the earlier work be "taken as a whole" absent the exercise of discretion, skill, judgment or the like.

Mrs. White's sternest critics offer the best evidence available supportive of noninfringement. As an example, the "88 different
[14] authors and 400 references" refer to *The Great Controversy*, and it is suggested strongly that such utilization by Mrs. White (if true) of this vast reference material evidences skill and use of common materials and common sources of knowledge, and not merely "colorable alterations and variations only to disguise the use thereof." [5] It is inconceivable that even if Mrs. White used 88 different authors and 400 references in *The Great Controversy*, she could have taken the value of any one of the original works to the degree that it be "sensibly diminished, or the labors of the original author (be) substantially to an injurious extent, appropriated" by her usages.

What in *The Great Controversy* or any other book of Ellen White's, when "taken as a whole, is substantially a copy" of the works of earlier authors? Here again, when a comparison is equitably made on a one-on-one, book-versus-book basis, and such is the only comparison that can be properly made in law, nowhere have we found the books of Ellen G. White to be virtually the "same plan and character throughout" as those of her predecessors. [6] Nor have we found or have critics made reference to any intention of Ellen White to "supersede the other(s) in the market with the same class of readers and purchasers by introducing no considerable new matter or little or nothing new except colorable deviations." [7]

The sheer "compilation" of the works of Ellen G. White necessarily reflects her labor and skill. So long as she had not, and the evidence clearly establishes that she did not, draw from any prior works "to a substantial degree," she remains well within the

[5] Emerson v. Davies et al., p. 864-865.
[6] Drury et al., v. Ewing et al., p. 809.
[7] Drury et al., v. Ewing et al., p. 809.

legal bounds of "fair use." Moreover, so long as the materials were selected from a variety of sources, and were "arranged and combined with certain chosen passages of the text of the original work, and in a manner showing the exercise of discretion, skill, learning, experience, and judgment," the use was "fair." [8]

It is also necessary in judging the writings of Ellen G. White to reflect upon the nature, character and influence of these writings which perhaps are best described by Uriah Smith from *Life Sketches* (469 et. seq.) as follows:

> "Their fruit is such as to show that the source from which they spring is the opposite of evil.
>
> 1. They tend to the purest morality.—They reveal the devices of Satan.—They have aroused and rearoused us to greater consecration to God, more zealous efforts for holiness of heart, and greater diligence in the cause and service of our Master.
>
> 2. They lead us to Christ.
>
> 3. They lead us to the Bible. [15]
>
> 4. They have brought comfort and consolation to many hearts."

Writings of the relationships of God, Satan and men necessarily create resemblances and often times striking resemblances. However, no prior author had ever before united in one work that which was authored by Mrs. White, nor do any of her critics so allege. Critics compare words, phrases, similarities thereof, but never compare the works of Mrs. White "as a whole." One reason suggested is that evidence would indicate that though "materials have been selected from a variety of sources," the same evidence strongly indicates the materials thus selected were "arranged and combined... in a manner showing the exercise of discretion, skill, learning, experience and judgment." It is the latter areas where critics fear to tread because had they done such, their only conclusions could be and would be that the writings of Mrs. White did not constitute infringements of even assumed to be copyrighted works of her predecessors.

[8] Lawrence v. Dana, p. 1606.

In summary, and again with the assumption that all earlier works were copyrighted, if the issue were court-tested between 1850 and 1915, Ellen G. White would be emphatically held not to be a copyright infringer.

Chapter 13—Ellen G. White Was Not A Plagiarist

Approached from a legal standpoint, courts tend to categorize a plagiarist as one who was legally guilty of piracy. In other words, courts generally have defined the elements of piracy, and if the appropriator of a book fit the perimeters of illegal piracy, he was labeled a plagiarist. Therefore, the legal showing must be such "that the person accused of plagiarism has in fact copied or imitated another's work, and that he or she has done so in some substantial degree." [1]

More, however, seems evident from the case law as to what may or may not be an act of plagiarism. If that which was taken was not the "material and important parts" [2] of a book, but the resultant book instead reflects "the effort of his (taker's) own mind," such is not plagiarism. [3]

One of the most important factors from a legal standpoint between the legal crime of piracy/copyright infringement and the act of plagiarism is the "intention with which such appropriation is made." [4] A plagiarist, therefore, takes from another and utilizes that which is taken with the intent that the appropriated material be viewed as originating with the appropriator and not the originator. Therefore, Paull was eminently correct in concluding from a literary viewpoint [16] that the "plagiarist always hopes that he will not be found out" and though more might be added from a legal viewpoint, the intent of the taker is of a paramount importance. [5]

The major key to the plagiarism issue is the intent of Ellen G. White, and critics and advocates alike appear decidedly in agreement on this point, as evidenced by the following:

[1] Simms v. Stanton et al., 75F. 6, 13-16 C.O. Bull. 2406, 2414 (1896).
[2] Reed v. Carusi, 20F. Cas. 431 (No. 11642) 13-16 C.O. Bull. 2146, 2148 (1845).
[3] *Ibid.*
[4] Farmer v. Elstner, 33F. 494, 13-16 C.O. Bull. 970 (1888).
[5] Literary Ethics, p. 45.

> "I rather think that Mrs. White was sincere in what she believed and what she wrote and that she believed she was inspired in fact, indeed, she believed it was a revelation." [6]
>
> "But I am unwilling to believe that Ellen White either consciously or unconsciously was dishonest.... the main tenor of her life was wonderfully good and helpful; she stood for principles that were straight and right." [7]

One could hardly impugn the good intentions of Mrs. White when she, herself, seemingly made no effort to hide her sources and indeed acknowledged their value, as follows:

> *"The Life of St. Paul* by Conybeare and Howson, I regard as a book of great merit, and one of rare usefulness to the earnest student of the New Testament history." [8]

The best evidence of the intention of Mrs. White rests in what has been characterized as the grand central theme of her writings, "God's original purpose for the world," "the rise of the great controversy" between God and Satan, and "the work of redemption." [9]

One certainly perceives from Mrs. White's writings that she was motivated by "the influence of the Holy Ghost" [10] which itself belies wrongful intent, and proceeding with but the highest of motivations and intentions she in fact legally modified, exalted and improved much which others may have thought and expressed. It is impossible to imagine that the intention of Ellen G. White, as reflected in her writings and the unquestionably prodigious efforts involved therein, was anything other than a sincerely motivated and unselfish effort

[6] White Lies, transcript, p. 35.

[7] Ellen G. White And The Protestant Historians: The Evidence From An Unpublished Manuscript On John Huss by Donald R. McAdams, March 7, 1974, October 1977, p. 231.

[8] Ellen G. White and Her Critics, p. 423.

[9] The Literary Relationship between the Desire of Ages by Ellen G. White and the Life of Christ by William Hanna, Part II, Chapter 6, Walter F. Specht.

[10] Selected Messages 1:21.

to place the understandings of Biblical truths in a coherent form for all to see and comprehend. Most certainly, the nature and content of her writings had but one hope and intent, namely, the furthering of mankind's understanding of the word of God.

Considering all factors necessary in reaching a just conclusion [17] on this issue, it is submitted that the writings of Ellen G. White were conclusively unplagiaristic.

Conclusions

Based upon our review of the facts and legal precedents, we conclude that Ellen G. White was not a plagiarist and her works did not constitute copyright infringement/piracy.

By:_____

Vincent L. Ramik

VLR/skl