JOSEPH SOLOMON HONORED

By Mitchell I. Feld

At a dinner held at the Charles W. Frossel Library, NYLS, Dr. John V. Thornton, Chairman of the Board of Trustees, announced that the Joseph Solomon Professorship was finally funded in an amount in excess of $500,000.00.

In recognition of the establishment of the Professorship, Dr. Thornton presented Mr. Solomon with a citation which reads in part that “the establishment of the Joseph Solomon Professorship honors a most distinguished alumnus, lawyer, humanitarian and beloved colleague. Throughout his exceptional life and career, Joseph Solomon has exemplified those qualities which have enhanced not only the profession, but also the lives of all those who have been privileged to share in his wisdom.”

Dr. Thornton read the list of names of the persons constituting the committee to select the professor to occupy the prestigious chair.

Mr. Solomon earned an LLB from NYLS in 1927 and in 1976 New York Law School awarded him the degree of Doctor of Laws, honoris causa. He was additionally honored by NYLS when it presented him with the First Medallion for Distinguished Service for his contributions, not only to the school but “to the public and legal profession” as well. He was inducted as an honorary member of Phi Delta Phi, the International Legal Fraternity.

On November 20, 1960 in recognition of his remarkable contribution to NYLS: University of Bologna Legal Studies program which is held at the Center for Legal Studies at the University of Bologna, Italy; and for his establishment of the Solomon Scholarships granted to outstanding students participating in the program; the Italian Government knighted Mr. Solomon and made him a Cavalliere dell’Ordine al Merito della Repubblica Italiana. He has been honored in Italy by other professional organizations as well.

On April 11, 1974 Mr. Solomon had a Professorial Chair named for him at the Columbia University School of Law. The Chair, the Joseph Solomon Professorship in Wills, Trusts and Estates was made possible by Mr. Solomon’s friends who contributed more than $500,000.00 toward its establishment. This was the first professorship in estate law at Columbia University Law School. Previously, in June, 1972, Mr. Solomon was presented with the Columbia University Presidential Award of Distinction. In January, 1981, Columbia University established the Joseph Solomon Presidential Scholars and Fellows Fund.

During his outstanding career as an attorney he has served as a member of the Committee on Character and Fitness of the Appellate Division, First Dept., as a member of the Board of Directors of the New York County Lawyers’ Association and is presently a member of the Board of Editors of the New York Law Journal.

Interested as well in legal medicine, Mr. Solomon is a member of the Board of Trustees of the Milton Helpnir Library of Legal Medicine and in March, 1989, he received the Milton Helpnir Library of Legal Medicine Second Annual Memorial Award. In 1977 he was responsible for the establishment of the Flourette and Ernest Rosenberg and Joseph Solomon Chair in Medicine at Mount Sinai School of Medicine of the City University of New York.

Joe Solomon was born on the lower East Side of Manhattan, one of eight children of poor, hard working Russian immigrants. He was raised in a cold-water flat, on East 90th Street, between 2nd and 3rd Avenues. He bathed in the public bathhouse on 100th Street and learned to swim off the docks at East 90th Street. His entire family was once nearly asphyxiated by seeping coal gas fumes.

While attending elementary school, Joe earned ten cents a day by making deliveries for stores; on Saturdays he struggled from 6 A.M. to 10 P.M., with a fruit and

CONTINUED PAGE 2

COUNTY LAWYERS REPORT BLASTS CONDITIONS IN CRIMINAL COURT BUILDING

The second annual review of the Criminal Court Building, 100 Centre Street, N.Y.C., issued by the New York County Lawyers’ Association Committee on Penal and Correctional Reform, with Board of Directors’ approval, found the facilities “unbearable and dehumanizing,” according to New York Law School Dean E. Donald Shapiro, Chairman of the Committee. The Dean charged “these conditions deprive the defendant of human dignity and the presumption of innocence to which he is entitled.”

The report was prepared by the Special Action Subcommittee, chaired by Stephen Mark Jaeger, Esq., Legal Aid Society, and: John Michael Brickman, Esq., Anthony E. Davis, Esq., Crane & Hawkins, Gould & Davis; Irwin S. Davis, Counsel, N.Y. City Department of Health; Roger S. Hayes, Office of N.Y. County District Attorney, Matthew I. Mari, Esq.; Alan I. Raylesberg, Esq.; Guggenheim & Untermeyer; and the Hon. Joseph Rosenberg, Acting Supreme Court Justice, Bronx.

The report states that although two years have passed, the conditions are little changed in the detention facilities of the Criminal Court Building. Defendants stand in the cells because overcrowding prevents them from sitting; there is an ever present stench and vermin in the hallways and corridors. The public is still unable to monitor trials because proceedings are inaudible.

The Committee notes some improvement in the interviewing areas for lawyer-client conferences, and installation of bilingual signs, but the report concludes that overall, the facilities have been virtually ignored.

Other problems cited are: the deplorable state of public restrooms, in chronic disrepair due to insufficient daily maintenance; inadequate and poorly kept Judges’ chambers and jury rooms, whose conditions are “demeaning to the citizen and an embarrassment to the administration of justice.” Overcrowding of pens persists, with

continued on pg 6

VALUATION OF A HOMEMAKER’S SERVICES - PART TWO

by Alan M. Grosman and Kathleen H. Casey

Wives Employed Outside the Home

The wife employed outside the home contributes not only her income, but also her domestic labor to the marriage. Studies of such women conclude that the “working wife” receives little assistance with household chores from either husband or children. Courts, however, often ignore this dual contribution, as evidenced by the decision of an Indiana appellate court that a working wife was entitled to no more than 50 percent of the marital property. It held that a homemaker contribution provisions applied only to a wife who does not work outside the home. Such reluctance to fully value the contribution of a working wife is further evidenced by the Wisconsin Supreme Court’s comment that “The contribution of a full-time homemaker-housewife to the marriage may well be greater or at least as great as those of the wife required by circumstance or election to seek and secure outside employment.”

Missouri courts, however, have recognized than an employed wife who does all of the housework will be entitled to more than half of the marital assets. In addition, the husband’s financial misconduct may enlarge the share of a working wife.

The Role of Fault

Fault, either marital or economic, assumes an important role in those states, like Missouri and Alabama, in which the statutory factors specify that the conduct of the parties may be considered when dividing marital property. The recently enacted New York equitable distribution law, in its enumeration of factors for the court to take into consideration with regard to equitable distribution, lists “any other factor which the court shall expressly find to be just and proper.” Raymond J. Pauzley, chairman of the Family Law Section of the New York State Bar Association, has expressed the view that the New York courts may therefore take fault into consideration with regard to equitable distribution. New Jersey, which does not permit fault to be a factor with regard to equitable distribution, has considered the question of the nagging wife, as this bears upon the valuation of a homemaker’s services. The court stated:

Even if it should be determined that the wife was responsible in considerable part for the antagonistic marriage relationship, that factor alone should not bar her from sharing in the marital assets. Even a sparring partner can be said to contribute in some measure to the success of an adversary.

Wife’s Sacrifices

A wife’s sacrifices during the marriage will frequently influence the court’s award. In response to a Montana husband’s assertion that his wife contributed very little labor to improvement of their home, the court found, “Mere living on property

continued page 2
EDITOR RESCUES SINATRA’S BIRD

SOLOMON CONTINUED

car vegetable cart, earning one dollar a day; and on Sundays he sold newspapers. The family was so poor that Joe had to quit elementary school before graduating. More than 60 years later, he received a diploma from P.S. 109, at the graduation exercises held at the school on June 22, 1978.

When he left school at the age of fifteen, he began his full-time job as a 10-a-week messenger for the prestigious law firm of Leventritt, Cook, Nathan and Lehman. Each member of the firm was either a former justice, a distinguished lawyer or both. The young lawyer studied the evening law, he passed the Regenta qualifying examinations. He studied for and obtained a certificate of admission to New York Law School and graduated in 1877, at the age of twenty-two. In 1879, he became a member of the legal staff of the firm for which he was a messenger and became a partner in 1948. He is a senior partner in the present firm Pincus Munner, Bizar D’Alessandro & Solomon.

Mr. Solomon’s phenomenal rise from his humble beginnings to the eminent position he presently holds in the legal profession was professionally recognized when he was awarded a special Horatio Alger Award in 1978. In his remarks, at the dinner attended by distinguished members of the Board of Directors, the Board of Governors, former and current attorneys and friends, Mr. Solomon in explaining the thinking of prize giving, stated, “I am firmly convinced that giving and serving others is the best assurance of one’s own well-being.”

Bobby Sinatra and Mitch Feld

Such are the vicissitudes of fortune. Mitch Feld by happening to be at the right place at the right time succeeded in saving the life of a valuable racing pigeon.

Mitch was trimming hedges in his back yard when a beautiful young pigeon dropped to his feet. He found that a flock of blackbirds, predators of the skies, who slashed at the trembling bird.

Our Editor drove them off and then noticed two deep gashes in the little bird’s wings. Drawing upon his knowledge and experience with pets of all kinds, including birds, Mitch applied first-aid, stemmed the bleeding and somewhat calmed the terribly frightened bird.

During the following several days Mitch subjected his little feathered patient to the time honored remedy of TLC. He also conducted an exhaustive search and succeeded in tracking down its owner, Bobby Sinatra, a resident of Long Island.

Mr. Sinatra has been breeding and racing pigeons for over 50 years. His birds have successfully competed in both National and International races, and he is one of the most highly regarded fanciers in the country.

Mr. Sinatra was thrilled to receive the safe return of his treasured racer, especially since he had already resigned himself to its loss.

As an expression of his gratitude he invited Mitch to visit him and observe the training of these birds and races. Mitch may have some future reports on this exotic sport.

Valuation of Homemaker’s Services - Cont’d

where substantial improvements were being made required considerable sacrifice of personal comfort.43

Other sacrifices by homemakers which courts have considered as contributions to the marriage include: moving to be near the husband and changing or giving up her job,54 abandoning her education;55 forgoing an interest in a business,56 foregoing an opportunity to work,58 and, last but not least, performing domestic chores for laws.59

A wife’s frugality was rewarded by the Nebraska Supreme Court in a case in which, while she was employed part-time as a nurse, her lawyer husband accumulated close to $900,000 in his name. The court concluded that the contributions of the wife, who also was the mother of two children and a full-time homemaker for fourteen years, were significant. The court found that these contributions “are not minimized simply because her efforts were not directly involved with the acquisition of property. She contributed income and operated to live frugally so that funds could be invested.”60

Children

Generally, the presence or absence of children does not appear to greatly affect the weight given to homemaker services.61 A desire not to have children may be an “insubstantial” factor in determining an award.62 However, the physical or mental disability of a child, which makes the mother’s job “more onerous than usual,” will influence the award.63 Also, the presence of children from a prior marriage, the wife may recover more than 50 percent of the marital property.64

Health

Ill health of a wife is a factor that may or may not reduce the value of her services, depending on the interpretation of her role.65 In Marriage of Hebel,66 the wife had a heart condition that the husband knew of prior to their 18-month marriage; which precluded strenuous activity and limited her employability and earning capacity, the Montana Supreme Court included in her award a sum representing the value of the homemaker’s services and an additional award representing the disparity in health, age and earning capacity between her and her spouse. Because the wife established that the husband was aware of her physical limitations prior to the marriage, the court did not award the amount on that account.

The Oregon Court of Appeals, however, awarded a wife no property by way of equitable distribution, where she had been repeatedly hospitalized for mental disorders during a nine-year marriage and where her longshoreman husband had assumed the care of his son by a prior marriage, the house and his wife.67

McCall v. McCall68 involved a 21-year marriage in which the wife performed homemaker services though 68 years of age and ill health. The Missouri court awarded 45 percent of the assets subject to equitable distribution.

In Hatakat v. Haberstok,69 the North Dakota Supreme Court awarded a wife a history of alcoholism and schizophrenia only $12,000 of marital assets totaling $450,000, despite the fact that she had borne five children and proven that her husband had beaten her some thirty times during the course of their 15-year marriage. The dissent sharply criticized this decision, stating that the majority had improperly penalized the wife because of her drinking problem.

The House-Husband

Courts have generally refused to permit the wife a share of her husband’s future professional earnings by way of equitable distribution, unless she was working or planned to work to put him through school.70 However, some courts have held to the contrary.71 Courts have especially agonized over situations in which no marital property existed to recompense such contributions, but no satisfactory, generally accepted rule has yet gained. Generally, the wife’s contribution to her husband’s education has been recognized as a category factor which increased the value of her homemaker’s contribution, as distinguished from a contribution to the value of the business. This is especially true for a wife who runs a farm and ranch.

Conclusion

The concept of valuing a homemaker’s services must be understood within the framework of the developing law of equitable distribution. The law is not static. In the definition of the law’s applying to a homemaker, the court must consider the totality of the wife’s role and, as judge and jury of the contemporary family, consider such factors as the wife’s specific contributions to the value of the marital estate.

So it is that although the courts have developed an equitable distribution theory that is somewhat complex, they have yet to develop a theory that adequately compensates the homemaker. Moral considerations are balanced against the social structure in which homemaker’s services are considered essential and the economic structure of the household.

Alan Grossman, NYLS ’65, is a member of the firm of Grossman & Grossman, Short Hills, New Jersey.

Kathleen Casey is Law Secretary to Hon. Beatrice Shainswit, Justice, New York Supreme Court. “Valuation of a Homemaker’s Services” is reproduced with the permission of the EQUITABLE DISTRIBUTION REPORTER.


40. The study found that working wives do three times more housework than working husbands.

43. A desire not to have children may be an “insubstantial” factor in determining an award.

45. However, the physical or mental disability of a child, which makes the mother’s job “more onerous than usual,” will influence the award. Also, the presence of children from a prior marriage, the wife may recover more than 50 percent of the marital property.

48. As we understand the concept of equitable distribution, it is a corollary of the principal concept that marriage is a joint enterprise whose vitality and endurance is dependent upon the conjuncture of multiple components: only one of which is financial.

31. There are few reported cases regarding what property division is equitable, the courts have most often referred to in deciding what a homemaker’s contribution is worth. These factors should be exhaustively explored by way of pre-trial preparation. Often relatives, friends, as well as the wife, may have much to contribute in this regard.

Lesson Learned

In a recent divorce settlement, attorneys for a husband and his wife of 18 years, both doctors, were unable to agree on the proper division of marital property. The wife, who had performed the role of homemaker, was awarded 10 percent of the marital estate. In the light of the above, the wife’s contribution to the value of the marital estate was understated, and the proper award was 25 percent of the marital estate.

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BEST OF BOTH WORLDS

The Marino Bar Review Course, with over thirty years of unequaled success preparing students for the New York Bar Exam, and the Josephson Bar Review Center (BRC), the nation's most innovative legal educator and most successful national bar reviewer, have joined forces to develop an extraordinary bar review program integrating the best features of both institutions. The result—a course perfectly designed to assure that you pass the new New York Multistate Bar Exam.

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71 BROADWAY, 17th FLOOR
NEW YORK, NY 10006
JOE SOLOMON
AMERICAN

The rise of Joseph Solomon from his humble beginning as a poor boy on the lower East Side of Manhattan to legal adviser to eminent artists, industrialists and philanthropists is an American saga. It is very similar to the life stories of such American giants as Alfred E. Smith and David Sarnoff, among others.

Periodic process. Thank you for your consideration of the LAWS Ralph Walsh, a student at the school where he worked by way of a radio wave that detects a sensitized tape strip hidden in the book. When a book has not been properly checked out, it is taken through the device, a "beeper" sounds, to remind the student to return to the circulation desk. St. John's and Columbia Law Schools are presently using this system with great success.

According to head librarian, Professor Andrew Simak, the library staff would like to maintain its present cordial relations with the student body and does not relish the thought of unpleasant confrontations with would-be pilferers.

They are hopeful that the system will act as an effective deterrent and will cause students to remember to properly check out all books.

Professor Simak explained that while a thief could get around any security system, the problem is not to catch the criminal element, but to keep its collection on the shelves, where it will be available when needed. The new system is intended as a reminder to the Law School community that scarce resources like the law library collection is to be shared and not hoarded.

Dear Editor:

I am the new Editor of Due Process, the newspaper of New England School of Law.

Presently I am revamping the newspaper's design and layout. I would appreciate if you could forward additional copies of Equitas, your school's newspaper. There are many excellent features in your paper which I would like to incorporate into Due Process. Thank you for your consideration and assistance.

Sincerely,
Judith A. Hard
Editor-in-chief

GUNS DON'T KILL PEOPLE, KILL
Fair Use: Considerations in Written Works

by Jeffrey E. Jacobson

Part II

In Holdredge v. Knight Publishing Corporation, 59 the court held that when an alleged infringer has done his own independent research and has based his work on that research rather than on a copyrighted work, there can be no infringement of another's work regardless of the degree of similarity between the two publications, but this finding presupposes that there is no substantial copying. Fair use is allowed on the ground that it is a reasonable and customary appropriation; however, extensive use, as in this case, is not fair use because it is outside the scope of the defense and is neither reasonable nor customary. It is justifiable and conventional for scholars and biographers to make use of earlier works on the same subject matter to promote the scope of knowledge by building on previously completed works. 51

3. Amount of Use. Even though some copying is a prerequisite to finding a valid doctrine in weighing what amount of copying must be justifiable in a particular case. As explained in one recent case: "If the fair use privilege is based on the concept of reasonable and excessive verbatim copying or paraphrasing of material set down by another, it cannot satisfy that standard." 62 Reasonableness is an elusive standard; but where the appropriation is made for a rival work, the savings in time and effort may disallow the defense. 63 Yet, the arts and sciences have at times been defined in their broadest possible terms in order for fair use to be utilized for the development of the social sciences. 64 Because the reasonableness of the quantity of material used by the subsequent work is also crucial to the successful use of this affirmative defense, the quantity used should also be subject to the same broad interpretation. One may have resort to the fair use defense in order to justify a substantial amount of taking from an earlier work which forms the substance of a later work, since the later writing would not infringement, the mere fact of copying alone is not the end of the inquiry. The fair use doctrine is a add to the prior state of knowledge nor advance the public's knowledge in the field. 65 Occasionally one is permitted to use some direct quotation, 66 to use a substantial portion of a previous work will not be considered fair use, even if the later work paraphrases the earlier material. 67 The competitive effect function of the usage, quantity of materials used, and the purpose of the selection made, all help the court to determine if there is a fair use. But even a small taking will be considered an unfair use if it is of crucial importance to the work as a whole and taken by the infringing party in order to save time and expense. 68

Verbatim copying without giving of credit has almost never been permitted under the guise of fair use. 69 Certain the later author will not be permitted to make such extensive use of the previous work that he saves himself from having to do any original research. 70 Scholarly works that are not biographies also have received liberal treatment from the courts in infringement actions involving the fair use doctrine. It was held not to be fair use where an infringing work constituted 35 percent of a competing book on condemnation because the individual infringer had taken advantage of the access to the test and had made very free use with little independent work. Thus, the later book was an update that was a mere "colorable variation" of the earlier book, and that was clearly not reasonable. 71 Verbatim copying where credit is given or substantial reliance without verbatim copying may be permitted. 72 When there was a de minimis copying of five fictitious entries out of one hundred "trap" fictitious listings of a total 90,000 entries in a rate guide for postage, it has been held to be fair use. 73

It is recognized that a compiler of a directory or the like may make a fair use of existing compilations serving the same purpose if he first makes an honest, independent canvass; he merely compares and checks his own compilation with that of the copyrighted publication; and publishes the result after verifying additional items derived from the copyrighted publication. 74 The use in a novel of one seventh of a page from a 142 page history has been held to be fair use since the copied portion represented neither a substantial nor material part of the original work. 75 The rationale for this holding is that the infringement was insignificant in value and to the extend of the copyrighted materials used, that the use never prejudiced sales, nor diminished the history's profits, nor superseded the objects of the original work. The action is viewed as de minimis; the entries in a rate guide for postage, it has been held to be fair use. 76

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students fight to save lsc

the reagan administration's proposal to eliminate the legal services corporation prompted lisa ann murphy, second circuit governor for the law student division of the american bar association, to organize new york law students to petition congress to continue funding for the corporation.

scores of nyls students rallied behind the administration's proposal to eliminate the national center for citizen involvement, which lobbied their congressional representatives to protest the proposed elimination of the legal services corporation.

also involved in the fight against elimination was a movement for icj's bar association, the national bar association, many state and local bar organizations, the national council of churches, and the afl-cio.

in full concurrence with lisa ann murphy, second circuit governor, rebecca smith reece, president of the aba, issued the following statement:

"we are deeply disturbed by the president's recommendations to eliminate the national corporation and to curtail legal services for the poor. the proposed elimination of the legal services corporation is unsound, unwise, and not in the nation's best interest. eliminating this important program, which has been so essential to ensuring access to justice for the nation's poor will, in the long run, cost society more than any immediate dollars we may save."

COUNTY LAWYERS

continued from page 1

Dean e. donald shapiro, as chairman of the n.y. county lawyers association committee on criminal law and procedure reform, also announced the board of director's approval of the report, calling for the establishment of a sentencing reform. the report is the work of a subcommittee chaired by robert m. schlanger, esq., former deputy commissioner of the n.y. state division of criminal justice services. the other members are: eugene friedman, esq.; john f. keenan, chairman, board of directors and president, n.y. city otb corporation; comissioner stanley d. prim, commissioner of the n.y. city department of investigation; hon. ernest h. rosenberger, n.y. state supreme court, 1st dept.; comm. frank j. rogers, n.y. state division of criminal justice services; albert d. davison, counsel, n.y. department of health; and allen roddy esq., state division of criminal justice. it is based on a review of the report issued by the n.y. state advisory committee on sentencing, led by n.y. county district attorney robert m. morgenthal.

the subcommittee's findings are as follows:

sentencing in new york state today is erratic and unpredictable, resulting in excessive and unjustifiable disparity, thereby eroding the legitimacy of our laws, and reducing their maximum deterrent value.

two principal problems in the indeterminate system are: the unfettered, unguided discretion given to the sentencing and release authorities, be they court or the parole board; the abysmally philosophical basis for exercising the discretion, that we can predict or determine when a criminal has been rehabilitated.

the morgenthal report's recommendation for a determinate system, using guidelines developed to channel the sentencing decision by type of crime, manner of commission, and criminal background of the accused, is most intelligent both prosecutor and defendant would have the right of appeal either from excessive leniency or harshness, with good cause, a judge could depart from the guidelines.

initially, the guidelines would have to replicate sentences being served in the state today.

the present release authority of the parole board should be eliminated with that responsibility being strictly a judicial function, concentrated in the will of the courtroom.

in the subcommittee's opinion, with concurrence of the penal and correctional reform committee and the nycla board, the approach of the morgenthal report is reasonable, and is endorsed as a means of assuring more equitable and honest sentencing in new york state.

lasswells award continued

essentially a "polite ethical conversation." if that was the case, he maintained, "we would maintain cadres of philosophers instead of police, armies and other specialists in violence." plainly, said reisman, law-making involves another component—power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power. the proper function of law-making involves another component-power.

professors lung-chu chen and myres s. aikins, nyls, were commissioner with professor lasswells during his lifetime, of the book, "human rights and world public order: the basic policies of an international law of human dignity," yale university press, 1979.

homemaker's services continued

47. since relevant facts were in dispute, the circumstances had to be established at a trial of the facts in order to determine whether the fair use defense was available. "he who puts his hand to the plow, the court held, that the later work was a fair quotation and a legitimate use, even though the court admitted that there was a prejudicial effect upon the earlier work. this holding, however, is questionable in light of modern constructions of fair use. american courts have held that where it is clear that the effect of a use upon the potential market is nil, there is no infringement.

48. fair use has a diverse treatment when different types of writings and items are involved. it is a corollary of the fair use defense that when the defendant's work reproduces so much of the original so that it tends to satiate the potential audience for the original, then the fair use defense is usually not available.

49. see rosenblum enterprises, inc. v. random house, 366 f.2d 303 (2nd cir., 1966) which involved a biography of howard hughes. see also dieckler, extent of the doctrine of fair use, 12 u. of cbell a. l. rev. 753 (1965).

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55. see note 23 supra.

56. see hofstetter, "the air in a play of material from a biography was discussed in harris v. miller, 50 u.s.p.o. 306 (s.d.n.y., 1941), damages insufficient, 50 u.s.p.o. 625 (s.d.n.y., 1941). objections to the master's report on damages overruled, 57 u.s.p.o. 639 (s.d.n.y., 1941). the plaintiff's 1916 copyrighted biography of oscar wilde his life and confessions was held to be infringed by a 1938 play oscar wilde. a small part of the volume biography was found to be a substantial amount of the total copyrighted work, and copying was found to be substantial and verbatim. the defendant could not avoid infringement by the doctrine of unclean hands. the defense of fair use was disallowed since the original and the defendant's work were substantially similar. this case was taken from the biography original with the biographer and he did not take it from someone else. fair use and unclean hands were inapplicable. this case was

57. see merced corporation v. harper & row publishers, inc., 378 f.2d 586 (2nd cir., 1967).

58. see note 23 supra.

59. see rey v. exxon, 378 f.2d 586 (2nd cir., 1967).

60. see note 23 supra.

61. see rey v. exxon, 378 f.2d 586 (2nd cir., 1967).

62. see note 23 supra.

63. see note 23 supra.

64. see note 23 supra.

65. see note 23 supra.

66. see note 23 supra.

67. see note 23 supra.

68. see note 23 supra.

69. see note 23 supra.

70. see note 23 supra.

71. see note 23 supra.

72. see note 23 supra.

73. see note 23 supra.

74. the importance of economic consideration is illustrated by an early british case, campbell v. scott, in which it was held to be an unfair use to copy poetry for purposes correlated to criticism. another example is rose v. wilkins, another early british case where the use was held not to be fair use because it tended to diminish the sale of the original work.

75. wilkins v. aikins concerned the fair use of a previous author's research. the author of an essay on the doric order of architecture had copied several plates and prints from the plaintiff's earlier book the antiques of magna grecia. although the plaintiff had traveled extensively and had gathered the material himself, the court held that the later work was a fair quotation and a legitimate use, even though the court admitted that there was a prejudicial effect upon the earlier work. this holding, however, is questionable in light of modern constructions of fair use. american courts have held that where it is clear that the effect of a use upon the potential market is nil, there is no infringement.

76. fair use has a diverse treatment when different types of writings and items are involved. it is a corollary of the fair use defense that when the defendant's work reproduces so much of the original so that it tends to satiate the potential audience for the original, then the fair use defense is usually not available.

77. since relevant facts were in dispute, the circumstances had to be established at a trial of the facts in order to determine whether the fair use defense was available. "he who puts his hand to the plow, the court held, that the later work was a fair quotation and a legitimate use, even though the court admitted that there was a prejudicial effect upon the earlier work. this holding, however, is questionable in light of modern constructions of fair use. american courts have held that where it is clear that the effect of a use upon the potential market is nil, there is no infringement.

78. fair use has a diverse treatment when different types of writings and items are involved. it is a corollary of the fair use defense that when the defendant's work reproduces so much of the original so that it tends to satiate the potential audience for the original, then the fair use defense is usually not available.
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