demised premises or any part thereof in the name of the whole to re-enter and the same to have again repossess and enjoy as in his former estate." The plaintiff on 30th December, 1917, assented to an assignment of the lease to the defendant Boynton alone, and this was duly effected. At that time the plaintiff did not know that on three previous occasions the lessees had sub-let parts of the premises without asking for or obtaining his consent. After this date the defendant Boynton effected two further underlettings without licence. These breaches came to the knowledge of the plaintiff in March, 1922, and he issued his writ against the defendant and his underlessees in May, 1922, claiming possession and mesne profits. On the 26th June, 1922, an order was made for recovery of possession against all the defendants, and it was further ordered that "the plaintiff do recover against the defendant Boynton mesne profits to be assessed." On the 18th December, 1922, the Master made a certificate assessing the mesne profits as from the date of the first breach of covenant on the 20th October, 1919. This was an application to review the Master's certificate, claiming that mesne profits should only be assessed from the date of the writ by counsel.

SARGANT, J., after stating the facts, said: It is admitted that the real rental value of the property exceeded the rent paid by the defendant Boynton. The Master has treated him as a trespasser from the date of the first breach of covenant, and made him pay the real value of the property by way of mesne profits as from that date. The question is whether that is right. It seemed to him that there was an established practice stated in *Woodfall's Law of Landlord and Tenant*, 20th ed., p. 387, in a passage taken from *Cole on Ejectment*, p. 408, and supported by *Hartshorne* v. *Watson*, 1838, 4 Bing. N.C. 178, and *Selby* v. *Browne*, 1845, 7 Q.B. 620, at p. 632, to the effect that a lease is only avoided as from the time of actual re-entry. Here it seems clear on the construction of the proviso for re-entry as well as on authority, that there is a continuing lease until advantage is taken of the breach giving rise to a right of re-entry. For the plaintiff a line of cases have been cited to the effect that a plaintiff is entitled to recover damages for trespass in respect of a period prior to the completion of the plaintiff's title. These cases do not seem to be in point. They do not decide what date the trespass commenced from. The only other case cited was *Terrell* v. *Chatterton*, 127 L.T.R. 621; 1922, 2 Ch. 647. There the only point argued was whether there had been a breach of covenant, but at the end of their judgments, Warrington and Younger, L.JJ., after deciding that there had been a breach, said the plaintiff was entitled to the relief asked for. That included mesne profits from the date of the breach. That would be a binding authority if the matter had been put before the court and decided after argument. That clearly had not happened. In these circumstances the judgment of the court cannot override the settled practice. I must declare that mesne profits are only payable from the date of the writ in the action.—COUNSEL: *Wilfrid M. Hunt; Greene*, K.C., and *Ashworth James*. SOLICITORS: *Boulton, Sons & Sandeman; Williams & James*.

[Reported by L. M. MAY, Barrister-at-Law.]

AUSTIN *v.* COLUMBIA GRAPHOPHONE COMPANY.

Astbury, J. 24th July.

COPYRIGHT—MUSICAL COMPOSITION—COMIC OPERA—ADAPTATION OF OLD PLAY—INFRINGEMENT OF ORCHESTRATION BY GRAMOPHONE RECORDS—COMMON SOURCE OF INFORMATION—COPYRIGHT ACT, 1911, 1 & 2 Geo. 5, c. 46, s. 35.

The plaintiff composed music for an opera which was an adaptation of an old play. The defendant company prepared an orchestral score from the same source, records of which they offered to the trade. The plaintiff complained that the defendant company were passing off these records as records of the plaintiff's music.

Held, that the defendants had borrowed from the plaintiff's work in a way which was more than mere coincidence, and had infringed the plaintiff's copyright.

This was an action against the Columbia Graphophone Company for an injunction to restrain the company from making, selling, publishing or otherwise disposing of any record by which the music arranged and composed by the plaintiff for the opera "Polly" by John Gay might be mechanically performed or from otherwise infringing the copyright in such musical work. The plaintiff also sought an injunction to restrain the company from publishing or exhibiting an illustrated advertisement or poster headed "Columbia Records of 'Polly,'" or from passing off records as records by means of which the plaintiff's music for "Polly" might be mechanically performed. The original opera of "Polly" was written by Gay, and was first published in 1729, but it was never performed in Gay's lifetime. The play as first published consisted of the text in ordinary prose with certain added lyrics, mostly folk songs, for which simple airs with an added bass were printed in an appendix, but no music was composed by Gay. An adaptation of the play was recently written by Mr. Clifford Bax, and was now being performed at the Savoy Theatre, and for this adaptation the plaintiff composed music which was original, though it partly incorporated the airs contained in Gay's appendix. The plaintiff alleged that the orchestration by Mr. Katelbey, the musical director of the defendant company, was based on the orchestration of the plaintiff's music which he had prepared for the plaintiff's approval. The plaintiff said that in taking the airs from Gay he had varied the nature of their application, and that in the orchestration by Mr. Katelbey the same thing had been done. The plaintiff had used nineteen of Gay's airs, and he alleged that Katelbey had made use of eighteen of these and had transformed them into the same nature as the plaintiff's version, and he claimed that the orchestration of these airs and the band parts which were prepared by Katelbey for the defendant company's records were infringements of the plaintiff's copyright. He also claimed that the defendant company's advertisements were so framed as to lead purchasers to believe that the records were of the play "Polly," as performed at the Kingsway theatre, and not of a separate production by the defendant company, and that they were passing off their records as records of the plaintiff's music.

ASTBURY, J., said that the defendants admitted that the plaintiff was the composer of the music of the present production of the opera "Polly," and the question was whether the defendants' music was a new and original work based on Gay or whether it was an infringement of the plaintiff's copyright. Although there was no copyright in an idea, there was copyright in a combination of ideas, method and system making a new work. The Copyright Act, 1911, had extended the protection of copyright beyond what was previously given, and it appeared from the cases cited as to musical copyright that there was copyright in an arrangement of previous music which amounted to a new work: see *D'Almaine* v. *Boosey*, 1 Y. & C. Ex. 478; *Leader* v. *Purday*, 7 C.B. 4; *Wood* v. *Boosey*, L.R. 3 Q.B. 233; *Boosey* v. *Fairie*, L.R. 7 Ch. D. 317. The Copyright Act, 1911, had brought gramophone films within the law of copyright and the judgments in those cases applied here. Upon the whole he was of opinion that the plaintiff was entitled to copyright in his music and that the defendants had taken a substantial portion of the plaintiff's work and had infringed his copyright. The plaintiff therefore was entitled to an injunction to restrain the use of the defendants' films and for delivery up of all films which had not been sold and an inquiry as to damages. The defendants must pay the costs of the action. A stay of execution would be granted if notice of appeal was given within twenty-one days.—COUNSEL: *Luxmoore*, K.C., and *Macgillivray; Sir Duncan Kerly*, K.C., and *S. O. Henn Collins*. SOLICITORS: *Field, Roscoe and Co.; Withers, Benson, Currie, Williams & Co.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

High Court—King's Bench Division.

KEEVES *v.* DEAN; NUNN *v.* PELLEGRINI. Div. Ct. 13th July.

LANDLORD AND TENANT—STATUTORY TENANCY—WHETHER ASSIGNABLE—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920, 10 & 11 Geo. 5, c. 17, s. 15.

A tenant who, by reason of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, has continued in possession as a statutory tenant, is entitled to assign his statutory tenancy.

Appeals from the Croydon and Ipswich County Courts. The question whether a statutory tenant is entitled to assign his statutory tenancy was raised in these two cases. The Divisional Court delivered one judgment in respect of them. The facts were as follows:—In *Keeves* v. *Dean* the plaintiff (the landlord) commenced proceedings in the Croydon County Court against the occupant of a house at Thornton Heath. The premises had been assigned by the statutory tenant to the defendant, who claimed to be entitled to remain. The county court judge held that the statutory tenant could not assign the premises, and that the defendant was a trespasser and must deliver up possession. In *Nunn* v. *Pellegrini* the plaintiff was the owner of certain premises at Ipswich. The statutory tenant carried on business on the premises. He sold his business and purported to assign the business, the stock-in-trade and the house to the defendant. The plaintiff, on hearing of this, said that the plaintiff had no right to be on the premises, but the defendant claimed to be entitled to remain either as the tenant of the plaintiff by assignment, or as sub-tenant to the statutory tenant, and claimed the protection of the Act of 1920. It was contended that there had been no proper assignment of the premises. The county court judge held that the defendant was entitled to remain in possession of the premises, that a statutory tenant had the right to assign the premises, and that, if it were necessary for the assignment to be by deed, the court of equity would entertain an application for specific performance of the contract. By s. 15 of the Act of 1920 it is provided: "(1) A tenant who