Case No: HC02CO3260

Neutral Citation Number: [2004] EWHC 1157 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 18 05 2004

Before :

THE HONOURABLE MR JUSTICE PARK

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Between :

(1) Pamela Dallas Brighton

(2) Dubbeljoint Theatre Company Limited

Clai

- and -

Marie Jones

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Kevin Garnett QC (instructed by **Schillings**) for the claimants

Andrew Sutcliffe QC and Leslie Christy (instructed by **Reynolds Porter Chamberlain**) for the defendant

Hearing dates : 24.03 – 30.03.2004

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Judgment

Mr Justice Park :

Abbreviations, dramatis personae, etc.

1.
These are as follows.

Binding, Mr	Justin Binding; at the time employed by Dubbeljoint as full time administrator. A witness for the claimants.
Brighton, Miss	Pamela (Pam) Brighton, theatrical director. The first claimant and a director of Dubbeljoint, the second claimant. A witness for herself and for Dubbeljoint.
CDPA 1988	The Copyright, Designs and Patents Act 1988.

Connaughton, Mr	Shane Connaughton, writer of books, including ‘A Border Diary’ ; describes himself as ‘a de facto director of Dubbeljoint’. A witness for Dubbeljoint.
Cranney, Mr	Niall Cranney. In 1996 the stage manager for the production by Dubbeljoint of Stones In His Pockets. A witness for Miss Jones (the defendant).
Draft opening script, the	A script for the opening scenes of Stones In His Pockets, written in manuscript by Miss Brighton and sent to Miss Jones at some time in May 1996.
Dubbeljoint	Dubbeljoint Theatre Company Limited, the second claimant; theatre production company, trading as Dubbeljoint Productions; put on the first production of Stones In His Pockets in 1996.
Garnett, Mr	Kevin Garnett QC, counsel for the claimants.
Gordon, Dan	Dan Gordon; actor in earlier Dubbeljoint productions, but not in Stones In His Pockets. A witness for the defendant.
Hill, Mr	Conleth Hill, actor; a member of the first cast of Stones In His Pockets in 1996. A witness for Miss Jones (the defendant).
Jones, Miss	Marie Jones (Mrs McElhinney), referred to in the particulars of claim as Sarah Jones. The defendant. Actress and playwright, credited as author of Stones In His Pockets. A witness on her own behalf.
McElhinney, Mr	Ian McElhinney, actor and theatrical director. Husband of Miss Jones (the defendant). A witness for her.
McLaughlin, Mr	Patrick McLaughlin, production manager for the 1996 Dubbeljoint production of Stones In His Pockets. A witness for the claimants.
Miss Brighton’s draft opening script claim	Description used in the judgment for one of the two main claims being advanced by Miss Brighton (the first claimant). See also the next entry.
Miss Brighton’s joint authorship claim	Description used in the judgment for the other of the two main claims advanced by Miss Brighton (the first claimant). See also the previous entry.
Murphy, Mr	Tim Murphy, actor. One of the members of the 1996 cast of Stones In His Pockets. A witness for Miss Brighton.
Stones In His Pockets	A play the credited author of which has hitherto been Miss Jones. The copyright in the play is the main subject matter of the present case.
Sutcliffe, Mr	Andrew Sutcliffe QC, counsel for Miss Jones (the defendant).

Overview

2.

This is a case about the rights in a play, Stones In His Pockets. The play was first produced in Northern Ireland in 1996. It was presented in that year at a number of theatres in Northern Ireland and in the Irish Republic. The production company was Dubbeljoint, the second claimant. Dubbeljoint commissioned Miss Jones, the defendant, to write the play. She was the credited author in programmes, publicity material and the like. The director was Miss Brighton. In 1999 Miss Jones to some extent rewrote the original 1996 script of the play. It was still recognisably the same play, but the 1996 script and the 1999 script were different 'dramatic works' within the meaning of the CDPA 1988, and each had its own separate copyright. Miss Jones exploited the 1999 script in various ways, including contracts with theatres and production companies (not Dubbeljoint by this time). The 1999 version of the play has been a major commercial and critical success.

3.
Miss Brighton is the first claimant. She makes two claims against Miss Jones. By 'Miss Brighton's joint authorship claim' she claims that, because of contributions which she made to the play in the course of the initial rehearsals, she became a joint author of the 1996 script and therefore a joint owner of the copyright in it. She says that Miss Jones acted in breach of her (Miss Brighton's) interest in the 1996 copyright when she (Miss Jones) created the 1999 script and when she thereafter exploited it. I do not agree with Miss Brighton's joint authorship claim. In my view the contributions which she made during the initial rehearsals, though important and valuable, were not of the nature to make her a joint author. Accordingly Miss Jones was the sole owner of the copyright in the 1996 script.

4.
Miss Brighton's second claim is 'Miss Brighton's draft opening script claim'. At a time before Miss Jones had started work on writing the 1996 script Miss Brighton had written in manuscript a draft script for the opening scenes of the play. She sent it to Miss Jones, leaving it to Miss Jones to make whatever use of it she chose. In the event Miss Jones did not use any of the precise words of the draft opening script, but she did follow the plot lines in it quite closely until the draft opening script ended (which was well before the end of the plot of the final completed 1996 and 1999 scripts). Miss Brighton says that the draft opening script was a dramatic work in itself, that copyright subsisted in it, and that that particular copyright was owned by herself. So far, I agree. Miss Brighton does not say that the creation of the 1996 script by Miss Jones or the exploitation of it by Dubbeljoint involved any breach by Miss Jones of Miss Brighton's copyright in the draft opening script: Miss Jones was impliedly authorised to use the draft opening script as she did in 1996.

5.
However, Miss Brighton says that Miss Jones was not authorised to use the draft opening script when she created the 1999 script, or when she exploited the copyright in the 1999 script by contracts with theatres and the like. She says that the creation of the 1999 script and the exploitation of it constituted unauthorised uses of the copyright in the draft opening script. They were, therefore, acts which were infringements of Miss Brighton's copyright in the draft opening script. She claims various reliefs in consequence.

6.
I agree with some of the stages in Miss Brighton's draft opening script claim, but I do not agree with the critical proposition that the writing of the 1999 script and the early exploitation of the copyright in the 1999 script were acts which were unauthorised by Miss Brighton. In my judgment, when Miss Brighton provided Miss Jones with the draft opening script in 1996 she impliedly authorised Miss Jones to make any use of the copyright in the draft opening script unless and until Miss Brighton revoked the authority on reasonable notice. She did not revoke the authority until 7 November 2001,

the date of a letter from her then solicitors. Nothing which Miss Jones did before then was a breach of copyright. The 1999 script was created before then, and I believe that all significant contracts to exploit the 1999 script were made before then. However, future contracts by Miss Jones to exploit the 1999 script will involve breaches of Miss Brighton's copyright in the draft opening script unless Miss Brighton's consent for them is obtained.

7.
Dubbeljoint is the second claimant. There was a contract between it and Miss Jones for her to write the play in 1996. Dubbeljoint has two claims. The first arises from a clause of the contract which required Miss Jones to pay percentages of future income from Stones In His Pockets to Dubbeljoint. She did not do that. She now admits liability to pay the amounts to Dubbeljoint. Her agent has calculated the amount it believes to be due, and has paid it to Dubbeljoint. However, Dubbeljoint is considering whether to require an inquiry into whether the amount paid is sufficient to fulfil the contractual obligation.

8.
Dubbeljoint's second claim arises from another clause in the contract between it and Miss Jones. She ought to have caused theatre programmes for presentations of Stones In His Pockets otherwise than by Dubbeljoint to credit Dubbeljoint as having been the original producer of the play. She failed to do that. Dubbeljoint claims an order requiring her to do it, and also claims damages. Miss Jones has undertaken through her solicitors to ensure that Dubbeljoint is credited in future programmes, so the first relief claimed by Dubbeljoint is not in dispute. As respects Dubbeljoint's claim for damages, in my judgment it has not suffered any by reason of Miss Jones' breach of contract in this respect. I therefore make no award of damages.

9.
I record that Mr Kevin Garnett QC appeared on behalf of the claimants, Miss Brighton and Dubbeljoint, and that Mr Andrew Sutcliffe QC and Mr Leslie Christy appeared on behalf of the defendant, Miss Jones. I am particularly grateful to them all for their helpful presentations and submissions.

The facts

10.
Miss Brighton is a director for stage, television and radio. She commenced her profession in 1969, and apart from a comparatively brief period when she qualified as a barrister and practised in London, she has been a director ever since. She comes originally from Bradford in England, but she has done much work in Northern Ireland, and moved there permanently in 1989.

11.
Miss Jones is a native of Belfast. She is an actress and a highly regarded author of plays, of which she has written many for stage, television, radio and screen.

12.
Miss Brighton and Miss Jones first worked together on theatrical plays in the 1980s. This was in connection with a local Belfast theatre company called Charabanc. In 1991 they were both involved in the foundation of Dubbeljoint. Dubbeljoint is a company limited by guarantee, having charitable objects connected with the live theatre. It receives grants from time to time from the Arts Council of Northern Ireland. I am not sure whether it also receives any financial support from public sources in the Irish Republic, but it certainly presents plays in all parts of Ireland. (In the company's name 'Dub'

derives from Dublin and ‘bel’ derives from Belfast.) Miss Brighton is a member of the board of Dubbeljoint. Specifically she is the Artistic Director, having been formally appointed as such in January 1996. I have the impression that de facto she has been the artistic driving force from the earliest days of the company. As I have already said, Miss Jones was also much involved in Dubbeljoint, as were a number of Irish or Northern Irish actors, including Mr Hill and Mr Gordon. Of course Miss Brighton, Miss Jones and the actors earned income for what they did for the company, but their earnings from that source were modest. It is clear that they all believed in the objectives which Dubbeljoint was trying to achieve, and that that was a large part of their motivation.

13.
A number of the plays which Dubbeljoint has presented over the years have been written by Miss Jones and directed by Miss Brighton. One of them was Stones In His Pockets. For a lot of the 1990s Miss Jones and Miss Brighton worked closely together in the capacities of writer and director, and had a good relationship. In or around 1998 a disagreement arose between them. Originally it did not concern Stones In His Pockets, but now they are involved in litigation about that play, as I will describe in the course of this judgment. Stones In His Pockets was, however, the last play which Miss Jones was commissioned to write for Dubbeljoint, and it was also the last new play on which she and Miss Brighton worked together.

14.
I now need to say something more specific about Stones In His Pockets. In the early part of 1996 Miss Brighton, Miss Jones and several actors, including Mr Hill and Mr Gordon, were working together on rehearsals for another Dubbeljoint play and, later, the early performances of that play. Much of this work took place in Enniskillen. They discussed what should be the subject matter and the nature of the next play, and the idea for what became Stones In His Pockets was developed. The concept was to set the play on and around a filming location in a country area of western Ireland, where a Hollywood company was shooting a big budget film. The two principal characters were to be two extras, aged in their thirties, who were working on the film. One was to be Charlie, who came from the north of Ireland. The other was to be Jake, a local of the area where the shooting was taking place. Other characters would feature from time to time, but part of the idea for the play was that there would be only two actors. Their principal roles would be as the two extras, but from time to time as the action progressed they would change their personalities, accents, physical mannerisms and the like in order to portray someone else, ranging from a glamorous Hollywood film star to an elderly local man who claimed to have worked in his youth as an extra on the location shooting of the John Wayne film, The Quiet Man. In the discussions in Enniskillen the basic setting of the play emerged, as did the ideas for a number of the characters who would be portrayed from time to time. One incident was to be a suicide: the high rate of suicides, particularly among young men, in rural Irish areas was attracting a lot of attention at the time. The play was to be called Stones In His Pockets.

15.
So the theme and some aspects of the play were known, but of course it still had to be written. It was expected that Miss Jones would write it, keeping Miss Brighton informed of progress from time to time, as had happened in connection with previous plays. Miss Jones also expected that Miss Brighton would contribute ideas and suggestions for the detailed structure of the play which she (Miss Jones) was going to write, as had also happened on previous occasions. Miss Brighton would of course be the director of Stones In His Pockets, and it was originally visualised that Mr Hill and Mr Gordon would be the two actors. In the event Mr Hill was indeed one of the actors, but Mr Gordon was not. He and Miss Brighton appear to have fallen out at around this time, and they did not want to work together

again. The second actor came to be Mr Murphy, an actor based in the Republic of Ireland who had been a member of the cast of the play on which they were all working in Enniskillen.

16.
Dubbeljoint commissioned the play. There is a written contract between it and Miss Jones for her writing services. She signed the contract on 21 June 1996, but she had begun work on the play before then. The contract was in the standard form made available by the Theatre Managers Association. I do not need to quote verbatim from the contract, but it is relevant for me to summarise a few of its provisions.

i)
It provided for a fee to be paid to Miss Jones.

ii)
The copyright in the play was to be owned by her, but for nine months Dubbeljoint had an exclusive licence to produce it in all parts of Ireland.

iii)
Thereafter all rights were retained by Miss Jones, except as I summarise in (v) and (vi) below.

iv)
Any changes to the text of the play made by anyone and approved by Miss Jones were to be deemed to be part of the play, to accrue to the copyright, and to become the sole property of Miss Jones. This provision was in clause 6. It may be relevant in connection with 'Miss Brighton's joint authorship claim', the essence of which is that, during the rehearsals for the play, she made contributions such that she became a joint author with a beneficial interest in the copyright.

v)
If there were future presentations of the play otherwise than by Dubbeljoint itself, Miss Jones was to require that theatre programmes contained a statement that the play had first been performed by Dubbeljoint, adding the date of first performance. This provision was in clause 15. In the event Miss Jones did not do this, and there is an issue arising from her omission which I shall have to consider later.

vi)
Subject to certain conditions which in the event were satisfied, clause 16 provided that Miss Jones had to pay to Dubbeljoint for five years a percentage of any income which she might obtain from future performances. This is now of some relevance, because, until this case commenced, Miss Jones had not made the payments. She has accepted that she was in breach in this respect, and a payment has been made. But there is still an issue about it.

17.
Thus Miss Jones was to be the writer of the play, and she had a formal written contract. Miss Brighton was to be the director, but in her case there was no written contract. Nevertheless there must of necessity have been a contract between her and Dubbeljoint, even if some of the contents of it were unclear. She was paid fees of £3,500 for her services to the company. As will appear below, Miss Brighton played an important role in ensuring that the play would open on time, and she can only have done that in the capacity of Dubbeljoint's contracted director.

18.

Administrative arrangements for Dubbeljoint, including issuing written contracts and making bookings for rehearsal facilities and thereafter for theatrical presentations, were in the charge of Mr Binding, who was Dubbeljoint's only full-time employee. One of the witnesses, Mr Connaughton, described Dubbeljoint as being 'a ramshackle organisation struggling to keep afloat in Belfast as best they can.' He added that the emphasis was on the quality of the artistic work, not on administration. Miss Brighton, though a director of the company, had little or no understanding of the contractual underpinning for theatrical productions. For example, she said (somewhat to my surprise, but she was a totally sincere witness, and I accept what she said) that, not merely did she not know what was in Miss Jones' contract, she did not even know that a commissioned writer, such as Miss Jones, would have a written contract with the production company. Mr Binding confirmed that contractual arrangements were looked after by him, and that Miss Brighton knew very little about them.

19.
The discussions in Enniskillen which determined the sort of play which Miss Jones was going to write took place in (I think) April or early May of 1996. Thereafter Miss Jones returned to her home in Belfast, and Miss Brighton assumed that she (Miss Jones) would start work on the script of the play. However, rightly or wrongly, Miss Brighton formed the impression that Miss Jones did not start to write as promptly as she should have done. Miss Brighton started to get concerned about whether the play would be ready in time. She had to go to South Africa for a time towards the end of June, and she wanted to take as much as possible of the script with her so that she could work on preparations for the play. Rehearsals were to begin on 8 July 1996 (in Dublin, because Miss Jones would be acting in a play there at the time), and the play was to open in Belfast on 7 August 1996. Miss Brighton thought that time was becoming tight, and she thought that she needed to do something to stir Miss Jones into action.

20.
I do not think that anything much turns now on whether Miss Brighton's concerns were justified. I do, however, think that Miss Jones did not start work as quickly as she might have done. This seems to have had something to do with her having doubts about whether Tim Murphy would be the right choice for the actor to replace Dan Gordon (who, as I mentioned in paragraph 15 above, did not want to work any more with Miss Brighton). In the event, notwithstanding whatever doubts Miss Jones had, Mr Murphy was cast as the second actor, and, to judge from press notices of the 1996 production, was very good in the part. I mention in passing that quite soon after the 1996 run of the play Mr Murphy moved to Los Angeles, where he now exercises his profession as an actor, doing so with considerable success.

21.
Miss Jones says that Miss Brighton did not need to have worried: she would have produced a script for the play in time. I believe that she would, but Miss Brighton was worried nevertheless. With a view to 'kick-starting' the writing of the play, she (staying at the time in a cottage which she owned in County Fermanagh) prepared some manuscript materials and sent them by fax to Miss Jones in Belfast. There were three separate items. They have been referred to collectively in the case as 'the Notes'. In more detail they were the following.

i)
Miss Brighton's draft opening script. This was a script which Miss Brighton had written for the opening scenes of the play. It is important in this case, and I will say more about it later. In manuscript it occupied 13 pages. I would estimate that, if Miss Jones had simply adopted it in its original form

(which she did not) and then written the rest of the play, in length it might have been about a sixth of the complete play.

ii)
Some notes about characters in the play and about some themes which might feature in it. The notes occupied one and half manuscript pages. They were not in the form of a script, or in the form of a narrative of the plot as it might develop after the quite early stage at which Miss Brighton's draft opening script ended. They were some ideas which Miss Brighton had and which she wanted Miss Jones to consider. Miss Jones said that, whenever she is commissioned to write a new play, she expects to receive notes of this sort from the proposed director, and that she considers them carefully.

iii)
A draft for a promotional handbill which might be distributed by Dubbeljoint to theatres. This was one page only. Miss Brighton wrote on it a request for Miss Jones to forward it to Mr Binding, which she did.

22.
Miss Brighton went to South Africa and returned. On the evidence I conclude that she did have some script for the play to take there with her. It was not a complete script for the whole play, but I assume that it was as much as Miss Jones had written by the time that Miss Brighton left. Miss Jones continued writing while Miss Brighton was away and after she returned, supplying further sections of draft script to Miss Brighton as and when they were ready.

23.
Rehearsals started in Dublin on time on 8 July 1996. An important part of Miss Brighton’s claim in this case (the part which I describe as ‘Miss Brighton’s joint authorship claim’) revolves around what did or did not happen in the rehearsals. In the circumstances I will not say anything more about them here, but I will of course return to them in some detail when I evaluate the joint authorship claim.

24.
The 1996 version of Stones In His Pockets opened in Belfast in August 1996. For several months after that it was presented at various venues in Ireland (north and south). As I have said, the director was Miss Brighton, and the actors were Mr Hill and Mr Murphy. Miss Jones was credited in programmes and publicity material as the author. The production was reasonably successful, but not spectacularly so.

25.
After the completion of the 1996 run of the play Dubbeljoint’s licence to present it (which ran for nine months) expired. On the face of things, thereafter Miss Jones was a free agent to exploit the play, the copyright of which she owned, as she chose: that was certainly how she saw it. She did, however, have the continuing contractual obligations to Dubbeljoint which I described in paragraph 16(v) and (vi) above.

26.
In 1999, after some rewriting of the play by Miss Jones, a new production was put on. The director this time was Miss Jones’ husband, Mr McElhinney. The 1999 version of the play opened at the Lyric Theatre in Belfast, and proved to be a huge success, not just in Ireland, but throughout the English speaking world. It was still running in the West End of London when the trial of this case took place in March and April of 2004. It is not for me to assess why the play has been a success. It may have had something to do with the combination of humour and serious social issues, coupled of course with the

opportunity for virtuoso performances which the play provides to versatile actors. The play is often described as a comedy, and audiences have found many parts of it funny. However, it certainly has some darker and serious undertones. The suicide of a young drifter at the end of the first act (he drowns himself by walking into a lake with stones in his pockets, hence the title of the play) adds a sombre note.

27.
The impact of a Hollywood film production company on a rural Irish community had on a number of occasions been the subject of media discussion. BBC Belfast had put on a radio programme about it in 1992. Miss Brighton was the producer of the programme, and Miss Jones was the writer and presenter. Obviously their experience had contributed to their decision in early 1996 about the nature of the next play. An Irish writer, Mr Shane Connaughton, had been involved in the filming in rural Ireland of a film based on a novel of his. He had published a book about the filming, called 'A Border Diary'. He was a witness for Dubbeljoint in the trial, but his evidence did not seem to me to be relevant to the specific issues which I have to decide. He seems to have resented Miss Jones having picked up the underlying subject of his book and based a play around it. I think that he wishes that he could have sued her for breach of copyright, but plainly he could not. He did at one stage, through a letter from his agents, threaten legal proceedings, but nothing came of it.

28.
However all of that may have been, the 1999 production of Stones In His Pockets was a big hit and a major commercial success. Miss Brighton was not involved. By then relations between her and Miss Jones had broken down. There was no real prospect of her being the director of the play in 1999 and thereafter, but, perhaps understandably, she has felt hurt from time to time by the way in which her contribution to the creation of the play in 1996 has not been recognised. Eventually she instructed solicitors, who wrote a letter before action on 7 November 2001. The present case has been the result. The claim form was served by a letter dated 4 November 2002. By then Dubbeljoint had joined forces with Miss Brighton, and the particulars of claim covered its claims as well as hers.

29.
The more important issues are Miss Brighton's claims based on copyright law, and to them I now turn.

Miss Brighton's copyright claims

30.
Miss Brighton advances two quite separate arguments. One is based on her draft opening script (as to which see paragraph 21(i) above). The other ('Miss Brighton's joint authorship claim') is based on her role in the rehearsals of the play in Dublin in July 1996. Her draft opening script claim arises from events which happened before the rehearsals, but the second, if correct, has more far-reaching results, and I shall examine it first. However, there are some basic principles of copyright law which it is convenient for me to spell out at this stage. They are not in themselves controversial, but they need to be stated for the thread of the judgment to be followed as I progress through it.

31.
The law of copyright is governed by the CDPA 1988. Section 1 provides that copyright is a property right which subsists in (so far as relevant) original literary or dramatic works. Section 10 provides that, as a general rule, the author of a work is the first owner of the copyright in it. By section 9(1) the author of a work is the person who creates it. To a considerable extent the question whether a person is or is not the author of a work within that section is one of fact, assisted of course by the wealth of

case law which has considered the matter. However, there are some further provisions which can bear on the matter, including s.104(2):

Where a name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, the person whose name appeared shall be presumed, until the contrary is proved –

(a) to be the author of the work …

On the typescript of the 1996 version of Stones In His Pockets Miss Jones is named as the sole author of the play. That is also how the play was billed in publicity material and in programmes. Therefore, given the terms of s.104(2), it follows that the burden of establishing that Miss Jones was not the sole author of 1996 version of the play, but rather that she and Miss Brighton were joint authors, rests on Miss Brighton.

32.
An important point to appreciate about copyright is that there can be several different copyrights underlying a single work, and often anyone who wishes to exploit the last copyright to be created needs to own or to have authority (commonly called a licence) to use, not just the last copyright, but all of the earlier ones as well. Suppose that A writes a short story, that B then writes a play dramatising the story, and that C then writes a film script derived from the script for the play. The story is a literary work. Copyright subsists in it, and A owns the copyright. (For this purpose and in the rest of this paragraph I ignore the possibility of A, B or C being an employee or having made an assignment to someone else.) B's play is a dramatic work, and copyright subsists in it. B owns the copyright. For B to write the play without infringing A's copyright in the story he needed to have a licence from A. C's film script is another dramatic work, and there is an independent copyright in it. In order for C not to infringe copyright in writing the film script he needs a licence from B to use B's copyright in the play, but the important point is that he also needs a licence from A to use A's copyright in the story. The film script is copied directly from the play, but it is also copied indirectly from the story. In Robin Ray v Classic FM Plc [1998] FSR 622 at 638, Lightman J rejected an argument that, when an earlier work is used as the basis of a later work, the copyright in the earlier work is in some way 'subsumed' into the copyright in the later work. I will explain the significance of the foregoing in this case later, when I examine the arguments based upon Miss Brighton's draft opening script. I will merely say here that the equivalents of the story, the play, and the film script are Miss Brighton's draft opening script, the 1996 script, and the 1999 script.

33.
There is another point which is implicit in the example which I have given. Although there is no copyright in an idea, and although the protection which copyright gives is protection from having one's work 'copied', it is perfectly possible for a work to be copied for the purposes of copyright law even if not a single sentence from the original work survives. In my example B took A's story and wrote a play based upon it. If B did not have a licence from A to use A's copyright, he would almost certainly have been in breach of copyright, and it would not assist him to say that the actual words which he put in the actors' mouths in his play were his words, not words lifted verbatim from A's story. This concept, sometimes referred to as 'altered copying', is clearly established by authority. See for example observations of Lords Hoffman and Scott in Designers Guild Ltd v Russell Williams (Textiles) Ltd [2000] 1 WLR 2416 at 2422H and 2431D; Ravenscroft v Herbert [1980] RPC 193; Harman Pictures NV v Osborne [1967] 1 WLR 723.

Miss Brighton's joint authorship claim: the law

34.

Section 10(1) of CDPA 1988 contains a definition of ‘work of joint authorship’ . The term means ‘a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors’ . On behalf of Miss Brighton Mr Garnett says that, by reason of the way in which the rehearsals proceeded, that definition applied to the work which consisted of the 1996 script of Stones In His Pockets. Therefore, so the argument runs, instead of Miss Jones being the sole author of the 1996 version of the play, and in displacement of the presumption in s.104(2) of the Act, Miss Jones and Miss Brighton were joint authors. The Act itself does not expand upon the concept of joint authorship, but there have been a number of cases which have examined it. In my opinion three propositions can be extracted from the cases which may be relevant to this case.

i)

If someone claims to be a joint author, although the contribution which he needs to have made to the creation of the work does not have to be equal in magnitude to the contribution of the other joint author or authors, it still needs to be significant. In the Robin Ray case (supra at p.636) Lightman J said that he had to be someone ‘who (as an author) provides a significant creative input’ . In Godfrey v Lees [1995] EMLR 307 at 325 Blackburne J said: ‘What the claimant to joint authorship of a work must establish is that he has made a significant and original contribution to the creation of the work … . It is not necessary that his contribution to the work is equal in terms of either quantity, quality or originality to that of his collaborators’. In Hadley v Kemp [1999] EMLR 589 at 643 I noted that, where a person is a joint author, the effect was that he had an equal share in the copyright, and I added: ‘It would be surprising if a slight contribution was enough to make a person a joint author and thereby make him an equal owner with another or others who had contributed far more than he had’ . I should, however, add that in the recent case of Bamgboye v Reed [2002] EWHC 2922 (QB), [2004] EMLR 5, the claimant was held to have been a joint author by reason of his contributions, but with a one-third share, not a half share: see paragraph 77 of the judgment of Hazel Williamson QC.

ii)

The contribution which a person claiming to be a joint author makes must be a contribution towards the creation of the work. A contribution, even a significant one, of a different kind will not cause him or her to be a joint author. Fylde Microsystems Ltd v Key Radio Systems Ltd [1998] FSR 449 concerned the ownership of the copyright in software which, on the face of it, had been written by Fylde Microsystems (acting by its employees). Key Radio Systems argued unsuccessfully that it was a joint author because of contributions which its employees had made. They had put much skill, time and effort into testing the software and ensuring that it would achieve the performance which was intended. Laddie J accepted that their contributions were extensive and technically sophisticated, and that they had required considerable time and effort; but he held that they were not contributions to the ‘authoring’ of the software. The skill was like a proof reader’s skill, not authorship skill. Key Radio Systems had not contributed ‘the right kind of skill and labour’ . Hadley v Kemp (supra) is another example of the same point, this time in the context of a pop group. One member of the group devised the songs (the musical works), and the group as a whole performed them with much skill and flair. I held that the other members of the group were not joint authors. I said (at p.643): ‘… contributions by the plaintiffs, however significant and skilful, to the performance of the musical works are not the right kind of contributions to give them shares in the copyrights. The contributions need to be to the creation of the musical works, not to the performance or interpretation of them’ . The case can interestingly be compared with Stuart v Barrett [1994] EMLR 449, in which the songs of another

group emerged from a process of ‘collective jamming’, and all the members were found to be joint authors.

iii)
However, a person can become a joint author even if he has not himself put pen to paper, but someone else has done that, effectively writing what the first person had created. Cala Homes (South) Ltd v Alfred McAlpine Homes East Ltd [1995] FSR 818 was about the copyright in drawings for aspects of house designs. The physical drawings had been prepared by staff of a business called Crawley Hodgson. However, the Crawley Hodgson staff had been very closely instructed, verbally and sometimes by means of sketches, by the design director of Cala Homes. Laddie J held that, on the facts, Cala Homes was a joint author. In the Robin Ray case (supra, at p.636) Lightman J ascribed a fairly narrow ambit to this concept: ‘But in my judgment what is required is something which approximates to penmanship. What is essential is a direct responsibility for what actually appears on the paper. … As it appears to me the architects in that case [Cala Homes] were in large part acting as ‘scribes’ for the director. In practice such a situation is likely to be exceptional.’

Miss Brighton’s joint authorship claim: the facts

35.
The facts which are relevant to the joint authorship claim are those which bear on the rehearsals in Dublin in July 1996. Evidence about the rehearsals was given on Miss Brighton’s behalf by herself and Mr Murphy (one of the two actors), and on behalf of Miss Jones by herself, Mr Hill (the other actor) and Mr Cranney. I have not yet mentioned Mr Cranney (except in the dramatis personae at the beginning of this judgment). He was the stage manager for the 1996 production of Stones In His Pockets, and as such he was present at almost all times in the rehearsals. Miss Brighton, Mr Murphy and Mr Hill were also there at all times. Miss Jones was appearing in a play in Dublin at the time. She went to the rehearsal room towards the end of the afternoon on most days, but in general she was not there for most of the hours while the rehearsals were in progress. It was in any event her usual practice when rehearsals of a new play written by her were in progress to go there regularly but not to be there all of the time. There was also some evidence from Mr Patrick McLaughlin, who was the production manager for the 1996 play. However, he was hardly present at all during the rehearsals (being away from Dublin for nearly all of the time), and I do not think that his evidence is relevant.

36.
There were some differences between the accounts which the witnesses gave, but I do not think that the differences were very deep. I accept without hesitation that all of the witnesses described matters as they now recall them to have been. I will summarise the evidence in the following paragraphs, and then I will set out my findings of fact.

37.
A general point is that Miss Brighton and Miss Jones had worked together on rehearsals often in the past. There had always been a lot of discussion and interchange of opinions during the rehearsals of a new play, both between the two of them and with the actors. They regarded those processes as important and valuable. Miss Jones fully expected that, as rehearsals progressed, she would make changes to her original script, and that frequently these would flow from something raised by the director (whether Miss Brighton or another director) or by the actors. Thus on all plays if there was something in the original script written by Miss Jones which the director was not happy with, the director would say so, Miss Jones would listen, and she was entirely willing to consider making changes.

38.
Turning more specifically to the rehearsals of Stones In His Pockets, there is something of an issue of how complete the script provided by Miss Jones was when the rehearsals first began. Miss Brighton believes now that the first act had been written, but that the second act had hardly been started, if at all. However, my view is that the first act had been written, and, although the second act had not been completed, most of it had already been written. There were still a few concluding episodes or scenes in the second act to be written, but I do not think that they were going to take Miss Jones very long, or that they did take her very long. She was staying in a rented house with her husband, Mr McElhinney, and their two young children, and she was acting in a play which was being presented at a Dublin theatre. Mr McElhinney commented that the circumstances were not at all suitable for her to be writing a lot of script for Stones In His Pockets, and he had no recollection of her doing so.

39.
I specifically find that, when any day's rehearsal began, the actors and the director already had the script for the part of the play concerned. I do not think that there were any occasions when Miss Jones had not got the script prepared so that the actors, guided by Miss Brighton, had to begin by improvising dialogue which Miss Jones had not yet managed to write.

40.
I do think that on occasions some improvisation occurred in the course of the rehearsals, but in my view it arose in either or both of two different ways. Sometimes if the actors and Miss Brighton felt that a passage of Miss Jones' original script was not working well, they would try something else. Miss Jones was unlikely to be there at that precise time to provide different dialogue for them, so they would devise something themselves. Alternatively or additionally there were occasions when it appeared to them – perhaps to Miss Brighton more than to either actor in this respect – that the action in Miss Jones' script had moved a little uncomfortably from one episode to another, and that it would be useful to have another episode inserted between the two. If that happened they would discuss the sort of episode to insert, and then try it out in rehearsal, using dialogue which they devised themselves on the spot. It is hard to say whether such dialogue was devised by Miss Brighton or by the actors or by a joint discussion of the three of them. I think that the last of those possibilities is the more likely.

41.
When towards the end of each day Miss Jones came into the rehearsal room, there was a discussion of what had happened earlier in the day, and I do not doubt that it quite often led to changes being made to the part of the script to which that day's rehearsals had related. If Miss Brighton and the actors had worked out some possible changes to Miss Jones' dialogue, or if they had devised an additional episode to be inserted at some point, they used to demonstrate it to her. Her evidence was that, if she was content with the change, she would accept the principle of it. If she was not content with it, she would not accept it.

42.
When she did agree that a change should be made she did not simply accept the particular dialogue which Miss Brighton and the actors had improvised earlier in the day. She chose the words herself. The script was saved on her laptop, which was in the rehearsal room. Mr Cranney recalled that, when Miss Jones rewrote a piece of dialogue or wrote some new dialogue, she devised the words and he usually typed them into the laptop there and then. No-one could specifically recall a particular instance of Miss Jones taking the laptop away with her and doing some work on it at the flat where she was living with her family, but I think it possible that that did happen on a few occasions. More

generally, although everyone agrees that changes were made to the script as a result of experience in the rehearsals, no-one can bring to mind at this distance in time (eight years after the event) specific details of any of the changes. There are differences of emphasis in the evidence about the extent and significance of such changes as were made, and about the nature of Miss Brighton's contributions in the rehearsals. I will try to summarise some aspects of the evidence on those issues.

43.
However, before I do that, there is one matter about which I have a definite view, which I state now. Miss Brighton was not entitled to give instructions to Miss Jones about what Miss Jones should write, and either she did not do so, or, if she attempted to do so, Miss Jones made up her own mind about what she was prepared and what she was not prepared to write by way of changes to her original script. Under the contract which she had with Dubbeljoint she had the ultimate say about the contents of her script, and I am satisfied that she did not allow her contractual position to be overborne by Miss Brighton, powerful though Miss Brighton's personality was. Mr Hill was very clear on these aspects. In evidence he said that questions put to him in cross-examination made Miss Jones sound like a stenographer, but that in fact she would say in relation to the changes whether she liked them or not. He agreed that, if she accepted a change that was proposed to her, she would incorporate it into the script, adding : 'In her own way, yes' .

44.
Something else which is also clear from the evidence, particularly of Mr Hill and Miss Jones, is that by no means all of the changes which Miss Brighton wanted to make were agreed to. For example, it seems that Miss Brighton had a (possibly subconscious) inclination to enlarge the prominence in the play of Mr Murphy and correspondingly to diminish that of Mr Hill. Another example was that Miss Brighton had strong political opinions, and on several occasions wished to inject political elements into the script which were not originally there. Changes of those kinds were resisted by Mr Hill in the course of the rehearsals, and (I believe) were not adopted by Miss Jones. Mr Hill referred to 'fights' over such matters: 'No. You asked me before was it changed a lot and I said it was changed sometimes and it was attempted to be changed other times. The reason why there were fights in rehearsals was because I thought it should not be changed; I thought it should stay the way it was.' He said that changes which were resisted were not necessarily to do with political aspects: 'It could have been artistic. It did not have to be political. There are many reasons for conflict while you are working.' Miss Jones observed in cross-examination that she and Miss Brighton had a debate about politics at the time, 'which I was not happy with' .

45.
I turn more specifically to the evidence about the extent and significance of the changes which were made to the script as the rehearsals progressed. In Mr Cranney's witness statement he said that he had read paragraph 9.1 of the Defence, and agreed with it. I think that the sentences in paragraph 9.1 which he had in mind were the following, particularly the second one: 'In particular, and in accordance with her role as director of the 1996 play, Miss Brighton made suggestions as to editorial changes (consisting primarily of the removal of certain material from the 1996 script) some of which Miss Jones accepted. Taken individually or together these amendments to the 1996 script were insubstantial and the decision to, and responsibility for, incorporating any such amendments remained at all times with Miss Jones as author.' Mr Cranney added in his witness statement: 'The changes made to the script were mainly editorial ones involving cutting, pasting and repositioning scenes' . It is fair to say that in cross-examination Mr Cranney accepted that his memory of these matters was not at all vivid, but he did not retract what he had written.

46.
Miss Brighton said in cross-examination that she did not agree with Mr Cranney's statement. In her view it absolutely underestimated the work that was done in rehearsals. 'It was not a question of shifting, pasting, whatever; it was a question of creation.' However, Mr Murphy said that an important paragraph in Mr Cranney's witness statement looked correct to him. The paragraph described how changes were made by Mr Cranney typing Miss Jones' changes into the laptop. It concluded by characterising the changes as shifting, cutting and pasting, and saying that as a matter of overall impression the dialogue did not change very much. Mr Hill said in cross-examination that improvised scenes did not happen that much in his recollection.

47.
Miss Jones, not surprisingly, was adamant both in her witness statement and in cross-examination that the changes which were made to the script in rehearsal were not major changes. Most of the changes were, in her view, 'editorial in nature such as taking out superfluous material or moving lines around' . She agreed with what Mr Cranney had said on these matters in his witness statement, and in particular that the dialogue changed very little. She was asked whether she agreed that on occasions she was asked to write up into the script something which emerged from improvisations which had occurred in rehearsals earlier in the day. She answered as follows: 'My memory is that it was never anything major, but there were perhaps some lines I had to put in, a scene that needed to be elaborated on through their discussion. I was not there all the time and I do not think anybody wanted me to be there all the time, but it was my job to go there and change as I felt I wanted to or did not want to. It was for me to say yes or no, and so if I said yes, then that is part of my job; if I said no, that is what I do.'

48.
I move on to identify some parts of the evidence which bear particularly on the nature of Miss Brighton's input into the rehearsals. Everybody agreed that she was a strong personality and an experienced theatrical director. There were some differences of emphasis about whether the extent and nature of what she did in the rehearsals of Stones In His Pockets was or was not significantly different from what she had done in the past in rehearsals of other plays written by Miss Jones. Miss Brighton is convinced that she made a contribution to Stones In His Pockets which was much greater than, and different in kind from, the contribution which she had made in the case of any earlier play: 'I went way beyond the normal role of a director' .

49.
Mr Murphy, though a great admirer of Miss Brighton as a director, was, I think more cautious over the nature of her contribution. He said on more than one occasion that her contribution to Stones In His Pockets had been 'huge', but I do not interpret him as saying that her contribution was in the nature of a writer's contribution as well as in the nature of an excellent director's contribution. He was asked about the improvisations of episodes which happened on occasions in rehearsals, and said this: 'Myself and Conleth would work on the characters, their accents, the way that they moved, the way that they would say things. Whether we came up with a new script through the improvisations or not, I do not remember.'

50.
Later, in re-examination, Mr Murphy enlarged on what happened at rehearsals: 'Marie obviously had written [the] part of the script that we were rehearsing and we would try different things out, being directed by Pam, and if things did not work, we would try to work around it, or if they did not work to Pam's satisfaction, because she was the director of the play … Pam would actually get us to improvise

with our different characters … . … She would basically try different things out with the script. If Marie's script was not working to Pam's satisfaction, she would give us leeway to put other words in there, whatever, and move it along like that, basically. … When Marie would come in … Pam would let her see what we had done during the day with the script we had worked on, and she would suggest to Marie what she needed, as the director, to make this play work. … we would perform it in front of her. … Then Pam would suggest to Marie dialogue that she needed to move the play along … and she would also discuss with Marie what scenes she needed to make this work for her as the director.' [Early in the foregoing quoted extracts I have inserted the word 'the' in square brackets. The word does not appear in the transcript, but I believe that it was said, and that the sense of the entire sequence of questions and answers is only consistent with it having been there.]

51.
Moving from the evidence of Miss Brighton herself and of Mr Murphy, the other witnesses, while in no way belittling the importance of Miss Brighton's contribution in rehearsals, were on the whole not inclined to see it as having been different in kind from what she had done in rehearsals of earlier plays. Mr Hill wrote in his witness statement: 'As far as I could see there was nothing in the rehearsals for Stones which was different to the way Pam and Marie had worked previously as director and writer. As far as I was concerned Pam did nothing out of the ordinary or any more than would be expected of a director in preparing a new play for the stage.' In cross-examination he said, with reference to changes made to the script during the course of rehearsals: 'of all the plays that I did with Pam directing and Marie writing, there was always that kind of relationship of work' . Mr Cranney wrote in his witness statement: 'I do not intend to trivialise Pam's contribution as the director. Pam was a very good editor … . There was, however, nothing out of the ordinary in Pam's contribution during rehearsals for Stones, or anything which was more than one would ordinarily expect from the director.' He repeated his opinions in that respect in cross-examination.

52.
Miss Jones wrote in her witness statement that, as to the rehearsal period of Stones In His Pockets, there was nothing different or distinct from any other play which she had written. In relation to the extent of Miss Brighton's contributions, Stones In His Pockets was in her view not 'on a quite different scale from other plays she had done with Dubbeljoint'. It was suggested to her that there was a very substantial amount of working out and rewriting of the play in the course of rehearsals. Her answer was: 'I do not remember it as being out of the ordinary or that different from any other play, I really do not' .

Miss Brighton's joint authorship claim: discussion and conclusions

53.
Miss Brighton advances her claim to have been a joint author of the copyright in the 1996 script of the play in reliance on the contributions which, in her belief, she made in the rehearsals. I hope that I have extracted in the foregoing paragraphs the essential points from the evidence about the rehearsals, and that I have fairly reflected the difference in emphasis between her and (to a degree) Mr Murphy on the one hand and Miss Jones, Mr Hill and Mr Cranney on the other. On the basis of the evidence Mr Garnett submits that Stones In His Pockets was different from all the other plays of which the writer was Miss Jones and the first director was Miss Brighton. Although in rehearsals of other new plays the script was much discussed and changes were made to it, and although Miss Brighton made substantial contributions to the discussions, nevertheless her contributions were not sufficient to make her a joint author. But in the case of Stones In His Pockets her contribution was more extensive than on other occasions. Further, what she did went beyond that which would be

expected of a director, and amounted to a significant and original contribution to the creation of the final play (the dramatic work).

54.
I am unable to agree with those submissions. I do not think that they are correct on the facts, and, even if they were, there are legal objections, stemming from the contract which Miss Jones had with Dubbeljoint, which would in my opinion prevent Miss Brighton from asserting a claim to be a joint owner of the copyright. I will first set out my conclusions on the facts.

55.
It must be remembered that, by virtue of s.104(2), the burden of proof rests on Miss Brighton. The person described on the script of the play as the author was Miss Jones alone. She was also billed as the sole author in publicity material and in programmes. It never occurred to Miss Brighton to say that she ought to be regarded as a joint author until she commenced this case. None of that is conclusive against her, but it does at the least raise a substantial evidential hurdle for her to overcome.

56.
I agree that, on all versions of what happened in the rehearsals, changes were made to Miss Jones' original script, and that the changes resulted from the experience of the rehearsals and the discussions in the rehearsals. I agree that Miss Brighton was involved in the rehearsals throughout, and I would accept (though the point was not specifically covered) that she probably knew about all the changes before they were made and had played a part in what had led to each of them. However, there are still several reasons why, in my opinion, she was not a joint author.

i)
In terms of the dialogue of the final play, I believe that 100% of the words spoken (or as near to 100% as makes no difference) were actually composed by Miss Jones. Miss Brighton no doubt identified passages and places where some rewriting was desirable, but it was Miss Jones who (if she agreed that there should be some rewriting at those points) actually chose the words which the actors were to use. There is a sentence in Miss Brighton's witness statement which reads: 'In respect of each Act, I was heavily responsible for the actual form of expression of the dialogue on paper.' That appears to be saying that Miss Brighton was responsible not just for determining where some rewriting was to take place, but also for determining what the precise new words were to be. All of the other evidence is contrary to that, and I do not accept it.

ii)
The point made in (i) above concerns the actual words used, and it is not in itself decisive. Copyright can subsist in a story or a plot, so that if what happened in rehearsals was that Miss Brighton determined what the plot of the play was to be (or Miss Brighton and Miss Jones determined in collaboration what it was to be), and then Miss Jones actually wrote the words to give effect to the plot, I can see that Miss Brighton might have been a joint author. But in my opinion that was not how it was. I believe that the script which Miss Jones provided in advance of the rehearsals, plus the fairly small part which she had not written before the rehearsals began but did write before the rehearsals got round to that part, contained a complete plot for the play. It was a dramatic work, and at that stage the copyright in it was solely owned by Miss Jones. (That conclusion is not changed by the use which Miss Jones made of Miss Brighton's draft opening script, as I will explain later.) I am sure that there were some changes to the plot before the final form of the 1996 script was reached, and I accept that Miss Brighton made her own input into what those changes were; but I do not believe that

the changes were nearly significant enough to mean that a different dramatic work, of which Miss Brighton and Miss Jones were joint authors, had been created.

iii)
Just focusing on the changes, Miss Brighton had played a part in what led up to them, but in my view, on the general thrust of the evidence and bearing in mind the burden of proof, she has not established that the contributions which she made were contributions to the creation of the dramatic work rather than contributions to the interpretation and theatrical presentation of the dramatic work. In the expression used in the Fylde Microsystems case (see paragraph 34(ii) above), they were not 'the right sort of contributions'.

iv)
It cannot be said that, whenever Miss Brighton wanted a change to be made to the script, Miss Jones simply and unquestioningly made it. I accept that she expected to have suggestions for changes made to her, that she was fully prepared to consider them, that she probably expected that she would agree to many of them, and that she did agree to many of them. But it is clear from the evidence which I summarised earlier that she would not make changes to the script if she did not agree to them. The decision whether to make a change or not was hers, and that was not just a theoretical position: it was also the reality of what actually happened.

v)
It is in any case unrealistic to distinguish, so far as the present issue is concerned, between what Miss Brighton did in the rehearsals and what the two actors did. The actors do not claim to have become joint authors simply by doing well one of the things which led to them being engaged: working on the rehearsals of a newly commissioned play which had not yet been performed, and by doing so assisting in making the script better than it had been before the rehearsals. It seems to me that Miss Brighton is in essentially the same position. Miss Jones presented her with a play upon which, during the rehearsals, she was expected to exercise her director's skills, together with Mr Murphy and Mr Hill exercising their actors' skills, in order to get it ready to be performed before live audiences. The actors did not become joint authors by reason of what they did, and I do not think that Miss Brighton became a joint author by reason of what she did either.

57.
I said in paragraph 54 above that, as well as the facts not supporting Miss Brighton's case that she became a joint author by reason of the rehearsals, there were in any event legal problems in the way of her argument, stemming from the contract which Miss Jones had with Dubbeljoint. I now develop that point. Clause 6 of the contract addressed the possibility of changes being made, otherwise than by Miss Jones but with her consent, to the script of the play, and provided that they were to be part of the play, the entire copyright in which belonged to Miss Jones. The specific sentence in clause 6 is as follows:

Any changes of any kind whatsoever in the text, stage business, or title of the Play made by anyone and approved by the Writer shall be deemed to be part of the Play and shall accrue to the copyright of the Play and become the sole property of the Writer.

It is clear from that clause that, if this was a case between Miss Jones and Dubbeljoint in which Dubbeljoint was claiming to be a joint owner of the copyright by reason of what happened in the rehearsals, Dubbeljoint could not succeed. It had agreed in advance, in a binding contract, that, even if there were changes made to the script, Miss Jones was to be the sole owner of the copyright.

58.
Mr Garnett contends that clause 6 operated between Miss Jones and Dubbeljoint, not between Miss Jones and Miss Brighton. Miss Brighton was not a party to the contract, and she did not even know that a contract existed. The next step in Mr Garnett's argument is that in the circumstances Miss Brighton is not bound, or affected in any way, by the contract between Miss Jones and Dubbeljoint. This particular issue is not easy, but I do not agree with Mr Garnett. It was only on behalf of Dubbeljoint that Miss Brighton was involved in the rehearsals at all. Although she did not have a written contract to provide her director's services to Dubbeljoint for Stones In His Pockets, there was certainly an oral contract, or a contract by course of conduct, for her to do that. Miss Brighton had no standing to be present at the rehearsals and to participate in them except as the contracted director of Dubbeljoint. Everything which she did at the rehearsals she did on behalf of Dubbeljoint. That was true as a matter of contract, and it was also true in Miss Brighton's mental attitude at the time. At one point in her oral evidence she said: 'My absolute concern at that time was Dubbeljoint' . The point is a short one: it seems to me that, if Miss Brighton was only at the rehearsals on behalf of Dubbeljoint, and if everything which she did there was done on behalf of Dubbeljoint and not on behalf of herself in some distinct personal capacity, she cannot be in any better position than Dubbeljoint would have been in to claim an interest in the copyright by reason of what she did. Dubbeljoint could not have claimed an interest in the copyright, and therefore Miss Brighton cannot claim one either. In my view it makes no difference whether or not she knew of the contractual position as between Dubbeljoint and Miss Jones.

59.
For the foregoing reasons my decision on Miss Brighton's joint authorship claim is that it fails.

Miss Brighton's draft opening script claim: the facts in more detail

60.
In paragraph 21 above I have described how Miss Brighton, in an attempt to 'kick-start' the writing of the play by Miss Jones, sent to her three manuscript documents. The important one for present purposes was the draft opening script. It consisted of eleven and a half pages, and it was in the form of a draft script for the opening scenes of the play. The evidence of what Miss Jones did with it only really came out in cross-examination, and in part in answers to a few questions which I asked at the end of Miss Jones' evidence.

61.
Miss Jones may not have needed to be kick-started into writing the 1996 script, but she did read the draft opening script and the other two documents. Naturally so: they had after all come from the prospective director of the play, who was also the artistic director of Dubbeljoint and her own colleague whom, at the time, she held in high regard and with whom she had worked closely for several years. Apart from anything else she would not want to risk causing offence by ignoring what Miss Brighton had taken the trouble to write and to send. She did use the draft opening script to some extent on the opening scenes of the play when she began to write them. The way in which she used the draft opening script did not include verbal copying of the specific dialogue which Miss Brighton had written. Miss Jones commented that Miss Brighton was not a writer; further, originating as Miss Brighton did in England, she was not attuned as Miss Jones was to the nuances of conversation among persons from Ireland. However, Miss Jones did have Miss Brighton's draft opening script on the desk beside her when she began to type her own script for the earliest scenes in the play. She believes that she had it beside her for only one day, after which she discarded the draft. (The copy which featured in the trial was, I believe, Miss Brighton's original which she found in a file at Dubbeljoint's offices.

She would have retained the original in 1996 because what she sent to Miss Jones was a fax.) In oral evidence she said: ‘I took from it what I thought I could use, and the rest I did not use.’

62.
Even if Miss Jones did only have Miss Brighton’s draft opening script on the desk beside her for one day, I believe that that was long enough for her to use it towards writing the opening scenes of the play to a sufficient extent for her to have copied it in one of the senses of copyright law: not in the sense of ‘language copying’, but in the sense of ‘altered copying’: taking a plot and rewriting it in her own words. (See paragraph 33 above.)

63.
I think that Miss Jones came into the trial believing that she had not made any significant use of the draft opening script. However, I do not think that that belief can survive the matters which Mr Garnett pointed out to her in cross-examination, and which, when they were pointed out, she fairly accepted and did not attempt to dispute. Originally she may have been influenced because the incidents covered by the draft opening script were only a small part of the final complete play. Indeed they were, but the question is not whether the plot in the draft opening script formed a large part of the complete play: the question is whether a large part of the plot in the draft opening script formed part, large or small, of the complete play.

64.
The answer to that question is, in my view: yes. The draft opening script starts with Charlie (the extra from Northern Ireland) standing at the counter of the catering truck, telling a false story in an attempt to talk himself into a second helping of lemon meringue pie. The play starts in the same way. The draft opening script ends in the pub that evening when the female American film star comes in and starts talking to Jake (the extra from the locality) with a view to polishing up her Irish accent. The same thing happens in the final script of the play. There are various other incidents in between, and several other characters are introduced. The details vary between the draft opening script and the final script, but it is broadly true that the incidents which occur in the final script can also be found in the draft opening script (not necessarily in exactly the same order, but substantially so), that the characters introduced in the final script were also introduced in the draft opening script, and (more relevantly since many of the characters had already been thought of during the earlier discussions in Enniskillen) that the theatrical techniques by which they were introduced are broadly the same in both documents.

65.
In cross-examination Mr Garnett drew Miss Jones’ attention to 17 elements of the final script, some of more importance than others, and suggested to her that she had taken them (the incidents, not the precise dialogue) from Miss Brighton’s draft opening script. In almost all cases Miss Jones agreed that that was so. I suspect that the overall effect was something of a surprise to her. For example, in response to the question on one particular item ‘You took that?’ , she answered ‘It appears I have, yes’ . When Mr Garnett pointed out the large number of similarities between the draft opening script and the early stages of the plot which, through her own dialogue rather than Miss Brighton’s, she built into the complete script, she fairly and unequivocally accepted that she had taken large parts of the draft opening script and used them in the final script.

66.
In the circumstances I conclude that the draft opening script was used by Miss Jones to a sufficient extent for there to have been a species of copying within the sense of copyright law. The next question

is: does that matter? For the reasons which I will explain in the following paragraphs it did not matter in 1996; it might have mattered in 1999 but in my view did not; but it probably does matter now and for the future.

67.
Before I elaborate I refer back to the example which I gave in paragraph 32 above of A who wrote a short story, B who wrote a play derived from the story, and C who wrote a film script derived from the play. In that example there were three works, and three distinct copyrights. The same is in principle true on the actual facts of the case. The equivalent of the short story is the draft opening script. The equivalent of the play is the 1996 script of Stones In His Pockets. The equivalent of the film script is the rewritten 1999 script of the play. A difference between the example and the actual case is that in the example I have assumed three different authors, A, B and C, in the actual case there are two authors, Miss Brighton who is the author of the draft opening script, and Miss Jones who is the author of both the 1996 script and the 1999 script.

68.
I now analyse the legal consequences of the actual events. My first proposition is that the draft opening script was itself a dramatic work. In Mr Sutcliffe's opening skeleton he submitted that it was not because it was not a complete dramatic work, but only the opening part of what was intended to be a larger dramatic work. However, in my judgment that did not prevent the draft opening script from being itself a dramatic work, and if I understood Mr Sutcliffe correctly he substantially conceded the point as the trial progressed. It follows that copyright subsisted in the draft opening script, and that the owner of it was its author, Miss Brighton. She was the equivalent of A in my example (the author of the short story).

69.
The next question is: what effect did that have on the 1996 script of the whole of the play? The answer is: at that stage, none. The 1996 script was an independent dramatic work. Copyright subsisted in it independently of the copyright which subsisted in the draft opening script. The copyright in the 1996 script was owned by its author, and (as long as I am right in not having accepted Miss Brighton's joint authorship argument, based on the rehearsals) the author was Miss Jones alone. Mr Garnett confirmed in his oral submissions that it is not argued that Miss Brighton's draft opening script caused her to be a joint author of the 1996 script. So Miss Jones was the equivalent of B in my example. The other point to make about the 1996 script is that, although the writing of it involved a degree of copying from the draft opening script, that did not involve any breach of Miss Brighton's copyright in the draft opening script. Plainly Miss Jones had the implied permission of Miss Brighton to use the draft opening script in any way she wanted in order to produce the 1996 script of the entire play.

70.
I move on now to the 1999 script, and it is at this stage that the controversial issues start to arise. The 1999 script was not the same as the 1996 script. Therefore it was an independent dramatic work in which copyright subsisted. It is in that respect comparable to the film script in my example. There is no dispute that Miss Jones was the author of the 1999 script, that she owned the copyright in it, and that she still owns the copyright in it. The disputes arise over whether, in writing it, she committed any breaches of copyright in existing dramatic works. She did not commit a breach of the copyright in the 1996 script, since she was already the sole owner of that copyright, and she could not breach her own copyright. The critical issue concerns whether she committed a breach of the copyright in the draft opening script.

71.
As I have explained above, Miss Brighton owned the copyright in the draft opening script. Further, if, as I have found was the case, the 1996 script involved a degree of copying of the draft opening script, then so also did the 1999 script involve a degree of copying of the draft opening script. In discussing in paragraph 32 above my example of the story, the play and the film script I made the point that, although the film script was directly taken from the play, it also involved indirect copying of the story. I said that C, the assumed author of the film script, needed to have, not just a licence from B, the assumed author of the play, but also a licence from A, the assumed author of the story. If he did not have a licence from A the writing by C of the film script would involve a breach of A's copyright in the story, and A could seek remedies against C from the court. In this case Mr Garnett submits that Miss Jones did not have a licence from Miss Brighton to make use of the draft opening script in writing the 1999 script, and that in consequence she was in breach of Miss Brighton's copyright in the draft opening script.

72.
I do not agree with Mr Garnett's submission upon this important part of the case. My reason is that I do not accept that, when Miss Jones wrote the 1999 script, she did not have a licence from Miss Brighton to make use of the draft opening script. It is true that she did not have an express written licence of the sort which might have been produced by a firm of solicitors who specialise in intellectual property matters. But she did not have a licence of that sort for the 1996 script either. The licence which she had to use the draft opening script in the creation of the 1996 script was an implied licence: Miss Brighton sent the draft opening script to her with an implied permission to use it in creating the play. There is no doubt about that, and the critical question is whether the implied licence which permitted Miss Jones to make use of the draft opening script was still in existence when she wrote the 1999 script, and remained in existence thereafter at times when she entered into contracts with theatres, publishers and the like by way of exploitation of the 1999 script. Mr Garnett submits that the implied licence was not in existence at those times, but in my judgment it was.

73.
Mr Garnett's case was that one of the implied terms of the implied licence was that it was restricted to being used for the purposes of creating the play which was to be produced by Dubbeljoint in 1996, and that, if Miss Jones wished to make any further direct or indirect use of the copyright in the draft opening script, she would need a further licence from Miss Brighton before she could do so. In my judgment, however, that was not the true position. The implied licence was a gratuitous licence in the sense that it was given without consideration. Therefore it was revocable by Miss Brighton on reasonable notice. However, unless and until it was revoked it continued in force. I am prepared to accept that the letter before action written by Miss Brighton's then solicitors on 7 November 2001 operated as a revocation, but until then the implied licence still existed. I do not accept Mr Garnett's submission that the licence was impliedly restricted to the use which Miss Jones made of it in 1996, and, even if not revoked, could not be used again thereafter.

74.
Mr Garnett supports his argument by analogy with cases where a licence is granted by contract, but the extent of it is not expressly covered in the contract. For example, in Robin Ray v Classic FM [1998] FSR 622 (to which I have referred earlier on other aspects of the decision) the radio station had commissioned Mr Ray, in return for a fee, to produce a catalogue of pieces of music suitable for the programmes which it intended to present. The copyright in the catalogue remained with Mr Ray, but the contract was silent on what use the radio station could make of it. Everyone agreed that the

radio station had an implied licence to use the catalogue for the purposes of its own programmes and for the purpose of producing a database. There was a dispute, however, over whether, if it wished to exploit the database through contracts with foreign radio stations, it could do that without infringing Mr Ray's copyright in the catalogue. One issue was whether the implied licence which Classic FM had was limited to use for purposes of its own broadcasts. Lightman J held that it was, on the basis that the licence should be limited to what was necessary in the circumstances.

75.
In my judgment this case is different. The deal between Mr Ray and Classic FM was a commercial contract under which the radio station commissioned the work from Mr Ray. In essence it was arguing for an implied term in the contract where it had not inserted an express term. However, if it had wanted to be able to use Mr Ray's copyright work for purposes other than that for which it was specifically commissioned it ought to have ensured that an express term was included in the contract. A judge could not know whether Mr Ray would have agreed to such a term at all, or whether he might have agreed but only in return for an increase in his fee or a percentage of any future receipts of Classic FM from exploitation of the work. I respectfully agree with Lightman J that Classic FM could not circumvent the effects of the omission of such a clause by arguing for an implied term in the contract. In this case there was no contract. Miss Jones had not commissioned or requested the draft opening script from Miss Brighton. On the contrary, the draft opening script was wholly unsolicited. Miss Jones did not ask for it, and she says that she did not need it. The normal practice in the theatrical industry is that, if a playwright writes a new play, she owns the copyright, and, once the effects of an initial contract commissioning the play have been worked through, she is free to exploit her property as she is best able and inclined to do.

76.
In those circumstances, if Miss Brighton wished to provide the draft opening script to Miss Jones subject to the restriction that, although Miss Jones could use it for the purposes of Dubbeljoint's presentation of Stones In His Pockets, she could not use it for any other purpose without going back to Miss Brighton and getting special permission, she needed to say so at the time. She did not say so. For example, there was no covering letter from Miss Brighton to Miss Jones imposing any form of restriction on the use of the material in the draft opening script. If there had been it seems quite likely to me that Miss Jones would not have been willing to go along with it. If Miss Brighton had written to Miss Jones saying that she could use the draft opening script towards writing a play to be produced by Dubbeljoint, but could not do anything else with it, I can imagine that Miss Jones would have ignored the draft opening script altogether in writing the opening scenes of the play. When she did make some use of the draft opening script in writing the early scenes of the 1996 script she had no reason to anticipate that in future Miss Brighton would be saying the sort of things which she is saying now. For those reasons I do not accept Mr Garnett's submission that the only thing which Miss Jones was authorised to do by way of use of the draft opening script was to draw on it for the purposes of the 1996 script of the play and the exploitation of that version of the play by Dubbeljoint.

77.
I do agree that, because the implied licence for Miss Jones to use the draft opening script was gratuitous, Miss Brighton could revoke it on reasonable notice (subject to possible estoppel arguments, which I will consider below). However, she had not revoked it when Miss Jones rewrote aspects of the 1996 script in 1999. Therefore the creation of the 1999 script was not a breach of Miss Brighton's copyright in the draft opening script. Nor in my view was the making of any contracts by Miss Jones for the exploitation of the 1999 version of the play, as long as the contracts were made

before the licence was revoked. It does not make any difference if the contracts continue to operate after the licence has been revoked as long as they were made before then. I have already said that I would regard the solicitors' letter before action of 7 November 2001 as a revocation of the implied licence. As far as I know all contracts which Miss Jones has made for exploitation of her copyright in the 1999 version of Stones In His Pockets were made before that date. However, an effect of my judgment must be that, if she wishes to enter into further contracts in future, she will need to agree terms with Miss Brighton before doing so.

78.
I referred in the previous paragraph to 'possible estoppel arguments', and I should say something about that here. Godfrey v Lees (supra) had some similarity to this case in that the claimant (a musician) was held to have had an interest in certain copyrights but to have gratuitously given to the defendants (the members of a pop group) an implied licence to use them. Blackburne J held that the licence was in principle revocable on reasonable notice, but he also held that in the particular circumstances the claimant's conduct had been such that he should be estopped from exercising the right of revocation which he would otherwise have had. The relevant facts are summarised in this way in the headnote: 'The plaintiff had allowed the defendants to assume to their detriment that ... they were entitled to exploit the six works as their own. He had allowed them to labour under this assumption for 14 years before asserting his rights. In the meantime the defendants had worked hard to earn a reputation for themselves and generate a market for their recordings. In the circumstances it would be unconscionable for the plaintiff to be free to deny what for so long he had allowed the defendants to assume.'

79.
The facts in Godfrey v Lees were extreme. In this case they are not. I do not think that it was unconscionable for Miss Brighton, having received legal advice, to revoke the implied licence with effect for the future. She does not seek to upset any contractual arrangements which Miss Jones made with third parties before her solicitors' letter of 7 November 2001; and in any event, on my view of the position, revocation of the implied licence could not have any such effect. I would only add that, if I was wrong on that, and if (which I do not in any event believe to be the case) Miss Brighton was seeking to upset pre-2001 contracts or to bring about a situation in which Miss Jones would be placed in breach of contracts already made with third parties, I would wish to reconsider the position on estoppel. I would have in mind an outcome whereby Miss Brighton would not be estopped totally from revoking the licence, but would be estopped from revoking it in such a way that specific consequences for Miss Jones arose which it would be unconscionable to inflict.

80.
That completes what I have to say in this judgment about Miss Brighton's draft opening script claim: it fails up to the present time, but for the future it does have the implications which I have explained.

Dubbeljoint's claims

81.
Dubbeljoint is the second claimant. It makes two claims for damages against Miss Jones. These claims are of less importance and magnitude than the issues between Miss Brighton and Miss Jones which I have considered in the previous parts of this judgment, and I can deal with them comparatively briefly.

Dubbeljoint's claim for an account or inquiry as to damages

82.

The background to this is clause 16 of the contract between Miss Jones and Dubbeljoint. The clause provided that, subject to conditions which have been fulfilled, Miss Jones was liable to pay to Dubbeljoint certain percentages of her income from Stones In His Pockets. She received significant sums from the success which the play had from 1999 onwards, but she did not make any payments to Dubbeljoint. In the particulars of claim Dubbeljoint claimed an account of the amount due to it or an inquiry as to damages. In the defence Miss Jones pleaded that she was not liable to pay anything under clause 16, on the ground that that clause applied to income from the 1996 version of the play but not to income from the 1999 version of the play. That argument seems to me to have been virtually unmaintainable, and Mr Sutcliffe has not attempted to support it.

83.
Dubbeljoint's claim for the clause 16 payments seems to me to be effectively conceded by Miss Jones, but the issue will not quite go away. On 14 January 2004 Miss Jones' theatrical agents (Curtis Brown, a distinguished company of high reputation) sent to Dubbeljoint's solicitors a letter enclosing a certified statement of account and a cheque for the amount calculated to be due (a little below £30,000). A later letter said that interest would be paid as well. Nevertheless Mr Garnett has submitted to me that I still ought to order an account or an inquiry as to damages. Indeed, he goes further and says that 'Dubbeljoint must be entitled to an account'. In my view there is no 'must' about it. Apart from anything else, an account is an equitable remedy.

84.
However, there was a discussion about this at the end of the hearing, which produced the following result. Miss Jones, through counsel, undertook that Curtis Brown would provide to Dubbeljoint's solicitors all underlying documents which it had in its possession or control relating to the amounts of Miss Jones' earnings from Stones In His Pockets. Dubbeljoint and its advisers, after considering what they received and reviewing the position generally, should be at liberty to apply to the Master for an inquiry and an account to verify what is due from Miss Jones to Dubbeljoint. That is how the matter rests. There is no decision for me to make, but the formal order following this judgment will incorporate the effect of what I have just described.

Dubbeljoint's claim for damages for not receiving credits in post-1999 programmes

85.
The background to this claim by Dubbeljoint is another provision in the contract between itself and Miss Jones. I have mentioned it previously. By clause 15, if the play was presented otherwise than by Dubbeljoint Miss Jones was to cause theatre programmes to contain a statement that the play was first performed by Dubbeljoint, adding the date of the first performance. Miss Jones accepts that, from the 1999 productions onwards, she did not do that. In the particulars of claim Dubbeljoint pleaded that she was in breach of contract in this respect. It claimed an injunction requiring Miss Jones to ensure that it was given credit as required. It also claimed an inquiry as to damages. The defence initially pleaded that there had been no breach because of the difference between the 1996 version of the play and the 1999 version. I have already said that that defence was hopeless as an answer to Dubbeljoint's claim against Miss Jones to payments under clause 16, and it was equally hopeless as an answer to this particular claim by Dubbeljoint. The defence was not relied on before me.

86.
On 17 March 2004 Miss Jones' solicitors wrote undertaking that as soon as practicable she would require that in future Dubbeljoint would receive the acknowledgement provided for by clause 15. There is no continuing issue so far as that is concerned. However, an issue does still arise about

damages. By the particulars of claim Dubbeljoint had sought an inquiry as to damages suffered as a result of Miss Jones' breach. However, Miss Jones' solicitors wrote that Dubbeljoint had not put forward any evidence of loss or any attempt to quantify loss; they did not accept that Dubbeljoint had suffered any loss, and in the circumstances they offered a nominal sum of £1. It was agreed at the end of the trial that the parties, rather than debating whether there should be an inquiry or not and then, if I directed that there should, incurring the expense of it, would send to me written submissions on the basis of which I would decide the damages issue. In the light of submissions which I duly received, I decide the issue now. I decline to order the payment of any damages (Miss Jones having already offered the nominal £1).

87.
I need to distinguish between two possible justifications for an award of damages. One is that Dubbeljoint did not receive the publicity for which it stipulated in its contract with Miss Jones, and should be entitled to an amount of damages in recognition of its disappointment, regardless of whether it has suffered any financial loss or not. The other is that Dubbeljoint has suffered financially, or can reasonably be supposed to have suffered financially, from the failure of Miss Jones to procure that post-1999 programmes for Stones In His Pockets should contain a statement that Dubbeljoint had put on the first presentation of the play in 1996. As to the first, I do not believe that such damages are recoverable in contract. As to the second, I do not think that any financial loss, or any realistic possibility of any financial loss, has been shown.

88.
As to the first way in which a claim for damages might be formulated, in Addis v Gramophone Co. Ltd [1909] AC 488 Mr Addis had been dismissed from his employment in a manner which was a breach of contract by the employer. He was entitled to some damages, but the House of Lords held that he was not entitled to any damages by way of compensation for his injured feelings. That is still the general position, even though some particular exceptions to the principle have been recognised. See for example, Malik v BCCI SA [1998] AC 20. Chitty on Contracts, 28 th Edition, para 27-069 puts it as follows: 'where a breach of an ordinary commercial contract may cause foreseeable anguish and vexation to the [claimant], no damages are recoverable for that type of loss.' In my judgment that principle precludes me from awarding damages simply on the ground that Miss Jones ought not to have overlooked her obligation in clause 15 of the contract, and that the persons involved in Dubbeljoint feel affronted by her having done that.

89.
So the question is whether any more identifiable financial damages can be claimed. I accept that an actor who stipulated in a contract to receive credit of a particular kind but did not receive it is entitled to damages. If he cannot demonstrate a specifically identifiable and quantified loss he will be likely to be awarded a round number sum which the court considers to be appropriate. Many cases illustrate that that is so. But to an actor publicity is a valuable and important part of his profession. He wants publicity in order to maintain or enhance his professional standing and thus his earning power. If he has a contractual right to a species of publicity but does not receive it, he has lost something which would have been of value to him, even though placing a figure on the value is a matter of broad judgment rather than of precise calculation.

90.
Mr Garnett has drawn my attention to a case which involved, not an actor, but a specialist in jade: Joseph v National Magazine Co Ltd [1959] Ch 14. The defendant published a prominent fine arts magazine, The Connoisseur . It contracted to publish an article on jade with Mr Joseph being named

as the writer, but in the event it failed to do so. Mr Joseph was entitled to damages, and Harman J, having said that the measure of damages was not susceptible of accurate assessment, awarded £200. That was in 1959, and the equivalent today would be a much larger sum. I do not extract from the case any principle that damages can be awarded for breach of contract even where there is no loss. Mr Joseph was engaged in the jade business commercially, and had a shop at a fashionable London address. It is true that the judge commented that the publication of the article under Mr Joseph's name would have been 'a feather in his cap', but it is obvious to me that Mr Joseph did not want to see his article in print just because that would give him a sense of personal satisfaction. He wanted the commercial publicity in essentially the same way as an actor does. Fine art dealers spend sums of money advertising in the right sort of publications: they want publicity and are prepared to pay for it. In that sense the publicity which was denied to Mr Joseph would have been of value to him.

91.
I therefore move on to consider whether there is anything comparable in the present case: any loss of a financial nature, albeit not a loss which can be precisely estimated, which Dubbeljoint might realistically have suffered by reason of not receiving the credits which it should have received in programmes for Stones In His Pockets published from 1999 onwards. In my view there is not. Mr Garnett has referred to the company's prospects of attracting grants from the Arts Council of Northern Ireland or other similar organisations, public or private. I can readily see that it is important to Dubbeljoint to obtain financial support of that kind. I can also see that it could help Dubbeljoint in any approaches it may make to potential donors to be able to say that it was responsible for the first ever production of so successful a play as Stones In His Pockets. But it can say that, and quite possibly has said it, without needing to have been credited in 1999 and subsequent programmes as the first producer of the play. The Arts Council of Northern Ireland and similar bodies probably knew perfectly well that Dubbeljoint was the first producer of Stones In His Pockets. If Dubbeljoint was not sure whether any such body from which it hoped to receive a grant still remembered that fact, it could remind it. Bodies like the Arts Council would not ignore such a reminder on the ground that programmes for the 1999 version of the play had not been mentioning Dubbeljoint's involvement in 1996. If it is suggested to me that Dubbeljoint might have got more in the way of grants and donations if the programmes had contained the credit which Dubbeljoint ought to have had, I have to say that I do not believe it.

92.
Another source of funds for Dubbeljoint – perhaps its largest one – is ticket sales for the plays which it presents. But it cannot seriously be said that more people would have gone to see Dubbeljoint plays in 1999 and subsequent years if the programmes for Stones In His Pockets had contained a statement that Dubbeljoint had put on the play in 1996.

93.
A different aspect of Dubbeljoint's financial position is the level of its costs. I cannot see that Dubbeljoint would have been able to reduce its costs from 1999 onwards if Miss Jones had caused the programmes to contain the omitted credit. The salaries, office overheads, fees to actors, directors and the like, and the charges made by theatres for the use of their premises, would have been exactly the same.

94.
In the last few paragraphs I have given some examples of how I cannot see that the omission of the credit has made any difference to Dubbeljoint in its operations from 1999 onwards. The particular examples do not arise from specific evidence in the case. I draw them from what I hope is my own

store of realism and common sense. In any case, it is important to note that Dubbeljoint has not itself adduced evidence of any realistic respect in which the absence of the credit in programmes has, actually or potentially, cost it any money at all. Mr Binding (who was the employed administrator of Dubbeljoint at the relevant time) said in his witness statement that, if Miss Jones had acknowledged that Dubbeljoint had been the first presenter of the play, 'the status and credibility of Dubbeljoint would have been affirmed' . I do not know what that means. He suggested that the Arts Council 'may certainly have looked more favourably upon Dubbeljoint's annual proposals for funding' . I have already commented on this line of argument. I cannot accept it. It implies that the Arts Council did not know that Dubbeljoint had put on the first production of Stones In His Pockets but would have known if programmes from 1999 onwards had said so. I do not believe it. Mr Binding concluded: 'I find it very difficult to quantify the loss suffered, but I am certain in my mind that there has been a loss' . I can only say that I do not agree, and in this respect Mr Binding's evidence does not help me to identify what the nature of the alleged loss was.

95.
For the foregoing reasons I am not prepared to award to Dubbeljoint any damages in excess of the nominal £1 which has been offered to it. It has the benefit of Miss Jones' undertaking that it will receive the credit in future programmes, and I consider that there is no further relief to which it is entitled on this particular issue.

Conclusion

96.
I believe that I have now dealt with all of the matters which need to be covered in this judgment. In most respects the claims of Miss Brighton and Dubbeljoint fail. Miss Jones is in my view the sole owner of the copyright in the 1999 version of Stones In His Pockets. However, for the future Miss Brighton, through her copyright in the draft opening script of the play, is a person whose consent is needed for new contracts by Miss Jones to exploit the copyright of the 1999 version. Dubbeljoint, if it wishes and is prepared to risk the costs consequences if the matter goes against it, may apply to the Master for an inquiry to be held into whether Miss Jones has now properly paid to it the amount due from her under clause 16 of her writer's contract. As regards credits to Dubbeljoint in programmes for the play in future, it has the benefit of the undertaking which has been given in correspondence by Miss Jones' solicitors (and which I will be prepared to incorporate in a court order if Dubbeljoint wishes), but it is not entitled to any other form of relief.