

A map, a poem and two copyright statutes

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In 1671 the nautical instrument and mapmaker John Seller published *The English Pilot*, which contained a map titled ‘A General Chart of the West India’s’.¹ In 1733, Jonathan Swift published *On Poetry, a rhapsody*, a sarcastic and satirical litany of advice to aspiring poets and critics, which included the quatrain:

So Geographers, in Afric-Maps,
With Savage Pictures fill their Gaps,
And o’er unhabitable Downs,
Place Elephants for want of Towns.²

In 1735 the first statute explicitly to provide legal protection against copying engravings was passed by Parliament.³ In 1767, that statute was amended by a second Act which explicitly extended that protection to cover maps, charts and plans.⁴

What links these three very different types of source beyond the fact that they all relate to maps? I thought, at first, very little. I began with Swift’s poem as it seemed to be a neat metaphor for the unfillable gap in my own research—the document or documents that would explain why maps were added into the 1767 Engravings Act. Lacking a ‘smoking gun’ to explain the inclusion, I would be compelled to fall back on ‘elephants’ of my own—context,

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¹ John Seller, *The English Pilot, Fourth Book* (London, 1689).

² Jonathan Swift, *On Poetry, a rhapsody* (Dublin, 1733), 12.

³ An Act for the encouragement of the arts of designing, engraving, and etching historical and other prints, by vesting the properties thereof in the inventors and engravers, during the time therein mentioned, 1735, 8 Geo. II, c.13 (Engravings Act 1735).

⁴ An Act to amend and render more effectual an Act made in the eighth Year of the Reign of King George the Second, for Encouragement of the Arts of Designing, Engraving and Etching, Historian and other Prints; and for vesting in, and securing to Jane Hogarth, Widow, the Property in certain Prints, 1767, 7 Geo. III c.38 (Engravings Act 1767). Note that further amendments were made ten years later, in an Act for effectually securing the property of prints to inventors and engravers, by enabling them to sue for and recover penalties in certain cases, 1777, 17 Geo. III, c.57 (Engravings Act 1777).

speculation, decorative filler. But working backwards from the poem to the actual map to which Swift may have been referring⁵ revealed a more complex and potentially more enlightening narrative at play, so that the parallel stories which can be told by these two non-legal sources act to cast new light on shadows in the legal materials.

Cartobibliographers and map historians are of course well versed in making use of maps to study the map trade and business practices of centuries past. The mapmakers of the seventeenth and eighteenth centuries were not given to publishing discourses on the workings of their trade (unlike their fellow merchants the booksellers), and there are no surviving archives of the various individuals, and later firms, who flourished and failed during this period. One notable exception is the collection of letters to the British mapmakers Thomas Jefferys and William Faden from their continental counterparts.⁶ The other major source, which is my stock in trade as a legal historian, are the legal documents the mapmakers generated—their wills, their bankruptcy proceedings, their royal licences and warrants, and their litigation. Between 1770 and the end of the century there were at least eight cases in which mapmakers sought to assert their rights under the newly passed copyright law,⁷ as well as several others relating to other facets of their business.⁸ And because of the tiresomely lengthy and repetitive, but frequently rewarding, nature of Chancery writs, we can learn all kinds of tidbits about who was in business with whom, what kinds of prices their wares cost to produce and commanded on the market, what they thought of each other (admittedly, at times of stress), as well as other snippets of varying reliability. John Hamilton Moore,

⁵ It is important to note here that there were multiple versions of this map in circulation by Swift's time and I have formed no views on which particular one he is likely to have been familiar with.

⁶ See Mary Sponberg Pedley (ed.), *The map trade in the late eighteenth century: letters to the London map sellers Jefferys and Faden* (Oxford: Voltaire Foundation, 2000).

⁷ *Jefferys v Bowles* C12/1318/18 m1 (Ch. 1770), *Bowles v Sayer* (1780) C12/1656/12 (Ch. 1780), *Sayer v Moore* (1785) 1 East 361n (K. B. 1785), *Carnan v Bowles* C12/136/25 (Ch. 1785), *Steel v Moore* (1789) *Sunday Gazette* (8 Mar 1789) (K. B. 1789), *Heather v Moore* C12/225/16 (Ch. 1797), *Faden v Stockdale* C12/672/12 (Ch. 1797), *Cary v Faden* C12/256/9, 5 Ves. 24 June (Ch. 1799), 3 Esp. 273, 1 East 358 (K. B. 1800).

⁸ For example, *Heather v Moore* C12/206/24 (Ch. 1794), *Blackford v Moore* C13/51/11 (Ch. 1805), *Woulfe v Moore*, Hil, 38 Geo. 3, IND1/6289 (C. P. 1798).

defendant in three copyright cases involving sea charts, was either devoted to his wife (to whom he may or may not have been married) or a lazy drunkard, depending on whom you believe. He certainly made firm friends and equally firm enemies. We can also discover that the ultimate failure of his business is likely to have had something to do with the fact that he lost his eyesight following an illness.⁹

Of course, the reliability of some of this information is open to question, but it can nonetheless operate to fill key gaps in what is otherwise known of the map trade and the mapmakers. Notwithstanding, these sources need to be dealt with cautiously in another respect. For, by focussing on a trade engaged in litigation, we may be led to overemphasise the competition and rivalry between the traders involved. By contrast, Mary Pedley's editorial work on the letters to Jefferys and Faden emphasises the cooperation and collegiality between members of the trade.¹⁰ As ever, the truth will lie somewhere in the middle, but using both kinds of source allows a more nuanced view to be achieved. So what can an examination of an individual map and an extract from a poem add to this story?

In his introduction to a book on using maps to interpret North American history, the map historian J. B. Harley cites the historian J. H. Parry: 'Old maps are slippery witnesses; but where would historians be without them?'¹¹ Harley continues by urging historians to consider maps as texts which, like all other texts, use signs to represent the world. Instead of viewing maps as factual representations, he insists that all maps are metaphors and symbols, all maps are rhetorical and that no maps are neutral, value-free or purely scientific.¹² Lawyers and

⁹ *Blachford v Moore* C13/51/11 (Ch. 1805), C13/487/49 (Ch. 1805).

¹⁰ Pedley, *Map trade*.

¹¹ J. B. Harley, 'Texts and Contexts in the Interpretation of Early Maps' in *From Sea Charts to Satellite Images: Interpreting North American History through Maps*, ed. D. Buisseret (Chicago: University of Chicago Press, 1990), 3.

¹² *Ibid.*, 4–5.

legal historians are frequently interested in maps for what they demonstrate by way of evidence, especially in terms of land title and boundary disputes. In this context, some attention has been paid to their rhetorical, metaphorical and constitutive power. My interest in this map lies in what it can tell us about its own conditions of construction and how these are graphically and textually represented on the map itself. Because it is here that we can find evidence of the role played by law, and in particular the law of copyright, in making and shaping such artefacts.

This map first appeared in the fourth volume of John Seller's *English Pilot* and was published in 1689.¹³ Seller had begun publishing *The English Pilot* in 1671¹⁴ and he planned to issue four volumes of *The English Pilot* in total: *Northern*, *Southern*, *Oriental* and *West India*. Seller began printing the text and arranging the plates for the charts simultaneously, as well as printing a second publication, *The Coasting Pilot* in 1672.¹⁵ Producing so much material at once was inordinately ambitious and soon brought Seller into financial trouble. In 1677, to avoid bankruptcy and to continue *The English Pilot's* publication, he went into partnership with John Colson, William Fisher, James Atkinson and John Thornton.¹⁶ This particular map was probably printed sometime before the consortium was formed, as it carries only Seller's name upon it. Later versions included the names of his partners.¹⁷ All the maps in these publications, including the present map, were based upon earlier charts, as Seller had

¹³ Helen M. Wallis, 'Geographie is better than divinitie. Maps, Globes and Geography in the days of Samuel Pepys' in *The Compleat Plattmaker: Essays on Chart, Map and Globe Making in England in the Seventeenth and Eighteenth Centuries*, ed. Norman J. W. Thrower (Berkeley, LA, London: University of California Press, 1978), 38; Coolie Verner, 'John Seller and the Chart Trade in Seventeenth Century England' in Thrower, *Compleat Plattmaker*, 50.

¹⁴ Although note that Verner has uncovered evidence of a 1668 edition: Verner, 'John Seller', 140–46

¹⁵ *Ibid.*, 146.

¹⁶ Wallis, 'Geographie is better than divinitie', 19.

¹⁷ Coolie Verner's investigations have revealed the inconsistency and lack of rigour in Seller's mapmaking practices. Verner demonstrates Seller not only failed to produce identical copies, but also printed charts in different forms and used them indiscriminately in his publications, gathering and printing large stacks at different times. Moreover, later booksellers have cannibalised copies of Seller's works, all of which make it difficult for a map historian to trace and date his editions and activities. Verner, 'John Seller', 128.

purchased worn Dutch copper plates and refurbished them for his undertaking. In copying from the Dutch, Seller was only following the usual practice amongst his contemporaries whose use and re-use of obsolete Dutch charts with little or no variation was legendary. As Samuel Pepys noted in his *Naval Minutes*, ‘Seller’s maps are at best but copies of the Dutch, with such improvements as he could make therein by private advice upon the observations of single men.’¹⁸

The map in question is a portolan chart, which means it was probably used both for planning journeys and by sailors on board ship—although it is true that we do not really know whether charts like this were taken on voyages or whether mariners continued to rely on manuscript charts and written directions. However, it is the cartouche¹⁹ (also copied) that draws the eye, and Jonathan Swift’s apparent ire. The elephant commands the African landmass, topped with its warlike native occupants. In considering the role played by this powerful image, it is instructive to consider its likely impact on eighteenth century viewers. Here is where the poem comes in. In the context of his poem, Swift deploys the image as a metaphor for hack writers who fill gaps in their poetic genius with spurious material. Simultaneously he seems to aim his own poisoned arrow at contemporary cartographers’ lack of knowledge or perhaps their reluctance to update their maps with the new information flowing in from mariners, traders and explorers (just as Herman Moll refused to update his charts upon receiving information from Lemuel Gulliver²⁰). Swift was fond of using cartographical metaphors and had considerable interest in navigation, as readers of *Gulliver’s Travels* will be aware.²¹ But, as Swift’s biographer Victoria Glendinning warns, it is impossible to ascertain from Swift’s

¹⁸ J. R. Tanner (ed.), *Pepys’ Naval Minutes*, Publications of the Navy Records 60 (London, 1926), cited in Wallis, ‘Geographie is better than divinitie’, 18.

¹⁹ A cartouche is a decorative emblem that frames the map title and other information related to that map.

²⁰ Jonathan Swift, *Gulliver’s Travels* (Wordsworth Classics, 1992), 215. Herman Moll was a (real) leading London mapmaker of the time.

²¹ For example, on Gulliver’s third voyage to Laputa he is measured for a suit using quadrant, rule and compasses, but the suit turns out not to fit due to a mistake having been made in the calculations.

writing his views on ‘the truth’ of anything: ‘In his polemical prose, you cannot always wholly count out, or count in, any expressed value or opinion.’²² And, indeed, a portolan chart such as this was not designed to display information not relevant to navigation; mariners would expect and require the coastal areas to be most detailed and would have little interest in what lay beyond them.

If so, the use of decoration to ‘fill’ a blank space invites us to consider other viewers and other markets besides sea-farers. Additional audiences and purchasers might include those who prized such maps for their aesthetic qualities or the geographical information they displayed. Maps were expensive and sought after as luxury consumer items which demonstrated the taste and discernment of their owners.²³ But quite aside from the map’s role as an item of commerce is the role it plays in firing the viewer’s imagination: there is a certain poetry in staring at unmapped and unknown lands to which one will never travel. The stereotyped racial prejudice of the elephant and savages is also the exotic Other, the romantic savage and the unknowable unknown. This was a time when nautical exploration was on the rise; new knowledge was starting to flow in to fill the gaps in human understanding of the world.²⁴ Swift was not alone in criticising mapmakers for their failure to seek out and reflect the latest geographical discoveries and to depict them using the latest mathematical techniques. This frustration was shared by many of his contemporaries as well as those who came after him, including the celebrated navigator Captain James Cook.²⁵ But as a poet Swift must also have been alert to the mythic and imaginative potential of blank spaces and stylised images.

²² Victoria Glendinning, *Jonathan Swift* (London: Pimlico, 1999), 7.

²³ Mary Sponberg Pedley, *The Commerce of Cartography: Making and Marketing Maps in Eighteenth-Century France and England* (Chicago: University of Chicago Press, 2005), 6

²⁴ I am grateful to Olivia Barr for her assistance in developing these ideas.

²⁵ Captain W. J. L. Wharton (ed.), *Captain Cook’s Journal During his Voyage Round the World made in H. M. Bark Endeavour 1768–71* (London: Elliott Stock, 1893) accessed at <http://www.gutenberg.org/files/8106/8106-h/8106-h.htm> (27 August 2013).

Next, we turn our attention to the text inside the image. Inside the elephant we find the map's title, the name of John Seller, and his official title of King's Hydrographer. So now we might ask: what kind of claim is being made here and what function is this text performing in relation to the rest of the map? As Christian Jacob has observed, 'the title cannot be reduced to a simple function of denotation. As with every paratextual element, it contains an implicit commentary on the image, whereby it defines not only its subject but also its position in a hierarchy of representative genres, appealing to generic conventions, defining the conditions as well as the authors of the drawing, pointing out who its receivers and what its concrete uses should be.'²⁶

The title itself 'A General Chart of the West India's' invites us to focus not on the dominating landmasses of Africa and America, which form the frame of the image, but upon the small islands on the left hand side: the West Indies. Since the early seventeenth century the West Indies had been growing in popularity with English investors and colonists. The introduction of sugar from about 1640 sparked an economic boom and the eighteenth century saw sugar become arguably the world's most valuable trade commodity.²⁷ The size and position of the islands on the map thus belies their emerging importance in England's economy and imagination. For romantically minded viewers, the chart depicts a fantasy journey to a land of exotic foods and potential riches—a veritable treasure map.

Under the map's title comes the name of John Seller and, after he forms his partnership, we also find the names of his partners have replaced mention of his office. So what claim is

²⁶ Christian Jacob, *The Sovereign Map: Theoretical Approaches in Cartography Throughout History* (Chicago: University of Chicago Press, 2006), 199.

²⁷ See, for example, Richard B. Sheridan, *Sugar and Slavery: An Economic History of the British West Indies 1623–1775* (Canoe Press: Jamaica, 1974).

Seller, and later his consortium, making to this map? Is it a claim of property? Of authority? Of authorisation? Of authenticity? On 22 March 1671, Charles II had granted Seller a royal licence forbidding anyone other than Seller from copying or reprinting the *English Pilot* and the *Sea Atlas* without Seller's permission.²⁸ Two days later, Seller was also officially named as Hydrographer to the King.²⁹ The position was titular only; no remuneration or other tangible benefit was associated with it. However, the significance of these two royal actions is shown by the fact that Seller includes the text of Charles' privilege on the fourth page of the book, and inserts his new official title under his name on the decorative frontispiece of the book, as well as upon the individual maps contained within it. The placing of Seller's name upon the map therefore demonstrates its official provenance, its authoritative status as flowing from the office of King's Hydrographer, and asserts that Seller is authorised to speak this geographical information in the name of the King. That it is found inside the elephant emphasises that, by virtue of his jurisdiction to grant licences for the representation of foreign countries, the King, through Seller, asserts dominion over those countries and their savage occupants.

The map itself then gestures towards control and proprietary aspirations. But what of control and property in the map itself? Now we return to the story relating to this map and its cartouche, which centres on its status as an item of commerce. Looked at in this light, we can see that the inclusion of the licence and Seller's official title also serve as sales puff, just as much as his claim on the title page that he had been 'furnished with New and Exact Draughts, Charts and Descriptions; gathered from the Experience and Practice of Divers Able and Expert Navigators of our English Nation.'³⁰ This statement was (unlike the licence)

²⁸ Wallis, 'Geographie is better than divinitie', 19. J. Seller, *The English Pilot, First Book (Northern)* (John Darby, London: 1671).

²⁹ Wallis, 'Geographie is better than divinitie', 17.

³⁰ Seller, *English Pilot, First Book*.

alarmingly false. By holding out his charts as improvements over existing ones, Seller was putting in danger the lives of mariners who would seek to rely on them.

So what kind of rights did Seller have to this valuable commodity? It cannot be conceived of as a property right in terms of positive statutory law for this particular map predates by sixty years the first statute giving copyright protection to engravings, and by over one hundred years the first copyright statute relating specifically to maps.³¹ Charles II's licence was not so much aimed at giving Seller the liberty to print and publish the book and its maps, but rather foregrounded the negative aspect of that right, stating that the King 'prohibit(s) and forbid(s) all our Subjects ... to Copy, Epitomize, or Reprint the said Treatises of Navigation ... In whole or in part ... or to Copy or Counterfeit any of the Maps, Plats or Charts that shall be in the said Treatises, within the term of Thirty years'³² without Seller's consent. Seller was clearly concerned about such copies as the privilege also stated, 'We are informed that Endeavours are made by some of our Subjects, secretly to Copy and Reprint the same, but under another Title.'³³ The inclusion of the privilege in the published book might therefore also be seen as giving a warning to those who might wish to copy it. Moreover, Charles' privilege went still further than merely forbidding copies and counterfeits of Seller's books, as it also forbade the import of books, maps, charts and plats 'under the name of Dutch Waggoners or Lightning Columes'³⁴—in other words, the very kinds of work Seller had himself copied. So the object of the royal privilege was not just to provide authority and authorisation but also some measure of protection against competitors.

³¹ Engravings Act 1767.

³² Seller, *English Pilot, First Book*.

³³ *Ibid.*

³⁴ *Ibid.*

Even so, the licence was insufficient to guarantee commercial success, as Seller's subsequent financial troubles show. What other measures did Seller take to protect his investment? He did not take the second available option of entering his book in the Stationers' Register.³⁵ But it is likely that the partnership itself was the key here. Fisher and Thornton were both successful nautical publishers, while Atkinson and Colson were leading teachers of navigation.³⁶ They were all his competitors and bringing them into the venture not only provided much-needed capital but also assisted in neutralising any threat they might otherwise have presented.

The placing of names on the map was an act of considerable importance in this context, as we can see when Seller's official title is removed and replaced by the names of his new partners. The inclusion of the additional names operates to accord recognition of those who have made a financial investment in the venture. Indeed, the order in which the names appear indicates the proportion of their investment.³⁷ They are responsible for it, in terms of having brought it to market, but also in the sense of being held responsible for its content. And they put on notice any would-be copier to whom they might have to answer in the event of any unauthorised activity. It is also worth noting which names are *not* on the map. What we do not see is the name of anyone who might be termed the author of the map in a more 'hands-on' sense—we do not see the name of the person or people responsible for collecting or compiling the geographical data, probably a number of mariners on different voyages as well as land-based compilers; we do not see the name of the engraver employed by Seller; nor the

³⁵ Seller himself was not a Stationer, but a member of the Merchant Taylors Guild and later the Clockmakers' Company, although it was not uncommon for Stationers to register on behalf of non-member colleagues. One of his partners, William Fisher, later used this route to protect the works he subsequently acquired from Seller, registering *The English Pilot, Southern*, on 30 November 1679: Verner, 'John Seller', 132, 149.

³⁶ Verner, 'John Seller', 149.

³⁷ *Ibid.*

printers; and we certainly do not see the names of any of the Dutch mapmakers, printer or engravers associated with the production of the charts from which this map was copied.

When the 1735 Act was passed and created a general right to engrave and print engravings, and to prevent others from engraving and printing copies of them, this practice of naming and labelling was continued and strengthened. The 1735 Act made the statutory protection dependent on the name of ‘the proprietor’ being engraved on each copper plate and printed on each print.³⁸ When extending the protection to maps, the 1767 Act extended this requirement to apply to them as well. The practice of placing on the map the names of those financially responsible for producing the map was now enshrined in legislation and cast as evidence of a property right. This had two important and concomitant effects for copyright law: it privileged and raised to the status of proprietary the claims of some of those involved in creating the map (those entrepreneurs who put down capital) and erased the claims of others (engravers, surveyors, printers).

The juxtaposition of Seller’s map and Swift’s poem directs attention to the multiple meanings contained in the graphic and textual elements of a map’s cartouche and highlights the variety of viewer responses they might elicit. Some of these meanings prefigure concerns of copyright law, others sit alongside them. By moving between the legal and non-legal sources we begin to appreciate the interweaving of imagination and science, poetry and commerce, authority and property, author and viewer, sovereign and subject. We can see that copyright law was far from being a legal regime imposed upon an area of artistic and artisanal endeavour. When copyright did arrive, some of the old practices were reinterpreted in the

³⁸ Engravings Act 1735, s.1.

new legal relation between author, object, audience and marketplace, but others remained outside the law's domain as 'unhabitable downs' and elephants of the imagination.