

The Legal Journey of *Paterson's Roads*

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Abstract: In 1771, Daniel Paterson entered into a publishing agreement with the bookseller Thomas Carnan to print and publish a travel itinerary known as *Paterson's Roads*. This book was to become the most enduringly popular practical road book of the period. However, Paterson and Carnan were soon embroiled in litigation. This article examines the legal cases that arose when the geographical information contained in *Paterson's Roads* was re-used, and improved upon, in a subsequent publication. It explores the background to the cases, focusing on what they reveal about the inner workings of the book and map trade of the period, as well as considering some of the broader historical ramifications. The article also demonstrates that these cases are of ongoing legal significance because they played an important role in developing some of the doctrines and principles of copyright law that continue to be controversial today.

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In 1771, Daniel Paterson (1738–1825), a 33 year old commissioned officer employed by the Quartermaster General, entered into an agreement with the bookseller Thomas Carnan to print and publish a travel itinerary that he had compiled entitled a *New and Accurate Description of all the Direct and Principal Cross-Roads in Great Britain* (Fig. 1).¹ The book was to become known as *Paterson's Roads*, and Paterson thus gave his name to the most enduringly popular road book of the late eighteenth century. Unlike John Ogilby's encyclopaedic library volume of 1675, Patterson's small formatted handbook was quintessentially practical.² Over the following sixty years thousands of copies were sold to travellers on the roads of Britain.

Such a valuable property was bound to attract the attention of Carnan's competitors in the road book market. Soon *Paterson's Roads* became embroiled in a series of legal cases that expose some of the inner workings of the late eighteenth-century map and book trade. Perhaps surprisingly, the cases are also of interest to copyright lawyers today not only because they began the process of developing precedents that continue to be applied, but also because they

required the courts to wrestle with the same kinds of problem that still arise in the twenty-first century when works of information become embroiled in copyright infringement proceedings.

The book compiled by Patterson and published by Carnan, *New and Accurate Description of all the Direct and Principal Cross-Roads in Great Britain* or, as it came to be known, *Paterson's Roads*, was essentially, as its title indicates, a list of the direct roads and principal crossroads of England, Wales and Scotland, with their various distances calculated from a fixed point (for example, London Bridge or Hyde Park Corner). They were published in octavo, a size suitable for being carried in a traveller's pocket, with the text set out on each page in three ruled columns. The middle column lists the names of places in geographical order for the road, or a section of it. Distances between places are given in the first column and the cumulative distances from the starting point in the third (see Fig 4). An index at the front of the book includes the dates of the market days in each town, and a section at the back contains a handy list of distances between towns where Assizes were held for each of the Circuits of the Judges. The total number of pages is 110.

For the second edition (1772–1773), a single double-spread map, printed separately and tipped-in along the centre fold, was added to show the towns of England and Wales and the roads described in the book.³ In the fifth edition, of 1781, the roads of Scotland were removed to a separate publication, but a list of all the fairs in England and Wales was added.⁴ All the editions also included short descriptions of the great houses and their owners near the particular route described.

Antecedents of Paterson's Roads

Despite the claims made in its title, however, *Paterson's Roads* was not particularly new (nor for that matter is it likely to have been particularly accurate, at least by today's standards). Indeed, it followed much the same format as numerous itineraries already on the market. Printed itineraries had begun to appear in the first half of the sixteenth century, although many formed part of other publications, like almanacs and chronicles. Between the middle of the sixteenth century and the nineteenth century, they were issued with increasing frequency and 'the (usually) leather-bound pocket-sized road book became the first place to turn to for an itinerary'.⁵ Over the years their information became increasingly corrupted through transmission errors.

In 1675, John Ogilby published his renowned *Britannia*. With his surveyors using only a perambulator (or waywiser) to measure distances and a surveyor's

compass or theodolite to measure changes in direction, Ogilby's *Britannia* provided the most up-to-date and accurate highway information available, making consistent use of the measurement of 1,760 yards to the mile (later, the statute mile). He also transformed the usual simple written list of distances into a graphic strip map, following, it would seem, the format invented by Matthew Paris four hundred years earlier.⁶ Ogilby thereby produced the first book of road maps of Great Britain, which Harley called the 'founding publication of a distinctive and enduring cartographic genre'.⁷

As a folio tome of 100 maps, with some 200 pages of text, weighing nearly 7 kilograms, it is highly unlikely that Ogilby's *Britannia* was ever taken on the road.⁸ Catherine Delano-Smith and Garrett Sullivan have each persuasively argued that the *Britannia* was never intended to be used for way finding; in fact it formed part of a genre of literary atlases intended for use by 'armchair travellers'. Its lavish format was designed to win the favour of the king, members of the nobility and other potential wealthy patrons and to promote an image of a flourishing and successful Britain.⁹

Ogilby's geographical information was almost immediately copied by the London booksellers Thomas Bassett and Richard Chiswell. In 1676 they converted Ogilby's graphic presentation into typographical word maps, in which place-names along each road were printed in geographical order in the approximate direction on an imaginary map of England and Wales. Copies of these maps were inserted into Speed's *Theatre of the Empire of Great Britain* and were also bound in a pocket volume called *The English Travellers Companion*.¹⁰ Ogilby responded in 1676 by producing his own typographic road maps, as well as a letterpress reduction in a narrow format suitable for being carried in a pocket, that was clearly aimed at travellers.¹¹ By the fourth impression, in 1689, this was being called *Mr Ogilby's and William Morgan's Pocket Book of Roads*.¹²

Almanac makers continued to use the obsolete, pre-Ogilby information until 1759.¹³ By the early eighteenth century, however, a number of mapmakers and booksellers were copying Ogilby's strip-map format and adapting it to create their own pocket-sized road book editions, with added letterpress. In 1719 Thomas Gardner published *A Pocket-Guide to the English Traveller*, and John Senex issued *An Actual Survey of all the Principal Roads of England and Wales*.¹⁴ The following year came John Owen and Emanuel Bowen's *Britannia Depicta or Ogilby Improv'd*.¹⁵ Later in the century these works had been joined by numerous other publications, including *Kitchin's Post-Chaise Companion*, *Bowles' Post-Chaise Companion* and *Owen's Book of Roads*.¹⁶

The Litigants

Such was the flourishing and competitive market that Daniel Paterson and Thomas Carnan joined in 1771. Little is known of Daniel Paterson beyond the bare facts of his life and death available on his tombstone and what can be gathered through his publications.¹⁷ His first foray into the publishing world was a single engraved sheet which gave a table of distances between the principal cities and towns of England, accompanied by a skeleton map.¹⁸ His next venture was the road book for which he would become known and with which we are concerned.¹⁹ Paterson had been commissioned as Ensign in the 30th Regiment of Foot on 13 December 1765.²⁰ In his book he described himself as ‘Assistant to the Quarter Master General of His Majesty’s Forces’ and dedicated the book to Lieutenant-Colonel George Morrison, the then Quarter Master General.²¹

Thomas Carnan was a London publisher and bookseller, known to history as the man who broke the long-standing monopoly held by the Stationers’ Company on printing almanacs in the 1770s.²² Having made the initial arrangement with Paterson in 1771, Carnan produced a further four editions in the following ten years. Each time Carnan paid Paterson for making additions and corrections. It seems, however, that after 1781 they had a parting of the ways because the next edition, published in 1783, was prepared for Carnan by a hack writer named Richard Johnson.²³

In 1785 Paterson found a new publisher: the London print and map seller Carington Bowles. We can speculate that money may lie at the root of Paterson’s defection. Carnan had originally paid Paterson the sum of £50 and undertook to provide him with 300 copies of the book for the first edition. For corrections and updates, Carnan had paid him £11 16s 3d, £15 6s 6d and £10 10s for the second, third and fourth editions respectively.²⁴ In 1783, however, Carnan paid Johnson half what he had paid Paterson, namely £5 5s, for corrections resulting in the fifth edition. Bowles, meanwhile, paid Paterson the considerably larger sum of £263 13s 3d and accordingly published a book known as *Paterson’s British Itinerary*.

Carington Bowles ran a substantial wholesale and retail print business, and by 1785 he was already publishing some of the main competitors of *Paterson’s Roads*, notably Emanuel Bowen’s *Britannia Depicta*, *Bowles’ Post-Chaise Companion* and *Kitchin’s Post-Chaise Companion*,²⁵ It was therefore good business strategy for Bowles to bring Paterson and his reputation into his publishing ‘stable’. Both *Britannia Depicta* and *Kitchin’s Post-Chaise Companion* contained strip maps as well as letterpress, and *Paterson’s British Itinerary* differed from *Paterson’s Roads* in that, like the first two, it also contained a set of strip maps, 179 in all, making it a much larger work in two

volumes (Fig.2). Unlike the bookseller Carnan, Bowles printed and sold a considerable number of maps, working often with his father, John Bowles, and with Robert Sayer, who had acquired much of Thomas Jefferys's stock following his bankruptcy in 1766 and death in 1771.²⁶

Carnan was not one to take Paterson's defection lying down. He appears to have had a reputation for being 'litigious, cantankerous, a born rebel and fighter against "the establishment", but brave and tenacious of purpose in a high degree'.²⁷ His experience fighting the Stationer's Company over almanacs meant that by the mid-1780s he was an experienced legal player, who had tasted victory in the courts of Chancery and Common Pleas. He was also fully aware of the possibilities offered by the Statute of Anne, which had been passed in 1710 to become the world's first copyright act.²⁸ This statute provided that authors or their assigns would have the sole right to print and publish books for the term of fourteen years, with a second term of fourteen years to apply to authors still alive at the expiration of the first period.²⁹ Being a book, *Paterson's Roads*, fell within its scope.

For his fight against Bowles, Carnan engaged numerous high profile counsel, including the Solicitor General Archibald Macdonald and John Scott (later Lord Eldon), and brought a bill of complaint in Chancery on 5 July 1785.³⁰ Bowles and Paterson made their Answer ten days later, and the following week the Solicitor General moved, on the part of Carnan, for an injunction to restrain the sale of *Paterson's British Itinerary*.³¹ Like Carnan, Bowles was not unfamiliar with the courts or the law of copyright. In 1770, the prominent mapmaker Thomas Jefferys had brought a suit against him in Chancery accusing him of copying a map-based game, the result of which is not known.³² Then in 1780, Bowles had brought a suit against the chartmaker Robert Sayer and his partner John Bennett for copying a map of Scotland, which the parties settled before any hearing.³³ In response to Carnan's suit, Bowles and Paterson also engaged a number of eminent counsel to plead their case in court, including James Mansfield and John Stainsby, both leading Chancery counsel.³⁴

The Legal Issues

Two legal issues were at stake here: first, whether the copyright Paterson had assigned to Carnan had reverted to him, allowing him to make a second assignment to Bowles; and second, whether the book Paterson and Bowles produced was an infringement of Carnan's rights under the Statute of Anne.³⁵ The first question, as to whether Paterson was able to make the second assignment to Bowles, turned on the time periods set out in the Statute of Anne. As previously mentioned, the Act's first section provided that the author of any

book, or his assigns, should have the sole right and liberty of printing and reprinting for the term of fourteen years.³⁶ The final section of the Act then stated that ‘after the expiration of the said term of fourteen years the sole right of printing shall return to the Authors thereof if they are living for another Term of fourteen years’.³⁷ This is what Paterson and Bowles were relying on, arguing that Paterson’s initial assignment to Carnan in 1771 ended in 1785 and returned to Paterson who was therefore free to re-assign his printing right to Bowles.

Carnan argued that he was entitled to the copyright for the second term of fourteen years, on one of two bases. The first argument was that Paterson had conveyed to Carnan his rights in the second fourteen year term as well as his rights in the first fourteen year term in the initial agreement back in 1771. The alternative argument was that his agreement with Paterson in 1781 relating to the fifth edition amounted to a new copyright assignment which still had ten years to run. The Lord Chancellor, Lord Thurlow, accepted Carnan’s first argument and held that the reversionary term did indeed pass to Carnan, so that he acquired both fourteen year terms in 1771. Rather robustly, he opined that ‘If he [Paterson] had meant to convey his first term only, he should have said so’.³⁸

The Same Book?

Because the Lord Chancellor found that Carnan *did* continue to hold the copyright, the second issue came into play: namely, the question of whether the book produced by Bowles infringed the rights of Carnan. The answer to this question turned on an assessment as to whether the book produced by Bowles was *the same* book as that published by Carnan. Unlike copyright legislation of today, infringement was barely defined in the Statute of Anne, and there were no provisions for exceptions or defences. Its drafters appear to have only contemplated the situation of a person publishing a book already owned by someone else. But it was not long before cases began to come before the courts that involved partial copying, rather than wholesale piracy, and the courts had approached these cases by asking whether the allegedly infringing book was the *same* book with merely ‘colourable’(that is, feigned or pretended) alterations, or a new and different book.³⁹ If the former, it would infringe; if the latter, it would not.

When Bowles and Carnan faced each other in Court of Chancery, Carnan’s chief argument was that the books were the same, and that the Bowles version was copied from his. The fact that one contained the roads as written description in the old format and the other depicted them graphically was immaterial: ‘The book contains the same road; the only difference is that one is engraved on copper plates, the other is in letter-press’.⁴⁰ Bowles and Paterson responded that, on the contrary, ‘this is as different from the former work as any two works of

this nature can be. They must all be considerably alike, as being descriptions of the same places. *Ogleby* [sic], *Kitchen*, et *Britannia delineata*, must all essentially be the same'.⁴¹ The Solicitor-General countered for Carnan that merely making improvements could not make the book a new and different work to the original. He went further and said that the additional parts in Bowles's book were the maps and that 'there is no additional mental labour' in them.⁴²

It was certainly true that the books 'must all be considerably alike' because Paterson had carried out no new survey in creating his road book. Rather, drawing upon the well-established tradition of the written itinerary, Paterson had gathered and collated information from a variety of sources, no doubt many of which were associated with his employment, and used them to update the work carried out by Ogilby one hundred years earlier. In his preface to *Paterson's British Itinerary* (1785), he explained his motives and methods:

The Author of the following Work, animated with a desire of excelling in his profession and of executing the duties of his staff employment with that degree of accuracy and precision necessary for conducting the movements of an army, in such regularity and good order as is absolutely requisite for the good of the service; and, as a thorough knowledge of the Roads, Towns, and even Villages of Note in the Kingdom, must be allowed the first essential towards the wished-for accompaniment, he has, for many years past, made it his principal study to attain that end therein he had so far succeeded even fourteen years ago, as to venture, through the persuasion of his friends, to lay before the public what he had originally compiled for his own amusement and information in business. The success attending that first Essay (notwithstanding its many imperfections) and the reception it has been honoured with from a generous public, has encouraged the Author to persevere in his favourite pursuit, sparing neither pains nor expence [sic] in procuring such materials as would enable him to improve upon the subject.⁴³

Both *Paterson's Roads* (1771) and *Paterson's British Itinerary* (1785) were therefore based upon the information published by Ogilby, but Paterson's *Roads* did not employ his, or indeed any, maps. *Paterson's British Itinerary*, by contrast, contained 179 strip maps of the kind popularized by Ogilby. The Lord Chancellor, Lord Thurlow, appeared to be at something of a loss as to how to decide whether copying had occurred in such a case. He observed, 'It is an extremely difficult thing to establish identity in a map, or a mere list of distances: but there may be originality in casting an index, or pointing out a ready method of finding a place in a map. In the work Paterson sold to Carnan there seems to be some sort of this originality'.⁴⁴ He referred the case to a Master (a senior officer or clerk appointed to assist the court) to examine 'the originality' of the books and make a report.⁴⁵

The Master, John Eardley Wilmot, did not make his report until 29 May 1786. He stated that he had been attended by both the plaintiff and the

defendants, and their solicitors, and that he had ‘looked into’ both books. Having done so, he concluded that they were not the same book and that they differed in the following ways: *Paterson’s Roads* was ‘a description only’ of the roads, while *Paterson’s British Itinerary* contained 179 maps or charts and therefore included a great deal more information. He also found that the books were by the same author, Paterson, and went on to say: ‘with regard to those roads which are in both Books described in Letter Press, I find there are many small differences, additions, corrections, & variations, but that the said Roads are in Substance nearly the same’. Finally, he pointed out that the two books were sold at different prices, the plaintiff’s book being sold for 2 shillings, and the defendant’s for 2 guineas.⁴⁶

When the case came back before the Court it was heard by the Master of the Rolls, Sir Lloyd Kenyon, who awarded Carnan an injunction on 20 June 1786 in respect of the letterpress only. He held that the Master’s report had found the ‘delineation’ to be different in the defendant’s work, but that the letterpress was ‘nearly the same’ and that ‘the mere act of embellishing could not divest the right of the owner in the text’.⁴⁷ Bowles and Paterson, however, moved to discharge the injunction in November of that year, and having heard their arguments the Lord Chancellor found that the Master’s report was unclear and ordered him to review it.⁴⁸

This time, the Master was even more clearly in favour of Bowles and Paterson, stating again that the defendants’ book was *not* the same as the plaintiff’s book and that it was ‘so essentially different from the last as to render the former a new and original composition’ in several ways. He went on to note that he considered neither book to be new and original except as compared with each other, since there were numerous books both prior to and contemporary with those in question ‘of the same kind but differing in form and execution’. Secondly, he observed that the greatest part of Bowles’s book was the delineation of roads on copper plates, and it therefore had much more information than Carnan’s book. Finally, he found that the letterpress in Bowles’ book contained many additions and corrections and so could not be said to be the same.⁴⁹

Lord Chancellor Thurlow accepted the Report.⁵⁰ Carnan, though, then took exception to it, and his objections were argued on 19 July 1787. The Lord Chancellor responded by referring the Report back to the Master for a third time. This time, Thurlow said, he wished to know specifically in which respects the book of the Plaintiff could be considered an original book and ‘whether the said Book published by the Defendant Carington Bowles is the same as the Book published by the Plaintiff in any and which of the respects in which he finds the latter is an original Work and it is ordered that the said Master do state

the respective particulars in which the said Books are different from each Other'.⁵¹

It seems that, for the Master, the fact that both books were based on the same *substratum* of information, which was itself shared by a number of other similar publications currently on the market, led him to focus on the differences between the two books. Clearly, they were different in a number of respects; in some cases, the actual distances differed. But, perhaps more significantly, they were designed for different sectors of the market. *Patersons' Roads* contained information of use to commercial travellers, such as the fair and market days and circuit dates, with a nod towards those travelling for leisure in the brief descriptions of some of the sights on route, and was sold at the price of 2 shillings.

Paterson's Itinerary, which was sold for 2 guineas (reflecting the greater cost of the copper plates), was directly aimed at more affluent travellers who also had the leisure to absorb the greater amount of printed information on local sights, views and great houses and to examine the maps closely for similar details (Fig. 3). As Paterson had explained in the Preface, the weakness of previous works (including his own) was that they contained only the line of the road without 'affording the least idea of the circumjacent country or describing any of those beautiful seats and other remarkable objects which attract the Traveller's attention, and excite a curiosity he cannot get satisfied'.⁵²

Lord Thurlow, however, was more interested in ascertaining the similarities between the books, which would assist in identifying what it was that Bowles may have copied. He seemed to consider that there must have been *something* about *Paterson's Roads* that distinguished it from the other publications on the market and that made it so successful: if this was what had been copied from these other publications by Bowles and Paterson, then the Lord Chancellor thought that should amount to infringement.

Unfortunately, we can only speculate as to what the Master might have said on his third reference, for this part of the tale has no ending. Carnan continued to pursue the case, perhaps encouraged by the Lord Chancellor's re-referral, or possibly simply due to his litigious and cantankerous nature.⁵³ However, in July 1788 Carnan died, and I have been unable to locate any further records. In the end, Bowles may have misread his market. A second edition of *Paterson's British Itinerary* was not published for another eleven years, while *Paterson's Roads* was published in a further four editions over that period. This was not, however, the end of the legal wrangles over *Patterson's Roads*.

After Carnan's death, the copyright in *Paterson's Roads* was inherited by his stepbrother, Francis Newbery, with whom he had originally been in business until they quarrelled and Francis had left to concentrate on the patent medicine business. Together with his nephew, Francis Power, Newbery arranged for the printing of several further editions, until trouble arose again in 1799.⁵⁴

This time the cause of the trouble was a new competitor: John Cary. Cary had been apprenticed to the engraver William Palmer and around 1783 set up his own business at 188 Strand engraving, publishing and selling maps and prints. In 1784 he issued his first road book, having employed Aaron Arrowsmith to survey the post roads and branches between London and Falmouth.⁵⁵ By 1786 Cary's maps were coming to be recognized as of higher quality than the usual offerings, with the *Monthly Review* noting that Cary's surveys were the 'most accurate and elegant of any that have appeared since the days of Rocque'.⁵⁶ His association with the Post Office probably began in relation to his *A New and Correct English Atlas*, published 1787–1789, in the preface of which he thanks the Comptroller General of the Post Office for permission to consult important documents.⁵⁷

In 1793 or 1794, Cary entered into an agreement with the Thomas Hasker, the superintendent of the mail coaches, upon the order of Lord Walsingham, one of the Postmasters General, to make a survey of the roads of England and Wales.⁵⁸ This was to be the first comprehensive road survey since Ogilby's in the 1670s. The chief reason the Post Office wished such a survey to be made was to settle the many disputes that were arising over the prices charged by the mail-coach contractors, which were calculated by mileage.⁵⁹ It was agreed that Cary should receive payment of 9 pence per mile, but since this was the amount he had to pay his surveyors, only his costs would have been covered.⁶⁰ It was therefore agreed he would also receive the exclusive right to publish his survey, which would allow him to make a profit through sales.⁶¹

In 1798 Cary began to sell the results of his road survey, under the title of *Cary's New Itinerary* (Fig. 4).⁶² According to Newbery's own account (published in 1803 as the preface to the 13th edition of *Paterson's Roads*), Newbery immediately accused Cary of having copied the 'plan and design' of *Paterson's Roads*.⁶³ Notwithstanding such accusation, Newbery decided not to bring legal proceedings, but 'instead of the slow warfare of legal restraints and prosecutions, [he] determined upon the bolder measure of reprisals: for two reasons, — one, that retaliation was more summary; — and the other, that the Public would probably be the gainers by the establishment of a competition'.⁶⁴ He therefore published a new edition of *Paterson's Roads* in 1799, containing additions and corrections copied from Cary's book.⁶⁵

Newbery's 'retaliation' spurred Cary to legal action, and he brought a bill in Chancery against Newbery's printers and publishers, William Faden, Thomas Norton Longman and Owen Rees.⁶⁶ A significant grievance was that Newbery's work was being offered at 4s 6d, which was cheaper than Cary's book at 7s. Cary alleged that Newbery could only offer the book so cheaply because he had copied it.⁶⁷ Newbery's strategy was apparently successful, since he claimed that he sold 3,700 copies in less than a year of the new publication.

Newbery, however, was not Cary's only problem. One of Cary's surveyors, a Nathaniel Coltman, was also attempting to undercut his publication by publishing his own book, called *The British Itinerary*, in 1799, which would be sold at 3s. Coltman advertised the book as being written by 'Nathaniel Coltman, Surveyor, employed by the Post-Office to measure the Roads of Great Britain'.⁶⁸ Cary responded by writing to the General Post Office, asking the Postmasters General to declare publicly that no person other than himself had been appointed Surveyor of the Roads to the General Post Office.⁶⁹ The request occasioned some embarrassment, since the Post Office could find no evidence that Cary had ever been appointed to such a position, and consequently they did not wish to make a public declaration that he had. At the same time, they did not wish to show a lack of appreciation towards Cary (particularly in light of the fact that Cary had been styling himself as holder of that post in the book).⁷⁰ The correspondence does not reveal a resolution, and Cary may have chosen to focus his attention on the more significant foe, bringing his Chancery case against Newbery, Longman, Rees and Faden.

Newbery responded with an affidavit, in which he claimed that 'the general plan or design of the said Complainant's Book is not new or original but is the same as that of the said Original book published by this Defendant and that the additions or improvements made by the said Complainant form but a very small part of the said Complainant's Work the remainder being copied in some instances almost page for page from this Defendant's said Book'.⁷¹ The Lord Chancellor, Lord Loughborough, inspected the works himself and found them to be very different. He complimented Cary, stating 'He has made a very good map; with which it is very pleasant to travel', but added that if he were to do 'strict justice', he would order the defendants to take everything out of their book that they took from the plaintiff and the plaintiff to take out everything he took from the defendants. He made no order.⁷²

Cary then brought an action in the King's Bench but, according to Newbery's account, after the day of the trial was fixed Cary withdrew the case and approached Newbery through intermediaries with a proposal. He told Newbery that, as the copyright term in *Paterson's Roads*, was about to expire

he had heard that the booksellers were about to publish their own version of it, but suggested that the two of them join together in a new publication as ‘from the command they had over the trade, they would be able to supersede or annihilate both Paterson’s Roads and Cary’s Itinerary’. Again according to his own account, Newbery reacted with righteous outrage: ‘To a proposal, so repugnant to the Statute of the 8th of Queen Anne (which was intended to limit such monopolies) and so hostile to the Booksellers, the Proprietor of Paterson’s Roads sent the following reply: — “That neither his character nor his feelings would allow him to enter into any such compromise or coalition”’.⁷³

Cary therefore renewed his case in the King’s Bench where he was represented by Thomas Erskine along with James Mingay QC and George Holroyd. (It is possible to trace the details of these proceedings because both Cary and Newbery included reports of the trial in subsequent editions of their publications.) One of the witnesses who appeared for Cary had been a compositor for Newbery. He gave evidence that in setting up the new edition of *Patersons’ Roads*, ‘The major part of it was Copy from Cary. *Pieces* were cut out of *Cary’s book* and interwoven Manuscript put between’. On further questioning, he confirmed that ‘there were Eight or Ten times as much Print as Manuscript’. Particularly damning, no doubt, was the following exchange:

Q: Were there any whole Pages entire Print?

A: Yes; there was a column cut out, and we substituted fractional Parts in order to deviate from him.

Q: Was this done to disguise it?

A: I suppose so, yes.⁷⁴

Newbery’s defence was not that he had not copied the information, but that Cary could have no such exclusive right in it. Knowing that the survey was paid for by the Post Office, ‘he naturally concluded, that after it was delivered out for publication, it was the property of the public for whose use and whose expense it had been made’.⁷⁵

Perhaps unsurprisingly, given the overwhelming evidence of copying, the jury found in favour of Cary. Sir Lloyd Kenyon (now Lord Kenyon), who had been Master of the Rolls in the case between Carnan and Bowles and Paterson, was now Chief Justice. As in *Carnan v Bowles*, Lord Kenyon had no difficulty in finding that copyright subsisted in Cary’s book, notwithstanding that he might have copied parts of it from elsewhere: the question would be whether the defendant had copied the parts which the plaintiff had added.⁷⁶

Despite the jury finding in his favour, Cary was awarded only 1s in nominal damages. Newbery's counsel brought a motion for a new trial in the King's Bench, but it was refused by Lord Kenyon.⁷⁷ Cary then returned to Chancery looking for an injunction and an account of profits.⁷⁸ In their Answers to the Chancery Bill, Longman, Rees and Newbery all confirmed that they had ceased to sell the 12th edition after the King's Bench judgment, and Newbery stated that overall he had sustained a loss of £238 12s. 5d.⁷⁹ Once again, in the absence of any profits to be accounted for, the case petered out—or at least out of the courts, since Cary and Newbery continued the battle in the pages of their respective publications.⁸⁰ Newbery's thirteenth edition of *Paterson's Roads*, published in 1803, included an 'Advertisement', describing the legal proceedings and accusing Cary of plagiarism, and a thirteen-page appendix comparing the two publications to demonstrate copying (Fig. 5).⁸¹ Cary rebutted the allegations in the second edition of his *Itinerary* and included a transcript of the King's Bench cases as proof.⁸²

Newbery, for his part, was not content to sit quietly by and lose such a valuable property as *Paterson's Roads* to an upstart like Cary. Following the King's Bench decision, his next action was to write to Francis Freeling, the Secretary to the Post Office, who also happened to be his son-in-law. Newbery asked for the same assistance as that given to Cary in the form of requests being sent to the Post Office's surveyors and Post Masters to supply him with local information on such things as the turnpikes, milestones, river and canal crossings, gentleman's seats, inns supplying post horses and so on. Newbery's particular concern was with the milestones for, as he explained to Freeling, 'I mean to pursue our old Plan of marking the Distances by the Mile Stones; which I find, from various correspondents, is much more agreeable to the Traveller and I shall therefore discard all Mr Cary's Admeasurements'.⁸³ Freeling referred the request to the Postmasters-General, who were happy for him to supply such information to Newbery.⁸⁴

Matters were less straightforward when Newbery requested a copy of Cary's actual survey. Although Newbery emphasized again that he only wished to use the survey to ascertain the positions of the milestones, which Cary had not used in his measurements of roads, Freeling sought legal advice on this point from a barrister, John Leach, and the Attorney-General Edward Law. Leach's advice was as follows:

Mr Carey [*sic*] having by his agreement with the Post Office expressly reserved the copyright in the Survey, it appears to me that the Post Office [*illeg*] only entitled to the use of it for their particular information and that they cannot authorise Mr Newbery to avail himself of it in any manner in his intended publication.⁸⁵

The Attorney-General came to the same conclusion, but placed more emphasis on protecting Cary against competition, stating that if

Carey has indicated or is supposed to entertain any purpose of giving this information to the Public in any new edition of his Work, or if even the immediate publication by any one else of a book of Roads with the addition and improvement in question would materially affect the Sale of Mr Carey's Work as at present published, I think it would be in some degree a violation of good faith on the part of the Post Office to communicate this Survey to any body else in such manner as that the materials furnished by Carey himself should be converted to his present or future prejudice.⁸⁶

The result appears to be that Newbery was not furnished with a copy of Cary's survey but was given the same assistance in the form of enquiries and information. In the preface to the 13th edition, Newbery thanked Freeling and the Post Office for their assistance.⁸⁷

The Final Stretch

Despite the not entirely satisfactory resolution of his case against Newbery, Cary was not finished with the law of copyright. In June 1802, with Erskine again as counsel, Cary brought an action in the King's Bench against the publisher George Kearsley for infringing copyright in the *Itinerary*.⁸⁸ The allegedly infringing work is not named, but it must have been *Kearsley's Traveller's Entertaining Guide through Great Britain* (Fig. 6).⁸⁹

This book was not a direct competitor to *Cary's New Itinerary*, but more in the nature of a guidebook. It contained a single folded map of Britain and was set out in two ruled columns. A subcolumn on the left listed the distances between each town, and the right-hand column provided a brief description of each town on the route in question. The descriptions included details of stately homes, the names of public houses and inns, as well as historical facts and anecdotes.⁹⁰ As Kearsley explained in his Preface, despite many 'Tours' having been published describing the roads of Great Britain, 'There yet, however, may be found wanting a Compendium of Topography; an Itinerary, comprehending as well what is amusing and instructive, as what is necessary and useful'.⁹¹

Once again, the debate before the court focused on whether a person who both copied a work and made additions could be guilty of piracy. Erskine presented Lord Ellenborough (who had advised the Post Office the previous year while still Attorney-General Edward Law), with an example involving William Paley: 'Suppose a man took Paley's Philosophy, and copied a whole essay with observations and notes, or additions at the end of it, would that be piracy?' The Lord Chancellor responded: 'That would depend on the facts of, whether the publication of that essay was to convey to the public the notes and

observations fairly, or only to colour the publication of the original essay, and make that a pretext for pirating it; if the latter, it could not be sustained'.⁹²

Taking a more robust approach, which prioritized the public interest in accurate geographical information, Lord Ellenborough asserted that 'a man may fairly adopt part of the work of another, he may so make use of another's labours for the promotion of science and the benefit of the public, but having done so, the question will be, Was the matter so taken used fairly with that view, and without what I may term *animus furandi* [intention to steal]'? He continued: 'while I shall think myself bound to secure every man in the enjoyment of his copy-right, one must not put manacles upon science'.⁹³ Seeing which way the wind was blowing, Cary's counsel consented to be nonsuited.⁹⁴

Both *Paterson's Roads* and *Cary's New Itinerary* continued to be published in new editions well into the nineteenth century.⁹⁵ Interestingly, it seems Cary became less concerned about copying new survey material—at least when he was doing it. In 1810 he complained to the Ordnance Survey that his inability to get hold of a copy of its Devonshire map, supplied only to William Faden as the Ordnance Survey's sole agent, was holding up publication of his own 'Ordnance Survey of Devonshire.'⁹⁶

Copyright Litigation and Cartography

Sir George Fordham, whose pioneering work on carto-bibliography—of road maps and itineraries in particular—has formed much of the historical background for this article, discovered the records of the Cary lawsuit that were reproduced in both his and Newbery's publications. In his biography of Cary, he commented that 'the matter now has no interest except for the information it gives incidentally as to the position and work of John Cary himself'.⁹⁷ It is, however, the contention in this article that the Cary litigation, when put into the context of the cases which preceded it, is in fact of considerable interest in many other respects and to a broader field that encompasses both historians and lawyers.

Picking up where Fordham left off, the meticulous carto-bibliography carried out by Donald Hodson in his unpublished doctoral dissertation reveals that obsolete information on the roads of Great Britain continued to be published long after the advances made by Ogilby's surveys of the 1670s, and that letterpress itineraries based on Ogilby's *Britannia* did slowly emerge in the marketplace alongside the older, cheaper productions and displaced them by the middle of the eighteenth century.⁹⁸ While similar detailed carto-bibliographical studies are still needed for the next hundred years, an examination of the

litigation over *Paterson's Roads*, and *Cary's New Itinerary*, begins to present a more nuanced picture of a trade in transformation.

The mapselling trade was changing because society was in flux. The enormous and accelerating changes to the British economy and development during the eighteenth century saw a demographic boom, manufacturing and industry rapidly expanding, towns and cities growing, and a surge in foreign and domestic trade. These developments were facilitated by, and themselves encouraged, improvements in the road and transport networks.⁹⁹ As new classes of independent or leisured travellers took to the roads in growing numbers, road books were needed for way finding, and consequently their popularity grew.¹⁰⁰ And because work was being done to improve the roads, the need for up-to-date information about those roads also grew, making new editions of road books ever more important.¹⁰¹

While we already know from the numbers of editions and issues of *Paterson's Roads*, as well as its key competitors such as *Owen's New Book of Roads* (as it had been since the second edition) and *Ogilby and Morgan's Book of the Roads*, that the market for such books was growing, documents produced in the course of litigation give an idea of the sheer volume of sales.¹⁰² Carnan in his Bill of Complaint in 1785 alleged he disposed of many thousands of copies of the first and second editions of *Paterson's Roads*, and many hundreds of the third, fourth and fifth editions, while Newbery claimed to have printed 10,000 copies of the eleventh edition, and to have disposed of 3,700 copies of the twelfth edition (which contained Cary's information) in less than a year.¹⁰³ Even allowing for a certain amount of hyperbole, sales must have been strong and the property considered valuable, or its owners would not have been prepared to submit to the cost and uncertainty of litigation.

We can also get an idea of Carnan's publication strategy—the first two editions of *Paterson's Roads* offered novelty and a form of organization that clearly appealed to travellers and sold strongly. Subsequent editions, with only minimal changes, sold less well but in sufficient numbers to make new editions viable and litigation feasible. The litigation also reveals that accuracy (or at least the appearance of it) was increasingly perceived to be a valuable commodity, and publishers were prepared to fight to retain exclusivity of their information.

In addition, claims to accuracy had to emanate from a reputable source. Daniel Paterson had just such a reputation, which explains the continued use of his name for almost sixty years after he had ceased to have any personal involvement in his book of roads. This in turn suggests Carnan may have been angered not only by Paterson's use of the same information, but also by

Paterson's attempt to use his name in connection with a different work. This also explains Cary's concern to be the sole mapmaker associated explicitly with the Post Office in an official capacity and his fury at Coltman's temerity in seeking to exploit his own Post Office survey connections.

From a copyright-law point of view these cases throw into stark relief the difficulties that courts experienced, and which they continue to experience to the present day, when faced with disputes involving works of information, and particularly works of geographical information. When a work is presenting 'facts', how can you tell if another work has copied those facts, as a matter of evidence?¹⁰⁴ How many changes are required to render a work 'new' from which a new term of copyright will commence running?¹⁰⁵ Should some copying of information be allowed in the interests of the public in obtaining accurate geographical data?¹⁰⁶

Meanwhile many modern maps, created using data sets and computers, may no longer attract copyright protection at all but may fall instead within the United Kingdom's database protection regime. The journey of *Paterson's Roads* through the courts and through the legal, social and economic history of Britain is not one Daniel Paterson would have expected his readers to take, but two hundred years later it remains both a relevant and an entertaining adventure.

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Notes and References

¹ Daniel Paterson, *New and Accurate Description of all the Direct and Principal Cross-Roads in Great Britain* (London, T. Carnan, 1771). The agreement is described in *Carnan v Bowles* (1786) 2 Bro. C.C. 80. (published law report)

² As discussed further below, Catherine Delano-Smith points out the need to draw a distinction between the modern use of maps for practical, way-finding purposes, and older, alternate uses of maps in the days of Ogilby. Catherine Delano-Smith, 'Milieus of mobility: itineraries, route maps and road maps', in *Cartographies of Travel and Navigation*, ed. James R. Akerman (Chicago, University of Chicago Press, 2006), 16–68. Likewise, Garrett Sullivan describes Ogilby's *Britannia* as forming part of the genre of encyclopaedic literature popular at the time. Garrett A. Sullivan, 'The Atlas as Literary Genre: Reading the Inutility of John Ogilby's *Britannia*', paper presented at the Thirteenth Kenneth Nebenzahl, Jr., Lectures in the History of Cartography, Newberry Library, 1999 (unpublished).

³ D. Paterson, *A New and Accurate Description of all the Direct and Principal Cross-Roads in Great Britain ... Corrected; With the addition of a Map and other Improvements* (London, T. Carnan, 1772–1773). The map is 'A General View of the Roads of England and Wales', engraved by J. Ellis, 1772.

⁴ The book was renamed *A New and Accurate Description of all the Direct and Principal Cross Roads in England and Wales* (London, T. Carnan, 1781).

⁵ Delano-Smith, 'Milieus of mobility' (see note 2), 39.

⁶ For the likelihood of Matthew Paris's influence on Ogilby, see Delano-Smith, 'Milieus of mobility' (see note 2), 46–54; and Catherine Delano-Smith, 'Matthew Paris's itinerary map (c.1250)', in *The Times History of the World in Maps* (London, Harper Collins, 2014), 36–39.

⁷ J. B. Harley, 'Introduction' to *John Ogilby Britannia 1675* (Amsterdam, Theatrum Orbis Terrarum Ltd, 1970), v, xv

⁸ Catherine Delano-Smith and Roger P. J. Kain, *English Maps: A History* (London, British Library, 1999), 169.

⁹ Delano-Smith, 'Milieus of mobility' (see note 2), 51–54; and Sullivan, 'The Atlas as Literary Genre' (see note 2).

¹⁰ *The English Travellers Companion* (London, Thomas Bassett and Richard Chiswell, 1676). An example of one of the sheets bound up with the 1767 edition of Speed's *Theatre of the Empire of Great Britain* can be found in Delano-Smith, 'Milieus of mobility' (see note 2), fig 2.11 on 42.

¹¹ *Mr Ogilby's Tables of His Measured Roads. So Digested, that any great Road or Branch may readily be found; with the General and the Particular, Computed & Measur'd Distance, and the Distinction of Market and Post-Towns ... By John Ogilby, Esq* (London, 1676). See Donald Hodson, 'The Early Printed Road Books and Itineraries of England and Wales' (unpublished doctoral dissertation, Geography Department, University of Exeter, 2000), 493–506 (available in the Forum Library, Exeter, and British Library microfilm no. DX215546; I am grateful to Dr Hodson for providing me with a copy).

¹² *Mr Ogilby's and William Morgan's Pocket Book of the Roads, with their Computed and Measured Distances ... the Fourth Impression. To which is added several Roads ... With a Table for the ready finding any Road, City, or Market-Town, and their Distance from London. And a Sheet Map of England ... By William Morgan, Cosmographer to their Majesties* (London, Printed for the Author, and Christopher Wilkinson, 1689). For details of this and subsequent editions see Herbert George Fordham, *John Ogilby (1600–1676), His Britannia, and the British Itineraries of the Eighteenth Century* (London, Oxford University Press, 1925), 168–74.

¹³ Hodson, 'Early Printed Road Books' (see note 11), 508.

¹⁴ Thomas Gardner, *A Pocket-Guide to the English Traveller: Being a Compleat Survey and Admeasurement of all the Principall Roads and Most Considerable Cross-Roads in England and Wales. One Hundred Copper-Plates* (London, 1719); John Senex, *An Actual Survey of all the Principal Roads of England and Wales; Described by One Hundred Maps from Copper Plates. On which are delineated All the Cities, Towns, Villages, Churches, Houses, and Places of Note throughout each Road. As Also the Directions to the Curious Traveller what is worth observing throughout his Journey* (London, 1719).

¹⁵ John Owen and Emanuel Bowen, *Britannia Depicta or Ogilby Improv'd; Being a Correct Copy of Mr Ogilby's Actual Survey of all ye Direct and Principal Cross Roads in England and Wales ... The Whole for its Compendious Variety and Exactness, preferable to all other Books of Roads hitherto Published or Proposed; and calculated not only for the direction of the Traveller [as they are] but the general use of the Gentleman and Tradesman* (London, 1720).

¹⁶ *Kitchin's post-chaise companion, through England and Wales; Containing all the ancient and new additional roads, with every topographical detail relating thereto. By Thomas Kitchin, for the use of travellers, on one hundred and three copper plates* (London, John Bowles, Carington Bowles, Robert Sayer, 1767); *Bowles's post-chaise companion; or, Travellers directory through England and Wales* (London, Carington Bowles, 1775); William Owen, *Owen's book of roads: or, a description of the roads of Great Britain; being a companion to Owen's book of fairs* (London, printed for W. Owen and R. Goadby, 1777),

which by 1779 is published as *Owen's New Book of Roads* (London, printed for W Owen and Gadby & Co, 1770)

¹⁷ See Herbert George Fordham, "'Paterson's Roads': Daniel Paterson, his maps and itineraries, 1738–1825" *The Library*, Transactions of the Bibliographical Society 5 (1924–1925): 333–56.

¹⁸ Daniel Paterson, *A Scale of Distances of the Principal Cities and Towns of England, Giving in all 4,560 distances in Measured Miles* (1766). See Fordham, 'Paterson's Roads' (note 17), 333.

¹⁹ Daniel Paterson, *New and Accurate Description of all the Direct and Principal Cross-Roads in Great Britain* (London, T. Carnan, 1771).

²⁰ Fordham, 'Paterson's Roads' (see note 17) 355.

²¹ Paterson, *New and Accurate Description of all the Direct and Principal Cross-Roads* (see note 19), title page and dedication.

²² *Stationers' Company v Carnan* (1775), 2 Black. W. 1004 (published law report).

²³ *The Records of the Stationers' Company* (microfilm) (Cambridge, Chadwyck-Healey, 1986), Series 1, Box O (Richard Johnson, father and son 1734–1860). For more on Richard Johnson, see M. J. P. Weedon, 'Richard Johnson and the successors to John Newbery', *The Library*, Transactions of the Bibliographical Society, 5th ser., 4 (1949): 25–63.

²⁴ C12/136/25 m1. (These numbers designate a bill of complaint, filed in the Court of Chancery. The original records are kept at The National Archives, Kew, London. Reference to TNA is omitted for Chancery (C) records hereafter.)

²⁵ Bowen had published his *Britannia Depicta* with Thomas Bowles, and Bowen's share was taken over by Thomas's brother John. Carington Bowles acquired his uncle Thomas's share, presumably after his death in 1763, when John purchased Thomas's business for his son Carington. (I learned of John's purchase of Thomas's business through the personal notes of the historian of the book trade, the late Michael Treadwell. I am grateful to his friends and colleagues for making these available for scholarly research.) Carington Bowles published a new edition in 1764: *Britannia Depicta, or, Ogilby improved: being an actual survey of all the direct and principal cross roads of England and Wales: shewing all the cities, towns, villages, churches, gentlemen's seats, &c. situated on, or near any of the roads / engraved by Emanuel Bowen ... ; to which is added an accurate historical and topographical description of all the cities, boroughs, towns corporate, and other places of note; compiled from the best authorities, by John Owen ... ; the whole illustrated with maps of all the counties of South-Britain, and a summary description of each* (C. Bowles, 1764). Bowles also published other similar works, such as *Bowles' Post-Chaise Travelling Companion*, and co-published *Kitchin's Post-Chaise Companion, through England and Wales*.

²⁶ For details on Carington Bowles's publications, as well as Thomas Bowles and Robert Sayer, see Laurence Worms and Ashley Baynton-Williams, *British Map Engravers* (London, Rare Book Society, 2011), 101–2, 585–87.

²⁷ Sydney Roscoe, *John Newbery and His Successors 1740–1814: A Bibliography* (Wormley, Herts., Five Owls Press, 1973).

²⁸ *An Act for the Encouragement of Learning by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*, 8 Anne c.19 (1710).

²⁹ A second Act was passed in 1735 giving similar protection to engravers: *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*, 8 Geo. II c.13 (1735). A third act, in 1767, extended this protection to cover maps, charts and plans: *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, Historical and other Prints, and for vesting in, and securing to Jane Hogarth, Widow, the Property in certain Prints*, 7 Geo. III c. 38 (1767).

³⁰ John Scott, Lord Eldon, was Lord Chancellor from 1801 to 1827 and is generally regarded as the greatest lawyer of his age. For the bill of complaint, see C12/136/25 m1 (note 24).

³¹ Bowles and Paterson's Answer at C12/136/25 m2, 3, reported in *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 81.

³² *Jefferys v Bowles* (1770). Records of the case can be found in The National Archives (London): C12/1318/18 m1 (15 Feb 1770), C33/433 f.161v (19 Feb 1770), C12/1318/18 m2 (7 Mar 1770), C33/433 f.421v (7 Mar 1770), C33/433 f.267v (17 Mar 1770). The case is reported at (1770) Dic. 429 (Ch).

³³ *Bowles v Sayer and Bennett* (1780–1781). C12/1656/12m1 (12 Jun 1780), C12/1656/12m2 (12 Jun 1780), C12/1656/12m3 (29 Jun 1780), C33/455 f.2 (14 Nov 1780), f.7 (21 Nov 1780), C33/455 f.497 (25 May 1781).

³⁴ David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (Oxford, Oxford University Press, 2000), 352–54.

³⁵ *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 81.

³⁶ 8 Anne c.19, s.1.

³⁷ 8 Anne c.19, s.11.

³⁸ *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 84. For more detail on this aspect of the case see Lionel Bently and Jane Ginsburg, “The sole right ... shall return to the authors”: Anglo-American authors' reversion rights from the Statute of Anne to contemporary U.S. copyright', *Berkeley Technology Law Journal* 25:3 (2010): 1475.

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- ³⁹ See Isabella Alexander, *Copyright Law and the Public Interest in the Nineteenth Century* (Oxford, Hart Publishing, 2010), Ch.6.
- ⁴⁰ *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 82.
- ⁴¹ *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 82.
- ⁴² *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 83.
- ⁴³ Daniel Paterson, *Paterson's British Itinerary: being a new and accurate delineation and description of the direct and principal cross roads of Great Britain* (London, Carington Bowles, 1785), iii.
- ⁴⁴ *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 84.
- ⁴⁵ *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 84, C33/463/696r–v.
- ⁴⁶ C38/728.
- ⁴⁷ C33/465/449v, *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 85.
- ⁴⁸ *Carnan v Bowles* (1786) 1 Cox. 284, 285 (published law report), C33/467 f.23v.
- ⁴⁹ C38/736 (19 May 1787).
- ⁵⁰ C33/467 f.393r
- ⁵¹ C40/5 (4 June 1787), C33/467 f.429v, C33/467 f.617v–618r.
- ⁵² Paterson, *Paterson's British Itinerary* (see note 43), iii.
- ⁵³ Records from the accounts book of Richard Johnson show he was still employed by Carnan to prepare material for the case in January and February 1788 (see note 23).
- ⁵⁴ Roscoe, *John Newbery and His Successors* (see note 27), 27.
- ⁵⁵ David Smith, 'The Cary family', *The Map Collector*, no. 43 (1988): 40, 43; Worms and Baynton-Williams, *British Map Engravers* (see note 26), 130–32; Donald Hodson, *County Atlases of the British Isles Published after 1703*, vol. 3, 1764–1789 (London, British Library, 1997), 173.
- ⁵⁶ Hodson, *County Atlases* (see note 55), 175
- ⁵⁷ *Ibid.*, 181.
- ⁵⁸ *Cary v Longman* (1800) 3 Esp. 273, 273 (published law report). See also the Affidavit of John Cary, C31/294 (18 November 1799).
- ⁵⁹ Hodson, *County Atlases* (see note 55), 181. See also *Cary v Longman* (1800) 3 Esp. 273, 273.
- ⁶⁰ Or so he claimed. Newbery later alleged that the going rate was only 6 pence per mile, suggesting Cary was making an adequate profit without the copyright.
- ⁶¹ *Cary v Longman* (1800) 3 Esp. 273, 273.
- ⁶² *Cary's New Itinerary, or, an Accurate Delineation of the Great Roads, Both Direct and Cross, throughout England and Wales* (London, John Cary, 1798).
- ⁶³ Daniel Paterson, *A new and accurate description of the Roads of England and Wales*, 13th ed. (London, Newbery, Longman, Rees and Faden, 1803), vi.
- ⁶⁴ *Ibid.*, viii–ix.
- ⁶⁵ Daniel Paterson, *A new and accurate description of the Roads of England and Wales*, 12th ed. (London, Longman, Rees, Faden, 1799).

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- ⁶⁶ Bill of Complaint, C12/256/9m.1.
- ⁶⁷ Affidavit, C31/294 (18 November 1799).
- ⁶⁸ Nathaniel Coltman, *The British Itinerary, or Travellers Pocket Companion throughout Great Britain, exhibiting the direct route to every borough and commercial town in the kingdom. With the principal cross roads. Compiled from actual measurement and the best surveys and authorities* (London: W. Dickie & N. Coltman, 1799); advertisement in *Morning Herald*, 29 June 1799.
- ⁶⁹ Letter from John Cary to Francis Freeling dated 18 July 1799, POST 10/286. (The POST collection of materials is found at the Post Office Museum and Archives, Freeling House, Phoenix Place, London).
- ⁷⁰ Notes made on the back of Cary's letter, POST 10/286.
- ⁷¹ Affidavit, C31/294 (20 November 1799).
- ⁷² *Cary v Faden* (1799) 5 Ves. Jun. 24, 26 (published law report).
- ⁷³ Paterson, *A new and accurate description of the Roads of England and Wales*, 13th ed. (see note 63), x–xi.
- ⁷⁴ *Cary's New Itinerary, or, an Accurate Delineation of the Great Roads, Both Direct and Cross, throughout England and Wales*, 2nd ed. (London, John Cary, 1802), 911.
- ⁷⁵ Paterson, *A new and accurate description of the Roads of England and Wales*, 13th ed. (see note 63), xvi.
- ⁷⁶ *Carnan v Bowles* (1786) 2 Bro. C.C. 80, 85; *Cary v Longman* (1800) 3 Esp. 273, 275.
- ⁷⁷ *Cary v Longman and Rees* (1801) 1 East. 358 (published law report).
- ⁷⁸ Bill of Complaint, C13/2/37 m1.
- ⁷⁹ Answers, C13/2/37 m2, m3.
- ⁸⁰ The final records I have located involve referring the answers of Longman, Rees and Newbery to a Master C33/513/807r (2, 3 July 1801), orders giving Newbery, Longman and Rees more time to put in their answers C33/516/172r (26 January 1802), and further answers of Newbery, Longman and Rees C13/14/46m3, m4 (22 March 1802).
- ⁸¹ Paterson, *A new and accurate description of the Roads of England and Wales*, 13th ed. (see note 63).
- ⁸² *Cary's New Itinerary*, 2nd ed. (see note 74), 862–68.
- ⁸³ Letter from F. Newbery to F. Freeling, 12 May 1801 POST 10/286.
- ⁸⁴ Letter from F. Freeling to Postmasters-General, 14 May 1801, and notes made on back of letter: POST 10/286.
- ⁸⁵ Notes made by Leach on statement of case (author unknown) provided to Leach for his opinion, 27 June 1801, POST 10/286.
- ⁸⁶ Copy Attorney General's Opinion, 10 August 1801, POST 10/286.
- ⁸⁷ Paterson, *A new and accurate description of the Roads of England and Wales*, 13th ed. (see note 63), xvii.

⁸⁸ *Cary v Kearsley* (1802) 4 Esp. 168 (published law report). Erskine was joined again by Holroyd and also by William Garrow.

⁸⁹ George Kearsley, *Kearsley's Traveller's Entertaining Guide through Great Britain; or, A description of the great and principal cross-roads* (London, Kearsley, 1801).

⁹⁰ The description of Otley, in Yorkshire, for example states: 'Otley is seated under a cliff. The adjacent parts are reckoned the most delightful in England. Its market is well supplied with corn. There are several good monuments in the church. Here was formerly a palace of the archbishops of York. Near it on the *r.* Farnley-Hall, W. Fawkes, esq. From Otley-hill, see Weston, —Vavasour esq. Four miles beyond on the *r.* Denton Hall, sir J. Ibbetson. *White Horse – Black Horse*' (Kearsley, *Kearsley's Entertaining Traveller* (see note 89), 448).

⁹¹ Kearsley, *Kearsley's Traveller's Entertaining Guide through Great Britain* (see note 89), Preface.

⁹² *Cary v Kearsley* (1802) 4 Esp. 168, 170.

⁹³ *Cary v Kearsley* (1802) 4 Esp. 168, 170.

⁹⁴ A judgment of nonsuit is given where it appears that there is insufficient evidence to establish a cause of action and terminates the case.

⁹⁵ The eighteenth and final edition of *Paterson's Roads*, completely revised by Edward Mogg, was published in several successive issues from 1826 to 1832 and *Cary's New Itinerary* ran to ten further editions, the last of which was published in 1828: see Sir H. G. Fordham, *Studies in Carto-Bibliography, British and French, and in the Bibliography of Itineraries and Road-Books* (Oxford, Clarendon Press, 1914), 52.

⁹⁶ Smith, 'The Cary family' (see note 55), 40, 42, citing Minutes from the Board of Ordnance, WO47/142.

⁹⁷ Sir H. G. Fordham, *John Cary, Engraver, Map, Chart and Print-Seller and Globe-Maker 1754 to 1835* (Cambridge, University Press, 1925), xvii.

⁹⁸ Hodson, 'Early Printed Road Books' (see note 115), 515ff.

⁹⁹ For a detailed examination of the relationship between roads and economic development, see Eric Pawson, *Transport and Economy: The Turnpike Roads of Eighteenth Century Britain* (London, Academic Press, 1977).

¹⁰⁰ Consider Catherine Delano-Smith's conclusions that maps were not used for way finding during either the medieval period or early modern times, and Donald Hodson's similar conclusions for the latter period (Delano-Smith and Kain, *English Maps* (see note 8), 142; Hodson, 'Early Printed Road Books' (see note 11), 519). Delano-Smith also suggests maps came to be widely used as way-finding aids only in the 18th and 19th centuries by non-professional travellers when roads were shown more reliably on topographical maps and all types of road were included (Delano-Smith, 'Milieus of mobility' (see note 2), 57).

¹⁰¹ For example, Boyd Hilton describes how the journey time from London to Bristol was 40 hours in 1750, but less than 24 hours in 1783, and under 12 hours by 1811: Boyd Hilton, *A Mad, Bad & Dangerous People? England 1783–1846* (Oxford, Clarendon Press, 2006), 15.

¹⁰² According to Freeman and Longbotham's examination of the Fordham collection held at the Royal Geographical Society, London, *Owen's New Book of Roads* went through 16 editions between the mid-1770s and 1840 (see note 16) while *Ogilby's and Morgan's Pocket Book of the Roads* (London, printed for J Brotherton, W. Meadows, R. Ware, T. Cox, T. Astley, J. Hodges, J. and J. Rivington, J. Buckland and M. Cooper, 1752), originally titled *Mr Ogilby and William Morgan's Pocket Book of the Roads* (see note 12) and from 1760 called *The traveller's pocket-book*, went through 13 editions between 1750 and 1794 (M. J. Freeman and J. Longbotham, 'The Fordham Collection at the RGS: an introduction', *The Geographical Journal* 146:2 (1980): 218–31, at 224–25).

¹⁰³ Paterson, *A new and accurate description of the Roads of England and Wales*, 13th ed. (see note 63), vi, x. Note that in his Further Answer to Cary's Bill of Complain in Chancery in 1802, Newbery alleged he had sold 5,600 copies of the 12th edition (22 March 1802).

¹⁰⁴ See *Geographic Limited v Penguin Books Limited and Others* [1985] FSR 208 (published law report).

¹⁰⁵ See *Universal Press Pty v Provest* (1987) 87 ALR 497 (Federal Court of Australia) (published law report).

¹⁰⁶ See *The Controller of Her Majesty's Stationery Office, Ordnance Survey v Green Amps Limited* [2007] EWHC 2755 (Ch) (published law report).