

OUR AMERICAN COUSIN IN COURT.

Laura Keene vs. Manager Street and John S. Clarke. A New Phase of an Old Quarrel.

[From the N. Y. News.] Some time ago there arose a legal dispute between Miss Laura Keene and Mr. Street, manager of the Winter Garden Theatre, and John S. Clarke, the actor, who joined with Mr. Street, defending the action brought by Miss Keene.

Before going into the matter in detail it will be necessary for me to make a few preliminary explanations. In the first place, some names which have transpired in the case shall not become confused on the present trial. Shortly before the 30th of September of last year the play "Our American Cousin" was advertised for performance at the Winter Garden, which theatre Mr. William Street was the lessee, and Mr. John S. Clarke was the actor, and Mr. Street was engaged as leading comedian. Miss Keene caused a notice to be served upon these gentlemen, informing them of her sole proprietorship of the theatre, and prohibiting her performance by them, without her previous consent and permission.

They disregarded that notice, and the play was produced on the 30th of September, 1855. On the Monday following Miss Keene had prepared and served papers to obtain an injunction to restrain the further performance of that play. It was an appeal to the court, sitting as a court of chancery for her relief, by a prohibitory act, to stop the further continuance of the performance, which she was to be subjected to. That application for an injunction, after various postponements, finally came up before one of the judges of the court, and upon hearing the judge intimated that he considered the case could be heard and tried upon its merits at a very early day, it was hardly necessary to say that the examination of the question of injunction, which was a lengthy and which, probably, he could not decide as soon as the case could be heard upon its merits. That suggestion meeting with opposition on the side of the plaintiff, of course, ceased to run, the necessity for an injunction having in reality ceased, it was allowed to stand over in that until the case came before the court for a final decision. From that time the plaintiff of the court Miss Keene appealed to the General Term, which appeal has been argued but not decided. I mention these facts in order that your minds may not be embarrassed, as allusion may possibly be made to them intentionally or inadvertently in the course of the trial.

Barbour solely upon the merits of the papers produced were authenticated in the manner that the statutes of our State required. The defendant continued the representation of the play after the 30th of September, and this present action is brought to recover damages for the performance of the play upon every evening night of the month of October, commencing on the 2d and continuing down until the 28th of the month. It also has also performed on two or three days—Sundays, or the days of the week, which have not the dates fixed. This action is brought to recover damages for the performance of "Our American Cousin" for the winter garden, by the defendant, John S. Clarke, who was the principal comedian, performing a star engagement, by whose means the copy was produced at the Winter Garden. Now, the facts in this case, as we shall show them, are these: Some seven or eight years ago Miss Laura Keene purchased from the author of the play, the celebrated Tom Taylor, the original copyright of the right to its exclusive representation throughout the United States and the Canadas. She produced the play at her theatre, of which she was the proprietor, in New York, in October, 1855, and it was, as you may remember, eminently successful. Soon after its production, in 1855, it was announced for performance at the theatre in Philadelphia, called the "Arch Street Theatre," of which Mr. George Clarke was one of the proprietors and managers, and the principal performer. A notice of announcement was made of its intended representation in Philadelphia. Miss Laura Keene applied through her counsel in that city to the United States Circuit Court, to obtain an injunction to restrain the performance of it there as being unlawful, and setting up her exclusive right, as being the sole proprietor of the play in the United States. To that action a defence was put in by the defendant, Clarke, and his associate Mr. Wheatley, in which they denied her right to the play, and denied her right to its sole representation, and set up in herself a new and independent title, which they claimed to have acquired from some other person, who had to her. That raised the issue as to the ownership of the play, and as to the right of its sole representation in this country. The case was heard before the United States Court in Philadelphia upon the allegations of the parties, and upon the proofs, depositions, and evidence given, and after lingering along for some months, I do not know but for a year or more—resulted in a judgment in favor of Miss Keene, which affirmed her right to its exclusive representation in the United States, and her right to recover damages against them for the violation of it at the Arch Street Theatre in Philadelphia. All the issues that were presented in that case were decided in favor of the complainant. The decree, which was rendered was in her favor, and the question of damages was disposed of by the order of the United States Court, as is the practice in that Court by referring it to a master, under the order of the court, to compute the amount, which he did, and awarded the damages of \$500 for the unlawful performance of the play, and the damages were paid by Mr. Clarke, together with the costs of the proceedings. From that time the comedy has been kept by Miss Keene in her possession, and she has, as far as possible, she has never, with but one exception, transferred to any person the exclusive right to perform it. She has, for valuable consideration, licensed the right to perform it—licensed him, in fact. She has licensed Mr. Barman in this city, and the Olympic, I believe, licensed the defendant Clarke, nor any person at the Winter Garden Theatre, to produce it. The production therefore, on the 2d of October, and every subsequent night, was a violation of her rights. Mr. Clarke, who performed it,

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