BEN-HUR

Francis Fredric Theophilus Weeks and Patent No 8615 of 1894

Lew Wallace's novel *Ben-Hur: a Tale of the Christ* was first published in 1880. According to Robert & Katherine Morsberger in their study *Lew Wallace: militant romantic* (NY: McGraw-Hill, c1980), from which the following information is taken, it sold slowly at first, perhaps handicapped by the cool reception of the critics, but

...as readers responded to *Ben-Hur*, they relayed their enthusiasm to friends, and sales began to snowball...as word spread, so did the demand for the novel...The snowball was becoming an avalanche. ...*Ben-Hur* had become the book of the hour, the decade, the age, the one novel that everyone must read. ...Despite its late start, *Ben-Hur* won the race as the best-selling novel of the 19th century.

The novel's success continued into the 20th century – no doubt helped by the two famous film versions of it (in 1925 & 1959 with Ramon Novarro & Charlton Heston respectively in the title role) – and has never been out of print in the 106 years since publication.

Requests for permission to stage dramatic versions of *Ben-Hur* were made to Wallace from as early 1882 and with increasing frequency subsequently. He declined all these on the grounds that the story, having as it did the life of Christ as its background, could not be treated on stage with the 'proper spirit of reverence'. However, in 1889, he relented:

Perhaps in self-defence, Wallace made an agreement...to produce tableaux from *Ben-Hur* with rights for 40 years. Wallace agreed to provide the libretto... [which], published by Harper's in 1891, has a curiously static quality. Neither play nor pantomime, it is a sort of hybrid; some scenes are like pages from a novel, combining dialogue with description that could not be acted out nor given as pantomime or tableaux... Thus Wallace's 61 page libretto is not really a working script for a viable stage version. It would be quite ineffective unless the audience already knew and loved the book and were ready to accept any presentation of it. An audience coming to it cold would find it disjointed and fragmentary, lacking character and dimension. Nevertheless, *Ben-Hur in Dramatic Tableaux and Pantomime* flourished until replaced by the regular stage production.

While Wallace continued to resist requests for such a production (only finally allowing one by Klaw & Erlanger in 1899) he had also to defend his work from attack from another quarter, for

...Wallace began to be plagued by lantern slides of *Ben-Hur*. In January 1896, Herbert J. Riley recorded with the Library of Congress *The Stereoptican Illustrator of 'Ben-Hur: A Tale of the Christ'* [1], consisting of 72 lantern slides accompanied by a lecture. Wallace got hold of a set and sent it to Harper's, asking about infringement of copyright. Harper's replied that Riley Brothers [2] was a large international concern whose version might destroy Wallace's own *Tableaux and Pantomime*; furthermore, 'About half their agents are Reverends'. Later that year, one G. N. Buzby wrote of having a collection of slides illustrating *Ben-Hur* and requested a slide of Wallace himself. Wallace did not oblige; but a month later, A. Dobbins of the Richmond, Virginia, YMCA informed Wallace that he was preparing an *Evening of War, Song and Story*, illustrated with stereoptican and wanted a slide of Wallace in full uniform, as well as a picture of the author to use in an illustrated lecture *The Two Princes*, partly taken from *Ben-Hur*; 'I tell the story in my own way and advise my audience to procure the book and read it...'.

Disappointingly, having set up, and provided the background to this interesting situation, *Lew Wallace: militant romantic* gives no details of Wallace's subsequent action – or, indeed, indicates if any were taken. To follow this up we are obliged to turn to the pages of the *Optical Magic Lantern Journal*. This tells us in its June 1896 issue, that:

Harper Bros., of New York, have entered an action against Messrs. Riley Bros., of Bradford and New York, which certainly puts the American copyright law in a very unfavourable light. When the popular story *Ben Hur* was printed by Harpers, they reserved all rights to the publication and dramatisation of the novel, and afterwards sold the dramatisation rights to Messrs. Clarke & Coxe, a Western firm. Messrs. Riley, at considerable expense, have prepared an illustrated lantern lecture on the story, and Messrs. Clarke & Coxe now object to this as an infringement of their rights of dramatisation, and claim damages to the tune of 10,000 dollars.

In this country it might seem absurd to claim that a lantern entertainment is in effect a dramatic representation. The action is a novel one, and is regarded as a test, and on the 20th ulto. Mr. Riley, sen., left Bradford for New York to defend the case.

This announcement was followed, in the August 1896 issue of the *Journal*, by a letter from Riley Brothers to the Editor expanding on the case and giving details of its current state:

HARPER BROS. & Gen. LEW. WALLACE
v.
RILEY BROTHERS.

To the Editor

Dear Sir, – Referring to your notice in the June number, drawing attention to the action taken against our firm in New York, by Harper Bros., for an alleged infringement of their dramatic copyright in the 'Story of Ben Hur', many readers of your journal have written asking for information about this action, hence we deem it the best way of answering all, to let you know how the matter stands at present. Harpers, in their plaint, allege that a magic lantern exhibition is a dramatic representation, that the person demonstrating or lecturing and the operator at the lantern are the *dramatis personnae* as much as the 'living actors on the stage', and that, therefore, every exhibition of our pictures in conjunction with the lecture is an infringement of a drama on 'Ben Hur', which we heard of for the first time when these proceedings were taken, but which they secured copyright upon some two or three years since. After many delays, the action has been heard since Mr. Riley, senior's, return from New York. It was argued before Judge Coombs at great length. Our counsel, Mr. Wilber, offered to abide by the definition given of a drama by any author of any dictionary in the English language, dwelling upon the latest and best that has ever been published, in which it is distinctly stated that 'a drama is a representation made by living actors, etc., and must have living voices and movements, etc'. We understand that the judge, who, of course, said little, remarked to the plaintiffs' counsel that if we have been setting it forth in the 'Vitascope', where there is such a real representation of life, he could have understood his argument, but it

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was difficult to imagine such being brought into a mere demonstration as in a lantern exhibition.

As the point raised was entirely new, and no decision had ever been given upon the point, the Judge stated he would take time to consider it in all its bearings, and announce to the Counsel concerned when he was prepared to give his decision. Mr. Herbert J. Riley writes us that it is not expected now that any reply will be given before October next, so we shall have to wait. In the meantime, they write very hopefully of the result.

Yours truly,

RILEY BROTHERS.

The decision was still pending in September 1896 as noted by that month's *Journal*, which also pointed out that it did 'not in any way affect sales in this country'. Except, we might speculate, to increase them – a court case, then as now, doing nothing to harm sales. The October issue, however, was at last able to report that the case had been settled – in favour of Riley Brothers:

WALLACE AND OTHERS

v.

RILEY BROTHERS, NEW YORK

This was an application by General Lew Wallace, the author of the well-known book 'Ben-Hur, a tale of the Christ', Harper Brothers, the publishers, and Walter C. Clark, the owner of the dramatic rights, to restrain Messrs. Riley Brothers (of Bradford and) New York, optical lantern and lantern slide makers, from issuing, or causing to be issued, their set of 72 lantern slides illustrating the story; and from issuing or causing to be issued any epitomised reading of the same. Complainants further claimed £2,000 damages. Messrs. Riley Brothers offered to withdraw the epitomised reading, which had been merely given away with each set of slides sold, but defended the publication of the slides, and resisted the action.

The case came on for hearing in May last, before the Honourable E. Henry Lacombe [sic, the judge's name was previously given as Coombs], Circuit Judge of the Southern District of New York, complainants and defendants being represented by Council. Decision was held over until September. In the result Messrs. Riley Brothers are restrained from issuing the epitomised reading of the story 'Ben Hur' within the jurisdiction of the United States, but the application to restrain them from publishing and selling the slides is denied. Messrs. Riley Brothers have therefore gained all that they could expect, inasmuch as they were aware that they were not within their legal rights in publishing in the United States an epitome of a copyrighted book, even though the book was only given as a help to a lecturer who might buy their slides. When they found that this was not acceptable to the author and publishers, however, they at once withdrew the books from circulation, and the matter would have ended there if complainants had not wished to press the injunction for restraining the defendants from publishing the slides, as well as claiming for heavy damages. In both these points they have failed. The complainants relied on the fact that some of the slides were produced from life models, suitably grouped with appropriate backgrounds, so as to present in successive tableaux vivants the principal scenes and incidents of the book, as they would ordinarily be shown on the dramatic stage. These being reproduced by photography, and subsequently presented to public audiences by means of the lantern, accompanied by a public recitation of passages from the book they claimed, constituted a 'dramatic representation', and as such were infringements of the dramatic rights which had been sold to Mr. Clark. In giving his decision in favour of the defendants the judge remarked that in the first place he could not be sure that the life models or drawings had been originally prepared specially for the purpose of illustrating the book 'Ben Hur', but that even taking it for granted that they were so prepared, it would hardly be contended that no one, except with permission of complainants, might produce and sell copies of drawings, the *motif* of which was suggested in the book.

This case has excited the utmost interest in the United States, where it was regarded as a test case, but it is generally conceded that the decision of the court is in harmony, not only with United States law but with the dictates of common sense.

This adverse decision did not deter Wallace from subsequently suing the Kalem Company when it made the first film version of *Ben-Hur* in 1907 – inevitably without attempting to acquire screen rights. Happily for Wallace, though Kalem fought the case all the way to the Supreme Court, this time the decision went in his favour and he received $25,000 plus costs. This was, the Morsbergers say: '...a landmark case; never before had an author or publisher challenged the movies' free and unrestricted use of copyrighted material.'

The *Journal* for November 1896 provided the following postscript to the case:

Photique Art – It may not be generally known that the set of 'Ben Hur' slides published by Messrs Riley Bros., and which have become vastly popular, partly by reason of the recent law case reported in our last journal, is the work of Mr. F. F. Weeks from living Jewish models. Mr. Weeks has erected studios at 263, Cannhall Road, Leytonstone, where, having a large stock of costumes, models, scenes, etc., he is prepared to make pictorial representations suited for any subject. We have known Mr. Weeks in connection with business for several years, and can say he is a thorough artist.

One can easily see Weeks' hand behind the provision of this free advertisement. No doubt the Editor felt well-disposed towards him having recently taken delivery of the new Weeks-designed masthead for his *Journal* which had been used for the first time in the previous month's issue. However, in the December 1896 issue of the *Journal*, it was necessary for him to print the following correction to this postscript:

Ben Hur Set of Slides. We learn from Messrs. Riley Bros., of Bradford, that Miss Preston deserved the greater credit for the production of the designs and drawings for the set of Ben Hur, and that only about 20 of the subjects were Mr. Weeks' productions. We must compliment Miss Preston on her artistic ability.

Examining the *Ben-Hur* slides today we can see that they are indeed 72 in number – although numbered only up to 65, with the inclusion of 10a, b & c, 15a and 52a, b & c. This first of these groups being a dissolving view sequence of the angels appearing to the shepherds (3), while the other groups, curiously, have no apparent reason for special numbering; perhaps they were later additions to an already established sequence – or slides which could, optionally, be omitted. We can also see the curious division of labour between F. F. Weeks (4) and Miss Preston noted above.

Weeks was responsible for the initial 25 slides and Miss Preston for the next 46 slides – the final slide being a real photograph of a Holy Land subject. Miss Preston's slides are all drawn subjects – of a rather basic type (5). Many of these drawings carry her signature which seems to read Nannie Preston (though the first name is nowhere entirely clear) and some carry the date 1895.

The life model portion of the slides, referred to in the *Journal* account of the court decision, all lie within the Weeks section and appear to constitute about 15 of his 25 slides. It is difficult to be precise about the number because they are not the normal Bamforth or York type of life model slide. They are, as the example shows, a curious hybrid type of slide based on life model original figures with the resulting photographic image then highly worked over as a painting (6). At first glance many of these images could be taken as having been entirely painted, but then on closer examination, the life model faces and hands begin to stand out to reveal the process which has been involved. The majority of the slides carry Weeks' well-known monogram (see lower left on

FRANK F. WEEKS,

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his *Journal* masthead (7)) based on his initials F.F.W. for Frank Frederic Weeks. In fact his full name, we can reveal, was Francis Frederic Theophilus Weeks, but he preferred 'Frank' to Francis (signing himself thus in letters, as in the example below) and never mentioned 'Theophilus' at all, though one can also see the 'T' representing it in the monogram. In one of the slides the monogram is accompanied by the date 1894. In another the text 'The PNLS Co' is carried at the lower margin behind the mask. These initials, perhaps standing for something on the lines of 'Patent Naturalistic Lantern Slide', remain to be identified.

The difference in style between the two parts of the set is most marked (8) and, while the transition occurs at the point at which Ben-Hur is made prisoner (which is a clear turning point in the story), it appears to make no artistic sense. We can only speculate on possible reasons: perhaps the elaborate Weeks life model method was too slow or too expensive and had to be replaced by the quicker and cheaper Preston drawings? An alternative explanation might be linked to Weeks' subsequent fate, as reported in the *Optical Magic Lantern Journal* for July 1898:

Seven Years Penal Servitude. On June 25th F. F. Weeks, who for many years has been known among lantern slide makers as a good draftsman, was sentenced at the Old Bailey to seven years penal servitude, the charges against him being bigamy, abominable conduct to his daughters, and with attempted suicide at the time of his arrest. Justice Grantham said that the case was one of the worst that had come under his notice, and the prisoner, although he professed to have great religious sentiments, was a villain of the deepest dye.

While it would be attractive to link his arrest on these charges with his 'removal' from the *Ben-Hur* project, unfortunately, the dates do not fit: Weeks had finished his work on *Ben-Hur* by the end of 1894, the date the slides were copyrighted – much too early, alas, to tie in with such an arrest! Another arrest perhaps?

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The Weeks' method for combining life model slides with drawings, which we further illustrate with a slide from the set *Vinegar and Smoke* (9), was not just the simple pasting together of different images, as practised in a fairly haphazard way by many people, but an elaborately worked-out method for which he had applied for, and been granted, a patent. The application was made on 1st May 1894 and reported in the *Optical Magic Lantern Journal* for June 1894.

A PATENT has been applied for 'for a method of producing photographic magic-lantern slides, pictorial representations, prints, and the like, from living or artificial models, without the aid of scenic effects, by

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N° 8615 A.D. 1894

Date of Application, 1st May, 1894—Accepted, 28th July, 1894

COMPLETE SPECIFICATION.

Improved Means and Methods of Producing Photographic Pictures.

FRANCIS FREDERIC WEEKS, Artist-draughtsman and Photographer, of 21, Thorpe Road, Forest Gate, in the County of Essex, and JOSEPH RILEY, Merchant and Manufacturer of 5, Cheapside, Bradford in the County of Yorkshire, England, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement :—

The object of this, our invention, is to produce by a combination of artistic manipulation and photographic procedure, pictures, magic lantern slides, dissolving effects, prints and the like, from living models, artificial figures, statuary and the like, with all the necessary scenic surroundings required by each pictorial subject, and thereby making perfect and complete pictorial representations of ancient, existing or original subjects, and producing, and reproducing the same by the means of this invention without the aid, use or cost of providing backgrounds, foregrounds, set pieces, and such like other scenic effects and "properties" as are usually provided and made use of for producing and procuring the same or similar results.

To effect and accomplish the foregoing a plain (preferably white) background or cloth and floor cloth in continuation may be used, in front and upon which the living or artificial models are arranged and grouped according to the design, composition and character of the subject to be represented, may require, and should the personages of the subject be required to appear in elevated, aerial or perilous positions or postures or the like, we make use of sundry and certain skeleton frames, supports and suchlike devices upon which to fix and arrange or group them made and formed to the requirements of such positions postures and the like, according to the requirements or design of the subject to be represented.

After having composed our subject or picture or the figure portions thereof, to our satisfaction and the design of the picture or subject to be represented we proceed to make a photographic negative thereof, by any photographic method we may think best.

The negative being made, we proceed to remedy any defects appearing thereon by the ordinary process of retouching, mending and so forth, when this has been done, the negative so taken and amended, undergoes a process which is known in the trade as being "blocked" or "blacked out" leaving the model figures visable only, untouched by the "blacking out" process, and entirely obliterating the supports and the like, this negative is to be called "the figure negative."

From this, the said "figure negative" when completed, a photographic enlargement is made upon suitable photographic paper or other suitable meterial, and upon the plain portions of this, surrounding the model figures appearing thereon, we proceed to design, draw or paint in all the required scenic representation and effects appertaining to the pictorial subject, thus making a complete pictorial representation of the subject we intend to pourtray, and showing the photographic representations of the model figures surrounded with the hand drawn or painted scenic effects and required surroundings. When finished, this the aforesaid

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combinations of artistic and photographic manipulation', and a company is preparing to work this patent. The artist-manager is to be Mr. Weeks, who, we learn, has entered into a contract for five years.

This produced the following response from Frank A. Hinkins, a fellow slide-maker, in the next month's issue:

THE NEW MODE OF MAKING LANTERN SLIDES

To the Editor

SIR,–I gather from your issue for the present month, that a company is being formed for the purpose of working a patent which had been applied for by Messrs. Weeks and Riley for 'a method of producing photographic lantern slides without the aid of scenic effects by combinations of artistic and photographic manipulation'.

As this specification is vague in the extreme, you would confer a favour on myself and a few other professional slide designers and manufacturers, if you would publish some details of the special processes hinted at, as the production of optical lantern slides, both with and without the aid of scenic effects, by combinations of artistic and photographic manipulations, has for years been an almost daily occurrence. On the face of the matter it would appear from the notice, to which I refer, that Mr. Weeks had just discovered one of these every-day processes, and jumps to the conclusion that it is gold mine.

If Mr. Weeks' process is on different lines to those usually adopted, all honour be to him, and may he make it pay; but if only what his specification implies, I shall have pleasure in meeting him at your office, and will submit for your joint inspection, drawings and photographs, negatives and duplicate slides, which will demonstrate that if there be anything new under the sun, it is not the production of photographic lantern slides by combination of artistic and photographic manipulation. I beg to enclose my circular,

I am, Sir, yours obediently,

Royston, Cambs
June, 1894

FRANK R. HINKINS.

Predictably the August issue carried a reply from the aggrieved Weeks:

Re WEEKS' PATENT METHOD OF MAKING SLIDES

To the Editor

DEAR SIR,–In last issue a somewhat sarcastic letter appeared by Mr. Hinkins, who describes himself as a slide designer and maker. He asks for details of my special patent process. If he is a man of *business*, he ought to know that now-a-days people are apt to keep certain information to themselves as long as they can. I happen to be of that class, and unless he likes to wait until the patent specification is published, no amount of letter-writing on his part will persuade me to give him information, or go further into the subject.

In reply to the latter portion of the letter, Mr. Hinkins may perhaps be unaware that those who draw up patent applications do not usually give the title in such a manner as will enable a reader to fathom the whole affair; and as for his offer for he and I to meet at your office and compare the ralative merits of slides, I fail to see why I should put myself to this trouble to satisfy him.

I know many firms who spend large amounts yearly upon their productions in *a certain line*, of which our patented methods absolutely and entirely *does without*. If the result to be gained by my method *had been* available *before* I sprung the idea, such firms would have avoided this expense all along, and would now if they could. *We can*, that is good enough for us, *we are satisfied*. I have been known '*professionally*' by every first-class firm in the trade since 1875, during which time I have made, professionally, nearly 7,000 slide designs, and so, with such experience, am not quite the novice Mr. H. seems to imagine me to be. Business, however, is business, and should he want information on the subject with which our patent deals, we have no objection to give him any information he may require, but it will entail on his part an expenditure of a large sum of money; so perhaps he will in the meantime find it better to mind his own business, and not try the old dodge of getting himself advertised on the cheap.

Thanking you in anticipation of your insertion of this letter in your columns. – I am, yours truly,

FRANK F. WEEKS.

Weeks was granted his patent (No 8615) on 28th July 1894 – which turned out interestingly to be issued jointly in his name and that of Joseph Riley of Bradford (10), the manufacturer of the *Ben-Hur* slides, which were clearly one of the first to which the method was applied, later in the same year. When this was published it drew the following dismissive response from an anonymous correspondent (perhaps Mr Hinkins again, being more cautious this time) to the *Journal*, which terminated discussion on the subject:

WEEKS' PATENT METHOD OF MAKING SLIDES

To the Editor

SIR, – 'The mountain has laboured and brought forth a mouse'. Well, the above specification 8615 of 1894– has been published and the secret is public; but, as I thought some time ago, it is one of the everyday practices, viz., place the subject against a white background, and make a negative, then a print on which is drawn the desired scenery, and from this a negative from which prints or transparancies are made. If Mr. Weeks looks up any book of twenty years ago, he will find it all described. One wants to be an old hand at photography nowadays to know what NOT to patent.

Yours truly,

PHOTOGRAPHER.

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enlargement, and the handwork thereon is photographed to produce a negative therefrom by any photographic process as may be preferred, and this the said negative, being the second negative made in by and for this method, is to be called "the working negative," and by and from this, the said "working negative" the copies, and all required reproductions, such as magic lantern slides or the like, are to be made and reproduced by any photographic or other process, and upon any material as may be desired or required.

This invention provides the only method, by which the production and reproduction of any subject or subjects, of either ancient, existing or original pictorial or natural representations, can be obtained, in which the human, zoological, allegorical or other figure subject being represented by living or artifical models, can be made to appear (in the finished photographic pictures) as if they, the said models, were photographed whilst in the midst of, and surrounded by natural or artificial scenic formations, at one and the same time, but which, in fact, was not the case, the said scenic formations and suchlike surroundings, really being an after-production by artistic handwork upon the photographic enlargement, made from a negative taken directly of, and in which, the figure models, only appear.

By the use of skeleton frames and supports, pedestals and suchlike devices, for fixing up, supporting and arranging our models or figure subjects in elevated, aeril or any postures or positions as we may desire, or the composition of our subjects may require, we avoid and entirely supersede the aid, use and cost of providing backgrounds, foregrounds, set pieces and such like scenic accessories and effects, (usually made use of hitherto for procuring and effecting the production of the same or similar results, hitherto known as photographic "life model" lantern slides, or suchlike photographic productions,) at a much less cost to the producer, and a more artistic and realastic character to the user than heretofore produced, in use, or employed for the same or similar purposes and results.

Having now particularly described and ascertained the nature of our said invention and in what manner the same is to be performed, we declare that what we claim is :—

1. An improved process for obtaining photographic pictures, in which living figures or models are photographed against a plain background, making an enlargement of the same and then filling in the portion surrounding the figures with representations of the desired scene to be again photographed substantially as described.

2. An improved process for the production of photographic pictures without the usual scenic surroundings, in which a negative is taken of living figures or models against a plain or other background, the surrounding portions blocked out, leaving only the figures, and an enlargement made, the scenic surroundings being then filled in on the enlargement, to be again photographed, substantially as and for the purposes specified.

3. In a photographic process of the kind claimed above, the employment of skeleton frames or supports on which the figures are supported for the production of the first negative, the negative being then treated and the enlargement made and prepared, substantially as described.

4. The improved process for the production of photographic pictures without the use of the ordinary scenic surroundings, described in the foregoing Specification.

Signed this Seventh day of June One thousand eight hundred and ninety-four.

FRANCIS FREDERIC WEEKS, and
JOSEPH RILEY.

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