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Report  
OF THE  
Register of Copyrights  
FOR THE  
Fiscal Year 1912-1913

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[Reprinted from the Report of the Librarian of Congress]



WASHINGTON  
GOVERNMENT PRINTING OFFICE

1913

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REPORT OF THE REGISTER OF COPYRIGHTS FOR THE  
FISCAL YEAR 1912-13

WASHINGTON, D. C., *July 7, 1913*

SIR: The copyright business and the work of the Copyright Office for the fiscal year July 1, 1912, to June 30, 1913, inclusive, are summarized as follows:

RECEIPTS

The gross receipts during the year were \$118,968.26. A *Fees, etc.* balance of \$7,335.41, representing trust funds and unfinished business, was on hand July 1, 1912, making a total of \$126,303.67 to be accounted for. Of this amount the sum of \$3,013.52 received by the Copyright Office was refunded as excess fees or as fees for articles not registrable, leaving a net balance of \$123,290.15. The balance carried over to July 1, 1913, was \$8,309.55 (representing trust funds, \$7,309.01, and total unfinished business since July 1, 1897—16 years—\$1,000.54), leaving fees applied during the fiscal year 1912-13, \$114,980.60.

EXPENDITURES

The appropriation made by Congress for salaries in the *Salaries* Copyright Office for the fiscal year ending June 30, 1913, was \$96,715.00. The total expenditures for salaries was \$96,523.14, or \$18,457.46 less than the net amount of fees earned and paid into the Treasury during the corresponding year. The expenditure for supplies, including stationery and other articles and postage on foreign mail matter, etc., was \$1,121.85.

During the 16 fiscal years since the reorganization of the *Copyright receipts and fees* Copyright Office (from July 1, 1897, to June 30, 1913) the total receipts have exceeded one and a quarter million dollars (\$1,370,130.08); the copyright fees applied and paid

into the Treasury have amounted to more than a million and a quarter dollars (\$1,304,647.30); the articles deposited number more than three million (3,017,286), and the total copyright registrations over one and a half million (1,697,227).

*Excess of fees over salaries* The fees (\$1,304,647.30) were larger than the appropriation for salaries (\$1,101,658.11) used during the same period by \$202,989.19.

*Value of copyright deposits* In addition to this direct profit, a large number of the 3,017,286 books, maps, prints, and other articles deposited during the 16 years were of substantial pecuniary value and of such a character that their accession to the Library of Congress through the Copyright Office effected a saving to the purchase fund of the Library equal in amount to their price.

#### COPYRIGHT ENTRIES AND FEES

*Registrations* The registrations for the fiscal year numbered 119,495. Of these 107,151 were registrations at \$1 each, including a certificate, and 11,279 were registrations of photographs without certificates, at 50 cents each. There were also 1,065 registrations of renewals at 50 cents each. The fees for these registrations amounted to a total of \$113,323.00.

The number of registrations in each class from July 1, 1912, to June 30, 1913, as compared with the number of entries made in the previous year, is shown in Exhibit F.

#### COPYRIGHT DEPOSITS

*Articles deposited* The various articles deposited in compliance with the new copyright law which have been registered, stamped, indexed, and catalogued during the fiscal year amount to 215,595. The number of these articles in each class for the 16 fiscal years is shown in Exhibit G.

*Elimination of copyright deposits* The copyright act which went into force on July 1, 1909, provides for the gradual elimination of the accumulated copyright deposits (see secs. 59 and 60).<sup>1</sup> During the year books

<sup>1</sup> SEC. 59. That of the articles deposited in the Copyright Office under the provisions of the copyright laws of the United States or of this act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve collections of the Library of Congress for sale or exchange

desired for the Library to the number of 5,517 volumes have been transferred to the Library through the Order Division. These volumes were in addition to the "first" copies of copyright books sent as received from day to day, numbering 13,395 for the fiscal year, thus making a total of 18,912 books and pamphlets delivered to the Library from the Copyright Office.

*Transfer of books to Library of Congress*

In addition to the current copies of maps, musical works, periodicals, photographs, and prints sent daily to the various Divisions of the Library from the Copyright Office (3,980 maps, 23,635 musical compositions, 39,241 periodicals, and 8,523 photographs and prints), 8,716 articles (maps, music, and periodicals) were transferred to the Library from the deposits received prior to July 1, 1909.

*Music and maps, etc., transferred*

The act of March 4, 1909 (sec. 59), provides for the transfer to other governmental libraries in the District of Columbia "for use therein" of such copyright deposits as are not required by the Library of Congress, and during the present fiscal year 9,215 books were selected by the librarians and thus transferred to the libraries of the Bureau of Education, Bureau of Mines, Bureau of Standards, Department of Agriculture, War Department, Interstate Commerce Commission, Naval Observatory, Surgeon General's Office, Navy Department, Department of Justice, Weather Bureau, and the Public Library of the District of Columbia.

*Books transferred to other libraries*

Under the provisions of the act of March 4, 1909, authority is granted for the return to the claimant of copyright of such copyright deposits as are not required by the Library. The notice required by section 60 has been printed during

*Return of deposits to copyright claimants*

or be transferred to other governmental libraries in the District of Columbia for use therein.

SEC. 60. That of any articles undisposed of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of those received during any period of years it is desirable or useful to preserve in the permanent files of the Copyright Office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it.

the year for all classes of works deposited and registered during the years 1890 to 1899, but no requests have so far been received to enable the return of articles. On the other hand, in response to special requests, 66 dramatic or musical compositions and 380 motion picture films have been returned to the copyright claimants, and of the current deposits not needed by the Library of Congress the following have also been so returned, 12,333 "books" (pamphlets, leaflets, etc.), 4,312 photographs, 20,658 prints, 5,932 contributions to periodicals, 14,490 periodicals; a total of 58,171 articles.

*Request for  
copies*

In response to inquiries during the year from the Card Section, the Order Division, and the Reading Room, in regard to 724 books supposed to be copyrighted but not found in the Library, it was discovered that 85 of these works were already in the Library, 99 of the books had been deposited and were still in the Copyright Office, 108 works were either not published, did not claim copyright, or for other reasons could not be deposited, and in the case of 165 works no answers to our letters of inquiry had been received up to June 30, 1913. Copies were received of 267 works in all in response to request made by the Copyright Office during the period of 12 months for works published during recent years.

#### THE COPYRIGHT INDEX AND CATALOGUE, BULLETINS, AND CIRCULARS

*Index cards*

The copyright registrations are indexed upon cards. The cards made are first used as copy for the printed catalogue and after printing are added to the permanent card indexes of the copyright entries. The temporary cards made for the printed indexes, etc., to the catalogue (numbering 85,095 during the fiscal year) are eliminated; the remaining cards (114,085 for the fiscal year) are added to the permanent card indexes, now numbering considerably over 2,600,000 cards. By revision and condensation 10,500 cards were canceled and withdrawn from the indexes during the year.

*Catalogue of  
Copyright Entries*

The publication of the Catalogue of Copyright Entries has been continued as required by law. For convenience of search the volumes are made to cover the works published and deposited during the calendar year rather than the

fiscal year. Five volumes of the Catalogue of Copyright Entries were printed for the calendar year 1912, containing a total of 7,415 pages, divided as follows: Part I, Group 1, Books, volume 9, contains 1,472 pages of text and 443 pages of index, a total of 1,915 pages; Part I, Group 2, Pamphlets, leaflets, contributions to periodicals, lectures, dramas, maps, etc., volume 9, contains 1,254 pages of text and 586 pages of index, a total of 1,840 pages; Part II, Periodicals, volume 7, contains 373 pages of text and 83 pages of index, a total of 456 pages; Part III, Music, volume 7, contains 1,683 pages of text and 832 pages of index, a total of 2,515 pages; Part IV, Fine Arts, etc., volume 7, contains 629 pages of text and 60 pages of index, a total of 689 pages.

Each part of the catalogue is sold separately at a nominal annual subscription rate within the maximum price established by law, as follows: *Subscription price of catalogue*

Part I, Books, pamphlets, dramatic compositions, and maps (two volumes), \$1; Part II, Periodicals, 50 cents; Part III, Musical compositions (a very bulky volume), \$1; Part IV, Prints, including chromos and lithographs, photographs, and the descriptions of original works of art—paintings, drawings, and sculpture—50 cents. The price for the entire catalogue for the year is \$3. The subscriptions, by express provisions of the copyright act, are required to be paid to the Superintendent of Documents (Office of the Public Printer, Washington, D. C.), and all subscriptions must be for the complete year for each part desired.

During the fiscal year a new edition of the copyright law was printed in order to include the provisions of the first amendatory act, approved August 24, 1912, providing for the copyright registration of motion pictures. (Bulletin No. 14. January, 1913. 52 pp. 8°.) *Bulletins and circulars: Law*

Information circulars were printed and distributed during the year as follows: The amendatory copyright act of August 24, 1912 (No. 47); the amendatory act of March 2, 1913, relating to certificate of copyright registration (No. 50); text of the copyright convention between the United States and Hungary, which went into effect on October 16, 1912 (No. 48); presidential copyright proclamation in respect to subjects of Tunis, October 4, 1912 (No. 49). *Information circulars*

*Foreign books  
deposited*

The considerable deposit of foreign books made under the operation of the present copyright law adds a new element of value to the catalogue of copyrighted books. More than four thousand volumes were deposited in 1912-13 of books printed in languages other than English, and nearly two hundred volumes of books printed abroad in the English language were registered for ad interim protection.

## SUMMARY OF COPYRIGHT BUSINESS

<i>Summary of</i>	Balance on hand July 1, 1912.....	\$7,335.41
<i>copyright business</i>	Gross receipts July 1, 1912, to June 30, 1913.....	118,968.26
	Total to be accounted for.....	126,303.67
	Refunded.....	3,013.52
	Balance to be accounted for.....	\$123,290.15
	Applied as earned fees.....	114,980.60
	Balance carried over to July 1, 1913:	
	Trust funds.....	\$7,309.01
	Unfinished business July 1, 1897, to June 30, 1913, 16 years.....	1,000.54
		8,309.55
		<u>\$123,290.15</u>
	Total fees earned and paid into the Treasury during the 16 years from July 1, 1897, to June 30, 1913.....	\$1,304,647.30
	Total unfinished business for 16 years.....	1,000.54

## FEES FOR FISCAL YEAR

<i>Fees</i>	Fees for registrations, including certificates at \$1 each.....	\$107,151.00
	Fees for registrations of photographs without certificates, at 50 cents each.....	5,639.50
	Fees for registration of renewals, at 50 cents each.....	532.50
	Total fees for registrations recorded.....	\$113,323.00
	Fees for certified copies of record, at 50 cents each.....	395.50
	Fees for recording assignments.....	978.00
	Searches made and charged for at the rate of 50 cents for each hour of time consumed..	170.50
	Notices of user recorded (Music).....	84.00
	Indexing transfers of proprietorship.....	29.60
		1,657.60
	Total fees for fiscal year 1912-13.....	<u>\$114,980.60</u>



ENTRIES

Number of copyright registrations.....	118,430	<i>Entries</i>
Number of renewals recorded.....	1,065	
	<hr/>	
Total number of entries recorded.....	119,495	
	<hr/>	
Number of certified copies of record.....	791	
Number of assignments recorded or copied.....	722	

The greater part of the business of the Copyright Office is done by correspondence. The total letters and parcels received during the fiscal year numbered 139,265, while the letters, certificates, parcels, etc., dispatched numbered 148,947. Letters received transmitting remittances numbered 44,292, including money orders to the number of 28,032. During the last 16 fiscal years the money orders received numbered 406,836. *Correspondence*

CONDITION OF COPYRIGHT OFFICE WORK

(a) *Current work*

At this date (July 7, 1913) the remittances received up to the third mail of the day have been recorded. The account books of the bookkeeping division are written up and posted to June 30, and the accounts rendered to the Treasury Department are settled up to and including the month of June, while earned fees to June 30, inclusive, have been paid into the Treasury. *Condition of current work*

All copyright applications received up to and including June 30 have been passed upon and refunds made. The unfinished business amounted on June 30, 1913, to \$1,000.54. Of this sum, however, more than \$900 represented business for the fiscal year, held awaiting answers to letters from the Copyright Office in regard to informalities, etc., and less than \$100 represented the total unfinished business for the previous 15 years from July 1, 1897.

At the close of business on July 7, 1913, of the works deposited for copyright registration up to and including June 30, all had been recorded. There remained to be indexed: Class A, Books, 703; Class E, Music, 245; Class J, Photographs, 129; Class L, Motion picture photo-plays, 16.

*(b) Deposits received prior to July 1, 1897**Deposits prior to  
July 1, 1897*

During the fiscal year 1912-13 about 10,000 articles received prior to July 1, 1897, were handled in the work of crediting such matter to the proper entries. Of these articles 5,168 pieces (including 3,131 pamphlets and leaflets, 1,587 periodical contributions, 70 engravings, and 380 miscellaneous articles) were credited to their respective entries and properly filed. Periodical deposits to the number of 249 were given proper credit preparatory to their disposal through the Order Division of the Library of Congress. Entries were located for about 4,825 additional articles and these were arranged by their entry numbers to facilitate later crediting. In addition about 2,000 printed titles filed prior to July 8, 1870, have been arranged by classes (Books, Music, Prints, Labels, etc.), to facilitate examination. The examination of this old material becomes proportionately slow and its identification more difficult as the remaining material presents fewer clues under which search can be made for possible entries. Meantime, the pressure of the current copyright business has been so great as to oblige the transfer, from time to time, of the clerks from the old unfinished material to the current work.

COPYRIGHT LEGISLATION AND INTERNATIONAL COPYRIGHT  
RELATIONS

*I. Legislation**Copyright legis-  
lation*

My last year's report contained a full and detailed statement of proposed amendments of the copyright act of March 4, 1909. The Townsend bill (H. R. 24224, 62d Cong., 2d sess.) was passed by the House on June 17, 1912, and by the Senate<sup>1</sup> on August 19, and was approved and became law on August 24. It includes motion-picture photoplays, as class "1" in the schedule of subject matter of copyright, and "motion pictures other than photoplays," as class "m,"

*Act of August  
24, 1912*

<sup>1</sup> 1912 (July 8). Statute in relation to copyrights. Mr. Brown, from the Committee on Patents, submitted the following report (to accompany H. R. bill 24224). Senate report No. 906. Printed, 3 pp., 8°.

1912 (Aug. 24). An act to amend sections 5, 11, and 25 of an act entitled "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. (Public, No. 303.) (H. R. 24224.) Printed, 3 pp., 8°.

and amends section 11 to provide for the registration of claims to copyright in such motion pictures. The amendatory act also adds "dramatico-musical compositions" to the list of works "of which copies are not reproduced for sale," which may be registered for copyright, under the provisions of section 11. The full text of this amendatory act is printed on pages 167-169 of this report. The bill to amend section 55 of the act of March 4, 1909, introduced on March 26, 1912,<sup>1913</sup> *Act of March 2,* by Mr. Morrison, of the House Committee on Patents, was passed, after amendment as proposed by the committee, by the House on July 15, 1912, and by the Senate on February 28, 1913,<sup>1</sup> and was signed by the President on March 2, 1913. The full text is printed on pages 169-170 of this report.

The following copyright bills were introduced during the present fiscal year. On July 8, 1912, by Mr. John H. Stephens, of Texas, a bill (H. R. 25629)<sup>2</sup> to provide for international reciprocity in regard to patents and copyrights. The text of this bill is identical with H. R. 5882, of March 29, 1909, which was printed in my annual report for 1908-9, pages 90-91. On April 7, 1913, the same bill with identical text was reintroduced by Mr. Stephens, of Texas, in the first session of the 63d Congress, as H. R. 11.<sup>3</sup> On April 7, 1913, Mr. Luther W. Mott presented a bill (H. R. 186)<sup>4</sup> to amend sections 5 and 28 of the act of March 4, 1909. This is identical with the bill (H. R. 24925, 62d Cong., 2d sess.) which was printed in my annual report for 1911-12, page 179. No action has been taken upon these bills. *Copyright bills*

<sup>1</sup> 1913 (Feb. 5). Amendment of laws relating to copyrights. Mr. Brown, from the Committee on Patents, submitted the following report (to accompany H. R. 23568). 62d Congress, 3d session. Senate report No. 1187. Printed, 2 pp., 8°.

1913 (Mar. 2). "An act to amend and consolidate the acts respecting copyright," approved March 4, 1909. Public, No. 405. (H. R. 23586.) Printed, 1 p., 8°.

<sup>2</sup> 1912 (July 8). A bill requiring any citizen of a foreign country who may apply for a copyright registration or for letters patent from the United States for an invention to pay to the United States for such copyright or patent the same amount of fees and be subject to the same laws, rules, and regulations relating to the registration of copyrights and the issuance of letters patent, and relating to the issuance and maintenance of copyrights and letters patent, as the Government of such foreign country exacts by its laws and regulations from citizens of the United States in such cases. Presented by Mr. Stephens, of Texas. H. R. bill No. 25629. Printed, 2 pp., 4°. [Referred to the Committee on Patents.]

<sup>3</sup> 1913 (April 7). [Title of this bill is identical with the above.] Presented by Mr. Stephens, of Texas. H. R. bill No. 11. Printed, 2 pp., 4°. [Referred to the Committee on Patents.]

<sup>4</sup> 1913 (Apr. 7). A bill to amend the copyright law passed March 4, 1909. Presented by Mr. Mott. H. R. bill No. 186. Printed, 3 pp., 4°. [Referred to the Committee on Patents.]

## COPYRIGHT FOR ARTISTIC DESIGNS

*Copyright for artistic designs* Under the law now in force in order to obtain adequate protection for the design of any artistic article of manufacture, it is necessary to take action under the provisions of the design-patent legislation (Revised Statutes, sec. 4929, and the amendatory act of March 9, 1902), providing that "Any person who has invented any new, original, and ornamental design for an article of manufacture . . . may obtain a patent therefor."

*Design patents* The procedure is the same as that in the case of letters patent generally, involving careful and extensive search to determine all the facts required by the law; a design patent depending on proof (1) of originality, (2) that the design was not known or used by others in this country before its invention by the claimant, (3) that it was not patented or described before its invention, and (4) that it was not in public use or on sale in this country for more than two years prior to the claimant's application. The design patent may be granted in the course of two or three months from the date of filing the application in the Patent Office. The statutory fees are \$10, \$15 or \$30, depending upon the term of protection secured, *i. e.*, either 3 years and 6 months, 7 years, or 14 years. The registrations actually made for design patents from 1902 to 1911 varied from 640 in 1902 to 1,010 in 1911, with an average annual registration of but 652.<sup>1</sup>

The small number of registrations made is no doubt due to the difficulty of registration, the unavoidable delay, and the considerable cost involved.

While patent protection may continue to be sought in the case of models and designs for certain articles, it seems clear that there is urgent need for legislation to secure protection for the great proportion of artistic designs for manufactured articles by means of a simpler procedure, greater facility of registration, and a reduced cost. This protection it is believed could be obtained by copyright. The present copyright law, approved March 4, 1909, expressly provides that it shall "include all the writings of an author"; and the schedule of works subject matter of copyright contains

<sup>1</sup> Report of the Commissioner of Patents for 1911, p. vi.

also the following two classes of works: "(g) works of art; *models or designs for works of art*," "(i) drawings or plastic works of a scientific or technical character."

Under these classifications claims to copyright in artistic designs for articles of manufacture are occasionally registered in the Copyright Office. While such claim of copyright may fully protect the design as a drawing, there is difference of opinion as to the complete protection of the design when it is embodied in the manufactured article against the unauthorized reproduction of the article itself. Lawyers whose opinions would carry great weight hold, however, that the copyright law can readily be so amended as to secure the protection desired for all artistic designs for articles to be multiplied by some industrial process. *Copyright registration*

In the case of copyright, as there is no grant of the right but simply a registration of the claim, the procedure may be simple, action prompt, and the official fee relatively small. The present copyright fee for each article registered is \$1, including a certificate of registration. The argument for the inclusion of designs of the character in question in the protection secured by the copyright law is that of their artistic authorship. It is the artistic invention which would be protected in behalf of its author as shown either in the decoration or ornamentation or in the artistic shape or configuration.

In France artistic designs of the character in question are brought within the protection of the general copyright law by the Act of March 11, 1902, amending the basic copyright act of 1793 to the effect that the rights secured by that act shall belong to the designer of any ornament "whatever may be the merit or the destination of the work." Detailed provisions for deposit and registration are authorized by a subsequent act. It is believed that an amendment of the copyright law of the United States is called for to secure the protection of ornamental designs for articles of manufacture, to provide suitable remedies in case of infringement, and to prescribe a sufficient but reasonably economical registration in behalf of the numerous American and foreign draftsmen engaged in the preparation of such designs; and also to provide the manufacturers of such articles with the necessary protection against infringement. *Legislation recommended*

II. *International Copyright Relations*

*Treaty with Hungary* A copyright agreement between the United States and Hungary was signed at Budapest on January 30, 1912. This convention went into force October 16, 1912. The full text is printed as Addendum IV, page 227.

*President's proclamation—Tunis* On October 4, 1912, the President issued a proclamation to the effect that subjects of Tunis are entitled to all the benefits of the copyright act of March 4, 1909, and the amendatory act of August 24, 1912, except copyright controlling the mechanical reproduction of a copyrighted musical work, provided for under section 1 (e) of the act of March 4, 1909.

*Protection under section 1 (e).* Presidential proclamations under the provisions of section 1 (e) have now been issued in behalf of Germany (Dec. 8, 1910); Belgium, Luxemburg, and Norway (June 14, 1911); Cuba (Nov. 27, 1911); and Hungary (Oct. 15, 1912).

*Protection of American authors in Denmark* The new copyright law which went into effect in Denmark on July 1, 1912, repealed the former copyright legislation of that country. The provisions of the law apply to all works by Danish subjects and to all works by foreign authors or subjects of foreign countries which have been published by Danish publishers or by some other method have been distributed for the first time in Denmark. The new Danish law further provides that upon a basis of reciprocal protection the benefits of the Danish act may, by royal decree, be made available for such works as are published by subjects of a foreign country, even when such works have not appeared through a Danish publisher. On February 22, 1913, the King of Denmark issued such royal decrees extending the benefits conferred by the Danish law of April 1, 1912, in regard to literary and artistic works and the law of May 13, 1911, concerning photographs, to such works by subjects of the United States, whether unpublished, or first published in the United States.

*Pan - American copyright convention, 1910* The United States signed at Buenos Aires on August 11, 1910, the Fourth Pan-American "Convention Concerning Literary and Artistic Copyright." This convention, with the advice and consent of the Senate, was ratified on the part of the United States and the ratifications were deposited with the Argentine Republic in accordance with the re-

quirements of the convention. Official notice has been received that this convention has been ratified by Honduras (Jan. 30, 1913) and Panama (Mar. 13, 1913). This convention, however, has not yet been put in force.

The interest in the judicial interpretation of the provisions of the new copyright statute continues, and the more important decisions handed down during the year are printed as Addendum II, pages 171-217. *Copyright cases reported*

Mr. Bruncken, the Assistant Register, has compiled a brief digest of the Opinions of the Attorneys General and of the Treasury Decisions concerning copyright, importation of books, etc., which is printed as Addendum III, pages 219-226. *Digest of copyright Opinions of Attorneys General and of Treasury Decisions*

Respectfully submitted

THORVALD SOLBERG  
Register of Copyrights

HERBERT PUTNAM  
Librarian of Congress

EXHIBIT A—Statement of gross receipts, refunds, net receipts, and fees applied for fiscal year ending June 30, 1913

Month	Gross cash receipts	Refunds	Net receipts	Fees applied
1912				
July.....	\$8,708.99	\$233.09	\$8,475.90	\$8,472.70
August.....	9,231.85	219.67	9,012.18	8,679.70
September.....	10,115.79	322.76	9,793.03	9,507.65
October.....	9,075.46	282.72	8,792.74	10,294.75
November.....	9,316.90	201.86	9,115.04	9,125.75
December.....	11,389.69	189.33	11,200.36	9,407.95
1913				
January.....	13,477.10	257.29	13,219.81	11,713.10
February.....	9,446.40	281.81	9,164.59	8,617.60
March.....	10,163.76	252.80	9,910.96	10,307.45
April.....	9,975.15	293.45	9,681.70	10,064.80
May.....	8,762.26	257.23	8,505.03	9,515.05
June.....	9,304.91	221.51	9,083.40	9,274.10
Total.....	118,968.26	3,013.52	115,954.74	114,980.60

Balance brought forward from June 30, 1912.....	\$7,335.41
Net receipts July 1, 1912, to June 30, 1913:	
Gross receipts.....	\$118,968.26
Less amount refunded.....	3,013.52
	115,954.74

Total to be accounted for.....	123,290.15
Copyright fees applied July 1, 1912, to June 30, 1913.....	114,980.60
Balance carried forward to July 1, 1913:	
Trust funds.....	7,309.01
Unfinished business.....	1,000.54
	123,290.15

## EXHIBIT B—Statement of fees paid into Treasury

Date	Check No.	Amount	Date	Check No.	Amount
1912			1913		
July 8	948	\$800.00	Jan. 6	980	\$1,807.95
15	949	1,600.00	7	981	900.00
22	951	2,100.00	13	982	2,200.00
29	952	2,000.00	20	983	3,000.00
Aug. 5	953	1,700.00	27	984	3,000.00
6	954	272.70	Feb. 3	985	2,300.00
12	955	2,100.00	5	986	313.10
19	956	1,800.00	10	987	2,000.00
26	957	1,600.00	17	988	1,800.00
Sept. 3	958	2,500.00	24	989	2,100.00
6	959	679.70	Mar. 3	990	2,300.00
9	960	1,300.00	6	991	417.60
16	961	1,300.00	10	992	1,500.00
23	962	2,200.00	17	993	2,400.00
30	963	3,400.00	24	994	2,800.00
Oct. 5	964	1,307.65	31	995	2,700.00
7	965	800.00	Apr. 5	996	907.45
14	966	2,000.00	7	997	1,200.00
21	967	2,200.00	14	998	2,100.00
28	968	2,600.00	21	999	2,300.00
Nov. 4	969	2,300.00	28	1000	2,800.00
8	970	394.75	May 5	1001	1,664.80
11	971	1,500.00	6	1002	900.00
18	972	2,500.00	12	1003	1,900.00
25	973	2,000.00	19	1004	2,000.00
Dec. 2	974	2,000.00	26	1005	1,900.00
5	975	1,125.75	June 2	1006	2,000.00
9	976	1,300.00	5	1007	815.05
16	977	2,100.00	9	1008	1,600.00
23	978	2,400.00	16	1009	1,800.00
30	979	1,800.00	23	1010	2,200.00
			30	1011	2,500.00
			July 7	1012	1,174.10
			Total		114,980.60



Register of Copyrights.

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EXHIBIT C—Record of applied fees

Month	Number of registrations, including certificate	Fees at \$1 each	Number of registrations, photographs, no certificate	Fees at 50 cents each	Number of renewal registrations	Fees at 50 cents each	Total number of registrations	Total fees for registrations
1912								
July.....	7,843	\$7,843.00	988	\$494.00	38	\$19.00	8,869	\$8,356.00
August.....	8,207	8,207.00	702	351.00	24	12.00	8,933	8,570.00
September...	8,885	8,885.00	958	479.00	32	16.00	9,875	9,380.00
October.....	9,608	9,608.00	989	494.50	59	29.50	10,656	10,132.00
November...	8,486	8,486.00	973	486.50	84	42.00	9,543	9,014.50
December...	8,817	8,817.00	740	370.00	214	107.00	9,771	9,294.00
1913								
January.....	10,890	10,890.00	1,088	544.00	213	106.50	12,191	11,540.50
February...	8,113	8,113.00	632	316.00	93	46.50	8,838	8,475.50
March.....	9,606	9,606.00	922	461.00	59	29.50	10,587	10,096.50
April.....	9,362	9,362.00	1,047	523.50	54	27.00	10,463	9,912.50
May.....	8,843	8,843.00	981	490.50	120	60.00	9,944	9,393.50
June.....	8,491	8,491.00	1,259	629.50	75	37.50	9,825	9,158.00
Total..	107,151	107,151.00	11,279	5,639.50	1,065	532.50	119,495	113,323.00

Month	Copies of record	Fees at 50 cents each	Assignments and copies	Fees for assignments	Notice of user in re music	Fees for notice of user	Indexing transfer of proprietor	Fees at 10 cents each	Search fees	Total applied fees
1912										
July.....	43	\$21.50	53	\$88.00	16	\$4.00	22	\$2.20	\$1.00	\$8,472.70
August.....	30	15.00	56	81.00	24	6.00	32	3.20	4.50	8,679.70
September...	64	32.00	50	64.00	39	9.75	29	2.90	19.00	9,507.65
October.....	59	29.50	60	111.00	31	7.75	30	3.00	11.50	10,294.75
November...	61	30.50	50	56.00	27	6.75	20	2.00	16.00	9,125.75
December...	73	36.50	41	53.00	27	6.75	42	4.20	13.50	9,407.95
1913										
January.....	74	37.00	88	111.00	34	8.50	61	6.10	10.00	11,713.1
February....	96	48.00	60	75.00	16	4.00	21	2.10	13.00	8,617.6
March.....	132	66.00	83	91.00	15	3.75	12	1.20	49.00	10,307.4
April.....	60	30.00	59	92.00	38	9.50	8	.80	20.00	10,064.8
May.....	36	18.00	70	91.00	17	4.25	13	1.30	7.00	9,515.0
June.....	63	31.50	52	65.00	52	13.00	6	.60	6.00	9,274.1
Total..	791	395.50	722	978.00	336	84.00	206	20.60	170.50	114,980.60

## EXHIBIT D—Copyright business (monthly comparison). Annual report for the fiscal year from July 1, 1912, to June 30, 1913.

COMPARATIVE MONTHLY STATEMENT OF GROSS CASH RECEIPTS, EXECUTED BUSINESS, NUMBER OF REGISTRATIONS, DAILY AVERAGES, ETC.

Month	Gross receipts			
	Monthly receipts	Monthly increase	Monthly decrease	Daily average
1912				
July.....	\$8,708.99		\$163.68	\$334.96
August.....	9,231.85	\$522.86		341.92
September.....	10,115.79	883.94		421.49
October.....	9,075.46		1,040.33	336.13
November.....	9,316.90	241.44		372.68
December.....	11,389.69	2,072.79		455.58
1913				
January.....	13,477.10	2,087.41		518.35
February.....	9,446.40		4,030.70	410.71
March.....	10,163.76	717.36		406.55
April.....	9,975.15		188.61	383.66
May.....	8,762.26		1,212.89	337.01
June.....	9,304.91	542.65		372.19
Total.....	118,968.26			
Month	Business executed			
	1912-13	Increase	Decrease	Daily average
1912				
July.....	\$8,472.70		\$920.40	\$325.87
August.....	8,679.70	\$207.00		321.47
September.....	9,507.65	827.95		396.15
October.....	10,294.75	787.10		381.28
November.....	9,125.75		1,169.00	365.03
December.....	9,407.95	282.20		376.32
1913				
January.....	11,713.10	2,305.15		450.50
February.....	8,617.60		3,095.50	374.68
March.....	10,307.45	1,689.85		412.30
April.....	10,064.80		242.65	387.11
May.....	9,515.05		549.75	365.96
June.....	9,274.10		240.95	370.96
Total.....	114,980.60			

EXHIBIT D—Copyright business (monthly comparison). Annual report for the fiscal year from July 1, 1912, to June 30, 1913—Continued

Month	Number of registrations			
	Totals	Increase	Decrease	Daily average
1912				
July.....	8,869		624	341
August.....	8,933	64		331
September.....	9,875	942		411
October.....	10,656	781		395
November.....	9,543		1,113	381
December.....	9,771	228		391
1913				
January.....	12,191	2,420		469
February.....	8,838		3,353	384
March.....	10,587	1,749		423
April.....	10,463		124	402
May.....	9,944		519	382
June.....	9,825		119	393
Total.....	119,495			

EXHIBIT E—Statement of gross cash receipts, business executed, number of registrations, etc., for 16 fiscal years, 1897-98, 1898-99, 1899-1900, 1900-1901, 1901-2, 1902-3, 1903-4, 1904-5, 1905-6, 1906-7, 1907-8, 1908-9, 1909-10, 1910-11, 1911-12, 1912-13

GROSS RECEIPTS

Month	1897-98	1898-99	1899-1900	1900-1901	1901-2	1902-3
July.....	\$4,257.70	\$5,102.74	\$5,156.87	\$5,571.51	\$5,382.28	\$5,429.52
August.....	4,525.27	4,675.96	4,846.97	5,864.68	4,880.60	4,504.56
September..	5,218.87	4,714.82	6,078.95	4,986.62	5,295.87	5,539.67
October....	5,556.21	5,149.07	5,583.59	6,027.36	5,399.03	5,651.16
November..	4,292.88	4,788.30	5,479.15	5,068.11	5,019.10	5,646.93
December..	6,512.60	6,435.56	6,728.06	7,332.53	7,201.64	8,005.75
January....	6,074.03	6,050.86	7,649.80	7,155.68	7,604.08	8,053.81
February...	4,606.92	5,141.40	5,523.47	4,803.50	4,810.59	5,360.48
March.....	5,138.78	6,300.02	6,515.43	6,049.07	5,899.56	6,119.54
April.....	5,053.21	5,198.69	6,086.82	5,789.03	5,580.14	6,005.89
May.....	5,386.93	5,593.50	5,660.36	5,580.11	5,762.92	5,395.02
June.....	4,476.16	5,034.73	5,762.86	5,297.05	5,569.27	5,821.58
Total.	61,099.56	64,185.65	71,072.33	69,525.25	68,405.08	71,533.97

## EXHIBIT E—Statement of gross cash receipts, business executed, number of registrations, etc., for 16 fiscal years, etc.—Continued

## GROSS BUSINESS—Continued

Month	1903-4	1904-5	1905-6	1906-7	1907-8	1908-9
July.....	\$5,380.97	\$5,540.30	\$5,779.98	\$6,469.68	\$6,772.43	\$6,498.83
August.....	4,958.30	5,770.70	6,071.25	5,601.93	7,179.19	6,193.68
September...	5,658.48	6,849.35	6,405.60	6,137.15	6,605.38	6,606.26
October....	6,323.42	6,704.89	6,789.36	6,786.13	7,343.10	7,306.88
November...	5,303.93	6,056.79	6,310.94	6,920.64	6,327.06	6,546.78
December...	8,581.60	7,699.47	7,981.03	7,856.74	7,386.04	7,873.33
January.....	7,502.53	8,946.60	9,321.94	10,992.30	9,260.75	10,192.88
February...	6,185.14	6,029.62	6,259.18	6,318.95	6,558.38	7,303.02
March.....	6,567.73	7,311.90	6,965.43	7,662.29	7,048.94	7,894.60
April.....	5,996.58	6,806.66	6,954.68	7,524.81	7,460.41	7,360.88
May.....	6,540.88	6,531.99	6,814.08	8,173.59	6,334.10	6,522.35
June.....	6,303.27	6,192.29	6,957.45	6,940.10	6,766.25	6,786.04
Total.....	75,302.83	80,440.56	82,610.92	87,384.31	85,042.03	87,085.53

  

Month	1909-10	1910-11	1911-12	1912-13
July.....	\$8,244.05	\$7,660.44	\$8,831.36	\$8,708.99
August.....	8,451.80	7,425.97	8,687.42	8,231.85
September...	9,032.45	8,800.67	9,256.83	10,115.79
October.....	9,635.19	9,288.51	10,579.96	9,075.46
November...	9,166.19	8,636.00	9,328.47	9,316.90
December...	11,504.01	11,907.32	11,721.86	11,389.69
January.....	12,198.02	13,564.79	13,655.73	13,477.10
February...	8,450.90	9,096.69	10,204.08	9,446.40
March.....	9,912.31	9,984.89	9,860.01	10,163.76
April.....	9,185.51	9,122.67	10,007.36	9,975.15
May.....	8,410.45	9,036.88	9,134.76	8,762.26
June.....	9,471.95	9,136.69	8,872.67	9,304.91
Total.....	113,662.83	113,661.52	120,149.51	118,968.26

EXHIBIT E—Statement of gross cash receipts, business executed, number of registrations, etc., for 16 fiscal years, etc.—Continued

BUSINESS EXECUTED

Month	1897-98	1898-99	1899-1900	1900-1901	1901-2	1902-3
July.....	\$3,769.00	\$4,724.50	\$4,789.50	\$5,115.00	\$4,886.50	\$4,781.00
August.....	4,296.00	4,266.50	4,709.50	5,404.50	4,837.50	4,599.00
September...	4,559.50	4,537.50	5,357.50	4,738.00	4,828.00	5,388.50
October.....	4,899.00	4,744.00	5,317.00	5,494.50	5,175.50	5,492.50
November...	4,062.00	4,269.50	4,810.50	4,500.50	4,360.00	5,242.00
December...	5,262.00	5,088.50	5,183.00	6,339.00	6,176.50	7,228.50
January.....	6,224.50	6,192.50	8,000.50	6,410.50	7,765.00	8,107.00
February...	4,204.00	4,505.50	5,032.50	4,546.50	4,629.00	5,159.00
March.....	4,865.00	5,312.50	5,871.50	5,416.50	5,473.50	5,993.00
April.....	4,835.50	4,899.00	5,535.50	5,653.50	5,271.50	6,025.00
May.....	4,610.50	5,076.00	5,229.50	5,045.50	5,809.00	5,074.50
June.....	4,339.50	4,651.00	5,369.50	5,023.50	5,475.00	5,784.50
Total...	55,926.50	58,267.00	65,206.00	63,687.50	64,687.00	68,874.50

  

Month	1903-4	1904-5	1905-6	1906-7	1907-8	1908-9
July.....	\$5,001.00	\$5,553.50	\$5,520.50	\$6,350.00	\$6,509.00	\$6,200.50
August.....	5,043.50	5,707.50	5,734.50	5,584.50	6,820.00	5,875.00
September...	5,406.00	6,431.50	6,171.50	5,559.00	6,682.00	6,408.50
October.....	5,945.50	6,873.00	6,752.00	6,865.50	6,819.00	7,188.50
November...	5,250.50	5,653.00	5,802.00	6,420.50	6,181.00	6,227.50
December...	7,441.00	6,760.00	7,458.00	7,863.50	6,889.00	7,657.75
January.....	8,120.50	9,432.50	9,719.00	10,590.00	9,247.50	10,206.00
February...	6,001.50	5,544.50	6,076.50	6,190.00	6,203.50	6,693.50
March.....	6,146.50	7,266.00	6,777.50	7,399.50	6,885.00	7,772.50
April.....	5,953.50	6,635.00	6,610.00	7,145.50	7,189.50	6,852.50
May.....	6,160.00	6,014.50	7,020.50	7,883.50	6,186.00	6,525.50
June.....	6,159.50	6,187.00	6,556.00	6,833.50	6,776.00	6,209.00
Total...	72,629.00	78,058.00	80,198.00	84,685.00	82,387.50	83,816.75

  

Month	1909-10	1910-11	1911-12	1912-13
July.....	\$4,975.90	\$7,069.70	\$7,301.80	\$8,472.70
August.....	7,707.90	6,831.65	8,377.80	8,679.70
September...	8,523.10	9,050.40	10,796.65	9,507.65
October.....	9,067.50	9,293.85	10,959.20	10,294.75
November...	9,584.90	8,852.35	8,852.50	9,125.75
December...	10,066.40	9,897.35	9,698.85	9,407.95
January.....	9,044.90	10,441.80	11,214.30	11,713.10
February...	8,138.80	10,093.60	9,502.25	8,617.60
March.....	10,146.85	9,665.65	11,237.30	10,307.45
April.....	9,449.70	9,476.50	9,756.00	10,064.80
May.....	8,267.45	8,778.85	9,595.30	9,515.05
June.....	9,671.55	10,462.25	9,393.10	9,274.10
Total.....	104,644.95	109,913.95	116,685.05	114,980.60

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EXHIBIT E—Statement of gross cash receipts, business executed, number of registrations, etc., for 16 fiscal years, etc.—Continued

NUMBER OF REGISTRATIONS

Month	1897-98	1898-99	1899-1900	1900-1901	1901-2	1902-3	1903-4	1904-5
July.....	5,015	5,653	6,835	7,514	7,010	6,748	7,107	7,778
August.....	5,618	6,005	6,525	7,822	6,776	6,451	7,147	8,039
September.....	6,106	6,188	7,571	6,685	6,684	7,132	7,605	8,487
October.....	6,368	6,316	7,627	7,901	7,305	7,771	8,289	9,326
November.....	5,288	5,682	6,814	6,210	5,909	7,397	7,352	8,109
December.....	7,408	7,288	7,284	9,693	9,190	10,792	10,248	9,436
January.....	9,220	9,556	12,808	9,871	12,241	12,808	12,546	15,116
February.....	5,514	6,552	7,521	6,421	6,333	7,144	8,519	7,939
March.....	6,350	7,417	8,311	7,755	7,757	8,663	8,657	10,879
April.....	6,494	6,834	8,089	8,062	7,527	7,839	8,412	10,066
May.....	6,222	6,888	7,508	6,974	8,325	6,907	8,546	8,845
June.....	5,942	6,589	7,905	7,443	7,921	8,327	8,702	9,334
Total.....	75,545	80,968	94,798	92,351	92,978	97,979	103,130	113,374

  

Month	1905-6	1906-7	1907-8	1908-9	1909-10	1910-11	1911-12	1912-13
July.....	8,241	9,023	9,594	8,985	5,106	7,465	7,681	8,869
August.....	8,337	8,142	10,004	8,190	8,124	7,262	8,957	8,933
September.....	9,001	7,792	9,281	9,040	8,941	9,514	11,155	9,875
October.....	9,778	9,682	9,652	10,098	9,672	9,806	11,493	10,656
November.....	8,317	9,374	8,804	8,820	9,969	9,232	9,086	9,543
December.....	10,936	11,557	10,163	11,009	10,527	10,388	9,925	9,771
January.....	15,358	16,841	14,615	16,079	9,519	11,096	11,591	12,191
February.....	8,639	8,991	8,863	9,301	8,414	10,476	10,077	8,838
March.....	9,628	10,750	9,999	11,005	10,481	9,948	11,456	10,587
April.....	9,402	10,422	10,316	9,612	9,808	9,916	10,146	10,463
May.....	10,411	11,317	8,616	9,076	8,532	9,229	9,871	9,944
June.....	9,656	9,938	9,838	8,916	9,981	10,866	9,493	9,825
Total.....	117,704	123,829	119,742	120,131	109,074	115,198	120,931	119,495

EXHIBIT E—Statement of gross cash receipts, business executed, number of registrations, etc., for 16 fiscal years, etc.—Continued

COMPARATIVE STATEMENT OF GROSS RECEIPTS, YEARLY FEES, AND NUMBER OF REGISTRATIONS

Year	Gross receipts	Increase	Decrease
1897-98.....	\$61,099.56	.....	.....
1898-99.....	64,185.65	\$3,086.09	.....
1899-1900.....	71,072.33	6,886.68	.....
1900-1901.....	69,525.25	.....	\$1,547.08
1901-2.....	68,405.08	.....	1,120.17
1902-3.....	71,533.91	3,128.83	.....
1903-4.....	75,302.83	3,768.92	.....
1904-5.....	80,440.56	5,137.73	.....
1905-6.....	82,610.92	2,170.36	.....
1906-7.....	87,384.31	4,773.39	.....
1907-8.....	85,042.03	.....	2,342.28
1908-9.....	87,085.53	2,043.50	.....
1909-10.....	113,662.83	26,577.30	.....
1910-11.....	113,661.52	.....	1.31
1911-12.....	120,149.51	6,487.99	.....
1912-13.....	118,968.26	.....	1,181.25
Total.....	1,370,130.08	.....	.....

  

Year	Yearly fees	Increase	Decrease
1897-98.....	\$53,926.50	.....	.....
1898-99.....	58,267.00	\$4,340.50	.....
1899-1900.....	65,206.00	6,939.00	.....
1900-1901.....	63,687.50	.....	\$1,518.50
1901-2.....	64,687.00	999.50	.....
1902-3.....	68,374.50	4,187.50	.....
1903-4.....	72,629.00	3,754.50	.....
1904-5.....	78,098.00	5,469.00	.....
1905-6.....	80,198.00	2,100.00	.....
1906-7.....	84,685.00	4,487.00	.....
1907-8.....	82,387.50	.....	2,297.50
1908-9.....	83,876.75	1,489.25	.....
1909-10.....	104,644.95	20,828.20	.....
1910-11.....	109,013.95	5,269.00	.....
1911-12.....	116,685.05	6,771.10	.....
1912-13.....	114,980.60	.....	1,704.45
Total.....	1,304,647.30	.....	.....

## EXHIBIT E—Statement of gross cash receipts, business executed, number of registrations, etc., for 16 fiscal years, etc.—Continued

## COMPARATIVE STATEMENT OF GROSS RECEIPTS, YEARLY FEES, AND NUMBER OF REGISTRATIONS—Continued

Year	Number of registrations	Increase	Decrease
1897-98.....	75,545		
1898-99.....	80,968	5,423	
1899-1900.....	94,798	13,830	
1900-1901.....	92,351		2,447
1901-2.....	92,978	627	
1902-3.....	97,979	5,001	
1903-4.....	103,130	5,151	
1904-5.....	113,374	10,244	
1905-6.....	117,704	4,330	
1906-7.....	123,829	6,125	
1907-8.....	119,742		4,087
1908-9.....	120,131	389	
1909-10.....	109,074		11,057
1910-11.....	115,198	6,124	
1911-12.....	120,931	5,733	
1912-13.....	119,495		1,436
<b>Total.....</b>	<b>1,697,227</b>		

## EXHIBIT F—Table of registrations made during fiscal years 1901-2, 1902-3, 1903-4, 1904-5, 1905-6, 1906-7, 1907-8, 1908-9, 1909-10, 1910-11, 1911-12, and 1912-13, arranged by classes

	1901-2	1902-3	1903-4	1904-5
<b>Class A. Books:</b>				
(a) Books (vols.) and pamphlets.....	8,399	10,589	15,870	16,037
(b) Booklets, leaflets, circulars, cards....	9,174	7,827	3,361	3,366
(c) Newspaper and magazine articles....	6,699	8,050	8,593	10,457
<b>Total.....</b>	<b>24,272</b>	<b>26,466</b>	<b>27,824</b>	<b>29,860</b>
<b>Class B. Periodicals (numbers).....</b>	<b>21,071</b>	<b>22,625</b>	<b>21,496</b>	<b>22,591</b>
<b>Class C. Musical compositions.....</b>	<b>19,706</b>	<b>21,161</b>	<b>23,110</b>	<b>24,595</b>
<b>Class D. Dramatic compositions.....</b>	<b>1,448</b>	<b>1,608</b>	<b>1,571</b>	<b>1,645</b>
<b>Class E. Maps and charts.....</b>	<b>1,708</b>	<b>1,792</b>	<b>1,767</b>	<b>1,831</b>
<b>Class F. Engravings, cuts, and prints.....</b>	<b>5,999</b>	<b>5,546</b>	<b>6,510</b>	<b>11,303</b>
<b>Class G. Chromos and lithographs.....</b>	<b>2,010</b>	<b>2,232</b>	<b>2,384</b>	<b>2,581</b>
<b>Class H. Photographs.....</b>	<b>13,923</b>	<b>13,519</b>	<b>14,534</b>	<b>15,139</b>
<b>Class I. Fine arts: Paintings, drawings, and sculpture.....</b>	<b>2,841</b>	<b>3,030</b>	<b>3,934</b>	<b>3,829</b>
<b>Grand total.....</b>	<b>92,978</b>	<b>97,979</b>	<b>103,130</b>	<b>113,374</b>



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EXHIBIT F—Table of registrations made during fiscal years 1901-2, 1902-3, 1903-4, 1904-5, 1905-6, 1906-7, 1907-8, 1908-9, 1909-10, 1910-11, 1911-12, and 1912-13, arranged by classes—Continued.

	1905-6	1906-7	1907-8	1908-9
<b>Class A. Books:</b>				
(a) Books (vols.) and pamphlets.....	15,504	16,651		
(b) Booklets, leaflets, circulars, cards....	4,567	5,195		
(c) Newspaper and magazine articles....	9,190	9,033		
Total.....	29,261	30,879	30,191	32,533
<b>Class B. Periodicals (numbers).....</b>	23,163	23,078	22,409	21,195
<b>Class C. Musical compositions.....</b>	26,435	31,401	28,427	26,306
<b>Class D. Dramatic compositions.....</b>	1,879	2,114	2,382	2,937
<b>Class E. Maps and charts.....</b>	1,672	1,578	2,150	1,949
<b>Class F. Engravings, cuts, and prints.....</b>	10,946	12,350	10,863	11,474
<b>Class G. Chromos and lithographs.....</b>	3,471	2,733	2,734	2,899
<b>Class H. Photographs.....</b>	17,269	15,836	16,704	16,764
<b>Class I. Fine arts: Paintings, drawings, and sculpture.....</b>	3,608	3,860	3,882	4,074
<b>Grand total.....</b>	<b>117,704</b>	<b>123,829</b>	<b>119,742</b>	<b>120,131</b>

  

	1909-10	1910-11	1911-12	1912-13
<b>Class A. Books (including pamphlets, leaflets, and contributions to periodicals):</b>				
(a) Printed in the United States.....	23,115	24,840	26,540	26,784
(b) Printed abroad in a foreign language.....	1,351	1,707	2,294	2,369
(c) English books registered for ad interim copyright.....	274	423	452	419
Total.....	24,740	26,970	29,286	29,572
<b>Class B. Periodicals (numbers).....</b>	21,608	23,393	22,580	23,002
<b>Class C. Lectures, sermons, addresses.....</b>	117	102	106	185
<b>Class D. Dramatic or dramatico-musical compositions.....</b>	3,911	3,415	3,767	3,700
<b>Class E. Musical compositions.....</b>	24,345	25,525	26,777	26,292
<b>Class F. Maps.....</b>	2,622	2,318	2,158	2,011
<b>Class G. Works of art; models or designs.....</b>	4,383	3,355	3,224	2,871
<b>Class H. Reproductions of works of art.....</b>	751	222	47	13
<b>Class I. Drawings or plastic works of a scientific or technical character.....</b>	317	232	500	462
<b>Class J. Photographs.....</b>	13,348	14,469	13,498	12,778
<b>Class K. Prints and pictorial illustrations.....</b>	11,925	14,269	17,639	16,591
<b>Class L. Motion-picture photoplays.....</b>				892
<b>Class M. Motion pictures not photoplays.....</b>				61
Renewals.....	1,007	928	1,349	1,065
<b>Total.....</b>	<b>109,074</b>	<b>115,198</b>	<b>120,931</b>	<b>119,495</b>

EXHIBIT G—Table of articles deposited during 12 fiscal years, 1897-98, 1898-99, 1899-1900, 1900-1901, 1901-2, 1902-3, 1903-4, 1904-5, 1905-6, 1906-7, 1907-8, 1908-9\*

	1897-98	1898-99	1899-1900	1900-1901	1901-2
<b>1. Books:</b>					
(a) Books proper .....	5,575	5,834	6,550	7,746	7,027
(b) Volumes, circulars, leaflets, etc....	4,698	4,196	5,073	5,770	6,259
(c) Newspaper and magazine articles..	3,262	5,185	8,851	9,010	5,577
2. Dramatic compositions .....	391	507	561	634	815
3. Periodicals (numbers) .....	13,726	9,777	14,147	17,702	19,573
4. Musical compositions .....	17,217	19,976	16,505	16,709	21,295
5. Maps and charts .....	1,296	1,478	1,353	1,718	1,566
6. Engravings, cuts, and prints .....	2,912	3,505	3,503	5,687	5,636
7. Chromos and lithographs .....	747	1,050	1,257	1,817	1,757
8. Photographs .....	5,777	7,695	12,115	13,064	13,884
9a. Miscellaneous (unclassified articles).....	375	14	.....	.....	.....
	55,976	59,217	69,915	79,857	83,389
Two copies of each article were received ..	111,952	118,434	139,830	159,714	166,778
9. Photographs with titles of works of art for identification, one copy each .....	853	1,709	1,614	2,569	2,948
Grand total .....	112,805	120,143	141,444	162,283	169,726

  

	1902-3	1903-4	1904-5	1905-6
<b>1. Books:</b>				
(a) Books proper .....	9,222	12,967	13,389	12,893
(b) Volumes, circulars, leaflets, etc....	5,255	3,084	2,940	3,602
(c) Newspaper and magazine articles..	7,097	7,883	9,081	7,833
2. Dramatic compositions .....	986	1,098	1,224	1,380
3. Periodicals (numbers) .....	21,498	20,320	23,457	22,116
4. Musical compositions .....	19,801	21,203	22,984	24,801
5. Maps and charts .....	1,802	1,547	1,817	1,708
6. Engravings, cuts, and prints .....	5,830	5,938	10,460	10,239
7. Chromos and lithographs .....	2,006	2,167	2,443	3,039
8. Photographs .....	13,790	14,258	13,954	16,210
	87,286	90,465	101,719	103,821
Two copies of each article were received ..	174,572	180,930	203,438	207,642
9. Photographs with titles of works of art for identification, one copy each .....	2,947	3,869	3,986	3,496
Grand total .....	177,519	184,799	207,424	211,138

\*For continuation, 1909-1913, see page 164.

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EXHIBIT C—Table of articles deposited during 12 fiscal years, 1897-98, 1898-99, 1899-1900, 1900-1901, 1901-2, 1902-3, 1903-4, 1904-5, 1905-6, 1906-7, 1907-8, and 1908-9—Continued

	1906-7	1907-8	1908-9	Total
<b>1. Books:</b>				
(a) Books proper.....	12,992			
(b) Volumes, circulars, leaflets, etc....	5,340	25,363	27,425	265,352
(c) Newspaper and magazine articles...	8,403			
2. Dramatic compositions.....	1,568	1,904	2,226	13,294
3. Periodicals (numbers).....	23,554	21,378	22,288	229,536
4. Musical compositions.....	27,308	27,673	23,969	259,441
5. Maps and charts.....	1,572	2,082	1,848	19,786
6. Engravings, cuts, and prints.....	11,233	11,125	10,137	86,205
7. Chromos and lithographs.....	2,589	2,682	2,802	24,356
8. Photographs.....	16,672	16,306	15,650	159,375
9a. Miscellaneous (unclassified articles).....				389
	111,231	108,513	106,345	1,057,734
Two copies of each article were received..	222,462	217,026	212,690	2,115,468
Foreign books received under act of Mar. 3, 1905.....	585	796	1,146	2,527
9. Photographs with titles of works of art for identification, one copy each.....	4,000	3,900	4,033	35,924
Grand total.....	227,047	221,722	217,869	2,153,919

EXHIBIT G—Table of articles deposited during 1909-10, 1910-11, 1911-12, and 1912-13, with total deposits in each class for 16 fiscal years, 1897-98, 1898-99, 1899-1900, 1900-1901, 1901-2, 1902-3, 1903-4, 1904-5, 1905-6, 1906-7, 1907-8, 1908-9, 1909-10, 1910-11, 1911-12, and 1912-13

	1909-10	1910-11	1911-12	1912-13	Total
<b>1. Books:</b>					
(a) Printed in the United States:					
Volumes.....	15,682	17,997	19,650	19,952	
Pamphlets, leaflets, etc.....	30,150	21,565	23,344	22,184	
Contributions to newspapers and periodicals.....		5,709	5,705	5,826	
(b) Printed abroad in a foreign lan- guage.....	45,832	45,271	48,699	47,962	
English works registered for ad- interim copyright.....	2,920	3,181	4,606	4,731	
	275	635	643	499	
2. Periodicals.....	49,027	49,087	53,948	53,122	735,888
3. Lectures, sermons, etc.....	49,156	46,780	45,172	46,070	646,250
4. Dramatic or dramatico-musical compo- sitions.....	117	102	107	183	509
5. Musical compositions.....	5,554	4,165	4,800	4,616	45,723
6. Maps.....	54,426	50,225	52,167	59,415	726,115
7. Works of art; models or designs.....	5,244	4,648	4,344	3,980	57,788
8. Reproductions of works of art.....	4,383	3,365	3,223	2,861	49,756
8a. Chromos and lithographs.....	1,502	456	40	26	2,024
9. Drawings or plastic works of a scientific or technical character.....					48,712
10. Photographs.....	317	237	609	862	2,025
11. Prints and pictorial illustrations.....	27,796	25,083	25,802	23,734	421,165
12. Motion-picture photoplays.....	21,502	25,079	29,309	27,824	276,124
13. Motion pictures not photoplays.....				1,742	1,742
14. Miscellaneous (unclassified articles).....				160	160
15. Foreign books received under act of Mar. 3, 1905.....					778
Total.....	219,024	209,227	219,521	215,595	3,017,286

Addenda to the Report of the Register of Copyrights, 1912-13

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- I. Copyright legislation enacted during the fiscal year 1912-13, pages 167-170.
- II. Decisions of the United States courts involving copyright, pages 171-217.
- III. Digest of the Opinions of the Attorneys General and of the Treasury decisions concerning copyright, etc., pages 219-226.
- IV. Copyright convention between the United States and Hungary, in force October 16, 1912, page 227.

Addendum I

COPYRIGHT LEGISLATION ENACTED DURING THE  
FISCAL YEAR 1912-13

[Sixty-second Congress, second session, Public--No. 303, approved August 24, 1912  
(H. R. 24224)]

AN ACT To amend sections five, eleven, and twenty-five of an act <sup>Copyright legis-</sup>  
entitled "An act to amend and consolidate the acts respecting copy- <sup>lation: Act of Aug.</sup>  
rights," approved March fourth, nineteen hundred and nine. <sup>24, 1912</sup>

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That sections five, eleven, and twenty-five of the act entitled "An act to amend and consolidate the acts respecting copyrights," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"SEC. 5. That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

"(a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations;

"(b) Periodicals, including newspapers;

"(c) Lectures, sermons, addresses (prepared for oral delivery);

"(d) Dramatic or dramatico-musical compositions;

"(e) Musical compositions;

"(f) Maps;

"(g) Works of art; models or designs for works of art;

"(h) Reproductions of a work of art;

"(i) Drawings or plastic works of a scientific or technical character;

"(j) Photographs;

"(k) Prints and pictorial illustrations;

"(l) Motion-picture photoplays;

"(m) Motion pictures other than photoplays:

*Provided, nevertheless,* That the above specifications shall not be held to limit the subject matter of copyright as defined in section four of this act, nor shall any error in classification invalidate or impair the copyright protection secured under this act."

"SEC. 11. That copyright may also be had of the works of an author, of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic, musical, or dramatico-musical composition; of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay; of a photographic print if the work be a photograph; of a title and description,

ing copy made or sold by or found in the possession of the infringer or his agents or employées;

"Third. In the case of a lecture, sermon, or address, fifty dollars for every infringing delivery;

"Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions ten dollars for every infringing performance;

"(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright;

"(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order.

"(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section one, subsection (e), of this act: *Provided also*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this act, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section one, subsection (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

"Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States."

Approved, August 24, 1912.

[Sixty-second Congress, third session, Public—No. 405, approved March 2, 1913. (H. R. 23568.)]

AN ACT To amend section fifty-five of "An act to amend and consolidate the acts respecting copyright," approved March fourth, nineteen hundred and nine. *Act approved Mar. 2, 1913*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section fifty-five of the act entitled "An act to amend and consolidate the acts respecting

with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay; or of a photograph or other identifying reproduction thereof, if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies, under sections twelve and thirteen of this act, where the work is later reproduced in copies for sale."

"SEC. 25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

"(a) To an injunction restraining such infringement;

"(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, and in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of one hundred dollars; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of five thousand dollars nor be less than two hundred and fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.

"First. In the case of a painting, statue, or sculpture, ten dollars for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

"Second. In the case of any work enumerated in section five of this act, except a painting, statue, or sculpture, one dollar for every infring-



copyright," approved March fourth, nineteen hundred and nine, be amended to read as follows:

"SEC. 55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain the name and address of said claimant, the name of the country of which the author of the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author (when the records of the copyright office shall show the same), the title of the work which is registered for which copyright is claimed, the date of the deposit of the copies of such work, the date of publication if the work has been reproduced in copies for sale, or publicly distributed, and such marks as to class designation and entry number as shall fully indentify the entry. In the case of a book, the certificate shall also state the receipt of the affidavit, as provided by section sixteen of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for in the case of all registrations made after this Act goes into effect, and in the case of all previous registrations so far as the copyright office record books shall show such facts, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same. Said certificate shall be admitted in any court as prima facie evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration."

Approved March 2, 1913.

HAZEL, district judge. The question raised in this case involves the right of the complainant, the Æolian Company, under the copyright act of March 4, 1909, to restrain the defendant, the Royal Music Roll Company, from copying and duplicating perforated music rolls or records manufactured by the former. While under the provisions of the copyright law such music rolls or records are not strictly matters of copyright, Congress in passing the enactment evidently intended to protect copyright proprietors in their right to their productions and to give them an exclusive right to print, publish, and vend the same. If the copyrighted work be a musical composition, the owner, under the provisions of the statute, after complying therewith, has the exclusive right to perform it publicly for profit, and may, if he chooses so to do, make "an arrangement or setting" of the musical composition, published or copyrighted after the passage of the act, for mechanical reproduction. In this manner the copyright owner retains control of the right to manufacture music rolls, and the mechanical reproduction of such music or composition is optional with him. If he elects to mechanically reproduce it, or knowingly acquiesces in such use of reproduction by another, "any other person," the act says, "may make similar use of the copyrighted work" upon payment of a royalty.

The bill avers that prior to making the music rolls or records in question complainant was given permission and license to mechanically reproduce the copyrighted composition and to make perforated rolls therefrom. By such permission or license the owners of the copyright transferred to the licensees their right to manufacture perforated rolls, or parts, or instruments to mechanically reproduce the copyrighted music. The provision of the statute (section re) that "any other person may make similar use of the copyrighted work" becomes automatically operative by the grant of the license; but the subsequent user does not thereby secure the right to copy the perforated rolls or records. He can not avail himself of the skill and labor of the original manufacturer of the perforated roll or record by copying or duplicating the same, but must resort to the copyrighted composition or sheet music and not pirate the work of a competitor who has made an original perforated roll.

The defendant contends there is no provision in the copyright act for an action of this kind by the manufacturer of perforated rolls or records—a licensee of the copyright proprietor—and that the license herein granted conveyed nothing beyond the right to use the copyrighted music. This court, however, is of a different opinion, and thinks that Congress gave to the owner of the copyrighted work and to his licensee the right to maintain an action such as this. By section 36 of the copyright act it is provided that any party aggrieved may file a bill in equity and a circuit (now district) court of the United States may grant an injunction to prevent and restrain the violation of any rights secured by such act. To effect the purpose intended by Congress this provision must be given reasonable construction (*Bobbs-Merrill Co. v. Straus et al.*, 210 U. S., 339; 28 Sup. Ct., 722; 52 L. Ed., 1086), and to give it such construction requires holding that the phrase "any party

"aggrieved" includes a licensee who has obtained a right to manufacture and sell perforated rolls. The phrase is not limited merely to owners of the copyright, but is broad enough to include licensees or others having permission from the owner of the copyright to mechanically reproduce the musical composition.

The allegation charging copying of the rolls by the defendant is not denied. The motion for temporary injunction is granted.

[196 Federal Reporter, pp. 926-928.]

ATLAS MFG. CO. ET AL. V. STREET & SMITH.

(Circuit Court of Appeals, Eighth Circuit. March 26, 1913.)

No. 3826

1. TRADE-MARKS AND TRADE NAMES—REGISTRATION—EFFECT.

Act Feb. 20, 1905, c. 592, 33 Stat., 724 (U. S. Comp. St. Supp. 1911, p. 1459), authorizing registration of trade-marks, provides that the applicant shall specify the class of merchandise and the particular description of goods comprised in such class to which the trade-mark is appropriated, a description of the trade-mark itself, and a statement of the mode in which it is applied. *Held*, that where complainant registered the words "Nick Carter" as a trade-mark and described the goods to which it was attached as "a weekly periodical devoted to fiction," the only property entitled to protection under such trade-mark was a periodical; and hence complainants were not entitled to restrain the use of the term "Nick Carter" as the name of a personage shown in moving pictures.

*Atlas Mfg. Co.  
et al. v. Street &  
Smith.*

2. TRADE-MARKS AND TRADE NAMES—LITERARY PROPERTY.

Literary property in a book can not be protected by a trade-mark, nor otherwise than by copyright.

3. TRADE-MARKS AND TRADE NAMES—UNLAWFUL COMPETITION—SIMILARITY OF GOODS.

That complainants for many years have published detective stories embodying the character "Nick Carter" did not entitle them to an injunction restraining the use of such name to designate a character represented on moving-picture films depicting a detective story, on the theory of unlawful competition and trade, there being no similarity in the "class of goods" offered for sale.

4. COPYRIGHTS—LITERATURE—CHARACTER.

That complainants' "Nick Carter" detective stories were not of the highest class of literature did not bar complainants from relief in the courts against piracy, the stories being proper subjects of copyright.

5. LITERARY PROPERTY—RIGHTS OF AUTHOR.

The author of a literary work, at common law, has the exclusive right to the first publication only, but has no exclusive right to multiply or control subsequent copies by others, this right being entirely a creature of statute, secured by the copyright laws of different Governments.

6. LITERARY PROPERTY—LITERARY WORKS.

Neither the author nor proprietor of a literary work has any property in its name, that being a term of description which serves only to identify the work, and may be adopted and applied to any other book or trade commodity, provided the person does not use it as a false token to induce the public to believe that the thing to which he has applied it is the identical thing which it originally designated.

7. COPYRIGHTS—BOOKS—TITLE.

The copyright of a book does not prevent others from taking the same title for another book, though the copyright has not expired.

## 8. COPYRIGHTS—EXPIRATION—RIGHTS OF PUBLIC.

On the expiration of the copyright of a novel, any person may use the plot for a play, copy or publish it, or make any use of it he sees fit; so where one writes and copyrights a play based on a novel, and bearing the same title as the novel, he can not prevent another from giving the same name to an entirely different play which has been constructed from that novel.

## 9. COPYRIGHTS—EXPIRATION—COPYRIGHTED NAME.

The right to use a copyrighted name on the expiration of the copyright becomes public property, subject to the limitation that the right be so exercised as not to deceive the public and lead them to believe that they are buying the particular thing which was produced under the copyright.

## 10. COPYRIGHTS—TRANSLATION—DRAMATIZATION—STATUTES.

Rev. Stat., § 4952, as amended by act Cong. March 3, 1891, c. 565, 26 Stat., 1107 (U. S. Comp. St. 1901, p. 3406), providing that authors or their assigns shall have the exclusive right to dramatize and translate any of their works for which copyright shall have been obtained, makes such exclusive right an integral part of the copyright itself.

## 11. TRADE-MARKS AND TRADE NAMES—UNLAWFUL COMPETITION—PROTECTION.

The law of unfair trade is to protect the honest trader in the business which fairly belongs to him; to punish the dishonest trader, who is taking his competitor's business by unfair means; and to protect the public from deception.

## 12. TRADE-MARKS AND TRADE NAMES—INFRINGEMENT—RIGHT TO RELIEF.

To sustain a charge of infringement of a trade-mark, the owner must have used it on the same class of goods put out by the alleged infringer, but not necessarily on the same species of goods.

## 13. TRADE-MARKS AND TRADE NAMES—NATURE OF RIGHT—CHARACTER OF PROTECTION.

Neither trade-mark nor trade name can afford protection to detective stories, as such, whether published or still unpublished, and much less where neither title nor composition is pirated and but a single common character is used by the alleged infringer.

## 14. LITERARY PROPERTY—FORMS OF PRODUCTION—MOVING PICTURES—DRAMATIZATION—BOOKS.

Moving pictures and dramatization being cognate forms of production, when the latter is copyrighted, it necessarily includes the former; but in the absence of copyright no such relation exists between either moving pictures or dramatization and a written book relating the same story.

HOOK, circuit judge, dissenting.

Appeal from the District Court of the United States for the Eastern District of Missouri; David P. Dyer, judge.

Suit by Street & Smith, a copartnership, against the Atlas Manufacturing Company and another. Decree for complainants, and defendants appeal. Reversed, and appeal dismissed.

James Love Hopkins and Nelson Thomas, both of St. Louis, Mo., for appellants.

Hugh K. Wagner, of St. Louis, Mo. (Leonard J. Langbein, of New York City, on the brief), for appellees.

Before HOOK and SMITH, circuit judges, and VAN VALKENBURGH, district judge.

VAN VALKENBURGH, district judge. Appellees, complainants below, are citizens of the State of New York, and are the members of a copartnership known and styled as Street & Smith. This firm is engaged in the business of publishing detective stories characterized by the general name of "Nick Carter." Its publications are issued weekly and consist, exclusive of cover, of 32 pages 11 by 8 inches in size. Of these pages, 26 are devoted to a detective story complete in itself; 5

pages to space-filling items under the heading "News of All Nations"; and 1 page to advertising other publications issued by the same firm. The cover is in colors and presents in order the serial number, date, price, general title "Nick Carter," the specific title of the detective story, as "The Red Button," contained in that issue, and an illustration characteristic of the story, or depicting some incident in it. Slight modifications of interior make-up have since been made, but this description applies to complainants' exhibit, filed with their bill July 1, 1912. The function of the weekly issue is the publication of the single detective story contained therein. A different story under a distinct title is published each week. These stories are complete in themselves. The only connection between them is that the detective character, Nick Carter, is the central figure in each. April 19, 1910, complainants registered the name "Nick Carter" as a trade-mark for "a weekly publication devoted to fiction," alleging that it had been used in their business and that of their predecessors since March 30, 1885.

The appellant Atlas Manufacturing Company is a Missouri corporation domiciled in the city of St. Louis. Its business includes the manufacture and sale of moving-picture films. Appellant Crawford is its president. In January or February, 1912, said Atlas Manufacturing Company employed certain persons, named, respectively, Wolcott and Hamilton, to write a scenario or memorandum of the series of events in a detective story. This story was then acted with appropriate stage setting and the performance photographed in sequence. From these photographs a film was prepared, and it is the purpose of appellants to sell, rent, or lease this film to such persons as may desire to display it in moving-picture theaters. As advertised the story presents "Nick Carter, the Great American Detective, Solving the \$100,000.00 Jewel Mystery." It appropriates neither title, plot, nor situations of any story published by complainants. The name Nick Carter is used, and a detective story is portrayed. The name of the appellant corporation, as manufacturer, is displayed upon the screen. Complainants, claiming the "exclusive right to make, sell, print, publish, and display to the public detective stories marked with the name and trade-mark 'Nick Carter' and called and known by the trade-name 'Nick Carter,'" filed their bill of complaint July 1, 1912, to restrain defendants from using this name in any connection or form. A preliminary injunction was granted, and defendants appealed. Complainants have taken out no copyright upon any of their publications. Therefore no rights arising under the copyright law are presented for determination. The property rights asserted are based (1) upon registered trade-mark; (2) upon long-established trade-name.

[1] The trade-mark registered is "Nick Carter." The law authorizing such registration provides that the applicant shall specify "the class of merchandise and the particular description of goods comprised in such class to which the trade-mark is appropriated. \* \* \* a description of the trade-mark itself," and "a statement of the mode in which same is applied and affixed to goods. \* \* \*" Act Feb. 20, 1905, 33 Stat. L., pt. 1, c. 592, p. 724 (U. S. Comp. St. Supp.,

1911, p. 1459). In compliance with this requirement complainants particularly describe their so-called goods as "a weekly periodical devoted to fiction." To entitle this publication to protection under the trade-mark granted, it must conform to the description filed; it must be a periodical. In *Smith et al. v. Hitchcock*, 226 U. S., 53, 33 Sup. Ct., 6, decided November 18, 1912, the Supreme Court held that the "Tip Top Weekly," issued by these same complainants, and practically identical in structure with the "Nick Carter" publication, is not a periodical, but a book.

[2] Literary property in a book can not be protected by trade-mark, nor otherwise than by copyright. (*Black v. Ehrich* (C. C.), 44 Fed. 793; *Brown on Trade-Marks*, §§ 116, 117.) This is conceded by complainants' counsel in brief and argument; but it is claimed that whether the publication be regarded as a periodical or a book, the trade-mark protects it in its character as goods or merchandise. It is therefore well to determine the exact nature of the "merchandise" to which the trade-mark applies. This must be the publication, as such, whether book or periodical. It is the form, not the contents. "Nick Carter" is not the name of the specific story, as, in this case, "The Red Button." None of the individual stories, as such, are covered by the mark. To publish a little booklet entitled "The Red Button," distinct in size, form, and dress, not bearing the imprint "Nick Carter," would not infringe this technical trade-mark. Conceding to this registered mark its broadest application, it can at most protect only against something in the nature of a periodical publication—of the same class.

No exercise of imagination, however fertile, can transform defendants' film or its intermittent exhibitions into anything resembling a periodical publication.

[3] Complainants' chief reliance would seem to be upon the claim asserted in their bill that they have possessed for many years, and still possess, the exclusive right to make, sell, print, publish, and display to the public detective stories called and known by the trade name "Nick Carter." This is a direct appeal to the law affecting unfair competition in trade. Because they have long published detective stories associated with this name and character, they now assert the exclusive right to construct and make public in any manner whatsoever all detective stories involving the name and character of Nick Carter. It is the individual story as an article of merchandise, and not the form of publication, for which protection is thus invoked. In the language of the brief, "the sole question in this case for the court to decide is whether or not a moving-picture film is of the same class of goods as a printed *book*." The claim advanced is ingenious and decidedly comprehensive in its scope.

[4, 5] We agree with counsel that "the fact that appellees' [complainants'] stories are not the highest class of literature does not bar complainants from relief by the courts." In other words, this fact does not take from the stories their essential character as literature in the eyes of the law. They are subjects of copyright. And this leads us to inquire what complainants' standing would be under the law of copyrights?

<sup>18</sup> The author of a literary work or composition has, by common law, the exclusive right to the first publication of it. He has no exclusive right to multiply or control the subsequent issues of copies by others; the right of an author or proprietor of a literary work to multiply copies of it to the exclusion of others is the creature of statute. This is the right secured by the copyright laws of the different Governments. (Palmer v. De Witt, 47 N. Y., 532; 7 Am. Rep., 480.)

[6] "Neither the author nor proprietor of a literary work has any property in its name. It is a term of description, which serves to identify the work; but any other person can, with impunity, adopt it and apply it to any other book, or to any trade commodity, provided he does not use it as a false token to induce the public to believe that the thing to which it is applied is the identical thing which it originally designated. If literary property could be protected under the theory that the name by which it is christened is equivalent to a trade-mark, there would be no necessity for copyright laws." (Black v. Ehrich (C. C.), 44 Fed., 793.)

[7-9] So the copyright of a book does not prevent others from taking the same title for another book, though the copyright has not expired; and on the expiration of the copyright of a novel any person may use the plot for a play, copy or publish it, or make any other use of it he sees fit. In such case, where one writes and copyrights a play based on a novel, and bearing the same title as the novel, he can not prevent another from giving the same name to an entirely different play which has been constructed from that novel. (Glaser v. St. Elmo Co. (C. C.), 175 Fed., 276.) The right to use a copyrighted name upon the expiration of the copyright becomes public property, subject to the limitation that the right be so exercised as not to deceive members of the public and lead them to believe that they are buying the particular thing which was produced under the copyright. (G. & C. Merriam Co. v. Ogilvie (C. C. A.), 159 Fed., 638; 88 C. C. A., 596; 16 L. R. A. (N. S.), 549; 14 Ann. Cas., 796.)

[10] Original section 4952, R. S. U. S., provided that "authors may reserve the right to dramatize or to translate their own works." Unless this reservation was made the public was free to make such use of them. By act of March 3, 1891, c. 565, 26 Stat., 1107 (U. S. Comp. St., 1901, p. 3406), it was provided that "authors or their assigns shall have exclusive right to dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States." This made such exclusive right an integral part of the copyright itself. Under this section, so amended, the Supreme Court has held that an exhibition of a series of photographs of persons and things arranged on films as moving pictures and so depicting the principal scenes of an author's work as to tell the story is a dramatization of such work, and the person producing the films and offering them for sale or for exhibitions, even if not himself exhibiting them, infringes the copyright of the author. (Kalem Co. v. Harper Bros., 222 U. S., 55, 32 Sup. Ct., 20, 56 L. Ed., 92, Ann. Cas., 1913A, 1285.) Nevertheless, it is held that the owner of the copyright of a novel is not entitled to protection against

the use of that name in connection with a dramatic composition which does not present any scenes, plot, or dialogue imitated or adapted from the novel; it being the name in connection with the novel, and not the name alone, which the copyright protects. (*Harper et al. v. Rano* (C. C.), 67 Fed., 904.) If the copyright has expired, or none has been taken out, neither the rights and privileges conferred nor the limitations and obligations imposed by that law are present, because, apart from the statute, none exist.

Complainants do not rely upon copyright. The name "Nick Carter" is not the title of any story nor the name of author or publisher. The complainants insist that we shall consider their books, not from the literary standpoint but as merchandise, and cite numerous cases recognizing that the principles of trade-mark law and the law forbidding unfair competition in business may, under certain conditions, apply to books, magazines, periodicals, and newspapers. That they may also apply to magazines, periodicals, and newspapers, as such, we have already seen; to books the application is more limited. The cases cited reveal that protection is accorded in connection with specific kinds of books, such as Bibles, dictionaries, and works of a like nature, where the name has so long been used to designate the production as to have become identified with such particular publications as denoting the origin, and where the use of such name by another publisher, having no connection with the place or name, can have no purpose except to deceive purchasers. (*Chancellor, etc., of Oxford University, v. Wilmore-Andrews Pub. Co.* (C. C.), 101 Fed., 443; *Merriam Co. v. Straus et al.* (C. C.), 136 Fed., 477; *Ogilvie v. Merriam Co.* (C. C.), 149 Fed., 858; *Merriam v. Holloway Pub. Co.* (C. C.), 43 Fed., 450; *Merriam et al. v. Texas Siftings Pub. Co.* (C. C.), 49 Fed., 944; *Merriam v. Famous Shoe Clothing Co.* (C. C.), 47 Fed., 411.) In instances where the same method of selection, illustration, and style of binding, as well as the name on the cover, have been taken, the form of publication is the feature of critical importance. (*Estes et al. v. Williams et al.* (C. C.), 21 Fed. 189; *Estes et al. v. Leslie et al.* (C. C.), 27 Fed., 22; *Estes et al. v. Worthington* (C. C.), 31 Fed., 154.) In all cases the courts have been careful to limit the doctrine announced to the special circumstance and have coupled it with a restatement of well-known principle. Thus in *Merriam v. Straus et al.*, *supra*, Judge Wallace said:

"It is proper, however, to say that the bill is in part an attempt to protect the literary property in the dictionaries, which became publici juris upon the expiration of the copyrights. This attempt must prove futile."

In *Ogilvie v. Merriam Co.* (C. C.), 149 Fed., 858, it is pointed out that this public right can not be taken away or abridged on any theory of trade-mark or unfair competition, which is only another way of seeking to perpetuate the monopoly secured by the copyright. Similar views are expressed in *Merriam v. Texas Siftings Pub. Co.* (C. C.), 43 Fed., 944, and *Merriam v. Famous Shoe & Clothing Co.* (C. C.), 47 Fed., 411. In *G. & C. Merriam v. Ogilvie* (C. C. A.), 159 Fed., 63,



88 C. C. A., 596, 16 L. R. A. (N. S.), 549, 14 Ann. Cas., 796, the Court of Appeals for the First Circuit used language still more explicit:

"The name 'Webster' having been copyrighted by the Merriams, they were protected in its use under a statutory right during an expressed term of years. The protection, therefore, in that respect, came by virtue of the copyright, rather than by virtue of its use in publication and trade. The statutory monopoly having expired under statutory limitation, the word 'Webster,' used in connection with a dictionary, became public property, and any relief granted upon the idea of title or proprietorship in the trade name of 'Webster' would necessarily involve an unwarrantable continuance of the statutory monopoly secured by the copyright."

The important principle involved is, perhaps, most pointedly stated by Mr. Justice Miller in *Merriam et al v. Holloway Pub. Co.*, supra. He says:

"I want to say, however, with reference to the main issue in the case, that it occurs to me that this proceeding is an attempt to establish the doctrine that a party who has had the copyright of a book until it has expired may continue that monopoly indefinitely, under the pretense that it is protected by a trade-mark, or something of that sort. I do not believe in any such doctrine, nor do my associates. When a man takes out a copyright for any of his writings or works, he impliedly agrees that at the expiration of that copyright such writings or works shall go to the public and become public property. I may be the first to announce that doctrine, but I announce it without any hesitation. If a man is entitled to an extension of his copyright, he may obtain it by the mode pointed out by law. The law provides a method of obtaining such extension. The copyright law gives an author or proprietor a monopoly of the sale of his writings for a definite period, but the grant of a monopoly implies that after the monopoly has expired the public shall be entitled ever afterwards to the unrestricted use of the book. \* \* \* I will say this, however: That the contention that complainants have any special property in 'Webster's Dictionary' is all nonsense, since the copyright has expired. What do they mean by the expression 'their book,' when they speak of Webster's Dictionary? It may be their book if they have bought it, as a copy of Webster's Dictionary is my book if I have bought it. But in no other sense than that last indicated can the complainants say of Webster's Dictionary that it is their book."

In the Chatterbox cases (*Estes v. Williams*, supra, *Estes v. Leslie*, supra, and *Estes v. Worthington*, supra) emphasis is laid chiefly upon similarity of form. In *Estes et al. v. Williams*, supra, it was said:

"There is no question but that the defendants have the right to reprint the compositions and illustrations contained in these books, including the titles of the several pieces and pictures. That does not settle the question as to the right claimed here. There is work in these publications aside from the ideas and conceptions. Johnston was not the writer of the articles nor the designer of the pictures composing the books, but he brought them out in this form. The name indicates this work. The defendants, by putting this name to their work in bringing out the same style of book, indicate that their work is his. This renders his book less remunerative, and while continued is a continuing injury, which it is the peculiar province of a court of equity to prevent."

In *Kalem Co. v. Harper Bros.*, 222 U. S., 55, 32 Sup. Ct., 20, L. Ed., 92, Ann. Cas. 1913A, 1285, it was suggested by counsel that extend the copyright to a case of reproducing scenes from *Ben Hur* by means of moving pictures was to extend it to the ideas as distinguished from the words in which those ideas are clothed. Mr. Justice Holm said:

"But there is no attempt to make a monopoly of the ideas expressed. The law confines itself to a particular, cognate, and well-known form of production."

[11, 12] It may be conceded: That the law relating to unfair trade has a threefold object: First, to protect the honest trader in the business which fairly belongs to him; second, to punish the dishonest trader who is taking his competitor's business away by unfair means; third, to protect the public from deception. (*Gulden v. Chance* (C. C. A. 182 Fed., 303, 105; C. C. A., 16.) That to sustain a charge of infringement the owner of a trade-mark must have used it on the same class, but not necessarily on the same species, of goods as the alleged infringer (*Layton Pure Food Co. v. Church & Dwight Co.* (C. C. A.), 182 Fed. 35; 104 C. C. A., 475; 32 L. R. A. (N. S.), 274.) Of course, defendant's film bears no resemblance to complainants' books. No one would be the one in the belief that he was getting the other. It is the display that constitutes the infringement, if there is one; and in such case the producer of the film is responsible equally with the exhibitor. (*Kalem Co. v. Harper Bros.*, *supra.*) We do not think a moving-picture show of the same class as a written book. One belongs to the field of literature; the other to the domain of theatricals. Originally there was no legal connection between the written novel and a dramatization based upon its characters and incidents. The connection was made by statute in derogation of the common law. In the absence of copyright, the situation is as if no such connection had ever been made. We are unwilling indirectly to extend to writings a protection beyond that conferred by statute. Congress created a specific form of monopoly in literary property in this country and made it subject to express limitations. It is for Congress to say whether these limitations should be relaxed.

[13] Neither trade-mark nor trade name can afford protection to detective stories, as such, whether published or still unborn, and much less where neither title nor composition is pirated, and but a single common character is used. The suggestion involves an attempt to make a monopoly of ideas, instead of confining the application of the law to "a particular, cognate, and well-known form of production."

[14] Moving pictures and dramatizations are cognate forms of production. When copyright was extended to the latter, it necessarily included the former; but in the absence of copyright no such relationship exists between either of these forms and the written book. It is not thought that the public will be deceived into belief that it is seeing a reproduction of one of the complainants' stories when it witnesses the display from defendants' film. But if so it is no more deceived than

when it reads a book of the same name as one theretofore published, but unprotected. It may be that the defendants are profiting by the use of a name made distinctive by complainants, but this is true of one who sells a brand of cigars named after a famous book or a famous personage. In the absence of some positive legal right in complainants, these are conditions for which equity can not undertake to create a remedy. The decree below must therefore be reversed and the case remanded, with directions that the preliminary injunction be dissolved and the bill dismissed for want of equity. (*Mast, Foos & Co. v. Stover Manufacturing Co.*, 177 U. S., 485; 20 Sup. Ct., 708; 44 L. Ed., 856; *Castner v. Coffman*, 178 U. S., 168; 20 Sup. Ct., 842; 44 L. Ed., 1021.)

It is so ordered.

HOOK, circuit judge (dissenting). My objection to the above conclusion can be expressed in a sentence: The defendants are engaged in appropriating the fruits of complainants' current endeavors, and are deceiving the public.

[204 Federal Reporter, pp. 398-406.]

BAKER *v.* LIBBIE ET AL.

(Supreme Judicial Court of Massachusetts. Suffolk. Jan. 3, 1912.)

1. LITERARY PROPERTY—OWNERSHIP—INJUNCTION.

Equity will grant injunctive relief to an author against the publication of his private letters on commonplace subjects, without regard to their literary merit or the popular attention aroused by them, since the author's right is property, entitled to the protection given to property, subject to limitations arising from the nature of his letters or the circumstances under which they were written or received, such as letters written by an agent to or for his principal and others, where the conditions indicate that the property in the form or expression is in another than the writer. *Baker v. Libbie, et al.*

2. LITERARY PROPERTY—OWNERSHIP OF LETTERS.

The right of an author to publish or suppress publication of his correspondence is absolute, in the absence of special considerations, and is independent of any desire or intent at the time of writing, and it is an interest in the intangible thought and in the particular language used; and while the author parts with the paper on which the letter is written, and the paper belongs to the receiver, he has the right to secure copies, and thereby protect his right of publication, but the receiver of a letter is under no duty to preserve it, and he may destroy it at pleasure.

3. LITERARY PROPERTY—OWNERSHIP—REMEDY—INJUNCTION.

In the absence of some limitations, imposed either by the subject-matter of a letter or the circumstances under which it is sent, the right of the receiver of an ordinary letter is one of unqualified title in the material on which it is written, and he can deal with it as absolute owner, subject only to the proprietary right retained by the author for himself and his representatives to the publication or non-publication of the ideas in their particular verbal expressions; and the executor of a deceased author of letters on commonplace subjects may obtain an injunction against the publication in any way, in whole or in part, for advertising or other purposes, of any of the letters and to permit plaintiff to make copies of the letters within a reasonable time.

Case reserved from Superior Court. Suffolk County. James B. Richardson, judge.

Suit by Henry M. Baker, executor of Mary Baker G. Eddy, deceased, against Charles F. Libbie and another. On the case coming on for hearing for a final decree the justice of the Superior Court reserved and

reported the case for consideration of the supreme judicial court. Decree for complainant ordered.

Elder, Whitman & Barnum and Wm. A. Morse, for complainant. Wm. M. Prest and Frank B. Livingstone, for defendant.

RUGG, C. J. The plaintiff, as executor of the will of Mary Baker G. Eddy, the founder of "Christian Science," so called, seeks to restrain an auctioneer of manuscripts from publishing for advertising purposes and from selling certain autograph letters of his testatrix. These letters were written in her own hand by Mrs. Eddy, as is said, "during one of the most interesting periods of her career, that is, just after the publication of her *Science and Health with Key to the Scriptures*," in 1875. It is averred in the answer that the letters have no attribute of literature, but are merely friendly letters written to a cousin about domestic and business affairs. Extracts from the letters show that they refer to household matters, to health, and to the work she was doing. The questions raised relate to the existence, extent, and character of the proprietary right of the writer of private letters upon indifferent subjects not possessing the qualities of literature and to the degree of protection to be given in equity to such rights as are found to exist. These points have never been presented before for decision in this Commonwealth. The nearest approach was in *Tompkins v. Halleck* (133 Mass., 32, 43 Am. Rep., 480), where the rights of an author of a dramatic composition put upon the stage but not printed were protected against a rival presentation made possible by human memory (overruling upon this point the earlier case of *Keene v. Kimball*, 16 Gray, 545, 77 Am. Dec., 426), and *Dodge Co. v. Construction Information Co.* (183 Mass., 62, 66 N. E. 204, 60 L. R. A. 810, 97 Am. St. Rep., 412), where property rights in valuable commercial information distributed to subscribers in writing, in print, by telegraph or orally, were recognized and protected against use by a rival concern. Neither of these decisions touch at all closely the points involved in the case at bar.

[1] The rights of the authors of letters of a private or business nature have been the subject of judicial determination in courts in England and this country for a period of at least 170 years. The first English case was *Pope v. Curl* (2 Atk., 341), which was in 1741. It was a suit by Alexander Pope to restrain the publication of letters written by him to Swift and others. In continuing an injunction Lord Chancellor Hardwicke, after remarking that no distinction could be drawn between letters and books or other learned works, said:

"Another objection has been made \* \* \* that where a man writes a letter, it is in the nature of a gift to the receiver. But I am of opinion that it is only a special property in the receiver, possibly the property of the paper may belong to him; but this does not give a license to any person whatsoever to publish them to the world, for at most the receiver has only a joint property with the writer. \* \* \* It has been insisted \* \* \* that this is a sort of work which does not come within the meaning of the act of Parliament [as to copyright] because it contains only letters on familiar subjects and inquiries after the health of friends and can not properly be called a learned work. It is certain that no works having done more service to mankind than those which have appeared i

this shape, upon familiar subjects and which perhaps were never intended to be published; and it is this makes them so valuable."

*Thompson v. Stanhope*, 2 Ambler, 737 (1774), was a suit by the executors of Lord Chesterfield to restrain the publication of his now famous letters to his son, which the widow of the latter proposed to print and sell. Some of these possessed literary merit of a high order. Lord Chancellor Apsley was "very clear" that an injunction should be granted, upon the authority of the foregoing decision and the somewhat kindred cases of *Forrester v. Waller*, 4 Burr., 2331, and *Webb v. Rose*, 4 Burr., 2330, where notes and conveyancer's drafts were held to be the literary property of the writer or his representatives, and *Duke of Queensbury v. Shebbeane*, 2 Eden, 329, where the publication of a part of Lord Clarendon's History by a possessor of the manuscript was restrained.

*Gee v. Pritchard* (2 Swanston, 402-426) was decided by Lord Eldon in 1818. Letters apparently without literary or other special interest by the plaintiff to the son of her husband were the subject of the suit, and publication was restrained on the ground of the property right of the writer. In *Lytton v. Devey* (54 L. J. Ch., 293) it was said: "The property in the letters remains in the person to whom they are sent. The right to retain them remains in the person to whom the letters are sent; but the sender of the letters has still that kind of interest, if not property, in the letters that he has a right to restrain any use being made of the communication which he has made in the letters so sent by him." (See also *Prince Albert v. Strange*, 2 De G. & Sm., 652, 1 MacN. & G., 25, 43.) This same principle was followed expressly in the Irish case of *Granard v. Dunkin* (1 Ball & Beatie, 207) and in *Labouchere v. Hess* (77 Law Times Reports (Ch.) 559). There are several dicta to the same effect by great English judges. For example, Lord Campbell said in *Boosey v. Jeffreys* (6 E., 580), at 583: "A court of equity will grant an injunction to prevent the publication of a letter by a correspondent against the will of the writer. That is a recognition of property in the writer, although he has parted with the manuscript, since he wrote to enable his correspondent to know his sentiments, and not to give them to the world." Lord Cairns said, respecting correspondence in *Hopkinson v. Burghley* (L. R., 2 Ch., 447) at 448: "The writer is supposed to intend that the receiver may use it for any lawful purpose, and it has been held that publication is not such lawful purpose." (See also *Jeffreys v. Boosey*, 4 H. L. C., 815, 867, 962.) The latest English case on the subject recognizes this as the well-settled rule. (*Phillip v. Pennell* (1907), 2 Ch., 577.) In 1804 the Scottish court on the suit of his children interdicted the publication of manuscript letters of Robert Burns. (*Cadell and Davis v. Stewart*, 1 Bell's Com., 116, note.)

The earliest case in this country, *Dennis v. LeClerc* (1 Mart. (1a.), 297, 5 Am. Dec., 712), arose in 1811. A single letter of no literary pretention was there in question and its publication was enjoined, and the writer's property interest in the letter was distinctly upheld.

The question was elaborately discussed by Mr. Justice Story in *Folsom v. Marsh* (2 Story, 100 Fed. Cas., No. 4901), who held that "the author of any letter or letters (and his representatives), whether they are literary compositions, or familiar letters, or letters of business, possess the sole and exclusive copyright therein; and that no persons, neither those to whom they are addressed, nor other persons, have any right or authority to publish the same upon their own account or for their benefit." In *Bartlett v. Crittenden* (5 McLean, 32, at p. 42, Fed. Cas., No. 1076) Mr. Justice McLean said: "Even the publication of private letters by the person to whom they were addressed may be enjoined. This is done upon the ground that the writer has a right of property in his letters, and they can only be used by the receiver for the purpose for which they were written." In *Woolsey v. Judd* (4 Duer (N. Y.), 379) the question was considered exhaustively, and all the earlier cases were reviewed. The conclusion was reached that the writer of even private letters of no literary value has such a proprietary interest as required a court of equity at his instance to prohibit their publication by the receiver. *Grigsby v. Breckinridge* (2 Bush (Ky.), 480, 92 Am. Dec., 509) decided that "the recipient of a private letter sent without any reservation express or implied" held "the general property qualified only by the incidental right in the author to publish and prevent publication by the recipient or any other person." In *Barrett v. Fish* (72 Vt., 18, at p. 20; 47 Atl., 174, at p. 175; 51 L. R. A., 754; 82 Am. St. Rep., 914) it was said: "that a court of equity will protect the right of property in such [private] letters by enjoining their unauthorized publication." The same doctrine has been held, either expressly or by way of dictum, in *Dock v. Dock*, 180 Pa., 14-22, 36 Atl., 411, 57 Am. St. Rep., 617; *Rice v. Williams* (C. C.), 32 Fed., 437; *Eyre v. Higbee*, 22 How. Prac. (N. Y.), 198; *Palmer v. DeWitt*, 47 N. Y., 532-536, 7 Am. Rep., 480.

Against these opinions are *Wetmore v. Scovell* (3 Edwards Ch., 515) and *Hoyt v. Mackenzie* (3 Barb. Ch. (N. Y.), 320, 49 Am. Dec., 178), decided respectively by Vice Chancellor McCoun and Chancellor Walworth while sitting alone. They were criticized and overruled in *Woolsey v. Judd* (4 Duer (N. Y.), 379) by a court of six judges. There are also certain doubtful dicta by a vice chancellor in *Percival v. Phipps* (2 Ves. & Beames, 19, 28), which are relied upon as asserting a somewhat similar view. But it is not necessary to discuss them in detail, for this review of cases demonstrates that the weight of decisions by courts of great authority, speaking often through judges of high distinction for learning and ability, supports the conclusion that equity will afford injunctive relief to the author against the publication of his private letters upon commonplace subjects without regard to their literary merit or the popular attention or special curiosity aroused by them.

The same conclusion is reached on principle and apart from authority. It is generally recognized that one has a right to the fruits of his labor. This is equally true, whether the work be muscular or mental or both

combined. Property in literary productions, before publication and while they rest in manuscript, is as plain as property in the game of the hunter or in the grain of the husbandman. The labor of composing letters for private and familiar correspondence may be trifling, or it may be severe, but it is none the less the result of an expenditure of thought and time. The market value of such an effort may be measured by the opinions of others, but the fact of property is not created thereby. A canvas upon which an obscure or unskillful painter has toiled does not cease to be property merely because by conventional standards it is valueless as a work of art. Few products of the intellect reveal individual characteristics more surely than familiar correspondence, entries in diaries, or other unambitious writings. No sound distinction in this regard can be made between that which has literary merit and that which is without it. Such a distinction could not be drawn with any certainty. While extremes might be discovered, compositions near the dividing line would be subject to no fixed criterion at any given moment, and scarcely anything is more fluctuating than the literary taste of the general public. Even those counted as experts in literature differ widely in opinion both in the same and in successive generations as to the relative merits of different authors. The basic principle on which the right of the author is sustained, even as to writings confessedly literature, is not their literary quality, but the fact that they are the product of labor.

The existence of a right in the author over his letters, even though private and without worth as literature, is established on principle and authority. The right is property in its essential features. It is, therefore, entitled to all the protection which the constitution and laws give to property. From this general statement are to be excepted special instances, such as letters by any agent to or for his principal and others where the conditions indicate that the property in the form or expression is in another than the writer. The absolute right of the author to prevent publication by the receiver may also be subject to limitations arising from the nature of the letter or the circumstances under which it is written or received. Some of these are pointed out in *Folsom v. Marsh* (2 Stóry, 100, Fed. Cas. No. 4901). But these exceptions are narrow and rare, and do not affect materially the general rule.

[2] The extent of this proprietary right, as between the writer and the recipient of letters, requires a closer analysis. It depends upon implications raised by law from the circumstances. This test is a general one, and has been applied to the public delivery of lectures, the presentation of dramas, and other analogous cases. (*Abernathy v. Hutchinson*, 3 L. J. Ch. (O. S.), 209, 1 H. & T. 28; *Tompkins v. Halleck*, 133 Mass., 32, 43 Am. Rep., 480; *Nichols v. Pitman*, 26 Ch. Div., 374, 380.) The relative rights of the writer and receiver may vary with different conditions. If there be a request for return or if the correspondence is marked in definite terms, as personal or confidential, such special considerations would need to be regarded. The case at

bar presents the ordinary example of friendly correspondence between kinswomen upon topics of mutual private interest. Under such circumstances, what does the writer retain and what does he give to the person to whom the letter is sent? The property right of the author has been described "as an incorporeal right to print [and it should be added to prevent the printing of, if he desires] a set of intellectual ideas or modes of thinking communicated in a set of words and sentences or modes of expression. It is equally detached from the manuscript or any other physical existence whatsoever." (*Miller v. Taylor*, 4 Burrows, 2303, at 2396.) It has been called also "the order of words in the \* \* \* composition." (*Jeffreys v. Boosey*, 4 H. L. C., 815, 867; *Holmes v. Hurst*, 174 U. S., 82, 86, 19 Sup. Ct., 606, 43 L. Ed., 904; *Kalem v. Harper Bros.*, 222 U. S., 55, 63, 32 Sup. Ct., 20, 56 L. Ed., 92.) The right of the author to publish or suppress publication of his correspondence is absolute in the absence of special considerations, and is independent of any desire or intent at the time of writing. It is an interest in the intangible and impalpable thought and the particular verbal garments in which it has been clothed. Although independent of the manuscript, this right involves a right to copy or secure copies. Otherwise the author's right of publication might be lost. The author parts with the physical and material elements which are conveyed by and in the envelope. These are given to the receiver. The paper upon which the letter is written belongs to the receiver. (*Oliver v. Oliver*, 11 C. B. (N. S.), 139; *Grigsby v. Breckinridge*, 2 Bush (Ky.), 480, 486, 92 Am. Dec., 509; *Pope v. Curl*, 2 Atkins, 343; *Werckmeister v. Am. Lith. Co.* (C. C.), 142 Fed., 827, 830.) A duty of preservation would impose an unreasonable burden in most instances. It is obvious that no such obligation rests upon the receiver, and he may destroy or keep at pleasure. Commonly there must be inferred a right of reading or showing to a more or less limited circle of friends and relatives. But in other instances the very nature of the correspondence may be such as to set the seal of secrecy upon its contents. (See *Kenrick v. Danube Collieries, etc.*, 39 W. R., 473.) Letters of extreme affection and other fiduciary communications may come within this class. There may be also a confidential relation existing between the parties, out of which would arise an implied prohibition against any use of the letters, and a breach of such trust might be restrained in equity. On the other hand, the conventional autograph letters by famous persons signify on their face a license to transfer. Equitable rights may exist in the author against one who by fraud, theft, or other illegality obtains possession of letters. The precise inquiry is whether indifferent letters written by one at the time perhaps little known or quite unknown, which subsequently acquire value as holographic manuscripts, may be marketed as such. This case does not involve personal feelings or what has been termed the right to privacy. (4 H. L. Rev., 193.)

[3] The author has deceased. Moreover, there appears to be nothing about these letters, knowledge of which by strangers would violate



even delicate feelings. Although the particular form of the expression of the thought remains the property of the writer, the substance and material on which this thought has been expressed have passed to the recipient of the letter. The paper has received the impression of the pen, and the two in combination have been given away. The thing which has value as an autograph is not the intangible thought, but the material substance upon which a particular human hand has been placed, and has traced the intelligible symbols. Perhaps the autographic value of letters may fluctuate in accordance with their length or the nature of their subject-matter. But whatever such value may be, in its essence it does not attach to the intellectual but material part of the letter.

This exact question has never been presented for adjudication, so far as we are aware. There are some expressions in opinions which, dissociated from their connection, may be laid hold of to support the plaintiff's contention. (See *Dock v. Dock*, 180 Pa., 14, 22, 36 Atl., 411, 57 Am. St. Rep., 617; *Eyre v. Higbee*, 22 How. Prac. (N. Y.), 198; *Palin v. Gathercote*, 1 Coll., 565.) It may well be that title such as appears to exist in the recipient may not go to the extent of being assets in the hands of a decedent, a bankrupt, or an insolvent. (*Eyre v. Higbee*, 22 How. Prac. (N. Y.), 198; *Sibley v. Nason*, 196 Mass., 125, 81 N. E., 887, 12 L. R. A. (N. S.), 1173, 124 Am. St. Rep., 520.) But on principle it seems to flow from the nature of the right transferred by the author to the receiver and of that retained by the writer in ordinary correspondence, that the extent of the latter's proprietary power is to make or to restrain a publication, but not to prevent a transfer. The rule applicable to the facts of this case, as we conceive it to be, is that in the absence of some special limitation imposed either by the subject matter of the letter or the circumstances under which it is sent, the right in the receiver of an ordinary letter is one of unqualified title in the material on which it is written. He can deal with it as absolute owner subject only to the proprietary right retained by the author for himself and his representatives to the publication or non-publication of ideas in its particular verbal expression. In this opinion, publication has been used in the sense of making public through printing or multiplication of copies.

The result is that an injunction may issue against publication or multiplication in any way, in whole or in part, for advertising or other purposes, of any of the letters described in the bill, and allowing the plaintiff, if he desires, to make copies thereof within a reasonable time, but going no further.

So ordered.

[97 *Northeastern Reporter*, pp. 109-112.]

## BEIFELD v. DODGE PUBLISHING CO.

(Circuit Court, S. D. New York. December 28, 1911.)

*Beifeld v. Dodge* 1. COPYRIGHTS—INFRINGEMENT—COPY FROM SKETCH.  
Pub. Co.

An artist contracted to paint and copyright a picture for complainant, and having done so defendant without complainant's permission printed substantial copies of the painting claimed to be from copies of a sketch made by the artist before completing the painting and given to defendant's vendor. The only differences between the sketch and the finished painting were in the treatment of certain minor details. *Held*, that since anyone, by making slight alterations in the copyrighted painting, could not obtain another copyright or publish it free of the original copyright, and the artist could not publish the sketch free of the copyright of the painting for the same reason, defendant's publication constituted an infringement.

## 2. WITNESSES—COMMUNICATIONS BETWEEN THIRD PERSONS.

In a suit for infringement of a copyright on a painting sold to complainant and copyrighted in his name, correspondence between the artist and the C. Co. as to the publication of a sketch of the picture from which defendant's copies were printed, produced under a subpoena duces tecum, was inadmissible as relating to transactions between third persons which might expose the publisher to penalties.

In equity. Suit by Joseph Beifeld against the Dodge Publishing Company. On motion for preliminary injunction. Granted.

Prior to November, 1910, Maxfield Parrish made a contract with complainant to paint for complainant a picture entitled "Sing a Song of Sixpence," to be placed in the barroom of the Hotel Sherman in Chicago. The contract provided that Parrish should make the picture, and sell the picture and the copyright to the complainant. This was done, and in November, 1910, copyright of the picture was procured by Parrish in the name of the complainant. Subsequently defendant published, without permission from complainant, pictures which were substantial copies of the complainant's painting, and a suit for infringement of copyright was brought, and on motion for preliminary injunction the defendant asserted that the pictures published by it were not copies of the painting, but were copies of a sketch for the painting.

Fixman, Lewis & Seligsberg (Walter N. Seligsberg, of counsel), for the motion.

Jacob B. Burnet (Norman B. Beecher, of counsel), opposed.

WARD, circuit judge. [1] This is a motion for a preliminary injunction enjoining the defendant from infringing the complainant's copyright taken out November 17, 1910, for a painting called "Sing a Song of Sixpence," purchased by him from the artist, Maxfield Parrish, with all rights to copyright in the same. The defendant is publishing a sketch or study of the painting which it purchased March 11, 1911, of one Purves, to whom the artist had given it after the copyright of the painting. It is contended that the sketch and the painting are different and independent productions, but I do not think so. The subject is the same, the number, position, and sex of the figures are the same, and the differences are only as to the treatment of certain minor details. Ordinary inspection would give the distinct impression that both pictures were the same.

Assuming, as the defendant contends, that the sketch was made before the painting, still it is, in my opinion, covered by the copyright

of the painting. It will hardly be pretended that anyone, by making slight alterations in the copyrighted painting, could get another copyright or publish it free of the original copyright. Neither could the artist copyright or publish the sketch free of the copyright of the painting for the same reason, namely, that both pictures are the same.

2. The correspondence between the artist and the Century Company as to the publication of the sketch in the Century Magazine of February, 1911, produced under a subpoena duces tecum, the admissibility of which was to be determined by the judge calling the motion calendar, is excluded and returned to the Century Company. It relates to transactions between third parties, may expose the publisher to penalties, and, as admissions of the artist, is not competent against the defendant.

Motion granted.

[198 Federal Reporter, pp. 658-659.]

CROWN FEATURE FILM CO. v. LEVY ET AL.

(District Court, S. D. New York. October 21, 1912.)

1. COPYRIGHTS—INFRINGEMENT—COMPLAINT—OWNERSHIP.

A complaint for infringement of a copyright, merely alleging that complainant's assignor was the sole and exclusive owner and proprietor of the copyrighted productions, was insufficient without an allegation of the facts showing how complainant became proprietor and his right to sue.

*Crown Feature  
Film Co. v. Levy  
et al.*

2. COPYRIGHTS—INFRINGEMENT—BILL.

A bill for alleged infringement of a copyrighted photograph must show that the photograph was a copyrightable work.

3. COPYRIGHTS—INFRINGEMENT—EXISTENCE OF COPYRIGHT.

In a suit to restrain the infringement of certain alleged copyrighted photographs, an allegation that plaintiff's assignor filed two complete copies of the photographs did not show compliance with the provision of the statute requiring registration by depositing two complete copies of the best edition thereof then published.

Suit by Crown Feature Film Company against Morris M. Levy and another, doing business under the firm name and style of Feature Film Company. On demurrer to bill. Sustained.

Isaac B. Owens, of New York City, for complainant.

Samuel F. Frank, of New York City, for defendants.

MAYER, J. The defendants have demurred, urging that the bill fails in the following particulars:

"(1) There is nothing to show that the person claiming copyright had the said right or how he acquired it.

"(2) There is nothing to show that the photograph is a copyrightable work.

"(3) It fails to show compliance with the copyright statute.

"(4) It fails to allege facts showing infringement."

The fourth ground is not tenable, and since the argument that ground has been abandoned, as appears in defendants' replying memorandum.

[1] First. Complainant states merely that its assignor was "the sole and exclusive owner and proprietor of certain photographs entitled 'St. George and the Dragon, Part 1,' \* \* \* and of all rights and

privileges thereunder and therein in and to the United States and the territories thereof." There is no allegation that Powers was the author, or that there was any author or producer in the United States or elsewhere, or how, if Powers was not the author, he became the proprietor. I think, under the present act even more strongly than heretofore, complainant must show his title not merely by an allegation that he is the proprietor, but by setting forth facts, which show how he became proprietor and why he has the right to bring the action. While *Bosselman v. Richardson* (174 Fed., 622, 98 C. C. A. 127) and *Ford v. Charles E. Blaney Amusement Co. (C. C.)* (148 Fed., 642), arose under the previous law, yet they are in principle applicable to the case here under consideration.

[2] Second. I am inclined to think that defendants are right in their contention that the bill is demurrable because there is nothing to show that the photograph is a copyrightable work.

[3] Third. The allegation that Powers filed "two complete copies of said photographs" does not satisfy the requirement of the statute, which, among other things, is that registration shall be made by depositing "two complete copies of the best edition thereof then published." The bill must show strict compliance with the requirements of the Copyright Law, and, if the failure so to do appears on the face of the bill, then the bill fails to state a cause of action under the statute.

The demurrer is sustained, with leave to the complainant to amend the complaint within 20 days upon the payment of \$10 and costs.

[202 Federal Reporter, pp. 805-806.]

DAM V. KIRKE LA SHELLE CO.

(Circuit Court, S. D. New York. December 12, 1908.)

*Dam v. Kirke  
La Shelle Co.*

1. COPYRIGHTS—LITERARY PRODUCTION—RIGHTS OF PURCHASER.

Under Rev. St. 4952 (U. S. Comp. St. 1901, p. 3406), giving authors the right to translate and dramatize their literary productions, and providing that proprietors or owners by assignment, on complying with the statute, shall have the exclusive right of printing and vending, the unconditional sale of a story entitled the purchaser to protection from piracy on securing a statutory copyright.

2. COPYRIGHTS—LITERARY PRODUCTION—PUBLICATION.

Where the publishers of a magazine purchased and published a story in a number of a magazine, they secured the copyright on the story by merely filing with the Librarian of Congress the title-page of the magazine and complying with the statute regulating copyrights, without filing a copy of the title of the story so published, or of the story.

3. COPYRIGHTS—LITERARY COMPOSITION—DRAMATIZATION.

Where a story printed in a magazine was copyrighted with other material in the magazine, it was not necessary that the author should himself secure a copyright, to retain the right of dramatization not sold to the magazine publishers.

4. COPYRIGHTS—RIGHTS TO PUBLISH AND DRAMATIZE.

An author may sell the exclusive right to print and publish his production, giving the buyer the right to copyright it, while the author withholds to himself the right to dramatize.

5. COPYRIGHTS—PUBLICATION—ASSIGNS.

Where the author sold the right to print and publish his production, with the right to copyright it, but impliedly retained the right to dramatize, the publishers could assign all the rights secured by their statutory copyright, after publication, to the author, his heirs and assigns.

## 6. COPYRIGHTS—DRAMATIZATION OF STORY—INFRINGEMENT.

In a suit to restrain a dramatic production as an infringement of an author's copyrighted story, the question of infringement depends on whether the substance of the literary composition has been taken, to complainant's injury.

## 7. COPYRIGHTS—INFRINGEMENT—DRAMATIZATION.

The author of a copyrighted story is not entitled to restrain a dramatic production thereof, if the story is merely an old theme or subject with a new dress or coloring; but if the composition or the subject thereof is dramatized without the author's consent, and is produced by a dialogue, and scenes and incidents are introduced, with stage situations, by which the kernel of the story is emphasized, there is an infringement, against which equity will grant relief.

## 8. COPYRIGHTS—INFRINGEMENT—DRAMATIZATION—QUESTION OF FACT.

Whether there is substantial similarity between a copyrighted literary composition and a dramatization thereof is a question of fact.

## 9. COPYRIGHTS—INFRINGEMENT—EVIDENCE.

Evidence held to warrant a finding that the play entitled "The Heir to the Hoorah," is an infringement of the copyrighted story entitled "The Transmogrification of Dan," under the rule that it is sufficient if the essence of a play is taken for an original literary production.

## 10. COPYRIGHTS—INFRINGEMENT—DRAMATIZATION—DECREE.

Where a play constituting an infringement of a copyrighted novel had been staged at great expense, with elaborate scenery, stage effects, etc., the entire play would not be enjoined, if it could be revamped, so as to eliminate the objectionable imitations.

Andrew Gilhooly, for complainant.

Stover, Hall & Freeman (Joseph E. Freeman and Martin L. Stover of counsel), for defendant.

HAZEL, district judge. This suit in equity was brought to restrain the defendant, the Kirke La Shelle Company, from producing or publicly performing the dramatic play or composition entitled "The Heir to the Hoorah." The bill alleges that the play is an unauthorized dramatization of the published story entitled "The Transmogrification of Dan."

It is first to be considered herein whether the story was protected by statutory copyright. Complainant's intestate, who was the author of the story, sold it to the Ess Ess Publishing Company, which later published the story, with other articles, in its copyrighted number of the Smart Set issued September, 1901. After the alleged infringement of the novelette the publishing company assigned back to the author its copyright of the September issue of the magazine; the assignment, however, simply covering and including the story or novelette in controversy, together with all claims and demands against infringers thereof. The defendant contends, first, that to secure a valid copyright of his authorship and the exclusive right to dramatize, the author must have copyrighted the literary production, or the copyright must have been taken out by the purchaser; and, second, that there was no sale of the copyright, but simply of the manuscript or literary composition.

But this contention is not thought maintainable, for by section 4952 of the Revised Statutes of the United States (U. S. Comp. St., 1901, p. 3406), not only authors have the right to translate and dramatize their literary productions, but proprietors or owners by assignment, upon complying with the statute, are given the exclusive right of print-

ing and vending the same. The unconditional sale of the story entitled the purchaser to protection from piracy upon securing a statutory copyright, and, moreover, it could be and was in fact copyrighted by the owner thereof by simply filing with the Librarian of Congress the title page of the magazine and complying with the provisions of the statute relating to copyrighting. It was not necessary to file a copy of the title of each article published in the magazine, or of the author's literary composition; nor was it necessary that he should himself have secured the copyright, so as to retain the right of dramatizing it. It was properly held in a recent case decided in this circuit by Judge Holt that an author can sell the exclusive right to print and publish his production, the buyer thereby having the right to copyright it, though the author may withhold to himself the right to dramatize. (*Ford v. Blaney Amusement Co.*, (C. C.) 148 Fed., 642.) Hence in the present case the sale or transfer of the literary composition prior to copyrighting vested the Ess Ess Publishing Co., in the absence of any reservation, with all the rights and privileges of the author, and gave it the right to secure the statutory copyright, which thereafter it could assign to the author, his heirs or assigns.

The next important question relating to the dramatization of the copyrighted literary composition by the defendant without the consent of the proprietor requires us to ascertain whether the subject or so-called plot of the story or novelette was original and whether the defendant, in producing the play or drama, abstracted a material portion thereof. In cases of this character the inquiry must be whether the substance of the literary composition has been taken to the injury of the complainant. Of course, if the plot or the language used by the author to develop the subject of the literary composition or the combination of incidents narrated therein was not new, or if its principal feature has been previously published, either in the form of a novel, story, or play, the complainant would not be entitled to the relief demanded; for in such case the author merely gave a new dress or coloring to an old theme or subject. But if the copyrighted literary composition, or the theme or subject thereof, was dramatized by another without the consent of the author and reproduced by dialogue spoken by play actors, and scenes and incidents are introduced, coupled with stage situations, by which the kernel of the literary composition is emphasized, then it may be fairly supposed that the playwright, in giving a public performance of the drama, endeavored to reap a profit or gain out of another's industry, against which a court of equity has power to grant relief.

Whether there is a substantial similarity between the copyrighted literary composition and the play performed by the defendant is a question of fact, and the court has found comparison helpful to a decision. The expert witness for the plaintiff testifies that the theme or subject of the story is the change of the disposition and character of "Dan," the central figure, from a man of submissive temperament in his household and toward his wife and mother-in-law to a man of commanding and asserting mien upon his becoming a father. From this idea or conception the author of the literary composition, by his descriptive ability

and by virtue of the use of apt words, has succeeded in developing different characters, causing them to perform separate functions, and helping to emphasize the central idea that, "Dan" becoming a father, his previous self-abnegation, his effacement or submissiveness, was at an end, making it instantly warrantable on his part to peremptorily assert his rights as the father of his child and protector of his home. This subject or theme of the copyrighted story is substantially imitated in the defendant's play. No other play, drama, or literary production is called to my attention, and I have examined the exhibits in evidence, from which it may be ascertained that the subject of the author's composition, together with the various characters which give it prominence, was not original.

It is true the dialogue of the drama is not in the words of the copyrighted story; but its exact phraseology was not necessary to the adaptation of the plot or subject or the portrayal of the different characters to the play. The actors in the play "The Heir to the Hoorah" portray or imitate the characters in the copyrighted story, and in addition thereto make use of incidents and situations which apparently give expression to the central theme or purpose of the author. Whatever of addition has been introduced in the play does not obscure or emasculate the central figure of the story, namely, the rejuvenate husband. The copyrighted story was not strictly a dramatic composition, although its special features, its incidents, personages, and episodes plainly indicated that it was not without dramatic interest and could, by appropriate dialogue, scenes, and stage business, be translated or expanded into a drama. It is enough if the essence of a play is taken from an original literary production, and it is held that one or more chapters of a novel are to be regarded as a dramatic composition. (Drone on Copyright, p. 589.) The playwright of "The Heir to the Hoorah," as already stated, has expanded the plot of the story, using different words. He has introduced additional characters. He has cleverly staged the play, and by the use of language and characters has given the subject of the story an excellent interpretation. But all this is unimportant, if he has taken, as I think he has, the substance of complainant's authorship. (*Emerson v. Davies*, 3 Story, 768, Fed. Cas., No. 4436; Drone on Copyright, p. 433.) The playwright has testified that he did not use the plot or theme contained in the copyrighted story, but that the plot of the play was originated by him. Evidence has been introduced to show that the incidents and situations were familiarly known. But, giving weight to the testimony of complainant's witness, Mrs. Norris, it would seem to be established that the playwright, without first obtaining the permission of the author or proprietor, plagiarized and imitated the complainant's copyrighted literary composition.

The theatrical production above mentioned has been staged at great expense, and the elaborate scenery, stage effects, translation of the story into a dramatic composition, were the result of such valuable services and skill by the defendant that the court would hesitate to grant relief by injunction against the entire play were it not that the

pivotal feature of the play or the objectionable parts are seemingly inseparable from the theme of the story, and therefore, adopting the general rule in such cases, the said play or drama containing the literary matter which is the subject of this controversy must be enjoined. Probably the play or drama can be revamped to eliminate the aforesaid objectionable imitations. If such is the fact, and this may be shown on settlement of the restraining order, the injunction will simply cover such objectionable portions.

Let complainant enter a decree in conformity with this decision, with costs.

[166 Federal Reporter, pp. 589-593.]

DAM *v.* KIRKE LA SHELLE CO.

(Circuit Court of Appeals, Second Circuit. January 11, 1910. On Petition for Modification of Order for Mandate, February 16, 1910.)

No. 70.

*Dam v. Kirke La Shelle Co.* 1. LITERARY PROPERTY—SALE OF STORY BY AUTHOR WITHOUT RESERVATION—COPYRIGHT BY PURCHASER—DRAMATIC RIGHTS.

A sale by the author of a story to a magazine publishing company and delivery of the manuscript, and the acceptance of a sum of money "in full payment for story" without any further agreement, was in legal effect an absolute sale without reservation, carrying with it as an incident of ownership the exclusive right to dramatize the story when copyrighted under Rev. St., sec. 4952, as amended in 1892 (U. S. Comp. St., 1901, p. 3406), which provides that "authors or their assigns shall have the exclusive right to dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States.

2. COPYRIGHTS—EXTENT OF RIGHTS ACQUIRED—COPYRIGHT OF MAGAZINE.

The filing of the title of a magazine for copyright by the publisher and the insertion of the proper notice is sufficient to secure a copyright of a story published therein and protect the right to dramatize the same where the publisher is the owner of both the story and the dramatic rights.

3. COPYRIGHTS—INFRINGEMENT—DRAMATIZATION OF COPYRIGHTED STORY.

A playwright who appropriates the theme or plot of another's story, protected by copyright, as the basis of a play, can not escape a charge of infringement by adding to or slightly varying the incidents, or by adding to the number and changing the names of the characters.

4. COPYRIGHTS—INFRINGEMENT—DAMAGES RECOVERABLE.

The owner of the copyright of a story which has been infringed by another by appropriating the story as the basis of a play is entitled to recover as damages all of the profits made by the infringer from the production of such play; there being no other practicable measure of damages.

WARD, circuit judge, dissenting.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Suit in equity by Dorothy Dorr Dam against the Kirke La Shelle Company. Decree for complainant (166 Fed., 589), and defendant appeals. Affirmed.

This was a suit in equity brought in February, 1906, by Henry J. W. Dam to restrain an alleged infringement of a copyright. The original complainant died in April, 1906, and the suit was subsequently revived in the name of the administratrix of his estate, the present complain-



ant. The circuit court held that the defendant had infringed the copyright in question and rendered a decree for an injunction and an accounting. The defendant has appealed.

The following are material facts:

During the year 1898 said Dam, who was an author and dramatist, wrote a story entitled "The Transmogrification of Dan." In 1901 Dam sent the manuscript of this story to the Ess Ess Publishing Company, a New York corporation and the proprietor and publisher of a monthly magazine called the Smart Set. The editors of the magazine accepted the story, and fixed the price to be therefor at \$85. The business office of the publishing company then sent a check to Dam for that amount with a receipt for his signature, which was duly signed and returned. The receipt reads as follows: July 12th, 1901. Received of Ess Ess Publishing Company \$85 in full payment for story entitled "The Transmogrification of Dan. H. J. W. Dam." Dam had no personal interview with any of the officers or employees of the publishing company, and the entire transaction with respect to the acquisition of the story is described in the foregoing statement.

The story was published in the number of the Smart Set for September, 1901. This number as a whole was duly copyrighted in the name of the Ess Ess Publishing Company and bore a notice in the front part thereof, "Copyright 1901 by Ess Ess Publishing Company." The magazine contained no other notice of copyright, and no steps were taken either by the publishing company or by Dam to copyright the story separately. On October 27, 1905, the Ess Ess Publishing Company, without any monetary consideration, assigned to said Dam its copyright of said number of the Smart Set magazine so far as it applied to, covered, or protected said story, all its interest in said story under said copyright, and its claims and demands then existing for the infringement of said copyright.

The defendant is a New York corporation engaged in the general theatrical business. At various times between September 4, 1905, and the commencement of this suit the defendant caused a play entitled "The Heir to the Hoorah" to be publicly performed in various theaters in the United States. This play was written and copyrighted by Paul Armstrong, a dramatist, and was presented by the defendant through an arrangement with him. On November 15, 1905, said Dam, by his attorney, notified the defendant that said play was an unlawful dramatization of said story and forbade its future production. The defendant, however, continued to produce said play and this suit was brought.

In his original bill of complaint, Dam alleged, in substance, that he assigned to the publishing company the right to publish and print said story as a part of said magazine, and not otherwise, and that the right to dramatize said story was held by the publishing company as trustee for his benefit.

In an affidavit made for the purpose of obtaining a preliminary injunction Dam swore as follows: "I have not at any time parted with any right or interest in said literary work entitled 'The Transmogrification

of Dan' except the right for publication thereof in said number of 'The Smart Set' for September, 1901."

The amended bill of complaint alleged simply that Dam sold and assigned said story to the Ess Ess Publishing Company.

Stover, Hall & Freeman (John W. Griggs, Martin L. Stover, and George W. Betts, jr., of counsel), for appellant.

Andrew Gilhooly, for appellee.

Before COXE, WARD, and NOYES, circuit judges.

NOYES, circuit judge (after stating the facts as above). The first question of law arising upon the foregoing facts is whether the Ess Ess Publishing Company by virtue of its transaction with Dam became the absolute proprietor of the story in question or acquired merely the right to publish it in the Smart Set Magazine. If the statement made by Dam in his original bill and his affidavit could be accepted as correctly defining the rights of the parties, the publishing company acquired only a qualified right to the story. But the entire transaction with respect to the acquisition of the story by the publishing company has been stated. Even if Dam's statements as to his interpretation of the transaction were contrary to his later claims or against his interest, they could not change what actually took place nor the legal conclusion to be drawn therefrom. This conclusion must be drawn by the court. No principle of estoppel is present.

Now, as a matter of law, it seems possible to draw only one conclusion from the facts surrounding the acquisition of the story by the Ess Ess Publishing Company, and that is that it became the purchaser, and, consequently, the proprietor, of the work with all the rights accompanying ownership. The author offered the story. The publisher accepted and paid for it, and the author transferred it without any reservations whatever.

While it is probable that an author in assigning the right to publish and vend his work may retain and reserve the rights of translation and dramatization (*Ford v. Blaney Amusement Co.* [C. C.], 148 Fed., 642), a sale or assignment without reservation would seem necessarily to carry all the rights incidental to ownership. And a transaction in which an author delivers his manuscript and accepts a sum of money "in full payment for story" can not be regarded as a sale with reservations. The courts can not read words of limitation into a transfer which the parties do not choose to use.

The copyright statute in force at the time of this transaction (Rev. St., Sec. 4952, as amended in 1891 [U. S. Comp. St. 1901, p. 3406]) provided that the "proprietor of any book \* \* \* shall upon complying with the provisions of this chapter have the sole liberty of \* \* \* publishing \* \* \* and vending the same." It further provided that:

Authors or their assigns shall have the exclusive right to dramatize or translate any of their works for which copyright shall have been obtained under the laws of the United States.

We think it the better view that the Ess Ess Publishing Company by virtue of its transaction with Dam became the absolute proprietor of

the story "The Transmogrification of Dan" and was entitled to the exclusive right to dramatize it.

The next question is whether the publishing company as proprietor of the story duly complied with the statute and obtained a valid copyright protecting the dramatic rights. No question is raised but that the publishing company took all the steps required by the statute to enter for copyright in its own name the number of the Smart Set Magazine containing the story under the title of the magazine. It is claimed, however, that such steps accomplished no more than to obtain such protection as the publishing company needed as publishers of the magazine.

Assuming that Dam retained the dramatic rights to the story, there would be much force in this contention. In such a case we doubt very much whether the steps which the publishing company took to copyright its magazine, especially in view of the form of the copyright notice, would have been sufficient to protect the dramatic rights.

It is true that in *Miffin v. White* (190 U. S., 260, 263, 23 Sup. Ct., 769, 770, 47 L. Ed., 1040), decided in 1903, the Supreme Court said that:

Without further explanation it might perhaps be inferred that the author of a book who places it in the hands of publishers for publication, might be presumed to intend to authorize them to obtain a copyright in their own names.

And it is said in *Drone on Copyright*, page 260:

A person who is not the author or owner of a work may take out the copyright in his own name, and hold it in trust for the rightful owner. Thus when an article has first been published in a cyclopaedia, magazine, or any other publication, the legal title to the copyright, if taken out in the name of the publisher, will vest in him. But it may be the property of the author, and held in trust for him. And the same is true when the copyright of a book which belongs to the author is entered in the name of the publisher. In such case a court of equity, if called upon, may decree a transfer of the copyright to be made to the owner.

The difficulty is that the Supreme Court in the *Miffin* case, *supra*, after holding that in certain cases there may be a presumption of intention to authorize the copyright of a work by the publishers, said that, assuming the existence of such authority, there was an additional question, viz: Whether the entry of a magazine by its title in the name of its publisher is equivalent to entering a book by its title in the name of its author. And the Supreme Court said:

The object of the notice being to warn the public against the republication of a certain book by a certain author or proprietor, it is difficult to see how a person reading these notices would understand that they were intended for the protection of the same work. On their face they would seem to be designed for entirely different purposes. While owing to the great reputation of the work and the fame of its author, we might infer in this particular case that no publisher was actually led to believe that the book copyrighted by Dr. Holmes was not the same work which had appeared in the *Atlantic Monthly*, that would be an unsafe criterion to apply to a work of less celebrity. It might well be that a book not copyrighted

or insufficiently copyrighted by the author might be republished by another in total ignorance of the fact that it had previously appeared serially in a copyrighted magazine. It is incorrect to say that any form of notice is good which calls attention to the person of whom inquiry can be made and information obtained, since, the right being purely statutory, the public may justly demand that the person claiming a monopoly of publication shall pursue, in substance at least, the statutory method of securing it. *Thompson v. Hubbard*, 131 U. S., 123, 9 Sup. Ct., 710, 33 L. Ed., 76. In determining whether a notice of copyright is misleading we are not bound to look beyond the face of the notice, and inquire whether, under the facts of the particular case, it is reasonable to suppose an intelligent person could actually have been misled. With the utmost desire to give a construction to the statute most liberal to the author, we find it impossible to say that the entry of a book under one title by the publishers can validate the entry of another book of a different title by another person.

See also *Mifflin v. Dutton* (190 U. S., 265, 23 Sup. Ct., 771, 47 L. Ed., 1043).

In view of this decision by the Supreme Court, we think that had Dam retained the dramatic rights to his story the entry of the magazine and the notice of copyright would have been insufficient to protect them. A notice of the copyright of the *Smart Set* magazine by the *Ess Ess Publishing Company* is hardly equivalent to a notice that the story, "The Transmogrification of Dan" is copyrighted by or in favor of H. J. W. Dam. In the case of the reservation of dramatic rights, in addition to the notice of the copyright of a magazine, it may well be that it should appear in some distinct way that such reservation of such rights to the particular article is made for the benefit of the author. Indeed, it may be that the author should contemporaneously take out in his own name a copyright covering such rights.

But this question need not now be determined. Having found that the *Ess Ess Publishing Company* became the proprietor of the story within the meaning of the copyright statute, the precise question is whether that corporation took sufficient and proper steps to protect the dramatic rights which belonged to it as assignee. In the first place, we think that the entry of the magazine containing the story with the notice in the magazine protected the story. The copyright law should receive a reasonable construction, and, in our opinion, it is not necessary that a copy of the title to each article in respect of which copyright is claimed should be filed nor that a notice should be inserted at the head of each article.

In *Ford v. Blaney Amusement Co. (C. C.)*, 148 Fed., 644, Judge Holt said:

The copyright act in my opinion should be liberally construed, with a view to protect the just rights of authors and to encourage literature and art. I think that the filing of the title of a magazine is sufficient to secure a copyright of the articles in it if they are written or owned by the proprietor of the magazine.

In *Harper v. Donohue (C. C.)*, 144 Fed., 491, 496, upon an extended review of the authorities, it is said:

The almost uniform practical construction of the copyright law has been to give the notice in connection with each number of a magazine, and this has been often sustained.

In *Drone on Copyright*, p. 144, it is said:

The copyright protects the whole and all the parts and contents of a book. When the book comprises a number of independent compositions, each of the latter is as fully protected as the whole.

As a corollary to the conclusion that the copyrighting by the Ess Ess Publishing Company of the *Smart Set* magazine protected the story "The Transmogrification of Dan," of which it was the proprietor, it follows that the dramatic rights to said story of which it was likewise the owner were protected. That which protected the story protected the incidents to the story.

The Ess Ess Publishing Company assigned its interest in the copyright of the story "The Transmogrification of Dan" to the author, together with its existing rights of action. We do not understand that any question is raised as to the sufficiency of this assignment. Considering the case thus far, then, we think that the complainant has established that she, as administratrix of Dam's estate, is the owner as assignee of the Ess Ess Publishing Company of a valid copyright covering the right to dramatize the story "The Transmogrification of Dan." The next question is whether the defendant has infringed.

We think it unnecessary to review the evidence in detail with respect to the question of infringement. The circuit court has carefully compared the story with the play, and we agree with its conclusion that the play is a dramatization of the story. The playwright expanded the plot. He made a successful drama. The story was but a framework. But the theme of the story is the theme of the play, viz, the change produced in the character of a husband by becoming a father.

It is, of course, true that the play has more characters than the story and many additional incidents. It is likewise true that none of the language of the story is used in the play, and that the characters have different names. But the right given to an author to dramatize his work includes the right to adapt it for representation upon the stage which must necessarily involve changes, additions, and omissions. It is impossible to make a play out of a story—to represent a narrative by dialogue and action—without making changes, and a playwright who appropriates the theme of another's story can not, in our opinion, escape the charge of infringement by adding to or slightly varying his incidents.

It is undoubtedly true, as claimed by the defendant, that an author can not by a suggestion obtain exclusive control of a field of thought upon a particular subject. If the playwright in this case, without the use of the story, and working independently, had constructed a play embracing its central idea, it may well be that he would not have infringed the copyright of the story. But a comparison of the play with the story shows conclusively in many unimportant details that Armstrong read the story and used it as the basis of his play. It is

practically impossible that the similarities were coincidences. Other testimony is to the same effect. In our opinion the playwright deliberately appropriated the story and dramatized it. The statute giving authors of copyrighted works the exclusive right to dramatize them must receive a reasonably liberal application, or it will be wholly ineffective. As we have just pointed out, the adaptation of a story to the stage must necessitate changes and additions. Few short stories could be transformed into dramatic compositions without the addition of many new incidents. Unless the copyright statute is broad enough to cover any adaptation which contains the plot or theme of the story, it is wholly ineffective. If Armstrong, by what he did, did not infringe the dramatic rights of this story, it is difficult to see what he could have done which would have infringed them.

We thus reach the conclusion that the defendant by the production of the play "The Heir to the Hoorah" infringed the copyright of the story "The Transmogrification of Dan." This conclusion would call for an affirmance of the decree without further discussion were it in the usual form. Questions as to the amount of damages or profits ordinarily come up for determination only after the accounting. The decree in this case, however, is very broad. It provides:

That the complainant recover of the defendant the gains and profits made by it by making use of said play, entitled "The Heir to the Hoorah," by giving public performances thereof, by causing or licensing public performances thereof, to be given, or in any other way, form, or manner.

As, therefore, the decree goes much further than to provide for the recovery of the profits derived from the use of the story and embraces all profits arising from the production of the play, it is necessary now to determine whether such comprehensive form is proper.

At the first consideration of the subject, it seems most unjust that the representatives of an author who was willing to sell his story for \$85, who apparently never thought of dramatizing it, whose dramatization, if made, might have been unsuccessful—indeed might never have been produced—who took no risks of an unsuccessful venture, should receive all the profits made by the defendant in the venturesome enterprise of producing and presenting the play—an enterprise involving the expenditure of time and money for the employment of actors, the preparation of scenery and costumes, the hiring of theaters, advertising, and many other purposes. On the other hand, unless the complainant is entitled to all the profits arising from the production of the play, she is, as a practical matter, entitled to no pecuniary recovery at all. It is manifestly impossible for an author of a book or story which he has never dramatized to show that he has sustained any actual damage by the dramatization and production of a play based upon it. It is equally impossible for him to show the proportion of the profits accruing to a theatrical company from the use of a copyrighted theme or plot and the proportion accruing from the use of the scenery, the employment of favorite actors, and other sources. If, in a case like the present, an author can not hold the theatrical company as his trustee and accounta-

ble for all the profits from the play, then it necessarily follows that all copyrighted but undramatized books and stories may be appropriated and used with impunity. The right to follow the theatrical company over the country and seek injunctive relief would involve great expense and be of little avail. Notwithstanding the hardships imposed upon the defendant by the decree in this case, we think that no other decree gives effect to the copyright statute, and that it is supported by the authorities. Thus in *Callaghan v. Myers* (128 U. S., 617, 666, 9 Sup. Ct., 177, 191, 32 L. Ed., 547) the Supreme Court of the United States, by Mr. Justice Blatchford, said:

In regard to the general question of the profits to be accounted for by the defendants as to the volumes in question, the only proper rule to be adopted is to deduct from the selling price the actual and legitimate manufacturing cost. If the volume contains matter to which a copyright could not properly extend, incorporated with matter proper to be covered by a copyright, the two necessarily going together when the volume is sold as a unit, and it being impossible to separate the profits on the one from the profits on the other, and the lawful matter being useless without the unlawful, it is the defendants who are responsible for having blended the lawful with the unlawful, and they must abide the consequences, on the same principle that he who has wrongfully produced a confusion of goods must alone suffer. As was said by Lord Eldon, in *Mawman v. Tegg* (2 Russell, 385, 391): "If the parts which have been copied can not be separated from those which are original without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me and the mixture be forbidden by the law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the parts of the work can not be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame." The present is one of those cases in which the value of the book depends on its completeness and integrity. It is sold as a book, not as the fragments of a book. In such a case, as the profits result from the sale of the book as a whole, the owner of the copyright will be entitled to recover the entire profits on the sale of the book if he elects that remedy. (*Elizabeth v. Pavement Co.*, 97 U. S., 126, 139 [24 L. Ed., 1000].)

See, also, *Belford v. Scribner*, 144 U. S., 508, 12 Sup. Ct., 734, 36 L. Ed., 514.

In the present case it is impossible to separate that which is taken from the story from the remainder of the play, and we can reach no other conclusion than that the complainant is entitled to recover the whole profits from the play.

For these reasons, the decree of the circuit court is affirmed, with costs.

WARD, circuit judge. I am not able to concur in the opinion of the court in this case. Two accounts are given of the original complainant's dealings with respect to the story called "The Transmogrification of

Dam" with the Ess Ess Company. Dam himself verified the original bill in which he averred that he gave that company merely the right to publish the story in the number of its magazine for September, 1901, and that it was to take out a copyright in trust for him as to every other right. He followed this by an affidavit made in the cause to the same effect. All this time he had in his possession an assignment from the Ess Ess Company of its copyright. This is the first account. After Dam's death the bill was amended by stating that he sold the story to the Ess Ess Company with the right to copyright the same, whereby it obtained the exclusive privilege of "printing, reprinting, vending, dramatizing, and translating" the same, and that the Ess Ess Company subsequently assigned its copyright to him, so far as it covered the story. This is the second account.

These two accounts are entirely inconsistent and lead to very different results. If the second, made after Dam's death, be adopted, the conclusion of the majority of the court is clearly right, because the law provides for but one copyright, and, as I think, that the right of translation and dramatization is covered by it as an incident of the ownership of the copyrighted work. On the other hand, if the account given by Dam himself is adopted, no right except to publish the story in the magazine was secured. Certainly under the case of *Mifflin v. White* (190 U. S., 260, 23 Sup. Ct., 769, 47 L. Ed., 1040) the notice of the entry of the magazine in the name of the Ess Ess Company was not notice to the public of Dam's reserved rights in the story, if he had any, and they were capable of protection. The form of certificate provided by section 4957 (Rev. St. U. S.) contains no provision for ownership of the right to dramatize or translate separate from ownership of the copyrighted work. The person getting the copyright is described as claiming "as author (originator, or proprietor, as the case may be)," and section 4964 permits the dramatization or translation of a copyrighted work with the consent of the proprietor. Congress could not have intended that the assignee of the author, not being actually the proprietor, should authorize the translation or dramatization of the work; such rights belonging to some one else. The experienced attorney for the complainant undoubtedly amended his bill because he saw that there could be no recovery under it as originally drawn. The majority of the court take the same view, but hold that the only possible conclusion to be drawn from what was done by the parties is that the Ess Ess Company, in the face of Dam's verified statements to the contrary, became the absolute proprietor of the work.

I think, however, that sending a story to a periodical and receiving back a check for the same is as consistent with selling the story for publication in the periodical only as it is with selling it outright. If to this be added a receipt for the check as payment in full for the story, the case is not advanced. A receipt is always open to explanation. (17 Cyc., 629.) If a contest as to title had arisen between Dam and the Ess Ess Company and he had been plaintiff, he would have been permitted to show, if he could, that the sale was not absolute, but with reservations, and for this purpose he could have availed himself of any



act or declaration of the Ess Ess Company inconsistent with an absolute sale. Similarly, if the Ess Ess Company had been plaintiff, it would have been permitted to use any declarations of Dam, if he had made any, to the effect that the contract was an absolute sale as an admission of that fact. And, treating the receipt as a contract, a stranger to the transaction like the defendant would be allowed to contradict it by parol testimony. (*McMaster v. Insurance Co.*, 55 N. Y., 222, 234, 14 Am. Rep., 239; *Condit v. Cowbrey*, 123 N. Y., 463, 25 N. E., 946.)

Adopting the account given by Dam himself of the transaction, which, by the way, is consistent with the gratuitous assignment to him by the Ess Ess Company of its copyright, I think the bill should be dismissed.

On petition for modification of order for mandate.

Per curiam. Upon the denial of the petition for a rehearing this court directed that the mandate should contain a provision that the affirmance of the decree of the circuit court should be without prejudice to the right of that court to amend its decree so as to provide for the recovery of damages if the court should be satisfied that there is a lawful and practicable method of ascertaining substantial damages sustained by the complainant and that for such reason the decree is too broad. The complainant now insists that such a modification should not be permitted, contending that the circuit court has no power to award damages in copyright suits in equity. The complainant in her complaint asks for damages as well as profits, and it may be that the equity powers of the circuit court are broad enough to award them. But it is unnecessary to decide this question, for there is a difficulty which arises in view of the complainant's present position. The decree awards profits, and the complainant expressly disclaims any desire to recover damages. We know of no principle upon which a court of equity can compel a complainant to take damages, instead of profits, when he insists upon the latter.

The order for the mandate will provide simply for the affirmance of the decree, with costs.

[175 Federal Reporter, pp. 902-911.]

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JOURNAL PUBLISHING CO. v. DRAKE ET AL.

(Circuit Court of Appeals, Ninth Circuit. October 14, 1912.)

1. COPYRIGHTS—INFRINGEMENT—ACTION FOR PENALTY—DIRECTION OF VERDICT. *Journal Pub. Rev. St.*, sec. 4965 (U. S. Comp. St. 1901, p. 3414), provides that if any person, *Co. v. Drake et al.* after the copyrighting of a photograph, without consent of the proprietor of the copyright, shall copy, print, or publish the same in whole or in part, or, knowing the same to be printed or published, shall sell or expose for sale any copy thereof, he shall forfeit \$1 for every sheet of the same found in his possession or exposed for sale, one half to go to the proprietor of the copyright and the other half to the United States. HELD, that where defendant printed 2 copyrighted photographs belonging to plaintiffs without their consent, and 400 sheets of the journal in which they were printed were found in defendant's possession, the court properly directed a verdict for plaintiffs for the penalty prescribed.

## 2. COPYRIGHTS—NATURE AND FORM—PENALTIES.

An action to recover penalties for violating Rev. St., sec. 4965 (U. S. Comp. St. 1901, p. 3414), relating to the infringement of copyrights, is a civil action founded on an implied contract, which every person enters into with the state to observe the laws.

## 3. TRIAL—QUESTIONS FOR COURT AND JURY—DIRECTION OF VERDICT.

Where plaintiff has clearly made out his case, and there is no evidence to the contrary, it is proper for the court to direct a verdict in his favor.

## 4. APPEAL AND ERROR—INCOMPLETE RECORD—PRESUMPTIONS.

In the absence of a complete record of the evidence, there being no objection to a statement by the court as to what the evidence was with respect to a fact, it will be presumed on appeal that the statement was correct.

## 5. COPYRIGHTS—INFRINGEMENT—INTENT.

Rev. St., sec. 4965 (U. S. Comp. St. 1901, p. 3414), provides that in case any person publishes a copyrighted photograph, without consent of the owner of the copyright and with intent to evade the law, he shall forfeit certain prescribed penalties. HELD, that the penalty was for the act of copying, printing, and publishing a copyrighted article, or for selling or exposing for sale such a copy, and, the printing or selling being proved, an unlawful intent would be presumed.

## 6. COPYRIGHTS—INFRINGEMENT—SHEETS.

Rev. St., sec. 4965 (U. S. Comp. St. 1901, p. 3414), prohibiting the infringement of a copyright, declares that the infringer shall forfeit \$1 for every sheet of the same found in his possession, either printed, copied, published, or exposed for sale. HELD, that the penalty imposed is for every sheet on which an infringement is printed; and hence, where 400 sheets, each containing 2 separate and distinct infringements, were found in defendant's possession, there were 800 infringements printed, and the court properly rendered judgment for \$800.

In error to the District Court of the United States for the District of Oregon.

Action by J. D. Drake and E. R. Drake, doing business under the name and style of Drake Bros., against the Journal Publishing Company, to recover the penalty provided by law for the infringement of a copyright. Judgment for plaintiffs, and defendant brings error. Affirmed.

In 1903 the plaintiffs were photographers in the city of Silverton, Marion County, Oreg., under the firm name and style of Drake Bros. In July, 1903, plaintiffs became the sole owners and proprietors of two certain photographic productions, entitled and known as "Lower South Silver Creek Falls," and "South Silver Creek Falls." In September, 1903, plaintiffs secured copyrights from the Librarian of Congress for these two photographs, and thereafter gave notice of such copyrights by printing on each print of said photographs and upon some visible portion of each of said photographs the following notice: "Copyright, 1903, Drake Brothers." Prior to September 8, 1907, the plaintiffs had given permission to one Phillip S. Bates, a publisher in the city of Portland, Oreg., to use said photographs in an illustrated edition of the "Pacific Northwest," a newspaper of general circulation published by the said Phillip S. Bates at Portland, Oreg., for the purpose of exploiting the resources of Oregon. Thereafter an agent of the defendant, in search of material for a proposed illustrated edition of the Oregon Daily Journal, a paper published by the defendant in Portland, Oreg., called at the office of said Phillip S. Bates and secured copies of the photograph in question. These photographs were taken by the agent of the defendant to the office of the Oregon Daily Journal, and by a mechanical process defendant made reduced copies of the same in size, and used

said copies by printing and publishing the same in defendant's paper, the Oregon Daily Journal, on September 8, 1907.

It is recited in the record that J. D. Drake, one of the partners in plaintiff's business, testified that since the complaint was filed he had succeeded to the partnership as the owner of said copyrights, and that prior to the filing of the complaint he did not give the defendant, its officers, agents, or servants, leave or permission to use said copyrighted photographs.

In March, 1908, plaintiffs visited the office of the Oregon Daily Journal and purchased 400 copies of the issue of the defendant's paper of September 8, 1907, which contained copies of plaintiffs' copyrighted photographs. Thereafter plaintiffs brought this suit in the United States District Court for the District of Oregon to recover the penalty of \$1 each, provided by the statute. Upon the trial of the case, the facts having been proved as stated, the court instructed the jury to return a verdict for the plaintiffs. It is recited in the record that the court, in granting plaintiffs' motion, stated that the photographs were reproduced and used by the defendant without the knowledge or consent of plaintiffs. In accordance with the court's instructions, the jury returned a verdict for the plaintiffs for the sum of \$800 and costs. Thereafter judgment was entered upon the verdict in favor of the plaintiffs for the sum of \$400, and for the use and benefit of the United States \$400, together with costs and disbursements in the action. The defendant brings the case here by writ of error.

John F. Logan and John H. Stevenson, both of Portland, Oreg., for plaintiff in error.

Seitz & Seitz and Conley & De Neffe, all of Portland, Oreg., for defendants in error.

Before GILBERT, ROSS, and MORROW, circuit judges.

MORROW, circuit judge (after stating the facts above): [1] The only question in this case is whether the court was in error when it instructed the jury to return a verdict for the plaintiffs. The action is based upon section 4965 of the Revised Statutes of the United States (U. S. Comp. St. 1901, p. 3414), which, so far as this case is concerned, provides:

If any person, after the recording of the title of any map \* \* \* photograph \* \* \* shall \* \* \* contrary to the provisions of this act, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, \* \* \* copy, print, publish \* \* \* in whole or in part, or by varying the main design, with intent to evade the law, or, knowing the same to be so printed, published \* \* \* shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit \* \* \* one dollar for every sheet of the same found in his possession, either printing, printed, copied, published \* \* \* or exposed for sale. \* \* \* One-half of all the foregoing penalties shall go to the proprietors of the copyright and the other half to the use of the United States.

There is no substantial controversy about the facts in this case. The plaintiffs had secured copyrights for these photographs. They were owned by the plaintiffs, and were copied, printed, and published by the defendant, and the evidence was that such copying, printing, and

publishing by the defendant was without the consent of the plaintiffs. This evidence was uncontradicted, and 400 sheets of the Oregon Daily Journal were found in the possession of the defendant, in which these two photographs were copied, printed, and published. It was the duty of the court to instruct the jury that these undisputed facts constituted a violation of the statute and that their verdict should be for the plaintiffs.

[2, 3] The action is a civil action for penalties. "Actions for penalties are civil actions, both in form and in substance, according to Blackstone. (3 Com., 158.) The action is founded upon that implied contract which every person enters into with the State to observe its laws." (*Stearns v. United States*, 2 Paine, 300, Fed. Cas. No. 13341; 30 Cyc. 1344. Where plaintiff has clearly made out his case, and there is no evidence to the contrary, it is proper for the court to direct a verdict in favor of the plaintiff. (38 Cyc., 1574.)

[4] It is objected that the evidence of one of the members of the plaintiff's partnership that consent had not been given by him to the defendant to use the copyrighted photographs was not sufficient; that there was nothing to show that written consent had not been given by the other partner. In granting plaintiffs' motion to instruct the jury to find for the plaintiffs, the court stated that the photographs were reproduced and used by the defendant "without the knowledge or consent of plaintiffs." Passing the question whether the written consent of plaintiffs was not a fact to be established by the defendant, it does not appear that all the evidence introduced upon the trial is in the record. In the absence of such a complete record of the evidence, and the fact that there was no objection made to the statement made by the court as to what the evidence was with respect to that fact, it will be presumed that the statement made by the court was correct, and that the evidence was uncontradicted that the copying, printing, and publishing of these two photographs by the defendant was without the consent of the plaintiffs.

[5] It is further objected that there was no evidence of any intent on the part of the defendant to evade the law. The penalty provided by the statute is for the act of copying, printing, and publishing a copyrighted article, or for selling or exposing for sale such a copy, and the forfeiture or penalty is fixed for every sheet of such copy found in the possession of the person who has committed any one of the acts prohibited. The general rule in such a case is that, where the defendant has been shown to have committed an unlawful act, an unlawful intent is presumed. "If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent." (*Ellis v. United States*, 206 U. S., 246, 257, 27 Sup. Ct., 600, 602, 51 L. Ed., 1047, 11 Ann. Cas., 589.) But there is a prohibition in this statute against the copying, printing, and publishing of a copyrighted article "by varying the main design with intent to evade the law." That is not this case, and it is obvious that the intent to evade the law is only

required to appear or be inferred where the copyrighted article has not been reproduced in the substantial form and character of the original, but where in the reproduction there has been a varying of the main design. In such a case it should appear as a fact, or be inferable from facts proven, that the reproduction was with an intent to evade the law, and this would be a question of fact for the jury. There is no such question in this case.

6. It is further objected that the verdict and judgment is in excess of that provided by the statute; that the penalty of \$1 is for every sheet of the infringed copyright found, without regard to the number of infringements printed on each sheet. We do not so understand the law. The penalty imposed is for every sheet upon which an infringement is printed. In this case, as there were two separate and distinct infringements printed upon 400 sheets, there were 800 infringements printed in all.

The judgment of the district court is affirmed.

[199 Federal Reporter, pp. 572-576.]

LYDIARD-PETERSON CO. v. WOODMAN

(Circuit Court of Appeals, Eighth Circuit. March 3, 1913.)

No. 3738.

1. COPYRIGHTS—EXTENT OF MONOPOLY.

The holder of a copyright has no monopoly by virtue of the issued copyright itself; his rights being measured solely by the statute, provided he has complied therewith.

*Lydiard-Peterson  
Co. v. Woodman*

2. COPYRIGHTS—NOTICE—MAP.

Act June 18, 1874, c. 301, 18 Stat., 78 (U. S. Comp. St. 1901, p. 3411), provides that a copyrighted publication must contain a notice on its face or title page, "Entered according to Act of Congress, in the year . . . by A. B., in the office of the Librarian of Congress, at Washington;" or at his option the word 'Copyright,' together with the year and the name, thus: 'Copyright, 18—, by A. B.'" Held that, where a map of a lake and surrounding property was drawn by J. C. Woodman and published by the Woodman Publishing Company, a copyright notice on the map, "Copyright 1908, Drawn by J. C. Woodman," was insufficient.

3. COPYRIGHTS—DIRECTORY—MAP.

Complainant published a map of a lake and surrounding territory, called "Woodman's Minnetonka Map-Directory, 1908." On the title-page of the book were the words "Copyright 1908 by Prentiss M. Woodman, Woodman Publishing Company, Lumber Exchange, Minneapolis, Minn." The map had on its face "Woodman's Minnetonka Map-Directory, Copyright 1908. Drawn by J. C. Woodman." It also contained red figures referring to the index book or directory by which the particular pieces of property shown on the map were further described and identified. The book contained a pocket for the map, both being referred to as "Map-Directory" and intended to be used together. Five hundred more maps than books were published, and some extra maps were sold alone, but not until after the book was copyrighted. Held, that the map was a part of the book, and protected by the valid copyright notice in the book, though the notice on the map was insufficient.

Hook, circuit judge, dissenting.

Appeal from the Circuit Court of the United States for the District of Minnesota; Charles A. Willard, judge.

Suit by Prentiss M. Woodman against Lydiard-Peterson Company. Judgment for plaintiff and defendant appeals. Affirmed.

Milton D. Purdy, of Minneapolis, Minn. (William A. Lancaster and David F. Simpson, both of Minneapolis, Minn., on the brief), for appellant.

Charles J. Traxler and Prentiss M. Woodman, both of Minneapolis, Minn., for appellee.

Before SANBORN and HOOK, circuit judges, and McPHERSON, district judge.

SMITH McPHERSON, district judge. This is an action in equity for an injunction and damages for infringement of an alleged copyrighted map or chart of Lake Minnetonka, Minnesota. The Lydiard-Peterson Company, the defendant in the court below, pleaded a number of defenses, only one of which will be considered. The lower court adjudged the Lydiard-Peterson Company guilty of infringement, awarded plaintiff damages in the sum of \$75 and costs, including an attorney fee of \$50, and perpetually enjoined the Lydiard Company from reproducing, printing, or selling the map it had been printing and selling. Thereupon this appeal was taken.

To save expense and to limit the controversy, the parties signed and filed a stipulation, to the effect that the only question for determination by this court is as to the sufficiency of the notice on complainant's alleged copyright. Prentiss M. Woodman had printed a directory showing the ownerships of all residences and property adjacent to and near by the lake. Inside of the cover is a pocket for a map. There were 500 copies of the book and 1,000 maps printed. In some instances the book with map included sold for \$3, and in other instances the map alone for \$1. Woodman himself sold them, and a few were sold at book stores. On the map is the following:

Woodman's Minnetonka Map-Directory. Copyright 1908.  
Drawn by J. C. Woodman.

On another part of the map is the following:

Published by Woodman Publishing Co., 841 Lumber Exchange Building, Minneapolis, Minn. Red figures refer to Index Book with ten special books. Price, including book, \$3.00 postpaid.

The bill of complaint refers to the map only. The map has red numerical figures representing each piece or tract of ground. By referring to the corresponding figure in the Directory, the name of the owner or occupant is ascertained. The description of defendant's map need not be stated, because the stipulation recites:

It being conceded by the appellant, if the notice of copyright is sufficient, the record contains evidence sufficient to support the finding and judgment of the court as to infringement.

It was also stipulated that the outside cover of the book, and the title page, introduction, and contents of the book should be certified to this court—

for the reason those portions of the exhibit above specified contain all matters in any wise affecting or pertaining to the question

raised and to be considered on this appeal, to wit, the sufficiency of the notice contained on Exhibit A (which is the map).

So that it is necessary to turn to the book (Map-Directory) in so far as it is in the record. On the title page is the following:

"Woodman's Minnetonka Map-Directory, 1908."

And the following:

"Woodman's Minnetonka Map-Directory,  
1908.  
Copyright 1908 by Prentiss M. Woodman.  
Woodman Publishing Company, Lumber Exchange,  
Minneapolis, Minn."

The requisite copies were timely deposited with the Librarian of Congress, and on March 25, 1908, the copyright for 28 years was issued.

[1] The holder of a copyright has no monopoly by virtue of the issued copyright itself, but his rights are measured by the statute, provided always he has complied with the statute. (Thompson v. Hubbard, 131 U. S., 123, 9 Sup. Ct., 710, 33 L. Ed., 76; Merrell v. Tice, 104 U. S., 557, 26 L. Ed., 854; Wheaton v. Peters, 8 Pet., 591, 8 L. Ed., 1055.) The statute of June 18, 1874 (18 Stat., 78, c. 301 [U. S. Comp. St. 1901, p. 3411]), provided that a publication should show on its face or title page:

"Entered according to Act of Congress, in the year —— by A. B., in the office of the Librarian of Congress, at Washington; or at his option the word 'Copyright' together with the year \* \* \* and the name \* \* \* thus—'Copyright, 18—, by A. B.'"

[2] This was on the book at its appropriate place with greater definiteness than required by statute. And if we were dealing with the book or Directory alone the case would not require argument to show that the statute had been complied with. And the subsequent statute, enacted after complainant had obtained his copyright, is of less specific requirements. (See act Mar. 4, 1909, c. 320, 35 Stat., 1079, U. S. Comp. St. Supp. 1911, p. 1472.)

[3] Turning to the map, and considering it alone, we find at one place on its face in large print:

"Woodman's Minnetonka Map-Directory. Copyright 1908.  
Drawn by J. C. Woodman."

In another place the words:

"Published by Woodman Publishing Co., 841 Lumber Exchange,  
Minneapolis, Minn."

In the light of the fact that the record shows Prentiss M. Woodman to have been the author of the copyright and that J. C. Woodman was the draftsman of the map, and that they were father and son, of the same city and same business address, that of and by itself, the notice on the map is not sufficient. The cases of Burrow-Giles Lithographic Company v. Sarony (111 U. S., 53, 4 Sup. Ct. 279, 28 L. Ed. 349) and Bolles v. Outing Company, by the Court of Appeals, Second Circuit (77 Fed., 966, 23 C. C. A. 594, 46 L. R. A. 712), affirmed in 175 U. S., 262, 20 Sup. Ct., 94, 44 L. Ed., 156, although not passing on the point, have gone far in upholding the sufficiency of a notice. In the Sarony case the initials of the given name was given. In the Bolles case no initial of the first

name was given, and the surname only was recited. But the subject matter was a photograph, and there was no other photographer by that name in the city named. To uphold the map alone in the case at bar is to carry the defective notice further than either of the cases cited, and as believed further than any appellate court has yet gone. So that, if the map alone were being considered, it would follow that the notice is insufficient.

But we are of the opinion that in this case the book or Directory and the map are one production, and that the Directory includes the map. We fail to find a material difference whether the map is inclosed in the pocket to the Directory or whether it is stitched or otherwise fastened to the cover, or elsewhere in the Directory. On the map is the hyphenated word "Map-Directory," showing that it is of itself not complete. To use it, the figures necessarily carry the reader to the book or Directory. And on the title page of the book are the same words "Map-Directory." These carry the reader to the map.

But the argument against the foregoing is that there were but 500 books published and 1,000 of the maps, and that some of the 500 extra maps were alone sold. But the answer to that is: He had the right to print as many extra maps as he desired, provided he did not distribute them. And those separate maps put in circulation were thus distributed after he had a valid copyright. The effect of that may or may not amount to an abandonment, the very question we are precluded under the stipulation from considering. The parties have agreed that we shall only consider the sufficiency of the notice.

Paragraph 8 of the defendant's answer is an affirmative defense to the effect that subsequent to March 28, 1908 (date of complainant's copyright), the complainant sold the map separately and thereby lost his exclusive rights under his copyright. This question was for the District Court to decide, and presumptively was correctly decided. And that holding is not here for review.

Our holding is that the directory, with the map in the pocket, constitute but one publication, on which, at the appropriate place, is a sufficient notice. What was done with the extra maps with a defective notice at a subsequent time, and the effect thereof, is now not material.

The decree of the lower court should be affirmed; and it is so ordered.

HOOK, circuit judge (dissenting). This suit was brought for the infringement of the copyright of a map, not of a book and map. It is conceded in the foregoing opinion, as indeed it must be, that the notice of copyright on the map, taken by itself, is insufficient; therefore the map, separately regarded, was subject to duplication by anyone. The notice required by the act of Congress to be placed upon each copy of the thing copyrighted must be sufficient to advise the public of the name of the author, the existence of the claim of exclusive right, and the date at which the right was obtained. This notice has always been held to be a condition precedent to the perfection of a copyright. To find a sufficient notice in this case my brothers leave the map and go to the title-page of a book. But the map is not a physical part of the book; it is a part only by reference found in the book. True, there is a pocket in the book in which the map might be placed for convenient



keeping, but whether it is kept there and used in connection with the book depends upon the whim or desire of the owner. This is so because the map as such is complete in itself and has a use independently of the book. To that extent it is a distinct publication. The course of complainant confirms this. He published 500 books and 1,000 maps, and put the extra maps on the market and sold some of them. This is not mentioned to show abandonment of the copyright or forfeiture, but simply to show complainant's course of trade, and that he regarded them as publications, each independently useful and marketable.

Heywood *v.* Potter (22 L. J. Q. B., 133) is in point. It arose under the English copyright of designs act, 5 & 6 Vict., c. 100, § 4, which required the proprietor of a design to put upon each article to which it was applied the letters "Rd," meaning registered. The plaintiff copyrighted a design for wall paper which he made and sold for use in 12-yard lengths. Upon these he placed the required letters. But it was also the practice to sell or otherwise issue patterns or samples 27 inches long cut from the 12-yard lengths. These samples so published and disposed of did not bear the mark of registration, and it was held the plaintiff was not entitled to relief. Regarding the same act, Romilly, Master of the Rolls, said:

Whatever the original manufacturer who has got a registered design sells, a separate piece it may be, he must give notice upon that piece that it is registered. (*Sarazin v. Hamil*, 32 L. J. Ch., 380.)

The notice prescribed by the act of Congress is to protect the public from charges of piracy, and it should be placed where it will reasonably accomplish its object, having regard to the character of the article and the customs of trade.

[204 Federal Reporter, pp. 921-926.]

NEW YORK TIMES CO. *v.* SUN PRINTING & PUBLISHING ASS'N

(Circuit Court of Appeals, Second Circuit. April 14, 1913.)

No. 176

COPYRIGHTS—ESTABLISHMENT—FILING COPIES—INFRINGEMENT—SUIT—CONDITION  
PRECEDENT—"MAINTAIN."

Act March 4, 1909, c. 320, 35 Stat., 1075 (U. S. Comp. St. Supp. 1911, p. 1472), providing that no action or proceeding shall be maintained for infringement of a copyright of any book until two complete copies have been deposited in the Copyright Office, or in the mails, addressed to the Register of Copyrights, is not limited to an action or proceeding for infringement, but applies as well to a suit in equity for an injunction to prevent the infringement or violation of complainant's copyright, and for an accounting, precluding the lawful commencement of a suit for that purpose prior to deposit of copies; the word "maintain" including the commencement of such suit.

*New York  
Times Co. v. Sun  
Printing & Pub-  
lishing Ass'n*

Appeal from the District Court of the United States for the Southern District of New York; Julius M. Mayer, judge.

Suit by the New York Times Company against the Sun Printing and Publishing Association. From a decree dismissing the amended bill on demurrer complainant appeals. Affirmed.

Leventritt, Cook & Nathan, of New York City (Alfred A. Cook, Max J. Kohler, and Franklin H. Mills, all of New York City, of counsel), for appellant.

James M. Beck and Charles K. Carpenter, both of New York City, for appellee.

Before COXE, WARD, and NOYES, circuit judges.

COXE, circuit judge. The principal question presented by this appeal is as follows: Can an action for the infringement of a copyright of a book be maintained, unless it be alleged and proved that prior to the commencement of the action two complete copies of the best edition thereof were deposited in the Copyright Office or in the mail addressed to the Registrar of Copyrights at Washington, as provided by section 12 of the copyright law? The relevant portions of section 12 of the law are as follows:

That after copyright has been secured by publication of the work with the notice of copyright as provided in section 9 of this act, there shall be promptly deposited in the Copyright Office or in the mail addressed to the Register of Copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published \* \* \*. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this act with respect to the deposit of copies and registration of such work shall have been complied with. (Act Mar. 4, 1909, c. 320, 35 Stat., 1078, U. S. Comp. St. Supp. 1911, p. 1476.)

The last paragraph would seem to be a plain prohibition against the maintenance of an action or proceeding for infringement until the copies are deposited in the Copyright Office or in the mail. If an equity action for an injunction and an accounting be not such an action as the statute contemplates, it is difficult to perceive what the lawmakers had in mind. Manifestly the statute refers to precisely such an action as this, otherwise the language is meaningless. We are not concerned here with the wisdom or necessity of the provision. Congress was conferring a special privilege upon authors and could limit that privilege in any manner it saw fit. In order to secure a valid copyright or a valid patent, it is necessary to comply with every requirement of the law, and a discussion of the wisdom or unwisdom of such requirements is wholly irrelevant. If a change in the law be needed, recourse should be had to the legislative and not to the judicial branch of the Government. It is unnecessary to consider the status of the complainant's alleged copyright for other purposes than those involved in this action. The question here is, Can an equity suit for an injunction and an accounting be maintained thereon?

It is contended that as soon as the copyright was secured and before the copies were mailed, as required by law, the complainant acquired a right which was entitled to the protection of a court of equity. Such a construction wholly ignores the provision for mailing. It may never be complied with, and still, if the complainant's contention be correct, an equity suit may be commenced, an injunction issued, and an accounting had. How can a court of equity protect an inchoate or

incomplete right by a suit which the law says can not be maintained? We are unable to assent to the proposition that this is not an action for infringement of a copyright, but rather, as complainant contends, "a suit in equity by a party aggrieved for an injunction to prevent and restrain the violation of the complainant's copyright secured by the copyright law." But this statement of the action is merely a change in nomenclature. There can be no doubt as to the character of the action. As before stated, not one of the criteria which determine an action for infringement is omitted.

A distinction is also sought to be drawn between "maintained" and "begun"; the contention being that a suit may be begun before the copies are deposited in the mail. In other words, an action may be commenced which can not be maintained. Not only so, but an injunction may issue restraining the defendant from publishing alleged infringing matter, in an action which can not be maintained. We are unable to assent to this construction. That the prohibition against maintaining a suit includes the commencement thereof was decided in *Neuchatel Co. v. Mayor*, 155 N. Y., 373, 49 N. E., 1043; *Thompson v. Hubbard*, 131 U. S., 123, 150, 151, 9 Sup. Ct., 710, 33 L. Ed., 76; *Mahar v. Harrington Park Villa Sites*, 204 N. Y., 231, 97 N. E., 587, 38 L. R. A. (N. S.), 210; *David Lupton's Sons v. Auto Club of America*, 225 U. S., 489, 32 Sup. Ct., 711, 56 L. Ed., 1177.

Even if it be assumed that such an action may be commenced, the moment it is examined it is found that it can not be maintained. That is, it can not be sustained, preserved, or kept in being, no injunction can be granted, no judgment for the plaintiff can be entered therein. No matter what meaning may be given to the word "maintained" the statute clearly prohibits the complainant from procuring any relief in the action. The questions involved are carefully discussed by Judge Lacombe in *New York Times v. Star Co. (C. C.)*, 195 Fed., 110, and we agree with what is there said as to the proper interpretation of section 36 of the act in connection with section 12.

As these views result in the affirmance of the decree, we deem it unnecessary to discuss the other questions presented at the oral argument and in the briefs.

Decree affirmed with costs.

[204 Federal Reporter, pp. 586-588.]

G. RICORDI & CO. v. MASON ET AL.

(Circuit Court, S. D. New York. December 4, 1911.)

COPYRIGHTS—INFRINGEMENT.

A booklet entitled "Opera Stories," by which the author sought to give a mere fragmentary and superficial idea of the plot and characters of various operas, each scene being covered by a single paragraph and taken from descriptions other than the operas themselves, was not an infringement of the copyright on the librettos. *G. Ricordi & Co. v. Mason et al.*

In equity. Bill by G. Ricordi & Co. against Henry L. Mason and others. On motion for preliminary injunction. Denied.

See, also, 201 Fed., 184.

Nathan Burkan, of New York City, for complainant.

Edwards, Sager & Wooster, of New York City, and Browne & Woodworth, of Boston, Mass. (Alexander P. Browne, of Boston, Mass., of counsel), for defendant Mason.

COXE, circuit judge. The complainant, as the owner of copyrights in the operas "Germania" and "Iris," seeks to restrain the defendants from publishing a book called "Opera Stories" which, it asserts, is an infringement of its copyrights.

"Germania" covers 46 printed pages and is divided into three acts. The "story" of this opera as printed by the defendants covers a little more than half a page, each act being described in a paragraph containing about 100 words. The entire situation will be made plain by reproducing the defendants' statement of the first act:

Act 1—Prologue

Scene, a mill near Nuremburg. Students, disguised as millers, are plotting and writing pamphlets. The police arrive; but their coming has been heard of so that when they enter wheels are turning and all are busy. Still they make some arrests, among others Carlo Worms. Frederico Loewe, his intimate friend, is gone to the wars and has entrusted to him the care of his affianced Ricke. Worms, forgetful of duty and friendship, falls passionately in love with Ricke, who succumbs to his overtures. She upbraids him, however, and Frederico shortly returns.

"Iris" need not be discussed, as the legal questions presented are identical in each opera.

It will be observed that the quotation above given is neither an opera nor, strictly speaking, the story of an opera. The reader gets a vague, fragmentary, and superficial idea of the plot and of the characters. One reading it might acquire sufficient information to enable him to decide whether or not he wishes to attend the opera. If he were attracted by so commonplace a plot as that disclosed in the first act he would probably attend, otherwise he would remain at home. I am unable to perceive how such an indeterminate statement infringes the copyright of the opera. It does not use the author's language, it does not appropriate his ideas, and it does not reproduce his characters. Indeed, it appears from the defendants' affidavits that the author of the "story" did not prepare it from the copyrighted opera but from a description thereof found in a newspaper. It gives just enough information to put the reader upon inquiry, precisely as the syllabus of a law report, the review of a book, or the description of a painting induces the reader to examine further.

It is generally supposed that the proprietors of operas are interested in having them made popular by widespread advertising; but if the doctrine contended for by the complainant is followed to its legal conclusion, the newspaper reporter and the literary and musical critic can not make their observations public without subjecting the publishers of newspapers and periodicals to suits for infringement. If such "stories" as are involved in this action are prohibited, it will be exceedingly difficult to draw the line of demarcation between legitimate and illegitimate criticism. It is easy to imagine instances where the complainant's contention will make unlawful the published

statement of the plot of a drama, the theme of a novel, or the review of a history.

It might even lead to the ludicrous result of condemning as an infringer the writer who publishes a laudatory notice of a picture or a poem. The historian who describes the charge of the cuirassiers at Friedland will hardly expect to be sued by the owner of the copyright covering Meissonier's great painting, "1807." The editor who reports the departure of "the captains and the kings" and the dispersion of the navy after a jubilee celebration will probably be astonished if accused of infringing "The Recessional."

It is said that the same rule should be applied to a copyright as to a patent for a machine. If this proposition be granted, it does not aid the complainant.

No one, for instance, infringes a claim for a machine unless he uses a similar machine operating in substantially the same manner and producing a like result by the same or equivalent means. A model of a machine incapable of producing any practical results does not infringe any more than the brief synopsis of an opera infringes the author's copyright. In the one case the property protected is the right to make, use, and vend the machine, in the other it is the right to publish, reproduce in other forms, and sell the opera. Neither the model of the machine nor the synopsis of the opera interferes with any of these rights.

If this case involved an *abridgment* as that word is ordinarily understood, I should be inclined to take a different view of this motion. The defendant's "story," however, is not such an abridgment. The abridgments which have been condemned by the courts involve colorable shortening of the original text, where immaterial incidents are omitted and voluminous dissertations are cut down, but where the characters, the plot, the language, and the ideas of the author are pirated.

In the case at bar none of these wrongs has been committed. On the contrary, the advertising which the opera has received by thus calling the attention of the public to it can not fail to have a beneficial effect upon the "market" of the owner of the copyright.

I have been unable to find an authority which goes to the extent contended for by the complainant. The most favorable view for the complainant is that the question is involved in doubt and in such a case a preliminary injunction should not issue.

The motion is denied.

[201 Federal Reporter, pp. 182-184.]

## G. RICORDI &amp; CO. v. MASON

(District Court, S. D. New York. October 31, 1912.)

*G. Ricordi &  
Co. v. Mason*

## COPYRIGHTS—INFRINGEMENT—OPERAS—"MAKE ANY OTHER VERSION THEREOF."

Copyright act March 4, 1909, c. 320, sec. 1, 35 Stat., 1075 (U. S. Comp. St. Supp. 1911, p. 1472), gives to the owner of a copyright the exclusive right to translate the copyrighted work into other languages or dialects, or to make any other version thereof, if it be a literary work, etc. HELD, that the words "make any other version thereof" were not to be strictly construed, so as to include mere abridgments or versions of copyrighted plays and operas, and hence a booklet, giving a mere fragmentary description of the various scenes of operas and entitled "Opera Stories," not taken from the librettos, was not an infringement of the copyrights on the librettos.

In equity. Suit by G. Ricordi & Co. against Henry L. Mason. Bill dismissed.

Nathan Burkan, of New York City, for complainant.

George F. Lewis, of New York City (Alexander P. Browne, of counsel), for defendant.

HAZEL, district judge. This is an action to enjoin the defendant from publishing and selling nondramatic versions of the copyrighted operas "Germania" and "Iris," owned by the complainant, and to recover damages and obtain an accounting of the profits realized by the defendant from the sale of said versions in a publication entitled "Opera Stories." There is no dispute of fact, and the question involved is solely one of statutory construction.

A motion heretofore made by complainant for a preliminary injunction was denied by Judge Coxe, who assigned his reasons therefor in an interesting opinion, which is published in 201 Fed., 182, which counsel have submitted to me. My own views, as intimated on the trial, that the versions of the operas contained in the defendant's publication are not an infringement of complainant's copyrighted librettos or their English translations, are clearly confirmed by Judge Coxe's decision. Although section 1 of the copyright act, which went into effect July 1, 1909 (act Mar. 4, 1909, c. 320, 35 Stat., 1075 [U. S. Comp. St. Supp. 1911, p. 1472]), in broad terms gives complainant the exclusive right "to translate the copyrighted work into other languages or dialects, or make any other version thereof," etc., still the summing up of a libretto by merely outlining the plot or theme, detailing the incidents in such a way as to give in the fewest words possible the so-called story, as was done by the defendant with the operas "Germania" and "Iris," does not constitute the making of such a version thereof as was in the contemplation of Congress when the copyright statute was enacted.

A literal definition of the words "make any other version thereof" would not only include the defendant's publication but also the newspaper publication, after performance, of any reviews or criticisms, even when written by reporters invited by the owner of the play to witness the production. The publication of abridgments or versions of the play or opera having been permitted to the newspapers, it makes no difference that another, without dialogue or stage directions, embodies practically the same information in a salable booklet. Indeed,

the proofs show that the information as to the theme or plot of the operas in question was not taken by defendant from complainant's copyrighted librettos, but that the version of "Germania" was derived from a newspaper and that of "Iris" from a German publication. Of course, if the defendant's stories consisted of mere modifications of the copyrighted works, or abridgments thereof, reproducing portions of the dialogue, words, or phrases, the scenes, and characters, a different question would be presented.

As the proofs stand, however, I am convinced, as was Judge Coxe on the motion for preliminary injunction, that the defendant's "Opera Stories" is not an invasion of the copyrights secured to the complainant by statute or an interference therewith.

A decree may be entered dismissing the bill, with costs.

[201 Federal Reporter, pp. 184-185.]

### Addendum III

#### DIGEST OF THE OPINIONS OF THE ATTORNEYS GENERAL AND OF THE TREASURY DECISIONS CONCERNING COPYRIGHT, ETC.

*Abandonment.* Upon formal declaration that a claimant abandons his claim, books containing a copyright notice obliterated or accompanied with a statement of abandonment printed on the same page with the copyright notice may be imported although not manufactured in accordance with section 15. (Case of "Oxford Cyclopaedic Concordance.") [19 "Treasury Decisions, 1910," p. 3; "Rept. Register of Copyrights, 1909-1910," p. 62.]

*Ad interim copyright. American manufacture.* By the ad interim act of 1904 (St. Louis Exposition), the requirement of American manufacture was, by necessary implication, suspended for the period of the two years' copyright term granted by that act. [7 "Treasury Decisions, 1904," p. 407; "Copyright Office Bulletin 3," p. 142.]

*Ad interim copyright. Deposit.* After an ad interim deposit has been made, it is not sufficient to deposit a mere fragment of the book made in the United States. [28 "Opinions Atty. Gen.," p. 176; "Rept. Register of Copyrights, 1909-1910," p. 52.]

*"Aiglon, L'," par Rostand.* Importation of foreign books in a foreign language prohibited where the same book in the original language has also been manufactured in the United States. [23 "Opinions Atty. Gen.," p. 353; 4 "Treasury Decisions, 1901," p. 93; "Copyright Office Bulletin 3," p. 133.]

*Assignee.* An assignee of an original copyright claimant is not authorized to register a renewal or extension under section 24 of the act of March 4, 1909. [28 "Opinions Atty. Gen.," p. 162; "Rept. Register of Copyrights, 1909-1910," p. 46.]

*"Ben Hur."* Prohibition of foreign-made copies of copyrighted books does not apply to copies imported by travelers for their personal use. [21 "Opinions Atty. Gen.," p. 159; "Treasury Decisions, 1895," pp. 125, 446, 495; "Copyright Office Bulletin 3," pp. 121-123.]

*Binding. Importation allowed.* Books bound in the United States and rebound abroad are not prohibited from importation. [28 "Opinions Atty. Gen.," p. 209; "Treasury Decisions, 1910," p. 4; "Rept. Register of Copyrights, 1909-1910," p. 55.]

*Binding. Importation prohibited.* Where books were duly printed in the United States, but the loose sheets sent abroad and there bound, importation prohibited under law of March 4, 1909. [28 "Opinions



Atty. Gen.," p. 90; "Rept. Register of Copyrights, 1909-1910," p. 34.]

*Book. Includes music.* Where the context of a section in a statute (sec. 4956, U. S. Rev. Stat.) showed that the words "book, lithograph, etc.," were used with regard to the mechanical processes by which a work is produced, the term "book" may include a musical composition in the physical form of a book. [22 "Opinions Atty. Gen.," p. 29; "Copyright Office Bulletin 3," p. 126.]

*Book. Means a complete work.* The term "book," as used in sections 5, 21, 22, and elsewhere in the copyright act, means a complete book and not a mere portion of a volume, such as a preface or a single chapter. [28 "Opinions Atty. Gen.," p. 176; "Rept. Register of Copyrights, 1909-1910," p. 52.]

*Book. Treated as an entirety.* A book must be treated as an entirety, and if a part of a book is obnoxious to a provision of the copyright law the whole is. [22 "Opinions Atty. Gen.," p. 29; "Copyright Office Bulletin 3," p. 127.]

*Chromos.* Where a painting is copyrighted, but a reproduction such as a chromo or lithograph is not separately copyrighted, such reproduction may be imported although not manufactured in the United States. [21 "Opinions Atty. Gen.," p. 416; "Treasury Decisions, 1896," p. 773; "Copyright Office Bulletin 3," pp. 124-126.]

*Deposits.* Deposit of merely a part of a work is not sufficient compliance with the statute to authorize registration. [28 "Opinions Atty. Gen.," p. 176; "Rept. Register of Copyrights, 1909-1910," p. 52.]

*Importation: Book in foreign language.* Foreign-made copies of a book in a foreign language, copyrighted in the United States, are not entitled to importation under act of March 3, 1891. (Case of Rostand's "L'Aiglon.") [23 "Opinions Atty. Gen.," p. 353; "Treasury Decisions, 1901," p. 93; "Copyright Office Bulletin 3," p. 133.]

*Importation: Books from American plates.* Books printed abroad, but from plates made in the United States, are not prohibited from importation under section 3, act of 1891. [1 "Treasury Decisions, 1899," p. 912; "Copyright Office Bulletin 3," p. 132.]

*Importation: Books from American plates.* Under the Act of March 3, 1891, books containing a copyright notice, if printed abroad, were entitled to entry, provided the type was set or the plates were made in the United States. [6 "Treasury Decisions, 1903," p. 888; "Copyright Office Bulletin 3," p. 141.]

*Importation: Chromo or lithograph.* Where a painting is copyrighted, but a reproduction, such as a chromo or lithograph, is not separately copyrighted, such reproduction may be imported, although not manufactured in the United States. (Act of 1891.) [21 "Opinions Atty. Gen.," p. 416; "Treasury Decisions, 1896," p. 773; "Copyright Office Bulletin 3," pp. 124-126.]

*Importation: Copyright abandoned.* Books, copyright in which has been formally abandoned, are entitled to importation although not made in accordance with manufacturing clause. [19 "Treasury Decisions, 1910," p. 3; "Rept. Register of Copyrights, 1909-1910," p. 62.]

*Importation: Copyright prior to act of 1891.* Books printed abroad may be imported, under act of March 3, 1891, although copyright is claimed in the United States, where such copyright was obtained prior to the act and the book had been originally manufactured in this country. (Case of "Liddell and Scott's Greek-English Lexicon," modifying "L'Aiglon" case.) [23 "Opinions Atty. Gen.," p. 371; "Treasury Decisions, 1901," p. 139; "Copyright Office Bulletin 3," p. 138.]

*Importation: Foreign-made copies.* Provisions in the tariff act of 1897, permitting free importation of certain articles, does not repeal or amend provisions of copyright act relating to nonimportation of foreign-made copies of copyrighted works. [23 "Opinions Atty. Gen.," p. 445; 4 "Treasury Decisions, 1901," p. 697; "Copyright Office Bulletin 3," p. 116.]

*Importation: Music.* The clause against lithographs made abroad being imported when the work is copyrighted in the United States does not prohibit musical compositions. (Citing "Littleton v. Oliver Ditson Co.," 62 Fed. Rep., 597.) [1 "Treasury Decisions, 1899," p. 792; "Copyright Office Bulletin 3," p. 131.]

*Importation: Music.* Prohibited music can not be made importable by being attached to an article not prohibited. [22 "Opinions Atty. Gen.," p. 29; "Copyright Office Bulletin 3," p. 127.]

*Importation: Music.* A statute prohibiting importation of books, lithographs, photographs, etc., reprinted in infringement of a United States copyright, prohibits importation of musical compositions if they have the physical form of books or are produced by one of the enumerated processes. [22 "Opinions Atty. Gen.," p. 29; "Copyright Office Bulletin 3," p. 126.]

*Importation: Nonimportation clause.* The nonimportation clause of the act of 1891 referred to books copyrighted both before and after the passage of this act. [21 "Opinions Atty. Gen.," p. 159; "Treasury Decisions, 1895," pp. 446, 495; "Copyright Office Bulletin 3," pp. 121-123.]

*Importation: Personal use copies.* The permission to import two copies for personal use of the importer embraces even pirated editions. (Act of 1891.) [21 "Opinions Atty. Gen.," p. 159; "Copyright Office Bulletin 3," p. 123.]

*Importation: Personal use copies.* Prohibition of foreign-made copies of copyrighted books does not apply to two copies brought in by travelers for personal use. (Case of "Ben Hur.") ["Treasury Decisions, 1895," p. 125; "Copyright Office Bulletin 3," p. 121.]

*Importation: Piratical copies.* Under the provision of section 31, act of March 4, 1909, all piratical copies, whether a work is copyrighted under the present or former acts, are prohibited from importation. Similarly also, all books not manufactured in accordance with manufacturing clause. (Case of "Key to Heaven.") [28 "Opinions Atty. Gen.," p. 90; 18 "Treasury Decisions, 1909," p. 6; "Rept. Register of Copyrights, 1909-1910," p. 33.]

*Importations: St. Louis Exposition.* Books and other articles, otherwise subject to the manufacturing clause, could be imported, notwith-

standing they were manufactured abroad, under the St. Louis Exposition ad interim act of 1904, for the ad interim term of two years. [7 "Treasury Decisions, 1904," p. 407; "Copyright Office Bulletin 3," p. 142.]

*Importation: Sheets or plates.* Under the act of March 3, 1891, importation of sheets or plates, made abroad, of books copyrighted in the United States, is prohibited even to the owner of the copyright. [2 "Treasury Decisions, 1898," p. 995; "Copyright Office Bulletin 3," p. 129.]

*Importation: Translations.* Prohibition in section 3, act of March 3, 1891, does not include translations made abroad of a book copyrighted in the United States in its English form, but not copyrighted in the country where the translation was made. (Case of Sheldon's "In His Steps.") [1 "Treasury Decisions, 1899," pp. 781, 798; "Copyright Office Bulletin 3," pp. 130, 132.]

*Importation: Translations.* Translations of books copyrighted in the United States, into a foreign language, made abroad by a foreigner, are entitled to importation, being "books of foreign origin in a language other than English" within the meaning of the copyright statute. ["Publishers' Weekly," v. 78, p. 407; "Rept. Register of Copyrights, 1909-1910," p. 63.]

*Importation: Unauthorized editions.* While under the "personal use" exception, even "unauthorized editions" are included, the general importation of such editions for sale is prohibited. ["Treasury Decisions, 1895," p. 66; "Copyright Office Bulletin 3," p. 124.]

*Importation: Unlawful imports destroyed.* Copyrightable articles unlawfully imported may be summarily destroyed without judicial proceedings. (Citing for "due process of law:" *McMillan v. Anderson*, 95 U. S., 37, 41; *Lawton v. Stelle*, 152 U. S., 133, 141.) [22 "Opinions Atty. Gen.," pp. 29, 70; "Copyright Office Bulletin 3," pp. 127-129.]

"In His Steps," by Sheldon. Unauthorized, but not piratical, translations may be imported. (See case of *Sylvanus Stall*.) [1 "Treasury Decisions, 1899," pp. 781, 798; "Copyright Office Bulletin 3," pp. 130, 132.]

"Key to Heaven." Books not manufactured in accordance with section 15 of act of March 4, 1909, are prohibited from importation regardless of the law under which the copyright in them was obtained. [28 "Opinions Atty. Gen.," p. 90; "Treasury Decisions, 1909," p. 6; "Rept. Register of Copyrights, 1909-1910," p. 33.]

"*Liddell and Scott's Greek-English Lexicon*." The manufacturing clause has no retroactive effect on works printed before it was enacted. [23 "Opinions Atty. Gen.," p. 371; "Treasury Decisions, 1901," p. 139; "Copyright Office Bulletin 3," p. 137.]

*Lithographs: Foreign.* Lithographs made abroad may be registered, provided the original paintings from which they were made are "works of art." [28 "Opinions Atty. Gen.," p. 150; "Rept. Register of Copyrights, 1909-1910," p. 41.]

*Lithographs: Music.* A book of musical compositions is not included within the clause of the act of 1891, prohibiting importation of lithographs of works copyrighted in the United States, if made abroad. It is not a lithograph within the meaning of the act, although produced by lithographic process. (Citing *Littleton v. Oliver Ditson Co.*, 62 Fed. Rep., 597.) [1 "Treasury Decisions, 1899," p. 792; "Copyright Office Bulletin 3," p. 131.]

*Lithographs: Reproductions.* Where a painting is copyrighted, but a reproduction such as a chromo or lithograph is not separately copyrighted, such reproduction may be imported although not manufactured in the United States. (Act of 1891.) [21 "Opinions Atty. Gen.," p. 416; "Treasury Decisions, 1896," p. 773; "Copyright Office Bulletin 3," pp. 124-126.]

*Manufacturing clause: Chromos.* Where a painting is copyrighted, but a chromo or other reproduction made therefrom is not separately copyrighted, the reproduction is not prohibited from importation although not manufactured within the United States. (Act of 1891.) [21 "Opinions Atty. Gen.," p. 416; "Treasury Decisions, 1896," p. 773; "Copyright Office Bulletin 3," pp. 124-126.]

*Manufacturing clause: Importation allowed.* Under section 3, act of March 3, 1891, books may be imported, although printed abroad, if the type was set in the United States. [1 "Treasury Decisions, 1899," p. 912; "Copyright Office Bulletin 3," p. 132.]

*Manufacturing clause: Importation allowed.* Where copyright has been expressly abandoned, books may be imported, although not made in accordance with section 15. [19 "Treasury Decisions, 1910," p. 3; "Rept. Register of Copyrights, 1909-1910," p. 62.]

*Manufacturing clause: Importation prohibited.* The protection of American printers is a conjoint purpose of the copyright law, as well as the protection of authors. Importation of foreign copies of a book in a foreign language, copyrighted in the United States, copies of which have been manufactured in the United States, is prohibited. (Case of *Rostand's "L'Aiglon."*) [23 "Opinions Atty. Gen.," p. 353; "Treasury Decisions, 1901," p. 93; "Copyright Office Bulletin 3," p. 133.]

*Manufacturing clause: Importation prohibited.* Under the act of 1891, importation of sheets and plates of books, copyrighted in the United States, if made abroad, is prohibited even to the owner of the copyright. [2 "Treasury Decisions, 1898," p. 995; "Copyright Office Bulletin 3," p. 129.]

*Manufacturing clause: Methods.* Section 15 does not prescribe a particular way in which a book must be manufactured, but if it is manufactured by the methods mentioned in such section, such work must be done in the United States. [28 "Opinions Atty. Gen.," p. 265; "Rept. Register of Copyrights, 1909-1910," p. 59.]

*Manufacturing clause: Part of the work.* It is not sufficient with the statute, to secure registration, if only a part of the work is manufactured in the United States. [28 "Opinions Atty. Gen.," p. 176; "Rept. Register of Copyrights, 1909-1910," p. 52.]

*Manufacturing clause: Philippine Islands.* Manufacture in the Philippine Islands not sufficient to give copyright. [25 "Opinions Atty. Gen.," p. 25; "Copyright Office Bulletin 3," p. 114.]

*Manufacturing clause: Prohibition of importation.* Books not produced in accordance with the manufacturing provisions of section 15 of the act of March 4, 1909, are prohibited from importation regardless of law under which the copyright in them was obtained. (Case of "Key to Heaven.") [28 "Opinions Atty. Gen.," p. 90; 18 "Treasury Decisions, 1909," p. 6; "Rept. Register of Copyrights, 1909-1910," p. 33.]

*Manufacturing clause: Requirements.* Under section 3, act of March 3, 1891, it was sufficient if the type was set or the plates were made in the United States, although the printing was done abroad. (Case of Schuberth & Co.) [6 "Treasury Decisions, 1903," p. 888; "Copyright Office Bulletin 3," p. 141.]

*Manufacturing clause: Retroactive effect.* Additional requirements, such as American manufacture, have no retroactive effect on copyrights obtained before they were enacted. (Case of "Liddell and Scott's Greek-English Lexicon.") [23 "Opinions Atty. Gen.," p. 371; 1 "Treasury Decisions, 1901," p. 39; "Copyright Office Bulletin 3," p. 137.]

*Manufacturing clause: Suspended.* By the ad interim act of 1909 (St. Louis Exposition), the requirement of American manufacture was, by necessary implication, suspended for the period of the two years' copyright term granted by that act. [7 "Treasury Decisions, 1904," p. 407; "Copyright Office Bulletin 3," p. 142.]

*Manufacturing clause: Translations.* Translations of books copyrighted in the United States, if made abroad by foreigners, are books of foreign origin in a foreign language, within the meaning of section 15. (Case of Sylvanus Stall.) Letter of Chief, Customs Division. ["Publishers' Weekly," v. 78, p. 407; "Rept. Register of Copyrights, 1909-1910," p. 63.]

*Music: Importation allowed.* Musical compositions may be imported, under act of 1891, although the copies were printed by lithographic process abroad and the work is copyrighted in the United States. [1 "Treasury Decisions, 1899," p. 792; "Copyright Office Bulletin 3," p. 131.]

*Music: Importation prohibited.* Music books made up in part of matter copyrighted in the United States are prohibited importation under the act of March 3, 1891. [22 "Opinions Atty. Gen.," p. 29; "Copyright Office Bulletin 3," p. 126.]

*New editions.* Under section 4959, United States Revised Statutes as amended by act of March 3, 1891, a revised edition of a book already copyrighted may be registered, but such registration is not obligatory. (Case of "Liddell and Scott's Greek-English Lexicon.") [23 "Opinions Atty. Gen.," p. 371; "Treasury Decisions, 1901," p. 139; "Copyright Office Bulletin 3," p. 137.]

"*Oxford Cyclopaedic Concordance*." Copyright was abandoned by formal declaration, whereupon books originally printed with copyright notice, but made abroad, were admitted to this country. [19 "Treasury Decisions, 1910," p. 3; "Rept. Register of Copyrights, 1909-1910," p. 62.]

*Philippine Islands*. Not part of the United States for copyright purposes.

1. Because, while still belonging to the United States internationally, yet they are not "within the limits of the United States." (See Const. U. S., 13th amendment. "Insular Cases," 182 U. S. 1.)

2. Because Congress, in the organic act for the government of the Philippines, provided that section 1891 of the United States Revised Statutes, extending Constitution and applicable laws to organized territory, does not apply to the Philippines. [25 "Opinions Atty. Gen.," p. 25; "Copyright Office Bulletin 3," p. 114.]

*Prints and labels*. The provision of the law of June 18, 1874, relative to registration of copyrights in labels and prints used in connection with articles of manufacture, still in force after enactment of act of March 4, 1909. [28 "Opinions Atty. Gen.," p. 116; "Rept. Register of Copyrights, 1909-1910," p. 37.]

*Proclamation: Conclusive evidence*. The proclamation of the President of the United States that reciprocity with some foreign country exists, is merely declaratory of the facts and does not itself create the condition on which citizens of such country may secure copyright in the United States, but it is conclusive evidence of the facts, and therefore may be retroactive in its effect. [28 "Opinions Atty. Gen.," p. 222; "Rept. Register of Copyrights, 1909-1910," p. 56.]

*Proclamation: Necessary*. A proclamation by the President of the United States declaring reciprocity to exist is necessary before citizens of foreign countries can obtain copyright in the United States under the law of 1909. A proclamation previously issued under the old statute is not sufficient. [28 "Opinions Atty. Gen.," p. 222; "Rept. Register of Copyrights, 1909-1910," p. 57.]

*Renewals*. Renewals and extensions can be made only by persons specified in section 24, act of March 4, 1909, and not by assignees. [28 "Opinions Atty. Gen.," p. 162; "Rept. Register of Copyrights, 1909-1910," p. 46.]

*Stall, Sylvanus*. Translations manufactured abroad of books copyrighted in the original may be imported as books of foreign origin in a foreign language. ["Publishers' Weekly," v. 78, p. 407; "Rept. Register of Copyrights, 1909-1910," p. 63.]

*Translations: Importation*. Translations into a foreign language of a book copyrighted in the United States are entitled to importation if the translator is a foreigner and did the work abroad, although the copies were not manufactured in accordance with section 15. Letter of Chief of Division of Customs. ["Publishers' Weekly," v. 78, p. 407; "Rept. Register of Copyrights, 1909-1910," p. 63.]

*Translations: Importation.* Where a book is copyrighted in the United States, and unauthorized (but not piratical) translations are published abroad, such translations may be imported notwithstanding the prohibition in section 3, act of March 3, 1891. (Case of Sheldon's "In His Steps." See also, case of Sylvanus Stall.) [1 "Treasury Decisions, 1899," pp. 781, 798; "Copyright Office Bulletin 3," pp. 130, 132.]

*Typoscript.* Typewritten books, if actually published, may be registered. [28 "Opinions Atty. Gen.," p. 265; "Rept. Register of Copyrights, 1909-1910," p. 59.]

Addendum IV  
COPYRIGHT CONVENTION BETWEEN THE UNITED STATES  
AND HUNGARY

ARTICLE 1

Authors who are citizens or subjects of one of the two countries or their assigns shall enjoy in the other country, for their literary, artistic, dramatic, musical and photographic works (whether unpublished or published in one of the two countries) the same rights which the respective laws do now or may hereafter grant to natives.

*Convention between United States and Hungary, 1912*

The above provision includes the copyright control of mechanical musical reproductions.

ARTICLE 2

The enjoyment and the exercise of the rights secured by the present convention are subject to the performance of the conditions and formalities prescribed by the laws and regulations of the country where protection is claimed under the present convention; such enjoyment and such exercise are independent of the existence of protection in the country of origin of the work.

ARTICLE 3

The term of copyright protection granted by the present convention shall be regulated by the law of the country where protection is claimed.

ARTICLE 4

The present convention shall be ratified and the ratifications shall be exchanged at Washington as soon as possible.

ARTICLE 5

The present convention shall be put in force one month after the exchange of ratifications, and shall remain in force until the termination of a year from the day on which it may have been denounced.

In faith whereof the plenipotentiaries have signed the present convention in two copies, each in the English and Hungarian languages, and have affixed thereto their seals.

Done at Budapest, the 30th day of January, 1912.

RICHARD C. KERENS. [SEAL.]  
ESTERHÁZY PÁL. [SEAL.]  
TÖRY GUSTÁV. [SEAL.]

[Ratification advised by the Senate of the United States on July 23, 1912; ratifications exchanged September 16, 1912; proclaimed, October 15, 1912; in force, October 16, 1912.]



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