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Copyright—Dedication to the Public—Legends on Phonograph Records

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the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law."

In view of the trend toward increased governmental control of business, and the need for quick and efficient investigation if control is to be effective, only the procedural requirements for reasonable search and seizure are likely in the future to be prominent in litigation. The question of relevance will probably, as a matter of expediency, be left primarily to the discretion of the administrator. Thus, in the instant case, the administrator sought records which included information about employees engaged solely in intrastate commerce and others who were exempt from the provisions of the Act.[10] Since the administrator is charged with the classification of employees, the Court decided that the information was necessary for the proper enforcement of his duties.

The effective execution of social policies involving the control of business depends upon the accessibility of pertinent information. Experience has shown that, generally, testimony and documents can be effectively secured under proper safeguards by administrative means. Whatever hardships may be imposed on individuals by such administrative demands for information are outweighed by considerations of the public interest in the more effective enforcement of the social policy.[11]

L. E. M.

COPYRIGHT—DEDICATION TO THE PUBLIC—LEGENDS ON PHONOGRAPH RECORDS—[Federal].—Paul Whiteman and his orchestra made a number of phonograph recordings. The records which were ultimately sold to the public bore the legend: "Not licensed for radio broadcast." This was eventually changed to " * * * only for non-commercial use on phonographs in homes. Manufacturer and original purchaser have agreed this record shall not be sold or used for any other purposes * * *." A distributor purchased these records from the manufacturer, and sold them to a radio station which broadcast them in total disregard of the legends. The manufacturer sued to enjoin the radio station from broadcasting the records.[1] *Held:* Injunction denied. Assuming that Whiteman and the manufacturer had "common law" property in the recordings (the former as to his performance, the latter as to the skill and art necessary for a good recording), the sale of the records was absolute and unconditional in spite of the legend. *R. C. A. Manufacturing Co. v. Whiteman.*[2]

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10. (1938) 52 Stat. 1067, c. 676, sec. 13, 29 U. S. C. A. (Supp. 1940) sec. 213.

11. See Interstate Commerce Comm. v. Brimson (1894) 154 U. S. 447, 474; Lilienthal, The Power of Governmental Agencies to Compel Testimony (1926) 39 Harv. L. Rev. 694, 720 et seq.; Handler, The Constitutionality of Investigations by the Federal Trade Commission (1928) 28 Col. L. Rev. 905, 933 et seq.

1. The manufacturer also asked that Whiteman be adjudged to have no interest in the records of his performance.

2. (C. C. A. 2, 1940) 114 F. (2d) 86.

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The court's assumption that a performer has property in his performance was based on a recognized common law doctrine.[3] This interest in performance, however, is not protected by the Copyright Act. At common law the performer lost his interest by a general publication,[4] but might retain his vital rights by publishing "restrictively."[5] The court in the instant case followed the settled rule that, where there is a general publication in fact, express words of restriction are inoperative.[6]

Not all courts have agreed with the result of the principal case. The legend, "not licensed for radio broadcast," has been held a valid restriction limiting publication.[7] The notice, "this record only to be used on Ford Motor Program," has also been held a valid limitation on distribution.[8] Prior to the invention of the phonograph and the sound film, an artist's performance ran little danger of identical reproduction, though it might be the subject of mimicry. Broadcasts by an ultimate purchaser, however, reproduce a single rendition and may reduce the demand for records, curtailing the artist's royalties and the manufacturer's sales. In this way the broadcaster may be competing with the artist and manufacturer in supplying a particular commodity to the public. Certainly the decision in the instant case does not extend the trend of earlier cases protecting artists in their performance. It also fails to follow the spirit of the Supreme Court's decision in *International News Service v. Associated Press*,[9] where the Court held that competing news agencies' news was to

3. Waring v. Dunlea (D. C. E. D. N. C. 1939) 26 F. Supp. 338; Aronson v. Baker (1887) 43 N. J. Eq. 365; Fleron v. Lackaye (S. Ct. 1891) 14 N. Y. S. 292; Waring v. WDAS (1937) 327 Pa. 433, 194 Atl. 631.

4. Universal Film Mfg. Co. v. Copperman (D. C. S. D. N. Y. 1914) 212 Fed. 301, 303; Moore v. Ford Motor Co. (C. C. A. 2, 1930) 43 F. (2d) 685, aff'g (D. C. S. D. N. Y. 1928) 28 F. (2d) 529; D'Ole v. Kansas City Star (D. C. W. D. Mo. 1899) 94 Fed. 840, 844; Baker v. Libbie (1912) 210 Mass. 599, 97 N. E. 109; Jewelers' Merc. Agency, Ltd. v. Jewelers' Weekly Publ. Co. (1898) 155 N. Y. 241.

5. Press Publ. Co. v. Monroe (C. C. A. 2, 1896) 73 Fed. 196, 51 L. R. A. 353; Werckmeister v. American Lithographic Co. (C. C. A. 2, 1904) 134 Fed. 321; McCarthy & Fischer v. White (D. C. S. D. N. Y. 1919) 259 Fed. 364; Uproar Co. v. National Broadcasting Co. (D. C. D. Mass. 1936) 8 F. Supp. 358, modified in (C. C. A. 1, 1936) 81 F. (2d) 373, cert. denied (1935) 298 U. S. 670; Bartlett v. Crittenden (C. C. D. Ohio 1849) Fed. Cas. No. 1,076; Chamber of Commerce v. Wells (1907) 100 Minn. 205, 111 N. W. 157.

6. In Chamber of Commerce v. Wells (1907) 100 Minn. 205, 111 N. W. 157, 159, the court said: "If there be in fact a publication of a character to enable the public, without fraud or collusion, to obtain the information, the property rights in the literary or other like production ceases, without regard to the intention of the owner." Ladd v. Oxnard (C. C. D. Mass. 1896) 75 Fed. 703; Larowe-Loisette v. O'Laughlin (C. C. S. D. N. Y. 1898) 88 Fed. 896; Wagner v. Conried (C. C. S. D. N. Y. 1903) 125 Fed. 798; Savage v. Hoffman (C. C. S. D. N. Y. 1908) 159 Fed. 584; Jewelers' Merc. Agency, Ltd. v. Jewelers' Weekly Publ. Co. (1898) 155 N. Y. 241. See the dissenting opinion of Mr. Justice Brandeis in International News Service v. Associated Press (1918) 248 U. S. 215, 248.

7. Waring v. WDAS (1937) 327 Pa. 452, 194 Atl. 640.

8. Waring v. Dunlea (D. C. E. D. N. C. 1938) 26 F. Supp. 338.

9. (1918) 248 U. S. 215.

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be considered "quasi-property," and hence protected, irrespective of the rights as against the general public.

The inconvenience of conflicting decisions is obvious against a background of national chain broadcasting. Congressional action seems the only expedient way to uniformity. An amendment to the Copyright Act, whereby performers would be protected in their recorded renditions by regular statutory copyright, or a declaration that limiting legends do or do not restrict publication, would provide the desired certainty. R. W. K.

DOMESTIC RELATIONS—ANNULMENT—CONCEALMENT OF VENEREAL DISEASE—[Missouri].—Plaintiff, upon proposing marriage to defendant, asked about the condition of her health. Defendant, knowing that she had a venereal disease assured plaintiff that there was nothing the matter with her. Some time after the marriage a doctor examined defendant and found that she had syphilis. Plaintiff then brought suit to have the marriage annulled. *Held:* Defendant's fraudulent misrepresentation and concealment was ground for annulment of the marriage. *Watson v. Watson.*[1]

Fraud is the basis for annulment of marriage because of concealment of a venereal disease. The majority (or "Massachusetts") rule[2] requires that fraud relied upon as a ground for annulment go to the "essentials" of the marriage contract.[3] The "essentials" of the contract include the legalization of sexual relations and the procreation of children; hence anything which was fraudulently concealed and which makes natural sexual intercourse impossible is ground for annulment.[4] Prior to 1903 New York followed the Massachusetts rule.[5] But in 1903, in *Di Lorenzo v. Di Lorenzo,*[6] the New York Court adopted a rule more favorable to annulment. It held that if consent to the marriage is given in reliance on a misrepresentation which would deceive an ordinarily prudent person, the marriage will be annulled. Thus in New York the fraud need go merely to the giving of the

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1. (Mo. App. 1940) 143 S. W. (2d) 349.
2. Vanneman, Annulment of Marriage for Fraud (1925) 9 Minn. L. Rev. 497.
3. Reynolds v. Reynolds (Mass. 1862) 85 Allen 605; Foss v. Foss (Mass. 1866) 94 Allen 26; Hanson v. Hanson (1934) 287 Mass. 154, 191 N. E. 673, 93 A. L. R. 701.
4. Huberich, Venereal Disease in the Law of Marriage and Divorce (1903) 37 Am. L. Rev. 226. In two cases the Massachusetts Court said that if the marriage were consummated it would not grant annulment. Smith v. Smith (1898) 171 Mass. 404, 50 N. E. 933, 41 L. R. A. 800, 68 Am. St. Rep. 440; Vondal v. Vondal (1900) 175 Mass. 383, 56 N. E. 586, 78 Am. St. Rep. 502. But there seems to be some doubt whether this is really the Massachusetts law. A note, in (1920) 5 A. L. R. 1016, 1023, points out that in the *Vondal* case, where the court said no annulment would be granted where a marriage was consummated, the disease was curable, while in the *Smith* case, in which an unconsummated marriage was annulled, the disease was incurable. As yet no case of a consummated marriage in which the disease is incurable has arisen.
5. Clarke v. Clarke (N. Y. 1860) 11 Abb. Pr. 228.
6. (1903) 174 N. Y. 467, 67 N. E. 63, 63 L. R. A. 92, 95 Am. St. Rep. 609.

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