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Copyrights—A Single Rendition of the Refrain of a Copyrighted Musical Selection, Without Permission—An Infringement—Damages

COPYRIGHTS — A SINGLE RENDITION OF THE REFRAIN OF A COPYRIGHTED MUSICAL SELECTION, WITHOUT PERMISSION —AN INFRINGEMENT—DAMAGES.

M. Witmark & Sons v. Pastime Amusement Co., 298 Fed. 470.

This is a suit in equity for infringement of a copyright of a popular musical selection. The infringement consisted of the playing of the refrain only once, by a musician in the employ of defendant, owner of a motion picture theatre. The plaintiffs are publishers of the selection to whom all rights therein were granted by the composers of the selection. Although plaintiff had partially assigned his rights under the copyright and a partial assignment is unauthorized, he was held to be entitled to sue for infringement.

The playing of music at a motion picture show, even though only incidental to the pictures, is a "performance" under the copyright act of 1909, Sec. 1.

The employer of a musician is held responsible for all that is done by him, including performance of copyrighted compositions.

That one may be a party to interstate monopoly under the Sherman Act, does not divest him of a right to sue for infringement of a copyright.

The damages allowable are "such as may appear just," unless specifically set forth, in the Copyright Act, in any case between prescribed limits.

Decree for plaintiffs.

COPYRIGHTS—BROADCASTING COPYRIGHTED MUSICAL COMPOSITION BY RADIO HELD NOT "PUBLIC PERFORMANCE"—STATUTE—CONSTRUED ACCORDING TO NATURAL IMPORT OF WORDS USED.

J. H. Remick & Co. v. American Automobile Accessories Co., 298 Fed. 628.

The plaintiff brings a bill in equity for an injunction against the rendition, by the defendant, of any of complainants' composition. The defendant files a motion to dismiss the complaint.

The defendant caused the rendition of the song "Dreamy Melody," which song is copyrighted and the plaintiff owns the copyright. Held, by the Court that the rendition here alleged was not within the meaning of "public performance" as used in the Copyright Act. "Public performance" implies a performance before an audience or spectators. The Court construes the terms "perform publicly" to absolutely require an assemblage of persons or an audience for the purpose of hearing what transpires at the place of amusement.

The Act says "perform publicly for profit." Even though the defendant is a manufacturer of receiving sets and accessories, the advertisement which he gets through this means does not bring him within the terms "for profit."

All rights that the plaintiff here asserts arise under the statute and since the damages here asked for does not arise under proof of any actual pecuniary loss, the Court construes the words of the statute very strictly.