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U. S. GOVERNMENT NOT REQUIRED TO REISSUE OR PAY LOST WAR SAVING STAMP CERTIFICATES UNLESS PREVIOUSLY REGISTERED.

Mandelbaum v. United States, 298 Fed. 295.

The appellant, owner of certain unregistered war saving stamps, brought this action for reissue and payment thereof, offering to give satisfactory indemnity. Court had no jurisdiction over order to reissue stamps.

Question of the right to general relief was brought to this court on appeal. The rights of the parties lay in the interpretation of the contract on the backs of the stamps which was as follows:

" * * * This certificate may be registered at any post office of the first, second, or third class, subject to such regulations as the Postmaster General may prescribe. Unless registered, the United States will not be liable if payment be made to a person not the owner.

"Upon payment thereof, this certificate must be surrendered and the receipt printed hereon must be signed by the owner in the presence of the official to whom surrender be made. * * * Upon furnishing evidence of the loss of a registered certificate, the owner shall be entitled to receive payment of the amount for which it shall have been registered."

The appellant contended that the provision was merely for added protection to the government in case they paid the holder of the certificate.

The Court decided according to the contention of appellee that the provision expressly stated that the certificate would be paid only on being presented and surrendered by the owner. This, the Court held, showed a clear intent that no lost, destroyed, or stolen certificate should be paid unless registered.

MUSICAL COPYRIGHTS—INFRINGEMENT THROUGH FAILURE OF MEMORY TO DETECT SOURCE OF MELODY—NO ACTUAL DAMAGES—MINIMUM RECOVERY.

Fischer, Inc., v. Dillingham, 298 Fed. 245.

The infringement claimed appeared in a number of a light opera. The part in question, a series of notes called an ostinato, appeared as an accompaniment in the song "Dardenella." After "Dardenella" had faded from popularity, the same series appeared in a light opera.

The Court decided that the series was an original, as there was no proof of an ostinato appearing in any of the old masters.

The law is well settled that plagiarism of any part of a musical copyright, either in melody or accompaniment is proper subject for a suit. It is also clear that two people independently arriving at the same original, both may acquire a copyright. An original work may also be copyrighted although an identical text has appeared before.

In such cases as stated it must be evident that the text is an original. In the case in question the defendant was acquainted with the song "Dardanella," and it was probable that he had kept the notes in his mind.