CHICAGO MUSIC CO. *v.* J. W. BUTLER PAPER CO.

(*Circuit Court, N. D. Illinois.* February 24, 1884.)

PLEADING—INFRINGEMENT OF COPYRIGHT—NECESSARY ALLEGATIONS.

In a suit to recover for the infringement of a copyright, the declaration must set out in detail a substantial compliance with the various requirements of the copyright laws.

Demurrer to Amended Declaration.

Frank J. Bennet, for plaintiff.

McCoy, Pope & McCoy, for defendant.

BLODGETT, J. This is a demurrer to the amended declaration, in which there are five counts. It is a suit for the alleged infringement of a copyright. The allegation in each of these counts is that the plaintiff was proprietor of a certain musical composition entitled "I will meet her when the sun goes down," words and music by William Welch; that on October 19, 1882, plaintiff caused the same to be recorded in the office of the librarian of congress, and afterwards published divers copy of this musical composition, with the words "Copyrighted by the Chicago Music Company" printed on each copy; and that the defendant, since the recording of the said work in the office of the librarian of Congress, has infringed upon the plaintiff's exclusive right so secured to him by virtue of the copyright laws of the United States.

The question made by the demurrer is whether the plaintiff has sufficiently set out his title as the holder and owner of this copyright by this averment. The law authorizes the owner, author, or proprietor of a book, musical composition, etc, to copyright the same, and it is to be copyrighted by delivering at the office of the librarian of congress, or by depositing in the mail addressed to said librarian, before publication, a printed copy of the title of such book or musical composition; and also, within 10 days from the publication of such book or musical composition, the author or owner of the copyright must deliver at the office of the librarian of congress, or deposit in the mail addressed to such librarian, two copies of such book or composition. These are the steps which must be taken to secure the copyright in a musical composition like this. This exclusive right to authors is a monopoly for the term of the copyright, and in order to secure it there must be a substantial compliance with the terms of the statute. It is not like a patent in this: that an applicant for a patent applies to the commissioner of patents, setting out his claim, and a *quasi* judicial proceeding is instituted before the patent-office. An examination is made as to the novelty and usefulness of the invention, and if the allegations of novelty and usefulness are adjudged to be sustained, the patent-office issues a patent, which is *prima facie* evidence of both the novelty and usefulness of the device, and that the patentee

is the first inventor thereof. But the librarian of congress possesses no power in the premises; he simply receives the title when it is delivered or forwarded to him, and makes a record of it in his office, and receives the two copies of the publication when published, and which must be forwarded to him within 10 days after the publication is made, and makes a record of the receipt of the copies. The librarian issues no certificate, or anything in the nature of a patent; he simply makes a record, and whenever called upon has to make a certificate of whatever the records of his office show towards a compliance with the terms of the law. The rights of the party holding a copyright, therefore, depend wholly on whether he has in fact complied with the terms of the law or not, and not upon the fact that he has obtained a certificate from the librarian. In this case the five counts in the declaration are barren of any averment of compliance with the terms of the law. The plaintiff alleges he was proprietor of this musical composition, but he does not state how he became proprietor; he does not state except inferentially who was the author of the composition in question. He says that he was proprietor of a musical composition known by a certain title, the words and music by William Welch, but how he acquired the proprietorship from William Welch, or whether William Welch was the author, is only, as I said, inferentially to be obtained from any statement in the declaration. Nobody but the author, or some person who has acquired the author's right to a copyright, can obtain a copyright under the law; and I think that where a person attempts to copyright as proprietor, and avers that he has copyrighted as proprietor, he must show how he became proprietor, because no intendment will be made in favor of an exclusive monopoly of this character. The plaintiff must show that he has taken the steps required by law. Here there is no statement in the first place, as I have already said, that he ever was either the author or proprietor by virtue of having acquired the rights of the author; there is no averment that he ever filed with the librarian of congress, before publication, the title of the work, and that within 10 days after publication he delivered or forwarded to the librarian of congress the two copies required by the law which make his copyright complete.

The demurrer to this amended declaration must therefore be sustained.

THE MARINA.

(*District Court, D. New Jersey.* March 8, 1884.)

1. CONDITIONAL SALE—ATTACHMENT.
   An engine was furnished to a steam-lighter under a written contract of sale, by which it was to remain the property of the vendor till paid for. The engine was attached by screws to the vessel. The contract was made in New York, but the lighter afterwards went into New Jersey, where an attempt was made by the creditors of the vessel to attach the engine. *Held*, that the engine remained the property of the vendor, and could not be attached.
2. SAME—NOT A CHATTEL MORTGAGE.
   An agreement by which goods delivered to the vendee are to remain the property of the vendor till paid for is a conditional sale, and not a chattel mortgage, within the meaning of the registration acts. In the absense of fraud the vendor's title will prevail over an attachment.
3. CONFLICT OF LAWS—LEX SITUS.
   Such is, at all events, the law of New Jersey, (*Cole* v. *Berry*, 13 Vroom, 308;) and property brought into a state becomes subject to its law and policy, which will govern the construction of contracts made elsewhere with regard to the transfer and disposition of the property.

In Admiralty.

John Griffin, Jr., (with whom was *Bedle, Muirheid & McGee,*) for libelants.

Hyland & Zabriskie, for petitioner.

NIXON, J. On the twenty-ninth of July, 1880, the Lidgerwood Manufacturing Company furnished to the steam-lighter Marina a double hoisting engine, at the request of her owner, J. A. Cottingham, upon the terms specified in a paper, of which the following is a copy:

"NEW YORK, July 29, 1880.

"*Lidgerwood Man. Co. Machine Ware-rooms, No.* 96 *Liberty street, New York*—GENTS: Please furnish and ship to steam-lighter Marina, to remain as your property until fully paid for by me in cash as below stated, the following: One double hoisting engine, same as provided me for steam-lighter Joseph Hall, at $450. To be paid for as follows: Fifty dollars in equal monthly payments. And unless so paid for, you are authorized to enter and retake the same into your possession, wheresoever she may be found. The same to be held fully insured by me against loss or damage by fire, and to be kept in good order. J. A. COTTINGHAM, 11 Dey St., New York."

The engine was placed on board the steam-lighter, attached to the deck by screws, and used since that date in her ordinary business of lighterage. In this condition of affairs a number of libels *in rem* were filed, and monitions issued out of this court against the said steamer, her engines, and tackle, in favor of creditors claiming liens for supplies, repairs, labor, etc. The marshal of the district, by virtue of said writs, seized the vessel, her engines, tackle, and apparel, and, by order of the court, has advertised her for sale for the satisfaction of alleged liens amounting to about $7,000. The Lidgerwood Manufacturing Company has demanded of the marshal the surrender of the possession of the hoisting engine, claiming the same as its property.