

FALK *V.* HOWELL *ET AL.*

*Circuit Court, S. D. New York.*

March 31, 1888.

COPYRIGHT—INFRINGEMENT—BILL TO ENJOIN—AMBIGUITY.

A bill to enjoin the infringement of an alleged copyright, alleging disjunctively, in the language of Rev St. U. S. § 4956, (which prescribes the prerequisites to the obtaining of a copyright,) that orator “before publication delivered at the office of the librarian of congress, *or* mailed to said librarian, a copy of the title of said photograph,” is ambiguous, and tenders no issue.

In Equity. On bill for injunction.

*I. N. Falk*, for complainant.

*Arnoux, Pitch & Woodford*, for defendant.

LACOMBE, J. This is an application for a preliminary injunction to restrain the infringement of an alleged copyright of a photograph. The statute (Rev. St. U. S. § 4956) provides that “no person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the librarian of congress, or deposit in the mail, addressed to the librarian of congress, \* \* \* a \* \* \* copy of the title of the \* \* \* article \* \* \* for which he desires a copyright, \* \* \* nor unless he shall also, within ten days from the publication thereof, deliver at the office of the librarian of congress, or deposit in the mail, addressed to the librarian of congress, \* \* \* two copies \* \* \* of such article.” The complainant in this case does not show that he delivered a copy of the title at the office of the librarian, nor that he deposited the same in the mail, addressed to such officer; neither does he show that he delivered the two copies required by the statute, at such office, nor that he deposited the same in the mail, addressed as therein required. The averments in the bill referring to these statutory requirements are as follows:

“Before the publication \* \* \* your orator \* \* \* delivered at the office of the librarian of congress, *or* deposited in the mail, addressed to the librarian of congress, at Washington, D. C., a printed copy of the title of said photograph, \* \* \* and \* \* \* also within ten days from the publication thereof \* \* \* delivered at the office of the librarian of congress, *or* deposited in the mail, addressed to the librarian of congress, at Washington, D. C, two copies,” etc.

This is alternative pleading. It is ambiguous and tenders no issue, and is not a sufficient averment of compliance with the statutory requisites. The motion is denied, with leave to renew upon other papers.