

SANBORN MAP & PUB. CO. V. DAKIN, PUB. CO. *ET AL.*

*Circuit Court, N. D. California.*

June 10, 1889.

1. COPYRIGHT—INFRINGEMENT.

Complainant sold a copyright insurance map to H. & M., who employed defendants to correct it, by reason of changes from time to time in buildings, etc., affecting risks. Defendants, in making such corrections, used pasters on complainant's map, and retraced portions of said map, and in some instances reproduced whole sheets of said map, by relithographing it. *Held* that, while defendants could correct the map by putting thereon their pasters of such corrections, nevertheless it was an infringement to retrace any material part of complainant's map, or to reproduce any material part thereof in making such corrections.

2. SAME—INJUNCTION—ACCOUNTING.

Complainant, in such case, is entitled to an interlocutory decree enjoining further Infringements, and to an accounting for damages.

In Equity. Infringement of copyright. Application for injunction.

*Langhorne & Miller*, for complainant.

*Van Ness & Roche*, for defendants.

SAWYER, J., (*orally*.) This is a suit for the infringement of a copyright of a map showing the improvements on property and on the surrounding property as affecting the risks for the benefit of fire insurance companies, so that they can have the map at hand in their offices, and know the character of their risks, which are noted on the map. This map is copyrighted by the Sanborn Map & Publishing Company. That company sold a copy of its map, or book of maps, I should say, (each page covers one or more blocks,) to Hutchinson & Mann. Hutchinson & Mann made corrections on it, as the risks changed from time to time, and they procured (the defendant) the Dakin Publishing Company to go over the field, note the changes, and make the corrections on the map. That company made the corrections by putting on pasters, showing the changes made, on the map which Hutchinson & Mann had purchased from the Sanborn Map & Publishing Company, and often by retracing and reproducing portions not changed by pasters. It is claimed that defendants, at the request of Hutchinson & Mann, had a right to do that. The owners certainly had a right to do anything they pleased with the map purchased from complainant so far as making changes and putting on pasters is concerned; but they did more than that. They reproduced portions of the map, sometimes nearly a whole sheet. When the corrections were so many that they found it cheaper and better to make out a sheet than to make the corrections on it by pasters in the book, they did so, and then relithographed it, and reproduced the page, multiplying the copies, and often, doubtless, supplying the copies to other companies having complainant's maps or book of maps. While they had a right to put on pasters, cut the map to pieces, and destroy it, they had no right to retrace or reproduce and multiply any material part of the map. In some instances they took whole sheets, made several changes in them, relithographed those sheets so amended, and used them and doubtless furnished them to others to use. If they can do that on one sheet, they can do it on two, three, or four, and finally reproduce the whole book, availing themselves of the plaintiffs works as to all except the changes. If they can reproduce it once, they can do it a dozen times. If they can do it for one man they can do it for every insurance company, and multiply the work indefinitely to the great injury of the owner of the copyright. In my judgment the reproduction, the retracing, or relithographing of any material part of the map is an infringement of the copyright. To the extent of the reproduction of complainant's work, defendants are liable for an infringement, and there must be a decree restraining them from so infringing. There will be a reference to the standing master to ascertain the profits in pursuance of these suggestions. It is an infringement to retrace or reproduce any material portion of the map. The mere putting on of the pasters and destroying the sheet, without reproducing any part of it, I do not think is an infringement. An accounting will be taken in accordance with that principle.