

WORTHINGTON *v.* BATTY.

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

November 23, 1889.

COPYRIGHT—INFRINGEMENT—PRELIMINARY INJUNCTION.

Plaintiff contracted with an authoress to copyright and publish her work, to use his best efforts to secure a speedy sale, and to pay her 12 cents per copy sold. She agreed to furnish the manuscript, and agreed not to cause to be published anything which might injure the sale of the book. Plaintiff sought to restrain the publication of the same work, emanating from her since, in a newspaper. She was, not made a party to the suit, and it appeared that the sale of the book had quite or nearly ceased, and that plaintiff had not continued his efforts to sell. *Held*, that the preliminary injunction would be refused.

In Equity.

*Simpson, Thatcher & Barnum*, for plaintiff.

*Townsend, Dyett & Einstein*, for defendant.

WHEELER, J. This is a motion for a preliminary injunction to restrain infringement of the plaintiff's copyright of a book written by Mrs. Fanny Stenhouse. The book was copyrighted under an agreement between them that she should furnish the manuscript of the work, which he should copyright and publish, and use his "very best exertions and facilities to secure the Speedy sale of," and pay her 12 cents on each copy sold; and that she would not cause to be published, in her name or otherwise, anything which might injure or interfere with the sale of the book. The publication sought to be restrained is of the same work, emanating

WORTHINGTON v. BATTY.

from her since in a newspaper. She has an interest in the copyright, but is not made a party to the suit, either by being joined as a plaintiff in protecting it, or as a defendant for inequitably violating her agreement not to injure or interfere with the sale of the book. The proofs brought forward on the hearing of the motion tend to show that the plaintiff has not continued the efforts required by the agreement for the sale of the book, and that sales have quite or nearly ceased. Damages from any further apprehended publication by the defendant would be comparatively slight. Whether the plaintiff is so carrying out the agreement on his part as to entitle him to equitable relief without joining the author, or against publication coming from her, is so doubtful in the present aspects of the case as to make preliminary restraint of what will be of such slight injury appear to be unwarrantable, in the exercise of the discretion involved in granting or refusing such motions.

Motion denied.