

relief upon the statute, but upon his right, quite distinct from any conferred by copyright, to protection against having any literary matter published as his work which is not actually his creation, and, incidentally, to prevent fraud upon purchasers. That such right exists is too well settled, upon reason and authority, to require demonstration; and, although it is equally well established that an author may, by dedication of any product of his pen to the public, irrecoverably abandon his title, yet, in this case, the fact relied on by the defendant to support his assertion of dedication wholly fails to vindicate the publication complained of. The complainant did send to a journal called the "British Weekly," and permit its publishers to print in its columns, reports of eight of the lectures to which this suit relates, but these did not give, and could not be understood as giving, a full and exact presentation of those particular lectures, and of the remaining four lectures of the series no report of any kind was furnished to the press or placed before the public. The defendant's book is founded on the matter which had appeared in the British Weekly, and, if that matter had been literally copied, and so as not to misrepresent its character and extent, the plaintiff would be without remedy; but the fatal weakness in the defendant's position is that, under color of editing the author's work, he has represented a part of it as the whole, and even, as to the portion published, has materially departed from the reports which he sets up in justification. The title of the book is "The Evolution of Man; being the Lowell Lectures Delivered at Boston, Mass., April, 1893, by Professor Drummond." It is true that all the reports, except one, in the British Weekly, appear under a heading in the same words; but the ordinary reader is not likely to rely upon display lines of a public journal to give a precise indication of the contents of an article to which they are prefixed, whereas such a title as we have in this instance, given to a book in permanent form, may reasonably be, and usually is, relied on as truly stating the nature of its contents. A most important circumstance in this connection is that the defendant, while precisely adopting his title from the headlines of the reports, has so altered their text as to make it appear, contrary to the whole tenor of the reports themselves, that what his book contains is the precise language of the author of the lectures, although, as has been said, it contains only some of the lectures, not all of them, and presents none of them fully or correctly. The complainant's right has been fully made out, and the case shown is manifestly one which calls for the interposition of the court at this stage. An order will be made for a temporary injunction.

POTT et al. v. ALTEMUS.

(Circuit Court, E. D. Pennsylvania. January 23, 1894.)

No. 26.

LITERARY PROPERTY—PRELIMINARY INJUNCTION.

An author obtained a temporary injunction against the publication, in garbled form, of certain lectures delivered by him. At the same time a

third person to whom he had transferred the copyright also sued to enjoin the same publication. *Held* that, in view of the privity between the plaintiffs in the two suits, the court was not called upon to determine whether the assignee also had a right to a preliminary injunction, and the same would be denied, without prejudice to a renewal of the application.

This is a bill by James Pott and others to enjoin Henry Altemus from publishing a book containing incorrect and fragmentary copies of certain lectures by Professor Henry Drummond. Complainant based his right on an assignment of the copyright. Heard on application for a temporary injunction.

Biddle & Ward, for plaintiffs.
 Josiah R. Sypher, for defendant.

DALLAS, Circuit Judge. This is a motion for a preliminary injunction. The facts are the same as in *Drummond v. Altemus*, 60 Fed. 338, in which an opinion will be filed at the same time as this. In that case the title of the plaintiff to relief is founded upon his authorship of the lectures to which both suits relate. In this one, the allegations upon that subject are:

"(5) That the said Professor Drummond has transferred and assigned to the said plaintiffs all right in the above-mentioned Lowell lectures and book, as well as the copyright thereof, as far as the United States of America is concerned. * * * (10) That by the said deceitful and fraudulent publication of the said fragmentary and imperfect extracts from the *British Weekly* in book form as aforesaid, and by the fraudulent unauthorized additions and variations contained and appearing in the same work by the said defendants, the said Professor Drummond is greatly injured, pecuniarily, and otherwise, in his literary reputation as an author, and the said plaintiffs and the said Professor Drummond are pecuniarily injured through the damage the publication of the said work by the said defendants has caused and continues to cause to the future sale by the said plaintiffs of the genuine book, composed of the genuine Lowell lectures."

I have recently stated, and on several occasions, that, in my opinion, a motion for an interlocutory injunction should not in any case be allowed to operate as a means of obtaining a premature expression, where unnecessary, of opinion by the court upon the merits of the controversy; and that this special relief should not be granted without special reason, but that, except in a clear case and under circumstances requiring the immediate exercise of the restraining power of the court, an alleged right to injunction, as well as all other questions in the cause, should await determination until the coming in of the proofs in the regular way. *Williams v. McNeely*, 56 Fed. 265.

I do not intend to suggest that the present motion has been made for the purpose of anticipating the final hearing, but, in view of the privity of the plaintiffs in this case with the plaintiff in the other, in which the writ has been allowed, it does not seem to be requisite to consider whether these plaintiffs also would, independently of the circumstances referred to, be entitled to a preliminary injunction. Therefore, no order will be made upon their present application, but the plaintiffs have leave to renew this motion at any time, if they shall be so advised.

MORROW SHOE MANUF'G CO. v. NEW ENGLAND SHOE CO. et al.

(Circuit Court of Appeals, Seventh Circuit. March 9, 1894.)

No. 71.

CREDITOR'S BILL—EQUITY JURISDICTION—CORPORATIONS.

Rev. St. Ill. 1893, c. 32, § 25, which authorizes a suit in the nature of a creditor's bill to be brought against corporations in certain cases by simple contract creditors, does not give federal courts jurisdiction to entertain such a suit where the creditor has not first exhausted his legal remedy, since the equitable jurisdiction of federal courts cannot be enlarged by state legislation.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

On petition for rehearing. For former opinion, see 6 C. C. A. 508, 57 Fed. 685.

Peckham & Brown and Miller & Starr, for appellant.

Flower, Smith & Musgrave, for appellees.

A. B. Jenks and W. A. Foster, for Peabody.

BAKER, District Judge. The appellees have filed petitions for a rehearing, which they have supported by elaborate briefs. We have given their petitions and briefs attentive consideration, and find no error pointed out which would justify the court in granting them a rehearing. The grounds upon which our decision is rested are fully stated in the opinion heretofore filed, to which we still adhere, and no good purpose will be subserved by adding anything to what is there stated. The petitions of the appellees are therefore overruled. The appellant has filed a petition for a rehearing and a modification of the opinion of the court by striking out of the same the following:

"The bill fails to allege that the plaintiff had prosecuted its claim to judgment, and had issued an execution thereon, and had the same returned nulla bona. For this reason the bill is insufficient within the doctrine of *Scott v. Neely*, 140 U. S. 106, 11 Sup. Ct. 712, and *Cates v. Allen*, 149 U. S. 451, 13 Sup. Ct. 883, 977."

The appellant further asks that the order of the court be modified to read as follows:

"That the decrees herein entered respectively on the 28th day of April, 1892, dismissing the bill of complaint as to the defendants Gore, Prouty, and Heimerdinger, and on the 9th day of May, 1892, dismissing the said bill as to Hiram B. Peabody, be reversed at the costs of said appellees, and that said cause be remanded to the court below for further proceedings not inconsistent with this opinion, and with leave to complainant to amend its bill as it may be advised within thirty days after the judgment herein shall be certified to said court."

Counsel for the appellant insist that the suit is brought under Rev. St. Ill. c. 32, § 25, and that under this section it is unnecessary to the maintenance of the suit that the claim should have been reduced into judgment and an execution issued thereon and returned nulla bona. This section provides that:

"If any corporation, or its authorized agents shall do, or refrain from doing any act which shall subject it to forfeiture of its charter or corporated pow-