

of the book to an agent or employe for sale only by subscription and for delivery to the subscribers, and the agent fraudulently sells to nonsubscribers, who have knowledge or notice of the fraud, such sale is an infringement of the original owner's copyright, who can disregard the pretended sale, and have the benefit of all the remedies which the statutes or the law furnish. This right to enjoy the benefit of the copyright statutes results from the fact that the owner has never parted with the title to the book or the copyright, although he parted with the possession of the book. But the right to restrain the sale of a particular copy of the book by virtue of the copyright statutes has gone when the owner of the copyright and of that copy has parted with all his title to it, and has conferred an absolute title to the copy upon a purchaser, although with an agreement for a restricted use. The exclusive right to vend the particular copy no longer remains in the owner of the copyright by the copyright statutes. The new purchaser cannot reprint the copy. He cannot print or publish a new edition of the book; but, the copy having been absolutely sold to him, the ordinary incidents of ownership in personal property, among which is the right of alienation, attach to it. If he has agreed that he will not sell it for certain purposes or to certain persons, and violates his agreement, and sells to an innocent purchaser, he can be punished for a violation of his agreement; but neither is guilty, under the copyright statutes, of an infringement. If the new purchaser participates in the fraud, he may also share in the punishment. *Clemens v. Estes*, 22 Fed. 899.

The distinction between the remedy of the owner of a copyright and the books published under its protection, who has retained the title to the books and the copyright, and has been defrauded by an unauthorized sale to a purchaser with notice, and the remedy of a copyright owner who has parted with his title to a copy of the copyrighted book, and has been injured by the failure of the purchaser to comply with his contract in regard to its use, is stated by Judge Hammond in *Publishing Co. v. Smythe*, 27 Fed. 914, as follows:

"The owner of the copyright may not be able to transfer the entire property in one of his copies, and retain for himself an incidental power to authorize a sale of that copy, or, rather, the power of prohibition on the owner that he shall not sell it, holding that much, as a modicum of his former estate, to be protected by the copyright statute; and yet he may be entirely able, so long as he retains the ownership of a particular copy for himself, to find abundant protection under the copyright statute for his then incidental power of controlling its sale. This copyright incident of control over the sale, if I may call it so, as contradistinguished from the power of sale incident to ownership in all property,—copyrighted articles, like any other,—is a thing that belongs alone to the owner of the copyright itself, and as to him only so long as and to the extent that he owns the particular copies involved. Whenever he parts with that ownership, the ordinary incident of alienation attaches to the particular copy parted with in favor of the transferee, and he cannot be deprived of it. This latter incident supersedes the other,—swallows it up, so to speak,—and the two cannot coexist in any owner of the copy except he be the owner at the same time of the copyright; and, in the nature of the thing, they cannot be separated so that one may remain in the owner of the copyright as a limitation upon or denial of the other in the owner of the copy."

The case of *Murray v. Heath*, 1 Barn. & Adol. 804, which is somewhat relied upon by the defendant's counsel, does not throw a strong

light upon a case arising under the statutes of the United States. The question was whether the sale of the engravings was, under the circumstances of the case, a violation of the English statutes,—which prohibited a piratical publication of the engravings of another,—or was a breach of contract. The court was of opinion that the statutes were not applicable. The other cases which were cited on the argument, are not applicable to the facts of this case, although they are instructive upon the rights of copyright owners under copyright statutes, or of the rights of owners of manuscripts. *Stephens v. Cady*, 14 How. 529; *Stevens v. Gladding*, 17 How. 447; *Parton v. Prang*, 3 Cliff. 537, Fed. Cas. No. 10,784; *Bartlette v. Crittenden*, 4 McLean, 300, Fed. Cas. No. 1,082; *Prince Albert v. Strange*, 2 De Gex & S. 652; *Taylor v. Pillow*, L. R. 7 Eq. Cas. 418; *Howitt v. Hall*, 10 Wkly. Rep. 381; *Hudson v. Patten*, 1 Root, 133. The discussion by Judge Hammond upon the general subject in *Publishing Co. v. Smythe*, supra, is most valuable, and any one who has occasion to examine this subject will find that the territory has been thoroughly explored.

Our conclusion is that, upon the facts stated in the bill and in the affidavits, the complainant has no remedy under the copyright statutes of the United States, and, as both the parties are deemed to be citizens of the state of New York, the complainant is without remedy in the circuit court for the southern district of New York. The order of the circuit court for a preliminary injunction is reversed and set aside, with costs.

THE PUBLIC BATH NO. 13.

TEBO et al. v. MAYOR, ETC., OF CITY OF NEW YORK et al.

SAME v. THE PUBLIC BATH NO. 13.

(District Court, S. D. New York. April 10, 1894.)

1. ADMIRALTY JURISDICTION—FLOATING BATH HOUSE.
A bath house built on boats, and designed for navigation and transportation, is within admiralty jurisdiction.
2. SALVAGE—SUBJECT-MATTER.
Use in trade and commerce, of the property saved, is not essential to salvage.
3. SAME—LIABILITY OF BAILEE.
A bailee in possession of a floating bath for repairs disobeyed the owner's directions as to its fastenings for security from storms, and increased its weight and exposure. *Held*, that he took the risk of its going adrift, and was bound to indemnify the owner for salvage thereupon.
4. SAME — SUIT IN PERSONAM — "REQUEST" FOR SERVICE WITHIN ADMIRALTY RULE 19.
A floating bath house, the property of a city, but in possession of a bailee for repairs, having gone adrift with no one on board, was picked up by a tug. *Held*, that as it was equally of the highest interest to the bailee and to the city to have it rescued, and as the right to proceed in rem against public property was doubtful, the request necessary, under S. Ct. admiralty rule 19, to sustain a suit in personam, might be implied, as respects both owner and bailee.
5. SAME.
Query, whether any part of admiralty rule 19 is applicable where the res is exempt from arrest as public property.