

to any obligation as surety or otherwise for the debt. A decree was entered finding the amount due from the railroad company on the bonds, and directing a sale of the mortgaged lands to pay the same. The county gave a bond conditioned according to law in \$40,000. It was held that this did not render the sureties liable to pay the deficiency remaining after applying the proceeds of sale or interest. As the decree in the case was not a judgment for money, but only a decree for sale to pay an adjudged sum in which the property followed the decree, it was manifestly not within the first class of judgments described in rule 29 as "for the recovery of money not otherwise secured," but was exactly within the second class of judgments and decrees therein mentioned.

There remains but one more objection to the judgment below to consider. It is said that no judgment could be taken until after the county had had time to make the levy on the lands to be taxed, and until October following the July in which the suit was brought no levy could be made under the law of Michigan. The obligee in the bond was under no duty to wait until then. The condition of the bond was broken when the supreme court affirmed the judgment, because then it was finally settled that the plaintiff in error had not prosecuted its appeal to effect. *Babbitt v. Finn*, 101 U. S. 7; *Davis v. Patrick*, 12 U. S. App. 629, 6 C. C. A. 632, and 57 Fed. 909.

The judgment of the circuit court is affirmed, with costs.

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LADD et al. v. OXNARD.

(Circuit Court, D. Massachusetts. April 16, 1896.)

No. 707.

1. APPLICATION FOR PRELIMINARY INJUNCTION.

It seems that, on an application for an interlocutory injunction, where defendant claims that the bill on its face is demurrable, he is entitled to the advantage of all the questions which could be raised upon demurrer; for the court will not grant an interlocutory injunction on a bill which it sees clearly could not be sustained on demurrer.

2. COPYRIGHT—PROTECTION OF STATUTES.

It may well be questioned whether the fact that one has not published, and the consequential fact that he has a remedy at common law, will deprive him of a concurrent remedy under the copyright statutes, when he has complied with all the requirements for obtaining a copyright.

3. SAME—WHAT IS A "PUBLICATION."

The issuance to subscribers, without count as to number, of a book of credit ratings and the financial standing of persons and firms engaged in a particular line of business, upon a stipulation that the same is merely loaned to the subscriber, and not sold, and that, if found in any other hands than those entitled to use it by permission of the publishers, the latter may take possession of it, and annul all rights of the subscriber, is a publication, sufficient to give the compilers a right to the protection of the copyright statutes, where they have taken the necessary steps to secure a copyright.

4. SAME—DEPOSIT OF COPIES—EVIDENCE.

Where it appears beyond doubt that complainants forwarded advance copies so early that the respondent could not possibly be prejudiced by any alleged delay therein, the court will not require any very direct proof that such copies were seasonably deposited in the mail, and it will be sufficient

if it is satisfied that the balance of probabilities, as shown by the evidence, is in favor of the complainants.

5. SAME—WHAT WILL BE PROTECTED—COMPILATIONS OF CREDIT RATINGS.

A book of credit ratings and financial standing of parties engaged in a particular line of business throughout the United States and Canada, containing information collected from original sources, by interviews and correspondence with persons acquainted with the particular trade, is entitled to protection under the copyright statutes.

6. SAME—INFRINGEMENT.

Where a very large proportion of a copyrighted compilation is plagiarized, it is immaterial that the defendant has done considerable work in the nature of corrections and additions thereto.

7. PRELIMINARY INJUNCTIONS—WHEN GRANTED.

When the result of a preliminary injunction is not simply to preserve the status quo, but (as often happens in copyright and patent cases) would operate to suspend temporarily the entire business of defendant, or so break it up as to result in permanent destruction, the court will ordinarily look for support of the complainant's case, either in long acquiescence by the public, or in some prior adjudication, or some other special matter. In view of the mischief that may sometimes be done by the granting of such an injunction by a single judge, the rule should be that a temporary injunction should never be granted in a case of new impression, if it be possible to effectuate justice in any other way. And the fact that the act establishing the circuit courts of appeal authorizes an appeal from an order granting such an injunction does not change the duty of the circuit courts in this respect.

8. SAME—ENJOINING INFRINGEMENT OF COPYRIGHT.

Where there was a clear infringement of a copyrighted compilation of the credit ratings and financial standing of persons engaged in a particular business, held that, in view of the fact that publications of this character depend for acceptance on the reputation of the compilers and publishers, so that defendant's book would presumably not obtain much circulation to the prejudice of complainants, a preliminary injunction would only be granted in the event of the failure of defendant to file by a date fixed a bond in a specified penal sum conditioned for the payment of any damages ultimately decreed against him.

This was a suit in equity by David M. Ladd and Albert M. Hunt, co-partners doing business under the name of United Mercantile Agency, against Edward P. Oxnard, for alleged infringement of a copyright. The complainants, beginning with the year 1890, have published annually a book, entitled the "United Mercantile Agency Credit Ratings," which contains credit ratings and the financial standing of marble, granite, and stone dealers and manufacturers in the United States and Canada. About November, 1895, the defendant, under the name of the Marble & Granite Exchange Mercantile Agency Company, published a book of reference, entitled "The Blue Book of the Marble & Granite Exchange Mercantile Agency," which also contained credit ratings, etc., of marble, granite, and stone dealers in the United States and Canada. Complainants allege that this book was an infringement upon their publications, and especially upon the edition of their work published in June, 1894; and the cause is now heard upon their application for an interlocutory injunction.

Upon the question of infringement the evidence consisted of affidavits, mainly, by the complainants and by the defendant and his son. The chief affidavit in support of the motion was made by complainant David M. Ladd, and is here set out in full:

## Affidavit of David M. Ladd.

[Filed February 6, 1896.]

United States of America, District of Massachusetts.

On this sixth day of February, A. D. 1896, before me personally appeared David M. Ladd, who, being by me duly sworn, deposes and says that he is one of the complainants in the above-entitled action; that he has during the past seven years had personal supervision and direction of the compiling, preparation, revision, and transcribing of the manuscript copy of each of the several editions of the United Mercantile Agency Credit Ratings for the Marble, Granite, and Stone Trade; that during that period his firm has continually had as subscribers, with one or two exceptions, all the leading manufacturers, quarriers, and wholesalers of marble and granite as used for both monumental and building purposes; that his firm and its representatives and agents have repeatedly consulted said subscribers with the aim and purpose in view of securing items of experience that would be of assistance in the revision and correction of said several editions of said Credit Ratings; and that from personal experience he has found it a matter of impossibility and impracticability to secure, from said individual subscribers or members of the wholesale trade, information, corrections, or changes of reliability or value to aid him in connection with the revision of said work, except as may have related to the particular customers or patrons of such individuals or concerns, which would necessarily and naturally be of limited number and a very small minority of all the firms and parties engaged in the various lines in the several states as included in said work. Said deponent further says that he had personal charge and supervision of the first edition of said Credit Ratings, issued in June, 1890, and that neither the compilation of that nor any of the several editions of the same work issued since that date have been or were compiled or revised from town or city directories or trade lists, but that the information and matter contained in said books were secured through special correspondents, agents, and representatives in all sections of the United States and Canada, and from direct correspondence with the retail dealers in marble, granite, and stone in the various towns and cities of the entire country; that the original answers to such direct correspondence with dealers, and the revised lists as sent in annually by said representatives, agents, and special correspondents, are now on file in the office of said complainants, and, in consequence, that if any instances occur where errors and misprints appear in both complainants' and respondents' books it cannot be explained or excused on the ground that both used the same common sources of information, unless it can be shown that complainants' agents and representatives and special correspondents also acted in the same capacity for said respondents. The deponent further says that he has made a careful comparison between the work issued by his firm in June, 1894, and the respondents' book, and that he finds that clerical errors and misspellings of his own making from the printed cards and letter headings and pen signatures of various dealers are reproduced in said respondents' book without change; that the names of parties who were never engaged in the marble, granite, or stone line, but whose names were inserted in Credit Ratings as detectives (or, in other words, for the purpose of enabling said complainants to discover infringements, should any be attempted) are also reproduced in the book of said respondents; that the names of towns correctly inserted in every standard atlas and gazetteer, but misspelled through error by said complainants in their book, also appear with like misspelling in the book of said respondents; that names wrongfully classified under towns of the same name in different states also appear reproduced without correction in said respondents' book, some of which are shown in the list or table herewith appearing, and further shown by the several letters and communications on file herewith, marked Exhibits A1 to Z, inclusive, and numbers 1 to 15, inclusive. The deponent further says that over ten thousand corrections and changes were made on the 1894 edition of Credit Ratings, as revised and issued in June, 1895, while said Blue Book, issued by respondents in November, 1895, is almost identical with the June, 1894, edition of Credit Ratings, issued seventeen months previously by the complainants, ex-

cept that a few corrections were made in Pennsylvania and one or two other states. The deponent further says that on the states of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, and Georgia the substance of the 1894 book of Credit Ratings is reproduced in the Blue Book, with only five or six alterations and one addition; while in the 1895 edition of Credit Ratings, issued seven months in advance of the Blue Book, several hundred changes, additions, and discontinuances were made in the same states. The deponent further says that no edition of the Credit Ratings issued to date has contained less than eight thousand changes from the book of the previous year, and that no two editions of Credit Ratings, published in different years, bear such close resemblance or show such uniformity in composition and make-up as do the Blue Book of the respondents and the 1894 Credit Ratings issued by complainants. The deponent further says that each year, since 1889, he has personally devoted two-thirds of his entire time, working long hours and frequently evenings in the revision of this work, constantly employing, during that period, three assistants in writing and mailing correspondence and lists for revision. The said deponent further says that, in such comparison of said Blue Book with said Credit Ratings of 1894 as he has been able to make (which has been thorough in the above-mentioned states), he finds the similarities given in said lists or tables hereinafter appearing, as to the states of Alabama, Arizona, Arkansas, and California, and says that the same similarity appears as to the states of Colorado, Connecticut, Delaware, and Georgia; and from his examination of other states the deponent believes that a further specification would be simply to recopy both of said books, except that some changes appear in the states of Pennsylvania and Massachusetts. In the said list or table hereinafter appearing, the deponent has in some instances added, after the word "Note," a few words in explanation, and that the word "Note" and explanation following should not be taken as appearing in either of said books. And the deponent further says that the following are the letters, characters, and numerals, and their respective significations, as appearing in the said Blue Book and said Credit Ratings:

## CREDIT RATINGS.

## TRADE CLASSIFICATIONS.

G	Granite
M	Marble
Z	Worker
R	Retail
Q	Quarry
H	Building
W	Wholesale
I	Interior
—	Monumental
B	Stone.

## BLUE BOOK.

## KEY OF TRADES.

M	Marble
G	Granite
S	Stone
W	Worker
X	Wholesale
R	Retail
Q	Quarry
B	Building
I	Interior
+	Monumental.

## ESTIMATED WEALTH.

1	\$1,000,000 and above.
2	500,000 to \$1,000,000
3	400,000 " 500,000
4	300,000 " 400,000
5	250,000 " 300,000
6	200,000 " 250,000
7	150,000 " 200,000
8	100,000 " 150,000
9	75,000 " 100,000
10	50,000 " 75,000
11	35,000 " 50,000
12	20,000 " 35,000
13	10,000 " 20,000
14	5,000 " 10,000
15	3,000 " 5,000
16	2,000 " 3,000
17	1,000 " 2,000
18	500 " 1,000
19	0 " 500
20	0

## KEY OF RATINGS.

AA	\$1,000,000.
A	300,000 to \$500,000
C	100,000 " 300,000
D	75,000 " 100,000
E	40,000 " 75,000
F	20,000 " 40,000
H	10,000 " 20,000
J	5,000 " 10,000
K	2,500 " 5,000
L	1,500 " 2,500
N	600 " 1,500
P	1 " 600
1	First-Class Pay
2	Prompt Pay
3	Fair Pay
4	Moderate Pay
5	Investigate Pay.

And said deponent submits the following list or table:

## CREDIT RATINGS.

## BLUE BOOK.

## ALABAMA.

Anniston Calhoun.  
 \*M—Jewell, W. P. & Co.  
 Birmingham Jefferson  
 MB—Alabama Marble & Stone Co.  
 (Cap. paid in \$12,300.)  
 \*M—Birmingham Marble Works  
 (See Thos. H. Holt)  
 \*M Holt, Thos. H.  
 Calera, Shelby  
 \*M Evans, Samuel J.,  
 Decatur Morgan  
 \*M Hummel, J.,  
 \*M Stewart, W. P.,  
 Eufaula Barbour  
 \*M Tansey, James,  
 Florence Lauderdale  
 \*M Eldred, C. B.  
 \*M Florence Marble Works  
 (See C. B. Eldred)  
 Fort Payne De Kalb  
 \*M Little, N. B.  
 Gadsden Etowah  
 \*M Darnell, M. S. & Co.  
 Hartsell's Morgan  
 \*M Moore, & Stinson

Anniston, Calhoun Co.  
 15 F GM+ Jewell, W. P. & C. I. K 3  
 Birmingham Jefferson Co.  
 GMS—Alabama Marble and Stone Co. (cap.  
 paid in \$12,300.)  
 GM+ Birmingham Marble Works  
 (See Thos. H. Holt)  
 17 F GM+ Holt, Thos. H. L 3  
 Calera, Shelby Co.  
 20 GM+ Evans, Samuel J. 5  
 Decatur, Morgan Co.  
 20 J GM+ Hummel, J. 5  
 19 J GM+ Stewart, W. P. P 4  
 Eufaula, Barbour Co.  
 13 E GM+ Tansey, James H 3  
 Florence, Lauderdale Co.  
 17 J GM+ Eldred, C. B. L 3  
 GM+ Florence Marble Works,  
 (See C. B. Eldred)  
 Fort Payne, De Kalb Co.  
 19 K GM+ Little, N. B. P 4  
 Gadsden, Etowah Co.  
 GM+ Darnell, M. S. & Co.  
 Hartsell's, Morgan Co.  
 19 J GM+ Moore & Stinson P 4

Note. W. S. Stinson had succeeded Moore & Stinson. (See 1895 Credit Ratings.)

Huntsville Madison  
 \*M Bakers & Conway 14 E Huntsville, Madison Co. J 3  
 \*M Hummell, Schaake & Co. J GM+ Bakers & Conway 5  
 GM+ Hummell, Schaake & Co. 5

Note. J. F. Hummel & Sons had succeeded Hummell, Schaake & Co. (See Exhibit A1 and error in spelling.)

Isbell Franklin  
 (Atty. Sheffield, 24 Miles)  
 BQ Isbell Quarry Co.  
 Jacksonville Calhoun  
 \*M Jacksonville Marble Works  
 (See S. F. Lively)  
 \*M Lively, S. F.  
 Isbell, Franklin Co.  
 (Atty. Sheffield 25 miles)  
 SQ Isbell Quarry Co.  
 Jacksonville, Calhoun Co.  
 GM+ Jacksonville Marble Works  
 (See S. F. Lively)  
 GM+ Lively, S. F. 4

Note. Calvin Wright had started new at Jasper, before June 1, 1895.

Mobile Mobile  
 M McDonald, March & Co. 10 D GM+ McDonoid, March & Co. E 2  
 158 North Royal St.  
 GM+ Mobile Marble Works  
 (See McDonald, March & Co.)  
 Montgomery Montgomery Co.  
 \*M Curbow-Clapp Marble Co. 14 E GM+ Curbow-Clapp Marble Co. J 2  
 Opelika Lee Co.  
 \*M Kinney, Geo. 19 J GM+ Kinney, Geo. P 4  
 Rockwood Franklin Co.  
 BQ Fossick, T. L. Co.  
 (Inc.) (See Sheffield)  
 Selma, Dallas Co.  
 \*M Montgomery, J. N. & Son 14 E GM+ Montgomery, J. N. & Son J 2  
 Sheffield Colbert Co.  
 BQ Fossick, T. L. Co. (Inc.) D SQ Fossick, T. L. Co. (Inc.) 3  
 (cap. paid in \$150,000) (Cap. paid in \$150m)

Note. T. L. Fossick Co. should read (See Rockwood) after name.

Talladega Talladega  
 \*M Taylor, Lafayette, 18 F Talledaga, Talledaga Co. N 2  
 GM+ Taylor, Lafayette  
 Note. At Tuscaloosa James Gaudin and Wildman & Gardner had started new (see Exhibit B), and T. H. Wildman had succeeded before Oct. 13, 1895.

## ARIZONA.

## ARIZONA.

Flagstaff Yavapai  
 B Arizona Sandstone Co.  
 (See Los Angeles, Cal.)  
 B English & Padgham 19 J S English & Padgham P 4

Note. W. H. Smith had started new before June 1, 1895.

## CREDIT RATINGS.

## BLUE BOOK.

## ARIZONA—Continued.

Phoenix Maricopa  
 \*M Bliss & Ligier 18 F  
 M Cohise Marble & Onyx Co.  
 \*M Gregory, J. M. 13 E  
 M Phoenix Marble & Stone Co.  
 (Cap. \$50m.)

## ARIZONA—Continued.

Phoenix, Maricopa Co  
 GM+ Bliss & Ligier N 4  
 GM+ Cohise Marble & Onyx Co.  
 GM+ Gregory, J. M. N 3  
 GM Phoenix Marble & Stone Co.  
 (Cap. \$50m)

Note. L. R. Ligier had succeeded Bliss & Ligier before June 1, 1895.

Prescott Yavapai  
 \*M Mair, Jacob,  
 Tombstone Cochise  
 \*M Ritter & Taylor 20 J

Prescott, Yavapai Co.  
 GM+ Mair, Jacob,  
 Tombstone, Cochise Co.  
 GM+ Ritter & Taylor 4

## ARKANSAS.

Batesville Independence  
 BQ Bartlett, Jesse M. 17 J  
 BZ Cone, J. C.  
 BZ Joblin Frank,  
 \*M Wiebusch, H. J. 19 J

ARKANSAS.  
 Batesville, Independence Co.  
 SQ Bartlett, Jesse M. L 4  
 SW Cone, J. C.  
 SW Joblin, Frank P 4  
 GM+ Wiebusch, H. J. P 4

Note. Jesse M. Bartlett and J. C. Cone had discontinued June 1, 1895.

Bentonville Benton  
 \*M Holland & Pearson  
 \*M McWhirter & Corley

Bentonville, Benton Co.  
 GM+ Holland & Pearson  
 GM+ McWhirter and Corley

Note. Corley & Backus had succeeded Holland & Pearson, McWhirter Bros. had succeeded McWhirter & Corley before June 1, 1895.

Jamden Oauchita  
 \*M Camden Marble Works  
 (See C. A. Weller)  
 \*M Weller, C. A.

Camden, Oauchita Co.  
 GM+ Camden Marble Works  
 (See C. A. Weller)  
 GM+ Weller, C. A.

Note. Weller & Wilson had succeeded C. A. Weller before June 1, 1895.

Clarendon Monroe  
 \*M Rawlings, Tucker W. 19 J  
 Clarksville Johnson  
 \*M Caldwell, Zach.

Clarendon, Monroe Co.  
 GM+ Rawlings, Tucker W., P 4  
 Clarksville, Johnson Co.  
 GM+ Caldwell, Zach.

Note. Zach. Caldwell discontinued business before June 1, 1895, and Rufus Norton and Henry L. Bunch had started in business before said date.

Dardanelle Yell  
 \*M Bennett, & Urmston 18 J  
 Eureka Springs Carroll  
 \*M Abbey, M. A. J  
 \*M Eureka Onyx Co.  
 (Cap. paid \$20m)  
 Fayetteville Washington  
 BQ Morley, Albert H. 20 K

Dandanelle, Yell Co.  
 GM+ Bennett & Urmston N 4  
 Eureka Springs, Carroll Co.  
 GM+ Abbey, M. A. 4  
 GM+ Eureka Onyx Co.  
 (Cap. paid in \$20m.)  
 Fayetteville, Washington Co.  
 SQ Morley, Albert H. 5

Note. Before June 1, 1895, William Davenport had started new, and Albert H. Morley had admitted his son, changing the style to A. H. Morley & Son.

Fort Smith Sebastian  
 \*M Daley, Farrell 19 J  
 400 Towson ave  
 \*M Fort Smith Marble Works  
 (See Smith & Tobey)  
 \*M Smith & Tobey 15 E  
 911 Garrison ave  
 Hope Hempstead  
 \*M Welcome, Wm. W.

Fort Smith, Sebastian Co  
 GM+ Daley, Farrell P 4  
 400 Towson Ave  
 GM+ Fort Smith Marble Works  
 Inc. 200M  
 (See Smith & Tobey)  
 GM+ Smith & Tobey 3  
 911 Garrison Ave  
 Hope, Hempstead Co.  
 GM+ Welcome, Wm. W.

Note. W. L. Warmack had started before June 1, 1895.

Hot Springs Garland  
 \*M Hill, Theodore, 19 J  
 121 Oauchita St.  
 Jonesborough Craighead  
 \*M Taylor, Dempsey. 19 J

Hot Springs, Garland Co.  
 GM+ Hill, Theodore P 4  
 121 Oauchita St.  
 Jonesboro, Craighead Co.  
 GM+ Taylor, Dempsey P 4

Note. E. Stull succeeded Dempsey Taylor before June 1, 1895.