COPYRIGHT PROTECTION

AND

STATUTORY FORMALITIES.

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BY

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COPYRIGHT PROTECTION AND STATUTORY FORMALITIES.

Introductory remarks by Mr. J. F. Bower, President of the Music Publishers' Association:

GENTLEMEN: The members of our Association and the members of the trade in general seeking to obtain copyrights will remember the great difficulties and the great annoyances experienced up to a few years ago. The question of copyright and of matters entering into the question of copyright seemed hedged about with all sorts of difficulties and annoyances and delays to such an extent that the obtaining of a copyright was absolutely laborious; it was unsatisfactory in the extreme. Due to the continued and continuous effort of our Association and in a large measure to the kind offices of the Librarian of Congress and the Copyright Office, the two were practically separated and made separate and distinct institutions.

The members of the Association and of the trade in general will bear me out in saying that under the new regime and under the new dispensation and order of things the obtaining of copyright has been reduced to a comparative pleasure, more particularly in the matter of expedition, promptness, and thoroughness generally, and I think the gentleman who has contributed to that result as much as any officer of the Government is the gentleman whom I am about to have the pleasure of introducing to you. We have made his address and his appearance here in New York on this occasion a matter of moment to our organization and

one which we think will mark a red-letter day in its affairs. The gentleman will discuss with you matters and things pertaining immediately to your own business as they come under his direction in Washington. He will also be open to the answering of any legitimate and proper questions along the line of his work. Questions which have no bearing on the case or are merely idle questions will not be discussed. After the gentleman has completed his address any one member at a time will be permitted to ask a question, which will be answered. This will not be an argumentative or long-winded affair, and there will be no sparring or cross-questioning. The gentleman will make his meaning clear to you, and I hope you will make your questions equally clear and explicit to him, and I am satisfied that if you do so you will receive ample satisfaction in the clearing up of any doubts or misunderstandings concerning matters relating to copyright and copyright legislation which he may be able to offer you.

I have the pleasure of introducing to you Mr. Thorvald Solberg.

Mr. Solberg was received with applause, and proceeded to say:

Gentlemen: I felt somewhat embarrassed appearing here at all, and my embarrassment has been increased by the speech of your President. I am afraid that at the conclusion of my address I shall seem to have rather lamely carried out the programme he has mapped out; but I shall at least endeavor in the remarks I shall make to give them a proper bearing, and what I want to bring to your notice particularly are matters which are every-day matters of business at Washington, because their rightful understanding certainly has to do with what you can secure in the way of copyright protection, a protection which shall be valid and useful and not merely a protection which may seem such. I may seem a little tedious in my first remarks in leading

up to what I want to have you carry away with you; but if you will bear with me, I think you will see that it is not undesirable for you to know something about the development of the legislation which plays so important a part in your practical business affairs.

Statutory copyright dates from the passage of the English act of 8 Anne, chapter 19, of the year 1709. That act, which related wholly to books, was followed by acts in 1735, 1767, and 1777, dealing with engravings. These four acts, together with a special statute giving protection to the copyright privileges of the English universities (1775) and the supplementary acts to prevent unauthorized importation,* formed the total existent legislation upon this subject, for the earliest French law only came into force in 1791, at the time when the first movements were being made in America to secure legislation to give protection to authors. This English legislation, therefore, was necessarily the only model available when our original thirteen States felt called upon to legislate upon the subject of copyright.

GROWTH OF COPYRICHT LEGISLATION.

I. State Legislation.

Connecticut was the first of the original States to feel a need for securing recognized protection to her authors, and in the January session of the legislature of 1783 was passed "An Act for the encouragement of literature and genius." Massachusetts followed on March 17, 1783, with "An Act for the purpose of securing to authors the exclusive right and benefit of publishing their literary productions for twenty-one years," and Maryland on April 21, same year, with "An act respecting literary property." These acts were all due to the personal efforts of Noah Webster, who not only en-

*12 Geo. II, chap. 36, 1739; 20 Geo. II, chap. 47, 1747; 27 Geo. II, chap. 18, 1754, and 38 Geo. II, chap. 16, 1759.

deavored to arouse interest in the necessity for copyright legislation by correspondence, but traveled from one State capital to another to urge it. He also went to Washington to bring the matter to the attention of the Federal Legislature, the immediate result being the passage of a Resolution by the Colonial Congress on May 27, 1783, recommending "the several States to secure to the authors or publishers of new books the copyright of such books," for a term of not less than fourteen years, with a renewal term of fourteen years more. Following this recommendation, the remaining thirteen original States (except Delaware) passed such laws—New Jersey, New Hampshire, and Rhode Island in 1783, Pennsylvania and South Carolina in 1784, Virginia and North Carolina in 1785, and Georgia and New York in 1786.*

II. Federal Legislation.

The following year, 1787, the Federal Constitution was adopted, and in the eighth section of its first article power is given to Congress: "To promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." Thereupon followed the first Federal copyright act of May 31, 1790. Its provisions were confined to books and maps, and the term of protection was exactly that recommended by the Congressional resolution of 1783, namely, fourteen years, with a renewal for fourteen years more. The next act, of April 29, 1802, extended copyright protection to prints, while an act of February 15, 1819, gave to circuit courts original jurisdiction in copyright causes, with a writ of error or appeal to the Supreme Court of the

*The exact dates of those acts are: New Jersey, May 27, 1783; New Hampshire, Nov. 7, 1783; Rhode Island, December session, 1783; Pennsylvania, Mar. 15, 1784; South Carolina, Mar. 26, 1784; Virginia, October session, 1785; North Carolina, Nov. 19, 1785; Georgia, Feb. 3, 1786; New York, Apr. 29, 1786.

United States. In 1831 * came the first general revision of the copyright laws, when musical compositions were added to the articles protected, while the period of protection was increased to a first term of twenty-eight years and a renewal term of fourteen years.

Provision for the assignment of copyrights was made on June 30, 1834, while the act of August 18, 1856, extended protection to dramatic compositions. The appeal of copyright causes to the Supreme Court of the United States was reënacted on February 18, 1861, and photographs were included in the protection accorded, by the law of March 3, 1865. The second general revision of the copyright laws, the work of the commissioners appointed to revise the entire statute law, was embodied in the act of July 8, 1870, and that act is the foundation of our present copyright law. By this act copyright protection was extended to chromos, and to original works of art—paintings, drawings, and statuary. By its provisions, also, the registration of copyrighted articles was transferred to the Library of Congress.

The work of the statute-revision commissioners became, with some minor changes, title 60, chapter 3, of the Revised Statutes adopted and published in 1873. By the act of June 18, 1874, a portion of the copyright business was transferred to the Patent Office, namely, the registration of labels and of prints relating to articles of manufacture, and this branch of copyright registration still remains in the charge of the Commissioner of Patents.

The next important alteration of the copyright statutes was made by the act of March 3, 1891, commonly called the "International Copyright Act." By this legislation the privileges of copyright in the United States were extended to foreign authors. Other changes effected by this act were that authors were given the exclusive right to dramatize and translate their copyrighted works; that only such books as are printed from type set within the United States may be

* February 3, 1831.

protected; that chromos and lithographs must be made in the United States, and protected photographs be printed from negatives made in the United States. This act also provided for the printing of the weekly Catalogue of Title Entries.

Of legislation subsequent to 1891, an act of March 3, 1893, modifies in some cases the result of non-delivery of copies; a paragraph in the public-documents act of January 12, 1895, provides that no Government publication shall be copyrighted; the act of March 2, 1895, relates to damages to be recovered in case of infringement of a newspaper or periodical; the act of January 6, 1897, increases the penalty for unlawful performance or representation of plays, making it (if wilful and for profit) a misdemeanor punishable by imprisonment not exceeding one year; while the act of March 3, 1897, strengthens the penalty for printing a false notice of copyright, a fine of one hundred dollars being recoverable for this offense, one-half to go to the person who shall sue, and one-half to the use of the United States. By a paragraph of the appropriation act of February 19, 1897, the office of Register of Copyrights was created, and that official was charged with the performance of all the duties relating to copyrights, under the direction and supervision of the Librarian of Congress.

STATUTORY FORMALITIES.

This brief summary includes all the important general copyright laws, but I wish to bring to your notice somewhat more in detail the various enactments relating to statutory formalities, and to indicate as clearly as possible the development of the three acts which have become conditions precedent to obtaining valid copyrights: (1) The registration of title; (2) The deposit of copies; (3) The attaching of the notice of copyright.

I. Registration of Title.

So far as the requirement of registration is concerned, the legislation of the original States differed considerably. The

acts of Massachusetts, New Hampshire, and Rhode Island contained no provisions as to registration of title. The acts of Maryland (1783) and South Carolina (1784) required registration, not as a prerequisite to obtaining copyright protection, but to prevent liability to punishment for unauthorized republication by reason of ignorance. The exact provisions of the two States differ slightly, but are substantially the same, those for South Carolina reading in part as follows:

"And whereas many persons may, through ignorance, offend against this act, unless some provision be made whereby the property in every such book, as is intended by this act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or re-printing of such book or books, may from time to time be known; Be it therefore further enacted by the authority aforesaid, that nothing in this act contained shall be construed to extend to subject any book-seller, printer, or other person whatsoever, to the forfeitures or penalties therein mentioned, for or by reason of the printing, or re-printing of any book or books, without such consent as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in a register book provided for that purpose by the secretary of the State."

The resolution of the Colonial Congress—recommending that the various States pass copyright laws—contained no suggestion either as to the registration of title or the deposit of copies, but only that the desired security be obtained "by such laws and under such restrictions as to the several States may seem proper." In the acts of seven of the States, however (Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, Georgia, and New York), registration of the titles of the books claiming copyright was made a condition precedent to obtaining the protection. The language of the provisions is substantially equivalent and to the effect that no author shall be entitled to the benefit of the act until he shall duly register the title of his book and his name as

author. Generally the registration was to be made in the office of the Secretary of State. In the case, however, of the seven States enacting renewal terms (Connecticut, Maryland, New Jersey, Pennsylvania, South Carolina, Georgia, and New York), the laws of none of these States required a second registration of title because of the renewal term.

Coming now to the provisions of the Federal laws as to registration, we find that the law of 1790 enacted that "no person shall be entitled to the benefit of the act * * * unless he shall before publication deposit a printed copy of the title in the clerk's office of the district court in the district where the author or proprietor shall reside." The first act of general revision of 1831 reënacted this requirement without change; the act of July 8, 1870, made no alteration except to require the deposit of title to be made in the Library of Congress, and this provision was repeated in title 60, chapter 3, of the Revised Statutes, while the act of March 3, 1891, only added the stipulation that the deposit of title should take place before publication in this or any foreign country. This remains the law in force today, making it a condition precedent to obtaining copyright protection that the title be deposited for record before any publication of the work.

II. Deposit of Copies.

Coming now to the second prerequisite to copyright protection, the deposit of copies, and going back to the beginning of United States legislation in this matter, we find that only one of the original States required deposit of copies, Massachusetts legislating in the act of March 17, 1783, as follows: "Provided, always, That every author of such book, treatise, or other literary work shall, in order to his holding such sole property in them, present two printed copies of each and every of them to the library of the University of Cambridge, for the use of the said university;" and the

act further provided that in order to recover the legal forfeiture for unauthorized republication a receipt for the deposit of the book from the Librarian of the University was to be produced in open court.

Federal legislation in regard to deposit of copies is considerable and varied. The act of 1790 required the delivery of "a copy" to the Secretary of State, and this deposit could be made at any time within six months after publication. This last fact and the wording of the law go to show that the deposit of the copy was not intended to be a prerequisite to copyright protection. The act of April 29, 1802, which extended copyright protection to prints, provided for the performance, in the case of engravings, of all the "requisites" directed in sections 3 and 4 of the act of 1790, namely, registration of title and deposit of copies. The first act of revision, of February, 3, 1831, reënacted the requirement of a deposit of one copy, but changed the place of deposit from the office of the Secretary of State of the United States to the office of the clerk of the District Court of the District in which the author resided, and reduced the time within which deposit could be made from six to three months after publication. The requirement of deposit still remained, however, merely directory, and was not a condition precedent to copyright protection.

On August 10, 1846, was passed the act establishing the Smithsonian Institution; and by its tenth section it was provided that of every article for which a copyright should be secured there should be delivered one copy, within three months from publication, to the librarian of the Smithsonian Institution, and one copy to the librarian of the "Congress Library, for the use of said libraries;" and on March 3, 1855, it was provided that these copies might be sent through the mails free of postage. By the act of 1831 it was required that all copyright deposits should be forwarded by the clerks of the District Courts to the Secretary of State of the United States at least once each year to be pre-

served; and the act of February 5, 1859, providing for the keeping and distributing of all public documents, ordered the transference of this accumulation of copyright deposits from the Department of State to the Department of the Interior, the latter department being substituted for the Department of State as the depository of copyright publications and charged with all the duties connected with the same, and with all matters pertaining to copyright, in the same manner and to the same extent that the Department of State had been formerly charged. This accumulation of material was finally transferred by the act of July 8, 1870, to the Library of Congress, and is now preserved in the Copyright Office.

Meantime, by a copyright amendatory act of March 3, 1865, it was provided that "a printed copy of every book, pamphlet, map, chart, musical composition, print, engraving, or photograph for which a copyright shall be secured" should be transmitted "within one month of the date of publication, to the Library of Congress at Washington, for the use of said library." It was further enacted that in case of neglect to deliver as the act required, it should be the duty of the Librarian of Congress to make a demand in writing "at any time within twelve months after publication; and in default of delivery within one month after the demand shall have been made, the right of exclusive publication secured under the acts of Congress respecting copyright shall be forfeited." Two years later (February 18, 1867) it was deemed desirable to add a penalty of twenty-five dollars, to be collected by the Librarian of Congress in the name of the United States, in the case of failure to make the required deposit within one month after publication. This penalty of twenty-five dollars for failure to make deposit is still in force.

The second act of general revision of July 8, 1870, provided for the deposit of copies in the Library of Congress, changed the number from one to two copies of each copy-

right book or other article, reduced the time within which deposit could be made from one month to ten days after publication, and enacted that "no person shall be entitled to a copyright" unless the deposit is made as required. When this act was taken over as title 60, chapter 3, of the Revised Statutes, the phraseology of the provisions was slightly changed so as to accentuate the fact that the deposit of copies was put on an exact footing with the registration of title as a condition precedent to copyright protection. Finally, by the act of March 3, 1891, the ten days' period after publication allowed for making the deposit was eliminated, it being provided in lieu thereof that the deposit should be made "not later than the day of publication in this or any foreign country."

III. Notice of Copyright.

As concerns the third formality, the printing of a notice of copyright, only one of the acts of the original States contained any provision in relation thereto. The act of Pennsylvania of March 15, 1784, required that there should be inserted on the back of the title page of each book and pamphlet copyrighted, the certificate of entry, and it was also enacted that no author should be entitled to the benefit of the copyright act unless this was done. The Federal act of 1790 required the publication for a space of four weeks of the record of the registration of title in one or more of the newspapers printed in the United States, but did not require the notice to be printed on the article. The amendatory act of 1802, however, required, in addition to such publication in the newspapers, that the certificate should be inserted "at full length" in the title page, or in the page immediately following the title, in the case of a book, and in the case of a map, the printing of a special statutory form of notice, the same notice being required to be engraved on the plates for copyright prints, all of which to be done before becoming entitled to the benefit of the act.

The act of 1831, while dropping the requirement of printing the certificate of registration in the newspapers, explicitly required as a condition precedent to copyright protection the publication of a statutory notice of copyright upon each copy of every copyright production. The general act of revision of 1870 favorably modified the requirement of notice by changing the wording to read "that no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof" by inserting the statutory form of notice. Curiously enough, this law reverted, after a lapse of nearly forty years, to the antiquated requirement of a newspaper publication of the record of registration of title in the case of renewal, and this stipulation is still in force. The provision as to notice was adopted unchanged by title 60, chapter 3, of the Revised Statutes, and was only changed in the amendatory act of June 18, 1874, by the addition of an alternative form of the notice, shortened and simplified.

SUMMARY OF STATUTORY PROVISIONS.

Summarizing these various statutory provisions which have become conditions precedent to obtaining copyright protection, we find, so far as the registration of title is concerned, that seven of the original thirteen States required such registration as a condition to obtaining protection, but made no stipulation as to when registration should take place, and did not require it in regard to the renewal term. Federal legislation, however, required such registration of title before publication as a prerequisite to protection, and that requirement has been ever since maintained.

Only one of the original States (Massachusetts) required any deposit of copies, while the early Federal laws required only the deposit of one copy to identify the article upon which copyright was claimed, and allowed six months from publication in which to make it. By the act of 1831 the six

months was reduced to three, and fifteen years later two additional copies were required, one for the Smithsonian Institution and another for the Library of Congress. In 1865 the three months during which copies could be deposited were cut down to one, and if deposit was not made within twelve months after publication and after demand for it from the Librarian of Congress within one month, the copyright was thereby forfeited—the first intrusion of the idea that copyright protection should be made to depend upon the deposit of copies. By the act of 1870 the time of grace was cut down from one month to ten days, and by the act of 1891 no grace at all was allowed, deposit being required on or before the day of publication, and it was frankly made a condition precedent to protection.

Only one of the original States required notice of copyright to be placed upon the book. The first Federal law required no notice, but publication in the newspapers; then both publication and notice were required, until the act of 1831, while dropping publication, made the printing of the notice upon each article a prerequisite to copyright protection. Finally, the present law requires notice not as a condition precedent to protection, but in order to maintain an action for infringement.

It is not my purpose to take up the various decisions of the courts in relation to these statutory formalities, but I do wish to emphasize the fact that the courts have almost invariably construed the stipulations as to registration and deposit of copies with great strictness, as also sometimes the requirement of printing the notice of copyright. A striking illustration of this are the decisions of the Supreme Court of the United States, handed down as recently as the 1st day of this month, in the cases brought in relation to Oliver Wendell Holmes' "Professor at the Breakfast Table" and Mrs. Stowe's "Minister's Wooing." I have purposely dwelt at such length upon these statutory formalities in order to make clear their genesis and their intimate relation to copy-

right protection under our present laws, with a willingness to arouse in your minds the question, Whether literary property protection should be thus made to depend absolutely upon exact compliance with technical requirements. This detailed presentation of the origin and development of these formalities will make it clear, of course, that the question desired to be raised is not whether registration and deposit should be required, but just what should be the nature and extent of their effect upon literary and artistic property.

It is very generally admitted by all who have to do with copyright matters that our present laws require amendment, and the song-writers, musical composers, and music publishers of the United States have obviously a large interest, of a most practical nature, in such possible recodification of the copyright statutes. Meanwhile, it cannot be safely overlooked that ours is an elaborately technical system, and that while our legislation is based on a constitutional provision which recognizes that an author has the exclusive right to his writings, the laws in force secure merely the granting of a privilege, for a limited time, upon compliance with certain specific statutory provisions. The articles which are protected are distinctly named. Not the *classes* of articles, but the *specific* articles. The persons who may secure the protection are explicitly designated. The acts they are to perform in order to obtain such protection are exactly set out. Under these circumstances it is obligatory that the statutory provisions be strictly interpreted. It cannot be safely assumed that this or that will follow by reason of supposed analogy, or that the narrow and explicit provisions of the law can be broadly construed. It is admittedly desirable that a liberal construction of the laws should be made to protect the equitable right; but it is the dictate of prudence that there should be such careful procedure in relation to obtaining copyright that questions may be eliminated, not obtruded. It is not wise to decide what the law or the rights

secured under the law ought to be, and then insist upon proceeding accordingly while ignoring the actual provisions of the law and what may actually be done under them.

Many examples might be given of questions which arise in relation to copyright in music, but I will only ask your consideration of a few, concerning which misunderstanding exists such as affect the applications presented to the Copyright Office. The matters to which I wish to direct your attention are, the title to be filed, the date of the registration, the form of the copyright notice, and who is entitled to copyright.

THE TITLE TO BE FILED.

The law requires as the first step preliminary to securing copyright that a title shall be filed. The exact provision of the law as to this title is simply that it shall be a "printed copy of the title." Whether that implies an absolute necessity to file a title printed from type has been questioned. For a long term of years the Copyright Office has not refused to register typewritten titles in lieu of titles printed from type, probably because of the opinion in the case of Chapman *vs.* Ferry *et al.*, decided December 3, 1883,* in which case it was held that the title filed for a map, produced by tracing the lithographed title of the printed map upon tracing paper with a pen, was a sufficient compliance with the requirements of the law to hold against infringement. In relation to this, however, as in relation to much else in the copyright law, it is sound advice to suggest such a course as will eliminate the question. In most cases the printed title-page can as readily be filed as the typewritten copy, and the experience of the Copyright Office demonstrates how frequently such copying leads to errors of transcription, not always detected before recording has taken place, thus resulting in what may prove a lurking cause for future embarrassment.

* In 18 Federal Reporter, pp. 539–543.

Of more serious import may be the form and style of the title filed for record. In relation to no other class of copyright subjects do so many questions arise as to title as in the case of music. Music publishers seem to be only beginning to favor the idea of a distinctive title page for each musical composition or each edition of it. The method is still very prevalent of printing on the cover or front page, in lieu of a distinctive title, a list of pieces, either all by the same composer or pieces of a similar class of music, a group of pieces, the particular one within the cover being identified by underscoring some descriptive indication. In other cases, instead of a cover title distinctly indicating the composition, there is something devised more for the purpose of attracting attention than of furnishing information. But the purpose in filing the title, under the law in force, is to *identify* the article designated. Care, therefore, should be taken that the title filed should be such that when recorded it really does identify the published music. Moreover, the music entries require to be indexed, and by law must be included in the weekly Catalogue of Title Entries. Each year now adds to the entries for musical compositions upward of twenty thousand titles and makes it proportionately more necessary that each title should be in some way differentiated from the others.

Another matter apparently not understood is that it is only the title filed which can go on record, and only that which is included in the title which can be recorded. Applications are constantly received containing statements additional to the wording of the title, apparently with the desire that they be recorded as part of the title. For example, the application form transmitting the title will say, "For band" or "For orchestra," or "For piano," etc. It is to be supposed that the applicant attaches value to such statement, presumably desiring the fact stated brought out when recording the title; but if so, a title or title page should be sent for registration which contains exactly what it is desired to have appear on

the records. The Copyright Office cannot, with due regard for the copyright interests of the applicant, undertake to edit his title. That should be done before the title is sent to the office, and if the printed title page is not worded exactly as the applicant desires his title recorded, he should make up a title with the exact wording required either by eliminating from or adding to the printed title or by typewriting an entire title.

It would seem that the question of suitable title pages for musical compositions would offer an interesting and not unimportant matter for consideration and discussion and furnish opportunity for good work by a committee of the Music Publishers' Association.

DATE OF ENTRY.

It seems not sufficiently understood that the Copyright Office is not authorized to date the registry of title upon any date desired. Requests are not infrequent that a certain date be given the record of receipt of title. Sometimes this date is a future date, subsequent to the actual receipt of the title in the office; sometimes a past date, anterior to the date of actual receipt; sometimes the date of the mailing of the title, and occasionally, in the latter event, the postmaster's receipt is sent to show the date of such mailing as authority to the office to give the record entry a corresponding date. This last cannot be done, however. The exact wording of the law is, "deliver at the office of the Librarian of Congress, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington."* The law requires that the postmaster shall, if requested, give a receipt for such mailed title, and that he shall then mail it to its destination.† But whatever value may, upon occasion, attach to such postmaster's receipt, it is not a document which gives to the Copyright Office any authority to

* Revised Statutes, section 4956.
† Revised Statutes, section 4961.

date the copyright entry upon a corresponding date. The law is quite explicit as to the date to be given of record for the receipt of the title. It provides in section 4957 of the Revised Statutes the exact wording of the record book into which the title is to be copied. This record, as provided by law, is an acknowledgment of the date of receipt of the title. It reads in part: "Library of Congress, to wit: Be it remembered that on the — day of ——, A. B. hath deposited in this office the title of a book," etc. As the correctness of this record may at any time be required to be acknowledged under seal and signature, it should be a statement of fact; and it is so made a statement of exact fact. The date of receipt at the Library of Congress is taken as the date of receipt in the Copyright Office, and such date of receipt is immediately stamped upon the title received. Hence requests to date titles received upon one day back to any stated anterior date cannot be acquiesced in.

The complications arising from endeavors to obtain international protection have led to a feeling of the necessity or desirability of obtaining simultaneous registration at Washington and London, and to requests that a title received on one date shall be held and entered on another subsequent date. This has been acquiesced in by the office upon special request, but with disclaimer of responsibility for the result, on the understanding (a sort of legal fiction) that such title is received by the Register of Copyrights, in the first instance, in his *private* capacity as the agent of the applicant, as it were, and that upon the date indicated he takes over the title in his *official* capacity as filed upon that day. But experience has very clearly demonstrated the undesirability this course, and endeavor is made to induce a discontinuance of requests for such subsequent dating. Not infrequently have the dates requested proved to be *dies non* in the law—Sundays or holidays. A date will be indicated, and then often followed by a telegram either withdrawing it until future advice is supplied or substituting another date, and

sometimes the one telegram is followed by a second and even a third. Manifestly this puts upon the Register of Copyrights a responsibility not contemplated; moreover, the practice has never been passed upon by a competent court. The course recommended in any case where entry is desired upon a given future date is that the application and title be forwarded sufficiently early to some person in Washington who can act as the agent of the applicant to deposit the title in the Copyright Office on the exact day under date of which it is desired the entry shall appear.

It may properly be emphasized here that there are certain *dies non* on which registrations are not made. The following are legal holidays, under which dates no entries can be made: The first day of January (New Year's day), the twenty-second day of February (Washington's birthday), the fourth day of March (each fourth year, Inauguration day), the thirtieth day of May (Decoration day), the fourth day of July (Independence day), the first Monday in September (Labor's holiday), the twenty-fifth day of December (Christmas day). In addition, any day appointed or recommended by the President as a day of public fast or thanksgiving becomes a legal holiday, on which date no registrations are made. The last Thursday in the month of November is thus appointed as Thanksgiving day. In case any one of these holidays falls upon Sunday, the next succeeding Monday is considered the legal holiday.

FORM OF NOTICE.

There is misconception also in regard to the date required in the notice of copyright. The year date in this notice should correspond with the date of entry of title. Frequently in cases where entry of title is made near the expiration of one year, but publication is not made until the succeeding year, the publishers are inclined—possibly for trade reasons—to print the year date of publication instead of the year of

entry, in the statutory notice of copyright. This is not a safe proceeding in view of the decision of the court in the case of Baker *vs.* Taylor.* It was held in that case that the entry of title having been made in 1846 and the year date in the notice being printed 1847, the copyright was invalidated.

It would seem so obvious that the name of the claimant of copyright printed in the notice should be that of the person in whose name as author or proprietor the title has been recorded, that it would appear unnecessary to remark upon it, but the experience of the Copyright Office shows that much greater caution should be exercised in regard to this matter. A not uncommon misunderstanding is that in the case of an assignment of copyright the name of the assignee can be substituted in the copyright notice for that of the original claimant in whose name registration of title was made. But the mere transference of the copyright secured by previous compliance with the statutory requirements neither justifies reëntry of the title page nor the omission of the original copyright notice. The assignee's title to the copyright property depends upon the validity of the original title; hence the notice justified by the proceedings first taken to secure copyright should be retained without change either in the name of the claimant or date of entry. There is no special provision of the law as to notice in cases of assignment, but as there is nothing in the law to forbid it, it would seem permissible, if desired, to print, in addition to the original notice, a statement of assignment.

WHO IS ENTITLED TO COPYRIGHT.

It is provided in section 4952 of the Revised Statutes that the author or proprietor of any book or other copyright article and the executors, administrators, or assigns of any such person shall have the sole liberty of printing, etc. The use of the word "proprietor" in this section has led to the erro-

* Decided in 1848 (2 Blatchford's Reports, p. 82).

neous impression that it may mean that the purchaser of the book or other article thereby secures a right to obtain copyright even when the author himself may not be entitled to copyright. Copyright protection in the United States comes through authorship, and no protection can come except through the author or originator. If the author himself is not entitled to the privilege of copyright, he cannot transfer such privilege to another. He cannot assign what he does not himself possess. I will not here enter upon such nice questions as copyright proprietorship, by virtue of the employment of an author. I only desire to make clear the distinction between the assignee of a qualified author and a person who may be the "proprietor" of the work of an author, not himself entitled to copyright, by reason of having purchased the author's book. In the one case the right of the "proprietor," the assignee, to obtain copyright is entirely a matter of agreement between himself and the author. In the other case no agreement between the two persons concerned can create a right to copyright. The copyright is not a right attaching to the thing—the music, for example—but is a right vested in the creator of the music, hence does not pass, necessarily, to a second person by the transference of the material thing—the music; and evidence must be offered showing that the transference of the music carries with it the author's consent to a conveyance of the privilege of copyright.

The same principle is embodied—even more noticeably—in the provisions of law as to renewal of the copyright. The law seems to have intended the granting of the extension of the protection only to the author or his family. Thus the second term of protection must also start with the author, or, if he be dead, with his natural heirs, his widow or children. No mention is made in the section relating to renewal of either assigns or proprietors. The right to the extension term is in the author, if he be living at the period during which registration for the second term may take place,

namely, within six months prior to the expiration of the first term of twenty-eight years. If the author be dead, the privilege of renewal rests with his widow or children. Whether the author may dispose of his right of renewal, so that the transference may be effective for the second term, even though he should have died before the date of the beginning of that term, is a question upon which authorities differ. The language of the statute would seem to give to the author an inchoate right which reverts to his widow or children, should he have married and have died before the expiration of the first term of the copyright. This contingent interest the author may undoubtedly assign; and if he is living during the six months' term when action to secure the renewal right must be taken, the author presumably is then under obligation to the assignee to take such steps to comply with the statutory formalities as will make the right good. But if the author is dead, the contingent privilege vests in his widow or child or children, who may or may not be bound by the author's agreement as regards the second term. Should neither author, widow, or children be surviving at the expiration of the first term, a nice question arises as between the rights of the assignee and those of the public. I know of no decisions of the courts touching upon or deciding this point.

REVISION OF THE COPYRIGHT LAWS.

It is admitted that our copyright laws need revision. How best to secure the necessary careful and adequate consideration, not only of the defects and limitations of the present statutes, but of such changes as may be desirable, is perhaps a question. The time would seem to have arrived, however, for dealing with the subject as a whole, not attempting further piecemeal alteration, such as is commonly though often questionably called "amendment" of the laws. The end in view should be to insure, in place of the contradictory and inadequate acts now in force, the substitution of one con-

sistent statute, simple in its phraseology and broad and liberal in its principles. Of necessity, in this complex age, many interests are affected by copyright legislation. The aim should be, then, that all these diverse interests be fairly dealt with, and that full justice be secured to the entire fraternity of literary and artistic producers. In my official reports I have suggested that this delicate and difficult task of preparing a codified text of the copyright laws should be intrusted to a commission representing all the various interests concerned and competent to frame an adequate measure.

Mr. Solberg answered numerous questions propounded by various gentlemen in the audience and was loudly applauded and heartily congratulated at the close of his address by those present, who gave him an informal reception.