

Paige Vs. Banks

Paige Vs. Banks

SooperKanoon Citation : sooperkanoon.com/82116

Court : US Supreme Court

Decided On : 1871

Appeal No. : 80 U.S. 608

Appellant : Paige

Respondent : Banks

Judgement :

Paige v. Banks - 80 U.S. 608 (1871)

U.S. Supreme Court Paige v. Banks, 80 U.S. 13 Wall. 608 608 (1871)

Paige v. Banks

80 U.S. 608

APPEAL FROM A DECREE OF THE CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. Where in consideration of an agreement by publishers to pay him a certain sum of money and the performance of specified duties in connection with the publication, a reporter of judicial decisions agreed in 1828 "to furnish in manuscript

the reports of his court for publication," with an additional clause that the "publishers shall have the copyright of said reports, to them and their assigns forever," *held*, on bill filed by the reporter's executrix for injunction and account of profits after the expiration of twenty-eight years from the entry of copyright (A.D. 1830), that the publishers had a full right of property in the manuscript, and accordingly that they could publish not only for the twenty-eight years during which the Act of May 31, 1790 (the only copyright act in force when the agreement was made), gave an author and his assigns the exclusive right to print, reprint, publish, and vend, but also during the fourteen years granted by an act of 3 February, 1831, subsequently passed, by which the exclusive right was continued to the author if alive, or if dead to his widow, child, or children, the reporter not having died till 1868.

2. *Held* further that this view was confirmed by the fact that a notice had been given in 1858 by the reporter to his publishers that he himself claimed the right to publish on the expiration of the first twenty-eight years, and forbid them to publish further, and that they in reply denied his right and asserted their own, and that though the reporter lived, as already said, till 1868, ten years after this correspondence, no further notice was taken of this subject, and no attempt by the reporter, by act or protest, to interfere with the exercise of the right of the publishers to publish and sell.

Congress, by a copyright law of 31 May, 1790, [[Footnote 1](#)] enacted that the author and authors of any book or books, "and his or their executors, administrators, or assigns," should have

Page 80 U. S. 609

the sole right and liberty of printing, reprinting, publishing, and vending such book or books for the term of fourteen years. And if, at the expiration of the said term, the said author or authors should be alive, that the same exclusive right should be continued to him or them, "his or their executors, administrators, or assigns, for the further term of fourteen years."

With this law in force as governing the subject of copyrights, the late Mr. Alonzo Paige of New York, reporter of its Court of Chancery, entered, on the 7th of October, 1828, into an agreement with Gould & Banks, law publishers of that state, thus:

"That the said Alonzo, during the term of five years from the 28th of April last, shall and will furnish the said Gould & Banks, *in manuscript*, the reports of the said court for publication, and that the said Gould & Banks *shall have the copyright of said reports to them and their heirs and assigns forever.* "

"And the said Gould & Banks agree to and with the said Alonzo that they will publish said reports in royal octavo volumes of between 600 and 700 pages, on paper and type suitable for such a work; that they will deliver to the said Alonzo twelve copies free of expense; that they will sell said reports to the members of the bar of New York at a sum not exceeding \$6 per volume, bound in calf, for each volume they shall so sell within one year next subsequent to the publication of such volume."

"And the said Gould & Banks agree to pay to the said Alonzo \$1,000 per volume for every volume they shall publish, and at the same rate for less than a volume, within six months after the publication of each volume."

"It is understood that the said Alonzo is to read and correct the proof-sheets of said reports as the same are furnished him."

Mr. Paige did accordingly furnish to Gould & Banks the manuscript of the volume known as 1st Paige's Chancery Reports, and on the 5th of January, 1830, Gould & Banks took out the copyright therefor in their own names.

On the 3d of February, 1831 -- that is to say, about two years and a half after the date of the agreement between

Page 80 U. S. 610

the parties, Congress amended the copyright law, [[Footnote 2](#)] enlarging the rights of copy. The new statute enacted:

"That whenever a copyright shall have been heretofore obtained by an author . . . of any book &c.;, if such author . . . be living at the passage of this act, then such author . . . shall continue to have the same exclusive right to his book, . . . with the benefit of each and all the provisions of this act for the security thereof, for such additional period of time as will, together with the time which shall have elapsed from the first entry of said copyright, make up the term of twenty-eight years."

"That if at the expiration of the aforesaid term of years, such author . . . be still living, and a citizen . . . of the United States, or resident therein, or being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author; . . . or if dead, *then to such widow and child or children* for the further term of fourteen years."

The twenty-eight years of right given by the act of 1790 expired on the 5th of January, 1858. Gould & Banks conceiving themselves to be entitled to renewal under the act of 1831, on the 3d of October, 1857, went through the usual process to secure a copyright for the extended term. Mr. Paige on the 3d of January, 1858, conceiving that the extension enured to *his* benefit, did the same, and on the 13th following informed Gould & Banks that he had thus renewed his copyright, and calling their attention to the fact that by this renewal, "all right on their part to print, publish, or vend volume first of his reports had ceased," and calling on them "henceforth to refrain from printing, publishing, or vending it." To this Gould & Banks, referring to the contract of October 7, 1828, reply:

" *First.* Your manuscripts were furnished to us for publication without limit as to time, and therefore, whatever be your rights under the law of 1831, we have an unlimited license to publish and sell."

"In the second place, where the entire interest in the copyright

Page 80 U. S. 611

has been assigned, we consider the provisions of the act of 1831 to have been intended to enure to the benefit of the assignee."

They accordingly notify to Mr. Paige that they shall themselves take out all of the renewals of the copyright, "and hold him liable for all damages consequent on any infringement of their rights."

Things remained in this state till March 31, 1868, when Mr. Paige died, and in about ten months afterwards, and after some correspondence with a view to amicable adjustment, his executors filed a bill for injunction against further printing and vending, and for an account of profits after January, 1858.

The court below (Blatchford. J.) dismissed the bill, [[Footnote 3](#)] and the executors of Mr. Paige appealed to this Court.

Page 80 U. S. 614

MR. JUSTICE DAVIS delivered the opinion of the Court.

The whole controversy turns upon the true interpretation of the agreement made on the 7th October, 1828.

Independent of any statutory provision, the right of an author in and to his unpublished manuscripts is full and complete. It is his property, and, like any other property, is subject to his disposal. He may assign a qualified interest in it or make an absolute conveyance of the whole interest.

The question to be solved is do the terms of this agreement show the intent to part with the whole interest in the publication of this book, or with a partial and limited interest?

The agreement on the one side is "to furnish, in manuscript, the reports of said court for publication," with an additional clause that the publishers "shall have the copyright of said reports to them and their assigns forever." The cause or consideration of this agreement is a stipulation by the other side for a certain sum of money and the performance of certain duties in connection with the publication.

It is insisted by the appellants that a just interpretation confines the agreement to a mere assignment of the interest in such copyright, as is provided for in the act of 31 May, 1790; that this was the law in force when the contract was entered into; that the fourteen years therein provided for, with the right to a prolongation of fourteen years more, is all that the publishers, at most, are entitled to, and that they are excluded necessarily from the benefit of the provisions conferred by the act of the 3d February, 1831, granting to authors an additional extension of fourteen years.

In our view, this is too narrow a construction. The fair and just interpretation of the terms of the agreement indicate unmistakably that the author of the manuscript, in

Page 80 U. S. 615

agreeing to deliver it for publication at a stipulated compensation, intended to vest in the publishers a full right of property thereto.

The manuscript is delivered under the terms of the agreement "for publication." No length of time is assigned to the exercise of this right, nor is the right to publish limited to any number of copies. The consideration is a fixed sum of \$1,000. Whether one or one hundred thousand copies were published, the author was entitled to receive, and the publishers bound to pay, this precise amount.

As between the parties to the agreement, the absolute interest was conveyed by the stipulation of Paige that he would furnish the manuscript for publication. Paige could no longer do any act after such delivery for publication inconsistent with the absolute ownership of the publishers. But it was proper, for the protection of the publishers, that they should be in position to assert the remedies given by the law against intruders, and it is to this end it is added in the agreement, "and the said Gould & Banks shall have the copyright of said reports to them, their heirs, and assigns forever." It is not covenanted that the publishers should take out the copyright, nor is there any express agreement for an assignment to them by Paige if he should take it out. Undoubtedly the provision that the publishers "should have the copyright" would authorize them to apply for it, and if Paige had taken it out in

his own name, it would have enured to their benefit. But, as between Paige and the publishers, the rights of the latter could not be estimated differently whether they had or had not availed themselves of the provisions of the act.

We have been referred to the case of *Cowen v. Banks*, in which Mr. Justice Nelson, on a similar agreement, expressed the opinion that the construction now contended for by the appellants was the true one. No reason is assigned by the judge for his opinion, and the case was such that it was not necessary that this point should be maturely considered. The practical construction by Judge Cowen of his own contract, in opposition to his interest, is cited in the decision to

Page 80 U. S. 616

which we are now referring, together with the fact that the judge died in 1844, three years after the expiration of the first term of the copyright. On this it is said with some emphasis [[Footnote 4](#)] "that he had all this time acquiesced in the claim of the assignee." The decree was that the contract be reformed accordingly.

In the case now before us, the construction contended for by the appellants was, for the first time, urged by letter of Mr. Paige 13 January, 1858, addressed to the appellees, who replied on 3 February following, asserting their absolute right of ownership, with an unlimited license to publish and sell. The parties lived together after this in the same state until 31 March, 1868, when Paige died, a period of ten years, during which no further notice was ever taken of this subject and no attempt by Paige by act or protest, to interfere with the exercise of the right of the appellees to publish and sell. It is difficult to account for this long acquiescence upon any assumption that Paige, after the receipt of the reply to the publishers, had faith in the construction now urged. If this agreement needed any extraneous aid to indicate the intention of the parties, this acquiescence would certainly be persuasive of the view we have taken of it.

Decree affirmed.

[[Footnote 1](#)]

Stat. at Large 124.

[[Footnote 2](#)]

4 Stat. at Large 439.

[[Footnote 3](#)]

7 Blatchford 154.

[[Footnote 4](#)]

24 Howard's Practice Cases 72.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com