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Caliga Vs. Inter Ocean Newspaper Co.

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Court : US Supreme Court

Decided On : Nov-29-1909

Appeal No. : 215 U.S. 182

Appellant : Caliga

Respondent : inter Ocean Newspaper Co.

Judgement :

Caliga v. Inter Ocean Newspaper Co. - 215 U.S. 182 (1909)
U.S. Supreme Court Caliga v. Inter Ocean Newspaper Co., 215 U.S. 182 (1909)

Caliga v. Inter Ocean Newspaper Company

No. 22

Argued November 5, 1909

Decided November 29, 1909

215 U.S. 182

ERROR TO THE UNITED STATES CIRCUIT COURT

OF APPEALS FOR THE SEVENTH CIRCUIT

SYLLABUS

Statutory copyright is not to be confounded with the exclusive property of the author in his manuscript at common law.

In enacting the copyright statute, Congress did not sanction an existing right, but created a new one dependent on compliance with the statute. Under existing copyright law of the United States, there is no provision for filing amendments to the first application, and, the matter being wholly subject to statutory regulation, copyright on a second application cannot be sustained. The statutory limit of copyright cannot be extended by new applications.

157 F. 186 affirmed.

The facts are stated in the opinion.

Page 215 U. S. 186

MR. JUSTICE DAY delivered the opinion of the Court.

The plaintiff in error, also plaintiff below, brought an action in the Circuit Court of the United States for the Northern District of Illinois to recover damages under 4965 of the Revised Statutes of the United States because of the publication by the defendant of more than one thousand copies of a newspaper containing a picture of a painting, copyrighted by the plaintiff. The plaintiff alleged that he had in all respects complied with the Revised Statutes of the United States by causing to be deposited, on or about the fifth day of November, 1901, a photograph and a description of the painting, for the purpose of having it copyrighted, which deposit was before

Page 215 U. S. 187

publication of the same in the United States or in any foreign country. By reason of the premises and the compliance with the statutes of the United States, the plaintiff claimed to be entitled to a copyright for the painting for the term of twenty-

eight years from and after the recording of the title thereof by the Librarian of Congress on November 7, 1901.

There were other allegations, and proofs tending to show a publication of a copy of the photograph in the newspaper of the defendant company. In the course of the trial, it appeared that the plaintiff had deposited a description and photograph of the same painting with the Librarian of Congress on October 7, 1901, for the purpose of securing a copyright. The trial court charged the jury, as a matter of law, that the plaintiff had brought his suit upon the wrong copyright, and therefore directed a verdict in favor of the defendant. Upon writ of error, the Circuit Court of Appeals for the Seventh Circuit affirmed this judgment. 157 F. 186. The case is now here for review.

The photographs filed upon the two applications for a copyright are identical. Nor is any substantial change in the painting shown; the copyrights undertaken to be secured were therefore upon the same painting. The difference is that, in the copyright sued upon, that of November 7, 1901, the title and description are,

"The Guardian Angel. Portrait of a young girl sitting, hair arranged smoothly over the ears, hair parted in the middle. Her guardian angel stands behind her, one hand resting on her left shoulder, the other on her right arm."

The description accompanying the application for the copyright of October 7, 1901, is, "Maidenhood. A Young Girl seated beside a window; an Angel stands behind her."

The question in this case is: is the second attempt to copyright valid and effectual, or was the court right in charging in substance that it was void and of no effect?

We have had such recent and frequent occasions to consider the nature and extent of the copyright laws of the United States, as the same were before the recent revision, which took

effect July 1, 1909, that it is unnecessary to enter into any extended discussion of the subject now. *Bobbs-Merrill Co. v. Straus,* 210 U. S. 339 ; *White-Smith Music Pub. Co. v. Apollo Co.,* 209 U. S. 1 ; *American Tobacco Co. v. Werckmeister,* 207 U. S. 284 ; *Bong v. Campbell Art Co.,* 214 U. S. 236 . In these cases the previous cases in this Court were cited and reviewed.

As a result of the decisions of this Court, certain general propositions may be affirmed. Statutory copyright is not be confounded with the common law right. At common law, the exclusive right to copy existed in the author until he permitted a general publication. Thus, when a book was published in print, the owner's common law right was lost. At common law, an author had a property in his manuscript, and might have an action against anyone who undertook to publish it without authority. The statute created a new property right, giving to the author, after publication, the exclusive right to multiply copies for a limited period. This statutory right is obtained in a certain way and by the performance of certain acts which the statute points out. That is, the author, having complied with the statute, and given up his common law right of exclusive duplication prior to general publication, obtained by the method pointed out in the statute an exclusive right to multiply copies and publish the same for the term of years named in the statute. Congress did not sanction an existing right; it created a new one. *Wheaton v. Peters,* 8 Pet. 591, 33 U. S. 661 . Those violating the statutory rights of the author or proprietor are subject to certain penalties, and to the payment of certain damages, as is provided in the statute.

Section 4952 of the Revised Statutes as amended in 1891 (3 Comp.Stat., 3406), provides that the proprietor of any painting, upon compliance with the provisions of the copyright act, has the sole right of publishing, copying, and vending the same. By 4953, we find that this right exists for the period of twenty-eight years from the recording of the title of the copyright, with a right to certain extensions after the

expiration of the twenty-eight years, as provided in 4954. In 4956, we find that a copyright is secured by depositing, on or before the day of publication, in this or

any foreign country, in case of a painting, a photograph of the painting, accompanied by a description thereof. There is absolutely no provision in the statutes for a second filing of the photograph or description, nor is there any provision as to filing any amendments thereto; and, as the matter is wholly the subject of statutory regulation, we are at a loss to preceive by what authority any second application for the same painting, with a view to securing a copyright thereon, can be sustained. If it could be, we see no reason why the proprietor might not thus extend the limit of copyright fixed in the statute by an indefinite number of new applications and filings with the Librarian.

The argument of the plaintiff in error is that, inasmuch as the statutory copyright is not complete before a publication of the subject matter thereof, and no publication being shown prior to the second application, it was within his power, while his rights were thus inchoate, to make the second application for the copyright -- that of November 7, 1901. Assuming that these premises are correct, and that publication was requisite to complete the right to be secured by the statute, it by no means follows that a second copyright is warranted by the statute. On the other hand, as we have already stated, the statute is barren of any provisions to that end. There is no provision, as there is in the patent law, for an amended application, and, under the patent law, it has been held that there is no authority for double patenting. *Miller v. Eagle Manufacturing Company,* 151 U. S. 186 . This is so because the first patent exhausts the statutory right secured by the act of Congress.

In this case, the plaintiff had complied with all the terms of the statute on October 7, 1901. He then attempts to take out a new copyright under the same statute on November 5, 1901, for the same painting, by depositing a new description of the painting and the same photograph. It is true there is a change

Page 215 U. S. 190

in the title of the painting, and a slight change in the description, but these matters are immaterial, and cannot enlarge the right of the plaintiff. We think the same principle, in this aspect, controls as in the case of a patent. The plaintiff had

already exhausted his statutory right, and the second attempt availed him nothing.

These views render it unnecessary to consider whether the record shows a publication of the painting prior to November 5, 1901. For the reasons stated, we are of opinion that the circuit court of appeals was right in holding that the attempted duplication of the copyright was void and of no effect.

Affirmed.

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