

Dejonge and Co. Vs. Breuker and Kessler Co.

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Court : US Supreme Court

Decided On : Nov-09-1914

Appeal No. : 235 U.S. 33

Appellant : Dejonge and Co.

Respondent : Breuker and Kessler Co.

Judgement :

DeJonge & Co. v. Breuker & Kessler Co. - 235 U.S. 33 (1914)

U.S. Supreme Court DeJonge & Co. v. Breuker & Kessler Co., 235 U.S. 33 (1914)

DeJonge & Company v. Breuker & Kessler Company

No. 18

Argued October 27, 28, 1914

Decided November 9, 1914

235 U.S. 33

APPEAL FROM THE CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

SYLLABUS

Under Rev.Stat., 4952, 4970, as they were before the Act of March 4, 1909, every reproduction of a copyrighted work must bear the statutory notice. One notice is not sufficient for several reproductions on the same sheet, even though the several reproductions make one harmonious whole.

Although a painting may be patentable as a design, if the owner elects to copyright, he must protect his copyright by repeating the statutory notice on every reproduction thereof.

191 F. 35 affirmed.

The facts, which involve the construction of the copyright law as to the statutory notice of copyright upon reproductions of paintings, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill to restrain an alleged infringement of a copyright under the law as it was before the Act of March 4, 1909, viz., Rev.Stat. 4952, 4970; Act of June 18, 1874, c. 301, 18 Stat. 78. The work alleged to be infringed was described as a painting representing

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sprigs of holly, mistletoe, and spruce arranged in the form of an open cluster having substantially the outline of a square. It was exhibited in court, was a water color painting in fact, and no doubt might have been framed and used for the same purposes of pleasure as other more considerable works of art. But it was so designed that it could be reproduced in repetitions that fitted and continued one another side by side and above and below, and was reproduced in that way with twelve repetitions upon strips of paper having much the look of wall paper, and intended to be used in covering or wrapping boxes during the holiday season.

Each strip bore a single notice of copyright. The circuit court, assuming that infringement was established, was of opinion that the work was a painting, capable of copyright, and also a design, patentable as such, but held that, as the appellant had elected to copyright, the notice must be repeated on each of the twelve squares, although they did not present themselves as separate squares on the continuous strip. 182 F. 150. The circuit court of appeals, reserving its opinion as to whether the sphere of copyright and patent for design overlapped, agreed with the circuit court that, if this was a painting, every reproduction of it must bear the statutory notice, and affirmed the dismissal of the bill. 191 F. 35.

It seems to us that the case is disposed of by the statement. The thing protected, and the only thing, was the painting, the whole of which was reproduced in a single square. Every reproduction of a copyrighted work must bear the statutory notice. *American Tobacco Co. v. Werckmeister*, [207 U. S. 284](#) , [207 U. S. 294](#) . It is suggested that it is overtechnical to require a repetition of the notice upon every square in a single sheet that makes a harmonious whole. This argument tacitly assumes that we can look to such larger unity as the sheet possesses. But that unity is only the unity of a design that is not patented.

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The protected object does not gain more extensive privileges by being repeated several times upon one sheet of paper, as anyone would recognize if it were the Gioconda. The appellant is claiming the same rights as if this work were one of the masterpieces of the world, and he must take them with the same limitations that would apply to a portrait, a Holy Family, or a scene of war.

Decree affirmed.