

tion of Musical Performing Rights (Gema) in Berlin, a limited liability association; both associated in the league for the protection of musical performing rights for Germany, in Berlin, S.W. 7, Dorotheenstrasse 32, represented by Attorneys Prof. Dr. A. Wasserman, Dr. Fisher, Dr. Bussmann, petitioner.

#### Against

The Nordish Radio Stock Corporation in Hamburg, represented by its Board of Directors, in Hamburg, Gr. Backerstrasse 11-15, respondent, represented by Attorneys, Drs. Pepler, Darboven, Soltau, Hagedorn and Jansen.

The Landgericht in Hamburg, Civil Division 3, through Chief Justices Dr. Framhein and Justice Dr. Rausch and Dr. Dehmelt, decrees as follows:

The respondent is by temporary order enjoined (under penalty of a fine to be determined in each case of violation) from broadcasting musical works of the composers and publishers mentioned in the list of composers, publishers and authors, being members of the Society of Authors, Composers and Music Publishers in Vienna and of the Society for the exploitation of Musical Performing Rights in Berlin (Gema) and in the repertoire of the American Society of Composers, Authors and Publishers.

The costs of this proceeding are to be paid by the respondent.

#### FACTS

The petitioner is the general representative of the Society of Authors, Composers and Music Publishers in Vienna, a registered limited liability association, and of the Society for the exploitation of Musical Performing Rights (Gema) in Berlin, a limited liability association, which two societies have associated themselves in the league for the protection of music performing rights for Germany in Berlin. (See Schedule 2.)

To these two societies and the league the composers mentioned in the lists of composers submitted to the court have assigned the protection of their performing rights. Accordingly the league makes contracts with all producers of commercial musical performances for the granting of the right to perform the compositions of the composers represented by the league. For the grant of such right the producer is to pay in fixed intervals stipulated fees which thereupon are divided between the composers and the heirs of composers according to certain ratios in the manner provided by the by-laws of the league and its two constituent societies.

Petitioner alleges that the respondent has broadcast, without having acquired the performing right thereof, the 35 musical compositions mentioned in the letter of the plaintiff's attorney, dated September 25, 1924 (Schedule A); that this fact was established by investigations made by the petitioner. It is to be assumed that the respondent has broadcast, without having acquired the performing right thereof, other copyrighted musical works. The petitioner demanded in place of the unpaid royalty a provissional payment of ten gold marks for every composition broadcast, by the respondent without license. That the respondent was only willing to pay a much smaller sum, and at the same time denied having broadcast seven of the musical compositions alleged and that it claimed as to five other pieces that it had received the same from the publishing firm Benjamin in Hamburg.

The petitioner, relying upon the facts above outlined and upon additional statements of its investigator, Max Freund, moved in the Amstgericht Hamburg for a temporary decree as follows:

That the respondent be restrained, under penalty of 1,000 goldmarks for each violation, from broadcasting through its radio system the works of composers the performing rights in which are represented in Berlin.