

The plaintiff laid its claim contending that its contract with the defendant Butterworth & Co. is a contract extending for a period of five years from the date of publication; that the work is a complete work, subscribed for and sold only in sets, and that it is not "published" until the last volume is issued. In the alternative, it is said that if it has not such contract, it has a contract for at least one year from the date of the publication of the final volume. The plaintiff claims an injunction to restrain the defendants from soliciting orders within its territory, and damages for breach of the contract.

With great reason, he says it never was intended that his sole right to sell would cease before the completion of the work. Were it not for the "overleaf" accompanying the letter of June 14th, I could easily follow the plaintiff's contention. Certainly prior to the date of that letter Mr. Bond recognized that the contract should continue until a period after the publication of the last volume. While his memorandum "overleaf" may seem at variance with that conclusion, still, I fail to understand how he could expect any offer to be accepted or considered reasonable where the term would expire before the final completion of the work.

The defendant denies the contract.

At the trial I allowed an amendment setting up the fourth section of the Statute of Frauds. During the progress of the trial various applications for amendment were made, some of which I refused. As the trial proceeded, however, it became apparent that all the material evidence was at hand, and I intimated to counsel that if, upon consideration, I considered any amendments to either the statement of claim or defence were necessary to grant proper relief, I would allow the necessary amendments.

I allow the plaintiff such amendments as are necessary to set up in the alternative, the contract as one for five years, with a right of renewal, the plaintiff by his counsel having offered to take the required number of sets. I also allow the plaintiff to set up waiver and claim for equitable relief.