

labelled or stamped "L. Bamberger & Co., One of America's Great Stores, Newark, N.J."

There is another point which, although striking us as immaterial, deserves some comment. The defendant argues that the plaintiff should not complain of the broadcasting of its song because of the great advertising service thereby accorded the copyrighted number. Our own opinion of the possibilities of advertising by radio leads us to the belief that the broadcasting of a newly copyrighted musical composition would greatly enhance the sales of the printed sheet. But the copyright owners and the music publishers themselves are perhaps the best judges of the method of popularizing musical selections. There may be various methods of bringing them to the attention of music lovers. It may be that one type of song is treated differently than a song of another type. But, be that as it may—the method, we think, is the privilege of the owner, he has the exclusive right to publish and vend, as well as to perform.

Considering all of the facts and circumstances it is the conclusion of the Court that the broadcasting of the defendant was publicly for profit within the meaning of the Copyright Act as that meaning has been construed by the United States Supreme Court.

A decree will be entered in favour of the plaintiff but restraint will be withheld pending a review of this opinion.

Copy, furnished by American Society of Composers, Authors and Publishers, 56 West 45th Street, New York City.

August 11, 1923.

B.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEROME H. REMICK & COMPANY,
Plaintiff

AGAINST

GENERAL ELECTRIC COMPANY,
Defendant

NATHAN BURKAN, Esq., Attorney for Plaintiff.

CHARLES NEAVE, Esq., and MERRELL E. CLARK, of Counsel for Defendant.
KNOX, D. J.

Upon the question, as to whether the broadcasting by radio, of a copyrighted musical composition, without the consent of its proprietor, constitutes an infringement of his rights, I am of opinion that under certain circumstances such may be the fact. In other words, I can conceive of conditions under which the unauthorized broadcasting of a copyrighted musical composition will be nothing else than its public performance for profit.

But in any such inquiry, I think it necessary to ascertain whose performance was broadcast. Was it that of the broadcaster, or was it that of another person who may have been authorized to perform the copyrighted composition publicly, and for profit? If the latter, I do not believe the broadcaster is to be held liable. By means of radio art he simply makes a given performance available to a greater number of persons who, but for his efforts, would not hear it. So far as practical results are concerned, the broadcaster of the authorized performance of a copyrighted musical selection does little more than the mechanic who rigs an amplifier or loud speaker in a large auditorium to the end that persons in remote sections of the hall may hear what transpires upon its stage or rostrum. Such broadcasting merely gives the authorized performer a larger audience and is not to be regarded as a separate and distinct performance of the copyrighted composition upon the part of the broadcaster.