1950
Feb. 8-10
Feb. 15

BETWEEN:

ALFRED MOREAU ..... PLAINTIFF;

AND

ROLAND ST. VINCENT, carrying on business under the firm name of Loisir Favori Enregistré..... DEFENDANT.

Copyright—Infringement—Copyright Act, R.S.C. 1927, c. 32—No copyright in ideas—Copyright in a literary work not dependent on registration—No copyright in arrangement, system, scheme or method—Plaintiff in infringement of copyright action must show copying of his literary work.

The plaintiff, a partner and manager of a firm carrying on business in Montreal under the firm name of L'Information Sportive, its business being the publication and sale of a weekly sports paper called "L'Informative Sportive", conducted a weekly competition called "Concours: Recrutement d'Abonnés", the details of which were published in the paper, and claimed to be the owner of copyright therein. The defendant, a former distributor of "L'Information Sportive", began to carry on business under the firm name of Loisir Favori, his business being the publication of a leaflet called "Mots Croisés", and conducted a weekly competition called "Quizz général de la publication Loisir Favori Enrg.", the details of which were published in the leaflet. The plaintiff claimed that the defendant's "Quizz général de la publication Loisir Favori Enrg." was a plagiarism of his "Concours: Recrutement d'Abonnés" and an infringement of his copyright and sought an injunction and damages.

Held: That an author has no copyright in ideas but only in his expression of them. The law of copyright does not give him any monopoly in the use of the ideas with which he deals or any property in them, even if they are original. His copyright is confined to the literary work in which he has expressed them. The ideas are public property, the literary work is his own. Every one may freely adopt and use the ideas but no one may copy his literary work without his consent.

2. That under the Copyright Act copyright in a literary work does not depend on registration but arises automatically from authorship. The registration of a copyright does not confer upon the author of a literary work any right that did not already belong to him by virtue of his authorship.

3. That no person has any copyright in any arrangement or system or scheme or method for doing a particular thing even if he devised it himself. It is only in his description or expression of it that his copyright subsists. *Hollinrake* v. *Truswell* (1894) 3 Ch. D. 420 at 427 followed.

4. That to succeed in an action for infringement of copyright the plaintiff must show that his literary work has been copied. It will not be enough to prove that his ideas have been adopted or that an arrangement or system devised by him has been used. The copying need not be word for word if there is colorable imitation.

ACTION for alleged infringement of copyright.

The action was tried before the Honourable Mr. Justice Thorson, President of the Court, at Montreal.

J. Perrault and *A. Vincent* for plaintiff.

H. Gérin-Lajoie, K.C., and *E. Angers* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

The President now (February 15, 1950) delivered the following judgment:

This is an action for infringement of copyright. The facts are not in dispute. The plaintiff is a partner and manager of a firm carrying on business in Montreal under the firm name of L'Information Sportive, its business being the publication and sale of a weekly sports paper called "L'Information Sportive". On October 2, 1947, the plaintiff and his associates, who were then Louis Daniel, J. L. Letourneux and Ch.-Roger Poitras, applied to the Commissioner of Patents for the registration of a copyright under the Copyright Act, R.S.C. 1927, Chapter 32, in what they called "Concours: Recrutement d'Abonnés", declaring that for the purpose of promoting subscriptions to the paper "L'Information Sportive" they had devised a system of distribution of prizes to subscribers for which they requested the grant of copyright, and on October 6, 1947, the Commissioner issued a certificate that copyright in

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a literary unpublished work called "L'Information Sportive" by the plaintiff and his associates had been registered in their names, the name of Ch.-Roger Poitras being misspelt. Subsequently, on June 25, 1948, the plaintiff and Mr. Poitras wrote to the Commissioner pointing out that the registration of October 6, 1947, was erroneous and requesting its correction with the result that the certificate was annulled and a new one issued in its place, dated back to October 6, 1947, certifying that copyright in a literary unpublished work called "Concours: Recrutement d'Abonnés" by the plaintiff and his associates had been registered in the name of L'Information Sportive.

Subsequently, on November 3, 1947, Mr. Daniel and Mr. Letourneux renounced their rights in the firm in favor of the plaintiff and Mr. Poitras, and on November 5, 1948, Mr. Poitras transferred his rights in the copyright to the plaintiff. The plaintiff now claims to be the sole owner of the copyright. After the registration of the copyright the firm commenced to publish its paper "L'Information Sportive" and to conduct a weekly competition for prizes to its subscribers which it called "Concours: Recrutement d'Abonnés" the details of which were published in each issue. The paper was sold for 25 cents per copy and a numbered receipt was issued to the purchaser of each copy.

The plaintiff stated that he had devised the competition in order to promote the sale of the paper, and had used three elements in an original arrangement of them. The elements said to have been thus brought together were described in the letter from L'Information Sportive to the Commissioner of Patents, dated October 2, 1947, to which I have referred, and also in the paper. The elements forming the system on which the competitions were based were three, namely, a numbered subscription receipt, a copy of the paper with two lists of sports clubs, one giving the results of contests already had and compilations of numbers from such results and another giving the scheduled contests for the following week the results of which were to serve as the basis of the compilation of numbers for the competition of that week, and a questionnaire or quiz relating to sports topics to be answered by the holders of subscription receipts carrying numbers corresponding to

those compiled from the results of the sports contests given in the first list in the paper. The details and conditions for each competition appeared in substantially the same form on page 9 of each issue of "L'Information Sportive", except, of course, for necessary differences, such as the names of the sports clubs selected, the results of the contests and the questions in the quiz. Likewise, the receipts continued to be issued in the same form, the only difference being in their numbers.

The defendant was in the employ of L'Information Sportive as a distributor of its paper under a contract with it for one year, dated December 30, 1947, subject to cancellation on thirty days notice. On May 12, 1948, he sent it a telegram of resignation effective on June 27, 1948. On the same day he filed a declaration of carrying on business under the firm name of Loisir Favori. And on the same day his solicitors forwarded his request for the registration of a copyright in an original literary unpublished work called "Loisir Favori", and copyright in the said work was registered on May 13, 1948, and a certificate to that effect sent to him. On July 3, 1948, the defendant commenced the publication of a weekly leaflet called "Mots Croisés", which he sold at 25 cents a copy, the purchaser receiving a numbered receipt. The leaflet contained a number of cross-word puzzles. With each issue the defendant conducted a competition called "Quizz général de la publication Loisir Favori Enrg.", the details of which were published in the leaflet. The defendant did not hesitate to solicit distributors and vendors of the paper "L'Information Sportive" to handle his leaflet and several of them did so. Some of them said that their customers preferred it. Moreover, the defendant sold his leaflet in the same area as "L'Information Sportive" had previously found its market. The result was that the sales of "L'Information Sportive," which had been approximately 50,000 copies per week, had by September 12, 1948, been reduced by over 14,000 copies per week.

No attempt was made by the plaintiff to prove the quantum of his damages, it being understood that if judgment went in his favor there would be a reference to the registrar for an enquiry as to damages.

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The plaintiff alleges, *inter alia*, that the defendant's "Quizz général de la publication Loisir Favori Enrg." is a plagiarism of his "Concours: Recrutement d'Abonnés" and an infringement of his copyright and that its publication has caused him damage and should be restrained, and claims, *inter alia*, a declaration recognizing his copyright in the original arrangement constituting "Concours: Recrutement d'Abonnés" and the defendant's infringement of it, an injunction restraining the defendant from further publication of "Quizz général de la publication de Loisir Favori Enrg." or other infringement of his copyright, damages in the sum of $44,131.25 and costs.

Counsel for the defendant took a number of objections to the plaintiff's action before putting forward his main defence. In view of the conclusion which I have reached on the main issue it will be sufficient to refer to the objections briefly. It was submitted that the plaintiff's title to the copyright claimed by him was not established but that, on the contrary, the evidence showed that he was not its sole owner and that its owners were not all before the Court. I make no finding on this objection beyond saying that if the only flaw in the action was that the plaintiff was not the sole owner of the copyright I would consider an application for the addition of the necessary parties so that the action would not fail for misjoinder of parties.

Counsel's next objection was that there was no originality in the plaintiff's system or arrangement of elements. There was a good deal of evidence on this subject. The plaintiff stated that he devised the arrangement of elements on which the competitions were based. He admitted that the elements themselves were public property but asserted that his arrangement of them was original. Mr. H. Robert, who was one of the plaintiff's associates in L'Information Sportive but expressly disclaimed any interest in his copyright, said that the plaintiff's arrangement was original in its selection of two lists of clubs, one giving the results of games already played and the other the schedules of the games to be played by the clubs selected for the following week, and that the plaintiff's system was the first one he had seen embodying such a feature until he saw the same feature in the defendant's publication, and Mr. J. L. Le-

tourneux, who had been one of the plaintiff's earlier associates, also gave evidence of a general nature that there was no other publication like "L'Information Sportive". On the other hand, it was shown for the defendant that there was nothing original in putting on a competition or draw with the winning of prizes dependent on the results of sports contests. There was, for example, the system which Mr. P. Gauthier claimed as his and there were many others on the market under various names, such as Union Four Way, Royal Five Way, Reliable Fair Way, Dominion Card. In each of these the purchase price of an entry card or ticket was 25 cents. Some of these did not involve any competition at all in that there was no questionnaire but were merely schemes or systems in which the participants bought a chance and the winners were determined by the results of sports contests. I need not decide whether there was anything original in the plaintiff's arrangement of elements or not. That question is, in my opinion immaterial and all the evidence bearing on it was, strictly speaking, irrelevant and inadmissible. It is, I think, an elementary principle of copyright law that an author has no copyright in ideas but only in his expression of them. The law of copyright does not give him any monopoly in the use of the ideas with which he deals or any property in them, even if they are original. His copyright is confined to the literary work in which he has expressed them. The ideas are public property, the literary work is his own. Every one may freely adopt and use the ideas but no one may copy his literary work without his consent. Riddell J. A. of the Ontario Court of Appeal in *Deeks* v. *Wells* (1) adopted the following statement of principle:

> There can be no copyright in ideas or information, and it is no infringement of copyright to adopt the ideas of another or to publish information derived from another, provided there is no copying of the language in which those ideas have, or that information has, been previously embodied.

Thus, even if it were conceded that the plaintiff had devised a novel arrangement of elements this cannot help him for the novelty of an idea cannot be the subject of copyright protection.

A third objection submitted by counsel was that the Commissioner of Patents had no statutory power to annul

(1) (1931) O.R. 818 at 834.

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the first certificate of registration and issue a second one in its place for a different work and in the name of a different person and that the second certificate was of no effect. I express no opinion on this objection, but even if it were sound it would not affect the plaintiff's cause of action, if he has one. Under the Copyright Act copyright in a literary work does not depend on registration but arises automatically from authorship. If, therefore, the plaintiff had any copyright he could bring an action for its infringement even if he had never obtained any certificate of registration. The registration of a copyright does not confer upon the author of a literary work any right that did not already belong to him by virtue of his authorship.

It is plain from the statement of claim and the evidence that the plaintiff has misconceived the nature of his copyright and the extent of the protection that it affords. While it was stated that the object of the competitions, both that of the defendant as well as that of the plaintiff, was to promote the sale of their respective publications, I could not help feeling that the parties were primarily concerned with the success of their competitions rather than the sale of their publications. I find it difficult, to say the least, to believe that any one would pay 25 cents for a copy of either "L'Information Sportive" or "Mots Croisés" if that was all he was getting. What the so-called purchaser of the paper or leaflet was really doing was buying a chance to win a prize in the so-called competition. It seems clear to me that what the plaintiff was really seeking was protection of his competition against the encroaching competition run by the defendant. Undoubtedly, it was this competition that ate into the profits he had made from his own competition when he was exclusively in the field. Thus, what the plaintiff was attempting to protect was the arrangement or system for conducting a competition that he said he had devised. Unfortunately for him, the law of copyright does not give him any such protection. Just as an author has no copyright in the ideas he has expressed even although they are original, but only in his expression of them, so also no person has any copyright in any arrangement or system or scheme or method for doing a particular thing even if he devised it himself. It is only in his description or expression of it that his copyright

subsists. This principle was tersely put by Lindley L.J. in the leading case of *Hollinrake* v. *Truswell* (1) as follows:

> Copyright, however, does not extend to ideas, or schemes, or systems, or methods; it is confined to their expression; and if their expression is not copied the copyright is not infringed.

and there has never been any departure from this principle. I am, therefore, of the view that in seeking to protect his system for conducting a competition from encroachment by the defendant the plaintiff was attempting to use the law of copyright for a purpose to which it is not applicable. He claimed more than the law permits.

If the plaintiff has any copyright it must be in some original literary work. He was hard pressed on his cross-examination to identify the literary work to the protection of which his copyright is restricted and appeared to be torn between the description of his arrangement given in the letter of October 2, 1947, to the Commissioner of Patents in which the request for registration of a copyright was first made and the text giving the details and conditions of his "Concours: Recrutement d'Abonnés" that appeared on page 9 of each issue of "L'Information Sportive", but counsel for the plaintiff in an able argument contended that the literary work in which the plaintiff had his copyright consisted of the article or writing on page 9 of each issue of "L'Information Sportive" together with the subscription receipt that went with it. It was in these two documents that the plaintiff expressed and described his arrangement and system for conducting his competition. I see no reason why this identification of the literary work in which the plaintiff has his copyright should not be accepted. It is only for this work, and not for any ideas or any arrangement or system for conducting a competition expressed or described in it, that the plaintiff has any protection. If he is to succeed in an action for infringement of copyright he must show that his literary work has been copied. It will not be enough to prove that his ideas have been adopted or that his arrangement or system has been used.

It is plain from this statement of the nature of the plaintiff's right that substantial amendments of the statement of claim are required to make it accord with the proven facts. If it had been necessary to do so I would have

(1) (1894) 3 Ch.D. 420 at 427.

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given further consideration to the application of counsel for the plaintiff for leave to make the necessary amendments, subject to proper terms, but in view of the conclusion I have reached I need not deal with it.

There is, in my judgment, no doubt that the defendant's competition was similar in its essential principles to that conducted by the plaintiff. He made use of similar elements, namely, a numbered receipt, lists of clubs and the results of sports contests and a questionnaire and his arrangement of the elements and his system of conducting his competition were likewise similar. And it may well be that he acquired his knowledge of the arrangement and system he used for his competition from the expression and description contained in the plaintiff's literary work. If he did, there is nothing in the law of copyright that prevents him from so doing.

To succeed in his claim the plaintiff must show that the defendant copied, not his ideas or his arrangement or system, but his literary work. This, in my opinion, he cannot do. Counsel made much of certain facts and actions of the defendant prior to embarking on his own publication as indicative of his intentions. Undoubtedly, he was thoroughly familiar with the details of the plaintiff's competition and very deliberate in his preparations to leave the employ of L'Information Sportive and start a competition of his own. It is clear that he was concerned with the extent of the plaintiff's rights under his copyright for he made a special trip to the Copyright Office at Ottawa to enquire about the matter. Then he began to solicit distributors and vendors to see whether they would handle his publication if he brought one out. Then on the same day as he sent his telegram of resignation he registered his declaration of firm name and applied for registration of his own copyright. Then he had a discussion with Mr. Robert in which he questioned the value of the plaintiff's copyright and asked him to go in with him. Then they consulted two lawyers whose views as to the protection given by the plaintiff's copyright differed. Far from indicating an intention to infringe the plaintiff's copyright these actions of the defendant suggest carefulness on his part not to do so. Obviously, there must be similarities between the defendant's "Quizz général de la publication

Loisir Favori Enrg." and the plaintiff's "Concours: Recrutement d'Abonnés" to the extent that both are based on an arrangement of elements and a system for conducting a competition that are essentially the same but a comparison of the two literary works show that the former is not a copy of the latter. The lists of the clubs are different and the results of the sports contests are set out differently; the texts of the conditions and rules for the two competitions are not the same; the questions in the plaintiff's questionnaire relate to sports, whereas those in the defendant's quizz are of a general nature. The receipts likewise, although necessarily similar in that both are receipts, are different in text, type and appearance. Nor can the fact that in one issue of the plaintiff's paper the word "engencement" was used erroneously for "agencement" and a similar error appears on the back of the defendant's leaflet in the form of "engensement" outweigh the other evidence of difference. And while I have not overlooked the fact that copying need not be word for word if there is colorable imitation. I am also of the view that there should be no anxiety to find copying in a case such as this and thereby indirectly give protection to a system of competition such as that conducted by the plaintiff when the law does not give it directly.

Under the circumstances, I have no hesitation in finding that the defendant has not copied the plaintiff's literary work or otherwise infringed his copyright and that the plaintiff's action must be dismissed with costs.

Judgment accordingly.