

1933

Jan. 19,
20 & 21.
Mar. 2.

BETWEEN :

FREDERICK W. KANTEL..... PLAINTIFF;

AND

FRANK E. GRANT, NISBET & AULD	} DEFENDANTS.
LIMITED, GILBERT WATSON AND	
DOMINION BATTERY COMPANY	
LIMITED	

*Copyright—Radio sketch—Authorship—Dramatic work—Infringement—
Injunction—Damages*

The defendant company employed the plaintiff, a dramatic author and producer, to prepare a radio sketch for use in advertising defendant's business, defendant suggesting the general outline of the work. The plaintiff prepared and procured production of the sketch through the defendant Grant. The plaintiff and defendant company entered into a written agreement covering production of the sketch, the agreement containing *inter alia*, the following clause: "The feature is only to be used as arranged through Fred W. Kantel." Subsequently the defendant company purported to cancel the agreement and continued to broadcast the sketch under the defendant Grant's direction. Later the defendant Grant broadcasted the sketch on his own account, for a short time, without plaintiff's consent. In an action for infringement of copyright and for damages.

Held, that the plaintiff was the sole author of the sketch, he having given it form and expression although certain ideas had been suggested by the defendant.

2. That the sketch was a dramatic work within the meaning of copyright law which does not require that the expression must be in an original or novel form, but that the work must not be copied from another work. Nor did it matter that the original manuscript was departed from in each broadcast as, in the presentation of a dramatic work in whatever form, it is open to the performer to depart from the literal text of the work.
3. That there was infringement of plaintiff's copyright since defendant company for several months caused to be performed or broadcasted through defendant Grant the sketch originally prepared and broadcasted by direction of the plaintiff without his consent.

ACTION by plaintiff for an injunction restraining defendants from presenting a dramatic sketch prepared by the plaintiff, and for damages suffered by the plaintiff by the defendant's presentation of the sketch.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Toronto.

R. S. Smart, K.C., and *O. M. Biggar, K.C.*, for the plaintiff.

G. M. Kelly, K.C., and *D. Guthrie* for defendant Nisbet & Auld Limited.

W. A. Stillwell for defendant, Frank E. Grant.

W. M. Magwood for defendant Gilbert Watson.

The Dominion Battery Company Limited was not represented by counsel, and the defendant Watson, having undertaken to abide by any order of the Court that might be made.

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

THE PRESIDENT, now (March 2, 1933) delivered the following judgment:

This is an action for infringement, by the defendants, of a copyright alleged to subsist in a dramatic sketch, a work of which the plaintiff claims to be the author. Throughout the trial the work in question was referred to as a "sketch," and it will be convenient to continue the use of that term in designating the subject matter in which copyright is said to subsist. It would appear desirable first to state the facts as appearing from the evidence.

In the early part of October, 1931, Mr. A. S. Auld, Vice-President of the defendant company, Nisbet & Auld Ltd., while on a business visit to New York, learned of a special advertising broadcast sponsored by the firm of Glass & Co., with whom Auld had business relations, and through this connection Auld came in contact with one Don Carney, who broadcasted this advertising feature daily under the mythical name of Uncle Don. He visited the studio of WOR where he heard Uncle Don broadcast this feature which essentially was one for young children. Uncle Don supposedly entered the studio in an aeroplane, his arrival being duly announced; the aeroplane landing effect was mechanically produced. Having arrived, Uncle Don enquired of the well being of his young listeners that day, and then after singing a children's song the meeting was brought to order by three knocks of a gavel on a piano, and then the club meeting, known as Peter Pan Club, was open. The name of the club had its origin in the fact that Glass & Co. were selling certain cotton fabrics known to the trade as Peter Pan Wash Fabrics. Uncle Don would then sing a song for sick children; he would sing a birthday song for the children whose birthday happened to fall on that day;

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and he would then talk to the children on such topics as the correction of bad habits or manners, the matter of the health of children, and the exercise of care on the public streets. The purpose of the club idea was to enlist the personal interest of children so that they would write to Uncle Don at the studio and become members of the club; after joining they would receive a special button and a certificate of membership. Auld was impressed with the merchandising advantages of this radio feature and immediately considered doing a similar thing in connection with his own business at Toronto, which included the sale of children's clothing. Upon his return to Toronto, Auld conferred with Mr. Pogue of the E. W. Reynolds Company, an advertising concern, and both agreed that Kantel, the plaintiff, should be interviewed regarding the proposal. An interview with the plaintiff soon followed when Auld outlined the general features of Uncle Don's Peter Pan Club broadcast, which he had heard in New York. Auld and Pogue thought it desirable to learn more of Uncle Don's broadcast, so on October 24, of the same year, they went to Philadelphia, where Uncle Don was to present his program to children in a large departmental store. This presentation was practically the same as Auld had previously heard in New York, except that a ventriloquist doll was introduced. Auld and Pogue then continued to New York where they further discussed with Carney, his radio presentation. Auld stated in evidence, that Carney never objected to the use of any idea which he had gained from his observance of the Peter Pan Club presentation, in New York or Philadelphia. On the return of Auld and Pogue to Toronto another interview took place with Kantel, and there was soon developed the sketch much as set forth in the plaintiff's statement of claim. Auld claims that he insisted upon the use of the word "Uncle" in connection with the name of one of the characters in the proposed sketch against the view of Kantel who thought something more novel might be employed; that he suggested the name of Sunshine Club because his firm was then making a line of children's frocks bearing the trade name of Sunshine; and that the Land of Happiness developed out of the general discussions with Kantel. Auld testified that he brought back from New York some printed matter in which was mentioned the names of some twenty odd child-

ren's features being broadcasted at different points in the United States, among which was one named Uncle Bob, and another Old Man Sunshine. Within three days after the return of Auld and Pogue from New York an audition performance of a sketch, which Kantel claims to have composed, was given at the studio of CKNC, Toronto, which means that a microphone was connected to a loud speaker and the presentation was given to the microphone in the studio, and was heard in the reception room by those present to hear it, but it was not broadcasted on the air. In this instance Auld and Pogue were present in the reception room, while Kantel, and one Grant, whom I shall later mention, were in the studio.

The plaintiff's statement of claim purports to set forth an outline of the sketch prepared by Kantel, and perhaps reference should be made to this. The title of the sketch is Uncle Bob's Sunshine Club. First, there is reproduced a phonograph record suggesting a train in motion, and there is announced the arrival of what is described as the Sunshine Special, from the Land of Happiness, having as passengers Uncle Bob and Happy Harry who will entertain the members of Uncle Bob's Sunshine Club. Happy Harry, a dummy, is described as a child who lives in the Land of Happiness and is brought thence by Uncle Bob in a little black bag. Uncle Bob, who says Hello to the children tuned in, sings a greeting song set to the tune of "Heigho Everybody Heigho," the words of which song Kantel claims to have composed. A conversation then follows between Uncle Bob—who is the person broadcasting—and Happy Harry, the former speaking in his ordinary voice, and the latter supposedly in a thin falsetto; the subject of the conversation relates to personal events in the lives of individual children, either fictitious, or derived from letters received by Uncle Bob from children who have already actually listened to the presentation of the sketch. Then a simple nursery song is sung by Uncle Bob or Happy Harry, followed by further conversation between Uncle Bob and Happy Harry and somewhat similar to that just mentioned, and then follows another nursery song. Conversation then ensues between Uncle Bob and Happy Harry in reference to individual children whose birthday falls, or is supposed to fall on that day, and a birthday song prepared by Kantel is sung by Uncle Bob to the tune of "Good

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Morning Merry Sunshine," followed by another selected nursery song which is sung by either Uncle Bob or Happy Harry. There then follows a conversation between Uncle Bob and Happy Harry, on the subject of the conduct of children, Happy Harry being presented as a model of what a good child should be, and this is followed by another nursery song. Then follows a conversation relating to named children who are ill, and a special song, prepared by Kantel, is sung for sick children to the tune of "The Old Oaken Bucket," or "Yankee Doodle," and another nursery song follows. An appeal is then made by Uncle Bob and Happy Harry to the children listening to the broadcast to become members of the Sunshine Club. Uncle Bob then sings a parting song, prepared by Kantel, and set to the same tune as the opening song. Uncle Bob and Happy Harry then say good-bye and indicate they are about to entrain on the Sunshine Special to travel back to the Land of Happiness; the announcer calls "All Aboard for the Sunshine Special," and the same train phonograph record as in the opening is reproduced. It is then announced that Uncle Bob and Happy Harry will return to-morrow at the same hour.

There was put in evidence as Exhibit A, a typewritten summary of the sketch as prepared for broadcasting on November 5, 6 and 7, 1931, which is in effect much the same as that outlined in the statement of claim,—though not so complete—and which was prepared by or under the direction of Kantel, and, I understand, was actually used by Grant in broadcasting the sketch; Grant had in the meanwhile been employed by Kantel to broadcast the sketch. The words of the songs do not appear in full on the summarized program, but the words "Opening parody," "Tunes," or "Birthday song" indicate the sequence in which the songs were to be sung; the songs having been selected and rehearsed one would hardly expect to find them extended in full on the program. The material selected from the letters received from members of the Sunshine Club were typewritten daily and handed to Grant, a sample of which is to be found in Exhibit A. The original manuscript of the sketch which Kantel states he prepared and delivered to Grant was not put in evidence, Kantel stating it was not returned to him by Grant and was not therefore in his possession.

As there is some conflict between Auld and Kantel as to the facts relating to the preparation and authorship of the sketch it is perhaps desirable to review briefly the evidence of Kantel relative thereto. Kantel, describing himself as a dramatic author and actor, testified that in 1927 his interest went in the direction of radio broadcasts, and that since that time his occupation has been entirely that of a dramatic author and producer. In October, 1929, he produced a radio sketch sponsored by Weston Bread Company, of Toronto, which embraced the idea of a juvenile club, the membership of which was composed of children, and he broadcasted for a time this children's feature, he himself taking the characters of Uncle Bill and Uncle Bob; this sketch I understand is still being continued. He produced also, for the W. Wrigley Chewing Gum Company, a sketch featuring Capt. Kidd and other pirates supposedly in charge of a pirate ship, the members of the crew being juvenile members of the Wrigley Club, and this feature was presented from February to June in 1931, and during the fall of that year. In March or April, 1931, he produced the written outlines of a sketch for the Paterson Chocolate Company, of Toronto, and in this sketch he first used Sunshine Special, and the name of the club in this instance was Uncle Bob's Sunshine Club, but in the end this sketch was not accepted by the company. In October, 1931, when he came in contact with Auld as already mentioned, he states that Auld asked him to prepare a sketch to be broadcasted, the general outlines of which I have no doubt were discussed, and he states that he suggested that the best way of judging of the merits of any sketch that might be prepared would be by having an audition, and he explained how this was done. It had been explained to Kantel that the product chiefly to be advertised was children's clothing and that it was young children that were to be interested. Accordingly, he states, he prepared the sketch outlined in the statement of claim. He arranged with Grant, one of the defendants, to do the broadcasting, if arrangements were completed with Auld, as they were eventually. He had several rehearsals of the sketch with Grant and went over the material many times. Arrangements were made for an audition about a week prior to the commencement of broadcasting, and mention of this has

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already been made. Grant, I understand, did a portion of the audition, the complete sketch having been committed to paper by Kantel, and the manuscript was before both Kantel and Grant in the studio, during the audition. The audition comprised everything outlined in the statement of claim, except that portion mentioned in paragraph 5, a song for sick children. Auld and Pogue heard the audition and must have approved of it. Broadcasting began on November 2, 1931, by Grant, and for the first three days, the broadcast, Kantel states, was literally from the manuscript, but after that there might have been abbreviations; there was shortly a sufficient mail response from which to prepare daily material gathered therefrom. Kantel prepared the material arising from the mail until he went to Vancouver, which is another phase of the controversy.

Early in December, 1931, Kantel decided to go to Vancouver on business, leaving Grant in charge of the broadcasting, and his wife in charge of the preparation of the broadcasting material to be compiled from the mail. Before leaving, Kantel states that Auld requested an agreement in writing covering the arrangements reached in reference to the broadcast, and he states that he prepared a draft agreement at Pogue's office, where it was discussed paragraph by paragraph, and on the afternoon of November 14, Pogue brought the agreement to Kantel's house, where Kantel read it; and he states that finding it contained no protection for himself as author of the sketch, he suggested it be rewritten, with the result that a fresh agreement was typed by Kantel, in triplicate. As I understand it the principal change made in the drafted agreement was the insertion of the words: "The feature is only to be used as arranged through Fred W. Kantel." Thereupon Kantel signed three copies of the agreement all of which Pogue took away with him, and on December 8, Pogue forwarded to Kantel, at Vancouver, his copy of the agreement.

The agreement which had better be quoted in full, is as follows:—

We, the undersigned; namely, A. S. Auld, Frank L. Pogue and Fred W. Kantel, agree to develop a publicity feature through the means of radio broadcasting—and to include any other advertising needed—a feature to be known as "Uncle Bob" and a character known as "Happy Harry." These two characters to be incorporated in the "Sunshine Club."

The following paragraphs confirm our understanding of the members governing the developing of this feature.

1. (a) It is proposed through Fred W. Kantel and with the co-operation of a radio station which will give satisfactory service to all concerned, to immediately commence broadcasting six days weekly at a time deemed mutually suitable. The broadcast takes the aspect of a radio studio feature until such time as it appears to have reached the stage where it has sufficient commercial value to be sponsored as a commercial feature by a number of radio advertisers. Up to that time Nisbet & Auld will pay for two of the six broadcasts at a cost of \$55 per broadcast. It is understood that Nisbet & Auld may arrange a contest among the Sunshine members and offer suitable prizes by way of gaining some publicity during the early stages of developing the broadcast.

(b) It is understood that there will be six "Sunshine Club" broadcasts weekly until Christmas. Four broadcasts each week are to be given free by the radio station and Nisbet & Auld are to pay for the remaining two broadcasts. When Fred W. Kantel and Edward W. Reynolds & Company sell four of these broadcasts to advertisers, Nisbet & Auld will pay nothing for their two broadcasts weekly. After Christmas, when there are five broadcasting days to be sold, Nisbet & Auld will have the option of having three broadcasts per week, and paying only for one, or continuing only with their two free broadcasts as mentioned above.

2. (a) It is understood that this radio and advertising feature with the above mentioned titles and outline, although the characters of "Uncle Bob," "Happy Harry," "Sunshine Club," etc., were conceived by Fred W. Kantel, they are under the control of Messrs. Nisbet & Auld as long as the feature in its entirety appears to have any commercial value to Nisbet & Auld. The feature is only to be used as arranged through Fred W. Kantel.

(b) Any expansion of the idea which may be undertaken in this or any other territory comes under the same category as the original idea, and is governed by the preceding paragraphs.

(c) When the Nisbet & Auld Company prepares a book on Etiquette, and other items of interest for children, to be used in connection with this radio feature, it is hereby agreed that Nisbet & Auld Company will possess the sole rights of ownership and will control the publication and sale of such books.

(d) When the status of the feature outlined is changed from "studio" to a commercial advertising feature—Fred W. Kantel will be paid \$275 weekly for the seven broadcasts weekly. This sum covers all disbursements in connection with talent and presentation of the program.

This controversy seems to have had its origin in Kantel's absence in Vancouver, and possibly the remainder of the facts should be briefly stated, although, I think, they are hardly relevant. Kantel's business in Vancouver was to secure sponsors for the broadcasting of children's features, similar to the sketch being broadcasted at Toronto, and he apparently intended that Auld was ultimately to derive some benefit therefrom. Auld, though he was aware of Kantel going to Vancouver, and that Grant was employed by Kantel to do the broadcasting of the sketch at Toronto,

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became of the opinion that Kantel should under the terms of the agreement be in Toronto arranging for the continuance and direction of the broadcast, and seeking other sponsors for the broadcast; Kantel appears to have thought that the broadcast of the sketch was being conducted successfully at Toronto in his absence, and he would not appear to have been acting in bad faith. On January 9, 1932, Nisbet & Auld Ltd. wired Kantel at Vancouver cancelling "our agreement Uncle Bob program," the reason assigned being, "your non-fulfilment of contract in securing business and refusal of station to agree to credit. We are continuing ourselves under our attorney's advice." To this Kantel replied "Cannot accept cancellation of our agreement. Continuance of Uncle Bob feature must be governed by terms of agreement." The causes leading to the cancellation of the agreement, and the conflicting views as to whether this should have been done or not, are hardly relevant to the precise issue before me, but I should say that Auld continued the program under Grant's direction from the date of the cancellation of the agreement, till June 30, 1932; the mail was refused to Mrs. Kantel who was left in charge of the preparation of material arising from the mail; and during that period the broadcast of the feature was that of Auld who had made arrangements with Grant and radio station CKNC.

The first question that falls for determination is as to the authorship of the sketch. I think Kantel was the author. His services were undoubtedly sought for the purpose of preparing a sketch of the nature in question, and he apparently was recognized as possessing the qualifications and experience to produce a work of this kind; it was for Auld to say whether or not the sketch as prepared was acceptable, and in the end it must have proved acceptable to Auld. Kantel wrote the original manuscript of the sketch,—there is no evidence that any one else did it—and he thus gave it form and expression which required some labour and effort on his part; he rehearsed it with Grant several times before the audition, and the audition and early broadcasts were, I think, presented from this manuscript, though possibly with slight variations. The preparation of the work for the audition must have been Kantel's work and upon the evidence I do not see how it

could be attributed to any other person; it was work that Kantel undertook to do. It may be quite true that Auld made suggestions as to the names of characters, and other features of the sketch, one or more of which may have been adopted by Kantel. Because another makes suggestions to a dramatic producer, or to the author of a radio sketch of the nature of the one in question, it does not follow that the person to whom the suggestions were made is not the author of the work produced, or that it is not a work in which copyright may subsist. The evidence, I think, all tends to show that the sketch as a whole was Kantel's and not that of anyone else. Auld and Pogue, it seems to me, relied on Kantel to produce the sketch, and it is not of importance that they or either of them suggested the general outline of what was required; the suggestions had to be developed in a practical and attractive form so that the talent employed to broadcast it might meet with a favourable reception from the Juvenile radio audience. The agreement, in its broad sense, seems to concede that Kantel was to be treated as the author of the sketch. The words, "although the characters of 'Uncle Bob,' 'Happy Harry,' 'Sunshine Club,' etc., were conceived by Fred W. Kantel," in paragraph 2 (a) of the agreement, must have been intended by the parties to the arrangement to mean that Kantel was to be recognized as the author of the sketch no matter what suggestions the others may have contributed towards its production; the abbreviation "etc.," concluding this quotation, was probably intended to convey more than perhaps it actually expresses. Then, the same paragraph states that "the feature is only to be used as arranged through Fred W. Kantel." All this appears to me to express or imply an admission by Auld and Pogue, that the sketch was the work of Kantel, and could only be used as and when arranged through him. Then again the fact that the rights of the Nisbet & Auld Company are expressly reserved in any book on Etiquette, which that company might prepare for use in connection with the broadcasting of the sketch, would seem to indicate to me that it was understood between the parties to the agreement that the sketch in its substantial outlines was the work of Kantel, and if any copyright subsisted therein it was in Kantel, but that was not to extend to the proposed book on Etiquette. All

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the circumstances relating to the issue of the authorship of the sketch raise a strong presumption that Kantel was its author. In fact, as I have already stated, I do not quite see how authorship can be attributed to any other person.

And I think Kantel was the sole author. Any suggestions as to the general scheme of the sketch contributed by Auld or Pogue do not, in my opinion, suffice to give them a share in the copyright as joint authors with Kantel. It clearly was not a collective work. There is no evidence that any word or line of the sketch was produced by anyone other than Kantel. A person who merely suggests certain ideas without contributing anything to the literary or dramatic form of the copyright is not a joint author. A lessee of a theatre employed an author to write a play and afterwards altered it, inserting an additional scene. A receipt of the author read thus: "Received of—the sum of £4 15s., on account of 15 guineas for my share as co-author, etc." The balance was never paid and it was held that there was no evidence that the lessee was a joint author. *Levy v. Rutley* (1). Where an advertisement agent prepares an advertisement, on instructions and information given to him by the advertiser, the Court will in the absence of evidence to the contrary, draw the inference that it was the intention of both parties that the copyright in the advertisement should belong to the advertiser. *Harold Drabble Ltd. v. Hycolite Manf. Co.* (2). This case was cited by the defendants, but, I think, it is an entirely different one from that under consideration. There was inferred in that case a plain consent that the advertisement should remain the property of the advertiser to insert whenever he chose; that inference cannot fairly be made in this case. The agreement would appear to leave the inference that the property in the sketch was solely in Kantel.

Copyright subsists "in every original literary, dramatic, musical and artistic work," and, I think, the sketch in question must be held to constitute a dramatic work within the meaning of copyright law, and was, I think, fixed in writing sufficiently to say it was a dramatic composition capable of being published or performed and in which the dramatic element was present. The original manuscript, and even Exhibit A, grouped a series of predetermined incidents,

(1) (1871) 24 L.T. 621.

(2) (1928) 44 T.L.R. 264.

songs, dialogues, and for want of a better name what I would call talks, in a fixed sequence, which gave to the sketch in its entirety the elements and characteristics of a dramatic composition. Had the performance of the sketch, as in the case of Uncle Don's performance in a shop in Philadelphia, been on the stage, the dramatic element would be more clearly realized than when communicated by radio. "The word 'original' does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with ideas or the originality of ideas—in which there is no copyright; it is the language in which the idea is expressed which is the only thing protected, and it is that to which 'original' in the Act relates; the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author." See *University of London v. University Tutorial Press* (1), in which case, I might observe, it was held that copyright subsisted even in examination papers. In *British Broad-Casting Co. v. Wireless League Gazette Publishing Co.* (2), it was held that there was copyright in the compilation of advance daily radio programs published for the ensuing week, on the ground that the compilation required very considerable work and was not a mere collection of what had already been prepared. Literary skill or originality is not necessary for a copyright, and does not depend on whether the material collected consists of matters which are *publici juris*, or whether such materials show literary skill or originality, either in thought or in language, or anything more than industrious collection. *Jewellers Circular Pub. Co. v. Keystone Pub. Co.* (3). The Courts appear to be extremely liberal in their construction of what constitutes copyright, and also as to what constitutes a dramatic work. The sketch may have contained some ideas that were not quite original with Kantel, it may have embodied some ideas of Auld and Pogue, but the complete sketch is, I think, original in the sense that it gave expression to ideas in language and form which no one else, so far as I know, had done before. The fact that the original manuscript was

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(1) (1916) 2 Ch. 601, 608.

(2) (1926) 1 Ch. 433.

(3) (1922) 281 Fed. R. 83.

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departed from daily is not, I think, fatal to the plaintiff. In the presentation of a dramatic work, in whatever form, it is open to the performer to depart from the literal text of the work. Whatever the merits of the sketch, and it is not claimed to be of a high dramatic or literary order, it interested a section of the juvenile public for some months, and the work involved some labour, talent and judgment. From a perusal of decided cases wherein copyright in works has been upheld, I am led to the conclusion that there is enough of original literary and dramatic work in the sketch to support the plaintiff's claim to copyright, though, I must confess, I was inclined in the other direction during the progress of the trial.

What constitutes infringement is defined fully by the Act. Copyright in a work is infringed by any person "who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright." There is no infringement unless the matter copied constitutes a substantial part of the copyright. It is not debatable that A. S. Auld, on behalf of Nisbet & Auld Ltd., for several months caused to be performed or broadcasted, through Grant, the sketch of Kantel, the sketch originally prepared and broadcasted by direction of Kantel, and if I am correct in holding that Kantel was the author of the sketch, and that copyright subsisted in the sketch, then infringement, I think, inevitably follows, because Nisbet & Auld Ltd., reproduced the sketch by radio communication to others, without the consent of the copyright owner. This action proceeds on the footing that the sketch was reproduced without the consent of Kantel. The words: "The feature is only to be used as arranged through Fred W. Kantel," must have been intended for the protection of Kantel's copyright in the sketch, and an arrangement for its use was made, but such arrangement was terminated on the cancellation of the agreement. To say that because Kantel stated, in his telegram of January 13, 1932, that he could not accept cancellation of the agreement, and that "the continuance of Uncle Bob radio feature must be governed by terms of agreement," that therefore the agreement was not cancelled, seems to me altogether without substance; this telegram was rather an intimation that the sketch could be

used under the terms of the agreement, or not at all. There was a very decisive cancellation of the agreement, and thereafter there was no arrangement of its use through Kantel. The plaintiff must therefore in my opinion succeed against the defendant Nisbet & Auld Ltd.

The action against the defendants, Dominion Battery Company Ltd., and Gilbert Watson, was abandoned, these two defendants agreeing that they would abide by any order of the Court that might be made in respect of copyright in the sketch. The defendant Grant registered in July, 1932, a copyright in "Uncle Bob's Sunshine Club," as a dramatic-musical work. In the autumn of 1932 he broadcasted the sketch, on his own account, for a short time, without licence from Kantel. When Grant registered his copyright he states it was intended for the benefit of himself and Kantel, a position difficult to reconcile with his attitude as a defendant in this action. If I am correct in my opinion that Kantel was the author of the sketch, and that copyright subsisted therein, then of course Grant infringed the copyright by performing it in public. Any alterations Grant made in his broadcast of the plaintiff's sketch was a colourable and evasive imitation of the plaintiff's work, which he had broadcasted for some time on behalf of the plaintiff, and later for Nisbet & Auld Ltd. Judgment must therefore be against Grant with costs.

The plaintiff is therefore entitled to the relief claimed against the two defendants, Nisbet & Auld Ltd., and Frank E. Grant, together with his costs of the action.

*Judgment accordingly.*

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