

U.S., at page 996 of 60 S.Ct., 84 L.Ed. 1311, 128 A.L.R. 1044, the court said: "Restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition."

[4] Reading the bill as a whole, there are no facts alleged which would bring the activities of the defendants within the prohibitions of the antitrust laws. The injury complained of is a private wrong which we assume is remedial in some other court.

Since the only basis alleged for the jurisdiction of this court is a violation of the antitrust laws, and in view of the foregoing, the defendants' motion must be allowed, and the action dismissed for want of jurisdiction.

**OLIVER et al. v. SAINT GERMAIN
FOUNDATION et al.**

No. 1268-H CIVIL.

District Court, S. D. California, Central
Division.

Sept. 16, 1941.

Joseph Lewis, of Los Angeles, Cal., for plaintiffs.

W. I. Gilbert, of Los Angeles, Cal., for defendants.

DAWKINS, District Judge.

Plaintiffs, under the trade name of Borden Publishing Company, charge that defendant corporation and certain individuals have plagiarized and infringed the copyright of the book entitled "A Dweller on Two Planets", the property of complainants. They pray for injunction, a decree sustaining the copyright and its infringement by defendants, for an accounting of profits, for damages, and the impounding of all copies of the offending book to be finally destroyed.

For defense, defendants made a general denial, coupled with pleas of limitation under state statutes and laches in equity. Thereafter, they moved a dismissal and plaintiffs, in turn, asked for summary judg-

ment. The case has been submitted, first on the motion to dismiss, and secondly the prayer for summary judgment by complainants.

The motion to dismiss is for failure to state a cause of action or grounds for relief, under Rule 12 (b); while the demand for summary judgment is under Rule 56 of the Rules of Civil Procedure. 28 U.S.C.A. following section 723c.

Motion to Dismiss.

This motion alleges invalidity of the copyright in that (a) Frederick Spencer Oliver, to whom the original was issued, did not pretend to be the author of the book "A Dweller on Two Planets", but stated plainly that it was dictated to him by the spirit of a previously deceased person; (b) the copyright was issued to him not as author but as proprietor; and (c) that this necessarily implied an assignment which could not be made by the spirit of a dead man. Further, that a proprietor has only a limited right of renewal (the original copyright having been issued more than forty years ago and renewed from time to time, the last time to Leslie Robert Oliver, son of Frederick Spencer Oliver), restricted to a "composite work upon which copyright was originally secured by the proprietor thereof".

It appears from the record in this case that Frederick Spencer Oliver did not claim to be the author of the book as ideas and thoughts of his own, but he describes himself as the "amanuensis" to whom it was dictated by Phylos, the Thibetan, a spirit. The following is quoted from Oliver's preface:

"By permission of the Author, whose letter addressed to me follows as his preface herein, and to meet the natural inquiry and satisfy, so far as any personal statement from me will, any honest inquiring mind, I humbly appear in order briefly to give the major facts concerning the writing of this, even to me, very remarkable book.

"I am an only child of Dr. and Mrs. Oliver, who for many years have resided in the State of California.

"I was born in Washington, D. C., in 1866, and brought to this State by my parents two years later. Prior to commencing the writing of this book, in 1884, my education had been comparatively limited, and extended to a very slight knowledge of the subjects herein treated. My father, a well known physician, died a few years

ago, my mother surviving him. Both were daily witnesses of most of the circumstances and facts surrounding the writing of this book. But further than to state this, I do not think myself called upon to introduce my family into the work, nor, in fact, myself, except insofar as it is meet for me to stand forth and do my personal part as the amanuensis.

"I feel that I am mentally and spiritually but a figure beside the Author of the great, deep-searching, far-reaching and transcendent questions presented in the following pages; and I read and study them with as much interest and profit, I imagine, as will any reader. At the same time I feel with no sense of the natural pride of an Author of such a book, that it is a work of unselfish love, and will help to the betterment of an upward-struggling world, searching ever for more light, and feed the hungry for knowledge of the great mystery of life, and of the ever evolving soul, through Him who said—*I am the Way: follow Me.*"

"In these days of doubt, materialism, and even rank atheism, it requires all the courage I possess to assert, in clear unequivocal terms, that the following book, '*A Dweller on Two Planets*', is absolute revelation; that I do not believe myself its Author, but that one of those mysterious persons, if my readers choose to so consider him, an adept of the arcane and occult in the universe, better understood from reading this book, is the Author. Such is the fact. The book was revealed to me, a boy, and a boy, too, whose parents were mistakenly lenient to such a degree that he was allowed to do as he chose in most things."

More than six pages of the book are consumed in emphasizing that it is a true revelation by Phylos through Oliver, the "Amanuensis", and the latter appends to his preface what he solemnly asserts are letters "from Phylos, the author of this history", which read as follows:

"To-day, my brother, the masses of humanity on this planet are awakened to the fact that their knowledge of life, the Great Mystery, is insufficient for the needs of the soul. Hence a school of advanced thought has arisen, whose members, ignorant of the mysterious truth, yet know their ignorance and ask for light. I make no pretenses when I say that I, Theochristian student and Occult Adept, am one of a class of men who do know and can ex-

plain these mysteries. I, with other Christian Adepts, influence the inspirational writers and speakers through an ability to exert the control of our trained, and therefore more powerful minds over theirs, which are enormously less so. Hence, when the people ask for bread, our media give it to them. Who are these, our media? They are all men or women, in churches or out, who bear witness of the Fatherhood of God, the Sonship of Man, and the Brotherhood of Jesus with all souls, irrespective of creeds or ecclesiastical forms. Because these, our writers and speakers have wrought for human good, so shall, and so does, good come to themselves, bread from the waters. It is proper that the leaders of the mental van should receive generous remuneration. And they do. But at this point enters a different phase. Observing the cry for more light, more truth, observing also how great is the recompense, up springs the imitator, who has no light of inspiration, no conception of the real truth, none of the laws of the Eternal. What does he? Watch! With a pen whose shaft is imitation, and whose point is not of the gold of fact, but of the perishable metal of selfish greed, this person writes. He dips his pen into the ink or more or less thrilling sensationalism, muddy with the dirt of immorality and nastiness, and he draws a pen picture illuminated by the tallow-dip of lust and corruption. There is in his work no lofty aim to inspire his readers; he deals with the lowest aspects of life, and, ignorant of the inexorable penalty for sin, has no expiation to demand of his characters. While a little allured by brilliant word-painting, the reader goes to the end, he is conscious ever that the cry of his soul for the bread of infinity has been answered not even by a stone, but by a handful of mud! No good purpose is thus subserved; nothing taught of the real laws or philosophies of life; it drags down, but never elevates. Whoso shall utter thus, upon them shall come retribution, and they shall be judges upon themselves, and executioners also, out in the open sea of the soul, where their own spirit will have no mercy for the misdeeds of the soul. Other imitators there may be, who, fired with a genuine desire to do good, will mimic intuitional utterances, and, however poor the work, yet if the animus has been to do good, in the measure of that resolve shall the Most High judge that whatever is for

good is not for evil. But let them beware who, for money or profit, are tempted to give stones or mud!

"And now, my brother, I have another subject to speak upon. Readers of my book, 'Two Planets', may consider awhile over those passages concerning the sin of the Princess Lolix and of Zailm, the legal nephew of the Emperor Owauxlu. They may say that the mention of this fact, though liable to occur as one of the varied experiences of life, is nevertheless out of place in a book whose aim is highly moral. But I ask those who know my work, is it? Is it inexcusable to speak of those grave but common crimes, if the author can treat them as examples of broken law, and can place the working of such law so clearly before this unthinking world that men and women will be afraid to break it, fearful of the penalty, which can in no wise be evaded? I think it unjustifiable to keep silence under such circumstances. I have, so far from overdrawing the estimate of the penalty of crime, not given the entire expiatory picture. I know whereof I speak, for this, my brother, is my own life history, and words have no power to depict the utter misery, and similar or equal sin which the exaction of the punishment has caused me! If but one soul shall be saved like misery, and similar or equal sin, or less or more error, then I am content. I have sought to explain the great mystery of life, illustrating it with part of my own life history, extracts which cover years reaching into many thousands; and the greatest of all Books has been my test. I add not thereto nor take away, but explain. Peace be with thee.

"Phylos.

"Addendum: I feel myself vastly indebted to many bright writers and authors for numerous quotations of which I have availed myself, without making credit at the time; it is impossible to render this award to every individual by name, hence I must do so concretely, just as the world finds itself forced to express its aggregate gratitude, not by words of laudation, but by shaping its life in conformity to the noble precepts in poetry and in prose, devised to humanity as the legacy of all the ages. As the world is helped, so has my work been; I hope I have returned help for help.

"Sincerely,

Phylos."

It is perfectly clear, therefore, that Oliver wished to impress in the strongest

terms possible, his sincere belief in the truthfulness of his statement that he, a mortal being, was not the author, and to induce those who might read to believe that it was dictated by a superior spiritual being, whose motive was to uplift and benefit the human race spiritually, religiously and morally. In other words, he sought to give the book an origin similar to that claimed by the followers of Joseph Smith in the Book of Mormons, the Koran by the followers of Mohammed, and to some extent the Bible, although it affirms the teachings of much of the New Testament.

[1,2] In this situation, if we accept Oliver's statement as true and not fiction, how can we say that King, who wrote defendants' book, was any less truthful and sincere, even though there be some similarity as to the methods of spiritual communication, incidents, etc., between the two? Who can say that the spirit of the Master or Masters, whether called by one name or another, might not see fit to use both men as instrumentalities or amanuenses for communicating their messages of guidance and direction to humanity? The law deals with realities and does not recognize communication with and the conveyances of legal rights by the spiritual world as the basis for its judgment. Nevertheless, equity and good morals will not permit one who asserts something as a fact which he insists his readers believe as the real foundation for its appeal to those who may buy and read his work, to change that position for profit in a law suit. *Davies v. Bowes*, D.C., 209 F. 53; *Collins v. Metro-Goldwyn Pictures Corporation et al.*, D.C., 25 F.Supp. 781, reversed on other grounds, 2 Cir., 106 F.2d 83. One who narrates matters of fact may be protected by copyright as to his arrangement, manner and style, but not as to material or ideas therein set forth. *Nichols v. Universal Pictures Corporation*, D.C., 34 F.2d 145.

[3] There is no charge of infringement here based upon style or arrangement, but it is upon the subject matter or stories of two earthly creatures receiving from the spiritual world messages for recordation and use by the living. There is no plagiarism or copying of words and phrases as such, but only slight similarity of experiences in that the parties became agencies for communicating between the spiritual and material worlds, of things which happened in other ages. In final analysis, the

object of both is to impress what is said to be one of the chief attractions of the theosophical movement, belief in the reincarnation of the soul.

I do not deem it necessary to go into the prayer by the complainants for summary judgment, which must be determined largely by comparison of the two books. It is sufficient to say, I think, that even on this basis, I do not believe the plaintiffs' case is made out.

The motion to dismiss will therefore be sustained.

**RICHARD NATHAN CORPORATION v.
MITSUBISHI SHOJI KAISHA,
LIMITED, et al.**

District Court, S. D. New York.

July 10, 1941.