

Copyright of Gramophone Records

Royalty Payable by B Class Stations

AS every listener knows, a payment is made by the New Zealand Radio Broadcasting Company, Limited, in respect of the copyright of all musical items performed by it over the air. Prior to the passing of legislation last session this payment was made direct to the Australasian Performing Rights Association, which claimed possession of approximately 90 per cent. of the music worth while for broadcasting purposes. On account of the position which arose, last session legislation was passed by the New Zealand Government directing that, pending finality and legislation likely to arise from the Report of the Copyright Convention held in Rome, at which New Zealand was represented, payment on a set basis should be made by the Radio Broadcasting Company to the Government for distribution by it to the Australasian Performing Rights Association, on proof of copyright of the music claimed being duly held by it.

While this decision has obtained in respect of the A stations throughout New Zealand, various amateur transmitters and B Class stations have not been troubled with any demands for payment of royalties in respect of the music broadcast by them from time to time. From the strictly legal point of view this position would seem now to be likely to end, although it remains for a specific demand upon such stations to be made by the party concerned, namely, the Australasian Performing Rights Association.

Action was recently taken by that association in Australia against a B Class station in Melbourne, namely, 3BD. This action was taken to determine the liability or otherwise of the station in respect of gramophone records used by it from time to time. The decision of the Court was in favour of the Performing Rights Association and against the B Class station, and an injunction was granted restricting the transmission of such records. This decision naturally will have a bearing upon the position as it obtains in New Zealand, and would seem to open the way for any action on a similar basis that may be contemplated against the B Class stations—i.e., were it not for the existing copyright legislation as passed by the New Zealand Government last session, and to be reviewed in the coming session in the light of the recommendations of the Rome Convention. As the case is of

interest to all those concerned in B Class stations and listeners in general, we give a summary of the Melbourne legal proceedings.

Injunction Sought.

THE Australasian Performing Rights Association, Ltd., sought an injunction against 3BD Broadcasting Company, Ltd., of Capitol House, Swanston Street, to prevent that company from infringing the performing rights of plaintiff, an inquiry regarding damages or, alternatively, an account of profits.

Mr. Menzies, K.C., and Mr. Eager (instructed by Messrs. Gillott, Mohr and Ahern) appeared for the plaintiff, and Mr. D. C. Robertson and Mr. Dean (by Messrs. Martin and Martin) for the defendant company.

Plaintiff in its writ claimed that it was the owner of the performing rights in the Commonwealth in the following and numerous other musical works: "Lolita," "Ramona," "My Ohio Home," and all selections from "The Desert Song," "Rio Rita," "Aida," and "La Tosca." Defendant without licence or consent of plaintiff had recently performed in public the said musical works, and thereby had infringed the plaintiff's performing rights. Plaintiff had requested defendant to desist, but defendant had neglected to comply with the request. As a result plaintiff had sustained serious loss, and unless defendant was restrained, would suffer further loss.

For the defendant it was admitted by Mr. Robertson that, insofar as the broadcasting by the defendant company was of vocal and instrumental performances, the defendant was bound by the decision of the Full Court in the case of Chappell and Co. against Associated Radio Company, Ltd., and must submit to an injunction. Insofar, however, as the claim related to the broadcasting of works performed by means of gramophone records or pianola rolls, the defendant contended that, the record having been lawfully made, the plaintiff had no right to prevent the public performance of musical works by means of those records, and that the performing right of the owner of the original work could not include the right to prohibit performances by means of such records.

Counsel for plaintiff contended that, although the Copyright Act permitted gramophone records and pianola rolls

to be made without consent of the owner, in certain circumstances, the Act nowhere authorised the public performance of musical works, in which copyright subsisted, by means of such records or rolls. The public performance of musical works without the consent of the owner of the performing right was an infringement of such performing right.

Judgment Against Radio Company.

IN giving reserved judgment, Mr. Justice Lowe said that at the trial Mr. Robertson (for the Broadcasting Company) had stated that, insofar as plaintiff's complaint related to vocal and instrumental items rendered by local artists, the defendant considered itself bound by the decision of the Full Court in the case of Chappell and Company versus Associated Radio Company, and in respect of those items it submitted to an injunction. Insofar as plaintiff's claim related to work performed on gramophone records and pianola rolls, defendant admitted that the works set out were performed in the manner alleged, and were broadcast by the defendant from its studio. Mr. Menzies, K.C. (for plaintiff), admitted that as to certain of the musical works specified in the statement of claim plaintiff was not the author of any such work, and that the gramophone records and pianola rolls by means of which the performances of the items complained of were given were lawfully made.

Mr. Justice Lowe said that the question which he had to determine was whether that part of copyright which was preserved under the right of performing a work in public was infringed by the performance in public of the reproduction of the work obtained from a gramophone record or a pianola roll. That question was, so far as he knew, novel. He was not called upon in this case to determine the full extent of the copyright conferred upon the owners of the copyright in mechanical contrivances when the owner of the performing right in the work recorded on the mechanical contrivances did not interfere. He had no admission that defendant was, in respect of these mechanical contrivances, an assignee or licensee from the owner of the copyright, nor was any assignment or licence in evidence before him. Nor was there anything to suggest that the contrivances used by the defendant were made otherwise than by or with the consent or acquiescence of the owner of the copyright. He must, therefore, on the admission he had set out, consider the defendant as one protected by, and to the extent of, section 19 (2) of the Copyright Act. He thought that this subsection did not authorise a performance in public of the work recorded on the contrivance in conflict with the right of the owner of the performing right of the work itself. In his opinion, therefore, the action succeeded, and there would be an order for an injunction against the defendant. If the plaintiff insisted there should be an inquiry regarding damages or profits, but plaintiff must elect which relief it wished. Plaintiff would be given the costs of the action, but he

Edison's Forecast

Views on Radio on 82nd Birthday

ON the occasion of the celebration of the 82nd birthday of the great inventor, Mr. Thomas Edison, a special meeting of America's prominent citizens, including the President and Mr. Henry Ford, was arranged. During the celebrations the great inventor was asked his opinion on twenty-two questions, and the following pertaining to radio are of particular interest to all who are interested in that science.

The inventor was asked: "Do you think that radio has been improved to any marked extent during the past year, and what do you see for it in the next year?" to which Mr. Thomas Edison replied, "Improvements are being made continually every year." Another question, "Will it ever be possible to completely eliminate static?" and the reply, "It is improbable."

"What is your opinion of what electricity, machinery, and man's genius will make the world 50 or 100 years from now?"

"It is impossible to tell anything about it," replied Mr. Edison. "We don't know a millionth of 1 per cent. about anything. Sound is the only feature that has been revealing to the men who have studied it."

IN the evening Mr. Edison talked to the people of the country over the air, and millions of Americans from coast to coast listened to the 31 radio stations of the National Broadcasting Company.

"Ladies and gentlemen," he said to the radio audience, "this is Thomas A. Edison speaking from Fort Myers, Florida."

"This has been such an eventful day, with so many kind messages from so many kind people that I find it difficult to express my heartfelt thanks."

"I am still working hard, and I ask you to accept my efforts as a proof of my affection, instead of my words. I wish I could invite all of you to have some of my birthday cake, but unfortunately we can't eat by radio just yet. I will have to work on that problem."

"Well, good night everybody. Thank you and good luck."

reserved for further argument the question of the costs of the notice of motion for an interlocutory injunction which had stood over to the trial of the action.

Mr. Eager (for plaintiff) said that plaintiff elected to waive the claim for damages and an account of profits. It had desired to have the legal questions determined, and was not insistent upon obtaining an award of damages.

Mr. Justice Lowe said he should think this was the proper course to take in the circumstances.

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