APPELLATE CRIMINAL.

Before Mr. Justice Wallace.

1927, July 27.

BALANTRAPU VENKATA RAO (COMPLAINANT), PETITIONER,

v.

VALLURI PADMANABHA RAJU AND THREE OTHERS (ACCUSED), RESPONDENTS.*

Indian Copyright Act (II of 1914)—sec. 7—Complaint of infringement—Plea, non-payment of fee under sec. 5 of Act XX of 1847—Bar to maintainability of action—If valid.

Where an author of a work filed a complaint under section 7 of the Indian Copyright Act (III of 1914) for infringement of copyright and the accused pleaded that the complainant, not having paid the fee prescribed by section 5 of the Indian Copyright Act (XX of 1847) which was the statute in force at the time the first edition of the complainant's work was published, the action was not maintainable and the accused were acquitted,

Held, in revision, that the complaint having been brought under section 7 of Act III of 1914 which had repealed Act XX of 1847 and the procedure about payment of fees having no place in the later Act, the non-payment of the fee prescribed under the earlier Act was no bar to the maintainability of the action, that the accused were wrongly acquitted and that there should be a retrial.

Goubaud and another v. *Wallace*, (1877) 36 L.T., 704, *E. W. Savory, Ltd.* v. *The World of Golf, Ltd.*, [1914] 2 Ch., 566, followed, and *Evans and another* v. *Morris*, (1913) W.N., 58, referred to.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgments of the Court of the Joint Magistrate

* Criminal Revision Cases Nos. 916 to 919 of 1926.

of Rajahmundry in Calendar Cases Nos. 27, 28, 29 and 30 of 1926, respectively.

Ch. Raghava Rao for petitioner in all.

V. Govindarajachari and *K. L. Narasimha Rao* for respondents.

JUDGMENT.

These are petitions presented against orders of acquittal of the counter-petitioners in the matter of offences under section 7 of the Copyright Act, III of 1914, on the ground that the lower Court has erred seriously in its view of the law.

The facts necessary for the disposal of these cases are that the petitioner published in 1906 and 1908 in two parts a book of folklore stories in Telugu containing in all 64 tales. So far as appears, the collection and form of presentation of these tales and the language in which they were told was original. In 1914 he published a second edition which was to all intents and purposes a reprint of the first. In 1925 the counter-petitioners published and sold the same set of tales in almost the same language and order. The petitioner contended before the lower Court that they had thereby committed offences under section 7 of the Copyright Act, having infringed his copyright book. The counter-petitioners' defence was that the book published and sold by them was a reprint of a book by one Ranganatha Rao and that they were not aware of the petitioner's book or whether Ranganatha Rao's book was or was not an infringement of the petitioner's copyright. It was also contended that the petitioner had no copyright whatever left in his book, first, because it was not original, and second, because he had not paid the registration fee.

Now on the first point the lower Court has not come to any very definite conclusion, but I gather that it was

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of opinion that the petitioner's book was an original compilation and therefore *prima facie* it was a work in which the petitioner possessed copyright. On the second point the lower Court has agreed with the counter-petitioners' argument, and that finding is attacked here. The ground on which the finding is based is, that when the first edition of the work was published, the Copyright Act in force was Act XX of 1847, which was to some extent modified or enlarged by Act XXV of 1867. Under the latter Act, section 18, a payment of Rs. 2 was necessary to constitute entry in the Government Catalogue of Books as entry for the purposes of copyright under Act XX of 1847. Under section 5 of this latter Act the proprietor of a copyright may have his book registered in the Registry book for a sum of Rs. 2, and under section 14 of that Act:

> "No proprietor of Copyright shall maintain, under the provisions of this Act, any action or suit at law or in equity, or any summary proceeding in respect of any infringement of such copyright, unless he shall, before commencing such action, suit or proceeding, have caused an entry to be made in the book of registry, provided always that the omission to make such entry shall not affect the copyright in any book, nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof under the provisions of this Act".

It seems perfectly clear from this proviso that it applies only to actions taken under the provisions of that Act. That Act was repealed by Act III of 1914, and the present action was not taken under the provisions of Act XX of 1847 but under the present Act. I am therefore unable to see how the lower Court has come to the conclusion that the present action is not maintainable because the petitioner has not paid the Rs. 2 which he would have had to pay had Act XX of 1847 still been in force.

This view is the view adopted in a case under the English Copyright Act reported in *Goubaud and another* v. *Wallace*(1). The counter-petitioners referred me to a case *Evans and another* v. *Morris*(2), but no reasons are set out in the notes in that case. In a case, *E. W. Savory, Limited* v *The World of Golf, Limited*(3), under the allied Fine Arts Copyright Act the view is expressed that mere failure to register does not deprive an artist of his copyright. This appears to me to be a correct and reasonable view. The lower Court seems to think that failure to make the payment deprives petitioner of his copyright altogether. I should be surprised if the Legislature had laid down any such proposition, and in fact the proviso to section 14 of Act XX of 1847 definitely states the contrary. It is only the right to sue under that Act that is prohibited if the registration fee has not been paid.

The lower Court has therefore proceeded on a fundamental misconception of the law. This procedure about payment of fees has no place in the present Act, and therefore the only question the lower Court had to consider was whether the counter-petitioners had committed an offence under section 7 of that Act. Under that Act the petitioner's copyright, which the lower Court *prima facie* found to exist in him, will still subsist since it enures at least for his lifetime. So the real question for the lower Court was whether the counter-petitioners had knowingly made for sale and sold infringing copies. There are two points here to be decided, on neither of which has the lower Court given any definite pronouncement, first, whether the petitioner's copyright work has been infringed by the counter-petitioners, and secondly, if so, did the counter-petitioners infringe it knowingly.

(1) (1877) 36 L T., 704. (2) (1913) W.N., 58.
(3) [1914] 2 Ch., 566.

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The lower Court's judgment is vitiated throughout by its mistake of law from which it concludes that petitioner's copyright no longer subsists and therefore the counter-petitioners have not committed any offence. The cases therefore have not been fairly heard and tried.

It is urged that there is no sufficient ground for setting aside an acquittal. But in a case where the Court has proceeded on a wrong view of the law, and where the matter is, as no doubt it is, of great importance to the petitioner in his position as author of this book, which, if this judgment stands, will be pirated by another, who will secure for himself the gains that ought legitimately to go to the petitioner, I think it is necessary that there should be a fresh trial; I therefore order a retrial. In this retrial the matter of confiscating the copies will also be reopened since the whole case is now reopened. The lower Court in refusing to confiscate these copies has rested its order on its erroneous view that the petitioner no longer possessed any copyright, which, as I have said, cannot be supported. All the four cases are therefore directed to be sent back for retrial. I reverse the decision in all the four cases and direct a retrial by the Joint Magistrate of Rajahmundry.

B.C.S.