

12th. November, 1945.

Judge :

The Hon. Prof. Dr. E. Ganado, LL.D.

Captain Henry Briffa ne. *versus* Frederick Graham ne.

**Copyright — Protected Music — Private
Entertainment — Copyright Act, 1911.**

The question whether a place is public or not is for the purposes of the Copyright Act, 1911, one of mixed law and fact; for it is a question of defining what the legislator intended with the words "in public", and of establishing if the facts deriving from the evidence of the case constitute the place where musical pieces are played as public, or point out only to a private entertainment.

In the case at issue, it was held that the premises were a residential home reserved for associates, and that the fact that at times entertainments were held therein to which friends were asked as guests, did not alter the character of privacy of the place and of that entertainment.

The Court — Upon seeing plaintiff's claim against defendant nomine before the Civil Court of Magistrates of Judicial Police, whereby he asked that it be adjudged that defendant be condemned to pay by way of damages a sum not exceeding £10 in that he, at the Dockyard Hostel, Sliema, publicly executed or allowed and tolerated to be executed, music controlled and protected by the plaintiff society, without authority and in contravention of the Copyright Act, 1911; with costs;

Upon seeing defendant's statement of defence to the effect (1) that the premises are erroneously called "The Dockyard Hostel", while their name is "Dockyard Agreement Workmen Nest", alias "D.A.W.N.", and (2) that the premises were a residential quarter, and as such to be considered as private, and not public place;

Upon seeing the judgment of the Court below, given on the 29th. September 1945, wherein plaintiff's claim has been disallowed, and has ordered that in view of the difficulties of the issue-at-fact raised each party is to bear its own costs;

That "juxta allegata et probata" the place in question is

to be used as a residence or home, and no admission fees or subscriptions are raised from or imposed upon associates; the place is furnished by the Admiralty for the purpose of providing board and lodging to dockyard workmen brought from abroad for not less than two years; meals are furnished in the place, exclusive of wine and spirits; a bar is run but drinks are paid for extra; the elected treasurer is the caterer of the place; each member pays for meals 25s. per week to the Treasurer, the capacity of the place is for 25 members, but the overflow of members is provided for by the tenancy of another premises in Sliema, Tigné Street, although the members living in the Tigné tenement do partake of the meals prepared and served in the premises in question situated at Ghar-id-Dud, Sliema; a rediffusion set which is paid for by the members & installed in the lounge of the premises;

That during a year three entertainments were held in which guests were asked; that any profits accruing from some items go to make good for the entertainments which are defrayed by the members;

That on the 7th, October 1944 the music mentioned by witness Borg was being played on the rediffusion set at 9.30 p.m. and that the work is protected by the plaintiff society; that whether the place is public or not is a question of fact; that it is important to establish the true character of the audience, for, as it was held by the Court below in re "Mallia ne, vs. Gascoyne ne," on the 4th, April 1945, the presence or absence of visitors is not a decisive factor, nor does it matter whether the performance was paid or gratuitous, nor is it conclusive that admission is free or for payment, nor is the number of the audience decisive although these factors may jointly be taken as valid positive test in that determination;

That the word "private" carries with it the idea in respect of associations of a domestic reunion, meeting or retirement from which the public in general is excluded but to which the friends of the associates can be asked, without by any means in any way altering the character of the place in question; that the place in question is not a public but a pri-

vate place, as it is the home or residence of the particular associates under agreement with the Admiralty for not less than two years, wherein a communal life is lead and the members of which are bound by a quasi domestic tie and twentyfive (25) of whom live under the same roof, the others being excluded owing to the capacity of the place in question, although in spirit they are brothers; that no honorary members are allowed to sleep in, no subscriptions are exacted nor entrance fees; the fact that sometimes and on occasions guests are invited does not alter the private character of the home as they would not alter a private house held by a private family in a public place if the members of a family were to invite a friend at home;

That reference has been made to Copinger "On the Law of Copyright", 1936 Edition, page 140 and 141, to Darras "Des Droits Intellectuals" no. 73, page 111, and Digesto Italiano Vol. IX, Diritto d'Autore, page 639;

Upon seeing the note of appeal and the relative writ-of-summons filed by appellant, whereby he asks the reform of the said judgment by reversing it on the part disallowing plaintiff's claim and ordering to pay his own costs, and by confirming the remainder, thus deciding according to the original claim for payment by defendant nomine of an amount of damages to be assessed by the Court, which amount is not to exceed £10, with costs of both Courts against respondent;

Omissis;

Having considered;

That according to the interpretation given by the local Court on the words in question, that is "in public", whether the place is public or not, and in conformity with what is established in English Jurisprudence, this is a question of mixed law and fact. It is a question of law, as the Court must define what the legislator intended with the words "in public"; it is a question of fact, as the Court has to determine and establish if the facts deriving from the evidence brought forward in the case amount to and constitute the entertainment where the musical pieces were played as public, or, on the

contrary, if it was only a private entertainment";

The Admiralty has furnished premises for the purpose of providing board and lodging to dockyard workmen brought from England and elsewhere under an agreement of not less than two years. Those persons, about twentyfive in all, live in a state of communal association under rules and regulations laid down by the Admiralty. Each member pays twenty-five shilling (25s.) a week and is served with meals exclusive of wine and spirits:

During the period of one year the members of the house in question gave three entertainments, to which guests were asked: any profits accruing from such items go to make good for the expenses necessary for such entertainment, which are generally defrayed by the members:

The question to be adjudged upon is, therefore, whether the entertainment was given in a public place. Having examined all the facts of this case, the Court considers that the Court below has well applied the law to the facts in question, according to the legal principles on the subject as fixed by local and English jurisprudence;

The nature of the entertainment given by the members of that house, the "D.A.W.N.", does not fall in the category of a public entertainment, but it remains within the orbit of a domestic or quasi-domestic entertainment;

The Court of Appeal in England held in re "Duck vs. Bates" (vide case of "Jennings vs Stephens", p. 7), that the entertainment was domestic or quasi-domestic when the audience was limited to nurses and others living in the hospital or connected with its management and a few friends. The fact that a limited number of members' friends were invited as guests does not alter the position, as there is no invitation to the public, or at least to a portion of the public, to attend, and to which, as Mr. Justice Bennett upheld in "Performing Right Society vs. Hawthorns Hotel" reported in 1933, Vol. I, Chancery Div. O. 855, any respectable member of the public could obtain admission merely by payment";

The present case is similar to that above quoted, "Duck

vs. Bates", which according to the English Courts, gave a quasi-domestic complexion to the performance. The Master of the Rolls, Lord Justice Brett, in that case defined a public representation as that to which any portion of the public is freely admitted, an element which is lacking in the present case, as besides the members of the "D.A.W.N." only their friends as invited by them were admitted as guests;

The present case is even stronger than the aforesaid case "Duck vs. Bates", as here we have members of a "home" associated together in their residential house, who give an entertainment to their friends in their "home";

For the aforesaid reasons and for those of the Court below, the Court dismisses plaintiff's appeal, and consequently affirms the judgment of the First Court, and orders that judicial costs, owing to the special circumstances of the case, are not to be taxed between the parties, the Registry fee to be borne by appellant.
