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MEMORIAL

TO THE

CONGRESS OF THE CONFEDERATE STATES.

MOBILE, December 14, 1863.

Wm. J. HARDEE, of Georgia, the author, and S. H. GUTZEL, of Alabama, the publisher, of a work entitled "Hardee's Rifle and Infantry tactics," which has been revised and improved by the author at the commencement of the present war, humbly memorialize the Congress of the Confederate States of America, to grant a special copy-right therefor, and assign as reasons the following:

In 1855, the work was completed for publication by your memorialist, Hardee, and the contract for printing, lithographing and publishing was made with Lippincott, Grambo & Co., of Philadelphia, the Congress of the United States making an appropriation to assist in its publication, on condition that the publishers should furnish the Government of the United States eighteen thousand copies, at one dollar per copy. This condition was assented to and complied with. The author's contract with the publishers was that they should pay him _____ cents per copy, for each copy sold over and above the Government purchase, which was afterwards increased to _____ cents per copy.

This contract was complied with up to the formation of this Government, and the said Hardee regularly received under it, his share of the net proceeds of sales by the publishers.

The publishers neglected to take out a copy right for the work, assigning as reasons, in excuse, that the work was a very expensive one to publish, and that, on account of the numerous lithographic plates it contained, the sales would necessarily be small and limited, and they therefore could not undertake to re-publish it from any profits that could be realized thereon. In time of peace, as then existed, these reasons were plausible and satisfactory; and, until the war, no one attempted to re-publish it.

During the war the work has been published in the United States in immense quantities, and the publishers there have realized large sums from the sale of it, in which the author, as author of course,

has no lot or share. He has to look to his own Government and people for compensation for his mental labor, and protection from an infringement of it. His remittances under his contract with the Philadelphia publishers, ceased with the formation of the Confederate Government, and he has no idea they will ever again acknowledge the contract which existed before the war, even if the Government of the United States has overlooked the author's interest in the contract with them (the publishers) in their efforts to confiscate property of Confederate citizens.

At the beginning of the war the author revised his original work, as published in Philadelphia; made many material alterations and improvements therein, though leaving it substantially the same, and then made a contract with S. H. Gætzl, of Mobile, for the publication of the work for the use of the army and people of the Confederate States, by which contract, the said Gætzl was to take out a copy-right for the same, in his own name, incur all the expense of publication, and pay to the said Hardee twenty cents per copy, for each copy sold.

The copy-right of said work was duly entered and secured by said Gætzl in the form and manner required by existing laws on that subject, in the clerk's office of the district court of the Confederate States, for the district of Alabama, and since then nine editions of the same has been published; and the said Gætzl, at all times, kept on hand a sufficient number of copies to meet all reasonable needs and demands, of the army and people of the Confederate States. Although there had been no copy-right secured in the United States, as we had formed a separate Government, and as the people of the United States had become a foreign people, and their Government a foreign Government, your memorialists considered that a copy-right, entered and secured under the Confederate Government, was a valid right, and would be protected by the Confederate courts, especially as the author had lost all his rights for compensation, under his contract with a citizen of the United States.

Notwithstanding the copy-right of your memorialist, various persons in the Confederate States have published private editions of said work, and have been selling them in various parts of the country to the detriment of the rights and interests of the author and publisher thereof.

The republications have generally been of the old Lippincott edition, and not containing the alterations, changes and improvements made by the genuine, or copy-right edition, which are important and material, and which has created some confusion in army instruction because of different versions of the same work being in use.

Your memorialist caused a bill to be filed in the district court of Alabama against Francis Titcomb, a bookseller in Mobile, who kept on sale a private edition of said work, published in Richmond, the same being a copy of the original Lippincott edition, for an infringement of the copy-right of your memorialist, on which a provisional injunction issued.

The same proceedings were taken against one Randolph, of Richmond, and several booksellers in Memphis before the fall of that place.

The cause in Mobile was tried in the Confederate States district court in July, 1863, on bill, answer and testimony, and after elaborate argument by counsel, the judge of said court delivered an opinion adverse to your memorialists copy-right, on the ground that the said work was published in the United States in 1855, without a copy-right, at a time the two countries were under one Government. The complainants contended that was a foreign publication, and as it was shown that they had promptly taken out a copy-right in their own country, and under their own laws, the original publication ought not to prejudice them in their present right, and especially, as the author had provided with the original publishers reasonable compensation for himself, and as the work had not been re-published in the United States before the war, and no probability existed of it ever being re-published by any other person, such contract secured for the author all the benefits of a copy-right.

By reason of the war, all the rights and benefits under that contract have been lost, and your memorialist (Hardee) could not now, and he does not, believe he ever will be permitted to enforce that contract in the United States.

As soon as he found himself in this condition in relation to his work, he promptly set about securing his rights and interests in his book in the Confederate States, by securing the copy-right in the name of the publisher, and prosecuting, under the law, those who infringed it. These and other arguments were urged at the bar in support of the copy-right, but the learned judge thought that the technical ground of former publication, which made the work *publici juris* to the people of the Confederate States as well as the people of the United States was against us, and he would have to condemn the copy-right.

Of course the other cases will have to be dismissed.

Your memorialist therefore respectfully apply to your honorable bodies for the passage of an act granting them a special copy-right in said work, yours being the only forum they can now apply to for protection of their rights and interest as author and publisher of the same.

A copy of the opinion of the Hon. Wm. G. Jones is hereto attached, and made a part of this memorial.

IMPORTANT DECISION ON COPY-RIGHT.

At the late term of the Confederate district court for Mobile, a case involving "copy-right" was heard by Judge Jones. The plaintiff was S. H. Getzel, and the defendant, F. Titcomb, both booksellers of this city. The former grounded his action on a copy-right obtained by him to "Hardee's Tactics," of which he was the publisher. The defendant had, in the course of his business, sold copies of the same work published by J. W. Randolph, in Richmond. For this alleged invasion of his copy-right, Mr. Getzel filed his bill in

the district court some months ago, and obtained an injunction against Titcomb, restraining him from selling Randolph's edition. The case was heard upon all and answer of the parties, and proofs of witnesses, and was argued for the plaintiff by Messrs. Overall and R. H. Smith, and by Mr. W. C. Easton for Titcomb. The decision of the court is against the validity of the copy-right of Gøtzel in the work, and his proceeding was dismissed. The decree of Judge Jones, copied below, sets forth the grounds of his decision fully:

U. S. DISTRICT COURT AT MOBILE, }
July, 1863. }

S. H. GOETZEL, ET AL., }
vs. } In Chancery.
F. TITCOMB, ET AL. }

There is no doubt or dispute as to the material facts in this case, and its decision depends entirely on a question of law. Whilst Gen. Hardee was an officer in the army of the United States, and before the dissolution of the Union, he prepared, under the direction of the then Secretary of War of the United States, a system of infantry tactics, since generally known as Hardee's Tactics. The work being approved of by the President, it was published in Philadelphia, in 1855, by Lippincott, Grambo & Co. The Congress of the United States made an appropriation of \$20,000 for stereotyping the work and of \$18,000 for the purchase of 18,000 copies of it for the Government. The publication was made with the knowledge and consent of General (then Lieutenant Colonel,) Hardee, and was superintended by him. No copyright of this publication was then claimed or taken out. After the dissolution of the Union and the organization of the Government of the Confederate States and the commencement of this present war, there sprang up a great demand for this work. In 1861, General Hardee made some slight alterations in the work, and under an arrangement between him and S. H. Gøtzel & Co., an edition of the work, with the alterations, was published by Gøtzel & Co., in 1861, in Mobile. Gøtzel & Co. duly entered the title of the work in the clerk's office of the Confederate States district court at Mobile, and took out a copyright. In the same year (1861,) J. W. Randolph published in Richmond, Va., an edition of Hardee's tactics from and corresponding with the Philadelphia edition of 1855.

The defendant, Titcomb, a bookseller in Mobile, sold here some copies of Randolph's edition after Gøtzel & Co. had taken out their copyright, and the bill in this case is filed to prevent Titcomb from selling such copies.

I do not think it necessary to decide in this case several of the questions which were raised and somewhat discussed at the bar. The main question in the case is the right of Gen. Hardee or of Gøtzel & Co. to take out a copyright for this work in 1861. It is admitted that the Philadelphia edition of 1855, and Randolph's edition of 1861, are precisely alike, and substantially the same as Gøtzel's edition of 1861, the only difference being some alterations made by the author in 1861, and embraced in Gøtzel's edition. They are all substantially the same.

It is quite immaterial, I think, in this case, whether the Philadelphia edition of 1855 is to be regarded a Government work or the private work of Gen. Hardee. Whether the one or the other, it was undoubtedly published to the world with General Hardee's knowledge and consent, and without his then claiming or taking out a copyright for it. This was, in my opinion, a dedication of the work to the public. It became then what the law books term *publici juris*, and any person in the United States then embracing what is now the Confederate States, had a right to publish and sell as many editions and copies of it as he pleased. I do not think the secession of some of the States and the formation of the Government of the Confederate States, diminished or affected the rights of the public or increased those of Gen. Hardee in this respect. Our statute, which is the same as the old United States statute, does not permit a copyright to be taken out for a work that has been previously published. It can only be taken out for works not previously published. It is insisted that a previous publication in a foreign country does not preclude an author from getting a copyright for the same work in his own country, if applied for within a reasonable time. That is a question which seems never to have been positively or definitely decided in the English or American courts; nor do I think it necessary to decide it in this case. The publication of the Philadelphia edition of 1855 was made when this country was a part of the United States. It was then a publication in this country, and it was as much to the public in Virginia or Alabama as the public of Pennsylvania. It is not like a publication in a foreign country. It was no doubt a meritorious act in the gallant general and enterprising publisher to prepare and publish this edition; but I am fully satisfied they had no legal right to take out a copyright for it. The bill must, therefore, be dismissed at the cost of the complainants.

WM. G. JONES, *Judge*.

MEMPHIS, TENN., July 6, 1861.

S. H. Gatzel:

I compliance with your letter, I also confirm our verbal understanding to that effect, that you and your partner, under the style and firm of S. H. Gatzel & Co., are, and shall be hereafter, the only authorized publishers of my "Infantry and Rifle Tactics," provided you pay me twenty cents, say twenty cents of each copy you sell, and to render account three times a year, say at the end of August, December and April, punctually.

(Signed,)

W. J. HARDEE.

WM. J. HARDEE, for sufficient considerations moving him thereto, by these presents authorizes and empowers S. H. Gatzel, of Mobile,

Alabama, to institute and conduct, in any of the courts of the Confederate States of America, in his name, such suits at law and in equity, and to do such other acts as may be necessary or proper to vindicate and protect against infringement the copyright of S. H. Goetzl, in the book of said Hardee, entitled "Rifle and Infantry Tactics," granted by the Confederate States of America. The said Goetzl, agreeing to bear expenses and liabilities of such suits and acts, and to exonerate and protect him against the same.

Witness my hand, this 6th day of July, A. D., 1861, Memphis, Tennessee.

(Signed,)

W. J. HARDEE.

NOTICE.

So many editions of my "INFANTRY AND RIFLE TACTICS" having lately been published, I think it due to both the public and publishers to state:

That the COPYRIGHTED EDITION of my INFANTRY and RIFLE TACTICS, published by S. H. GOETZEL & CO., in MOBILE, is the only COMPLETE, CORRECT and REVISED EDITION, and THIS EDITION ONLY contains the *improvements and changes* which I have recently made, adapting the manual to the use of the arms generally in the hands of the troops in the Confederate States.

W. J. HARDEE,
Colonel Confederate States Army.

FORT MORGAN, June 18, 1861.

The above notice is printed in the front of each volume of the copyright edition.



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