Royalty Agreements

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Correspondence.

ROYALTY AGREEMENTS.

TO THE EDITOR OF 'THE MUSICAL TIMES.'

SIR,—The article in your issue of February 1, on Royalty Agreements and the Society of British Composers, raises a question of such importance to composers that I am taking the liberty of making these few remarks in answer.

I agree with the writer of the article that the question can hardly be settled by a Bill. 'It is not so much a matter of copyright as a matter of contract': but I cannot agree with his censorship of the Bill as laid before Lord Gorell's Committee. Although the substance of it may have been a matter of opinion, there was no fault to be found with the draftsmanship.

Your correspondent asks several pertinent questions at the end of his article. From these questions it is evident that he has not followed the action that the Society of Authors has taken with a view to assisting those composers who are members of the Society to obtain a fair reward for their labours and a just control of their property.

His first question is as follows:

'If the composer retains his copyright, who will be entitled to sue for infringements of the right. Can a licensee sue or take criminal proceedings while the composer retains the copyright?'

This question is practically answered by Clause 12 of the draft agreement which was settled by the Copyright Sub-Committee of the Society of Authors at the beginning of last year, which runs as follows:

'If either party has reasonable cause for believing that the copyright in the said composition has been infringed, he or they shall give immediate notice to the other party. If the composer takes proceedings in respect of the infringement and if the publishers desire to be joined in the action, they may give written notice to the composer to that effect, and on an undertaking on their part to pay an equal share in the entire costs of the litigation the composer shall join them as parties. In such case the composer shall diligently prosecute the action, but shall retain control of the proceedings, and may make any reasonable settlement with the defendants in the interests of composer and publisher, and the damages, if any, recovered shall be firstly applied in payment of costs, and if there is any surplus shall be divided equally between composer and publisher. If the composer, after the infringement has come to his notice, refuses or neglects to take proceedings in respect thereof, the publishers shall be entitled to take proceedings, and on giving the composer a sufficient and reasonable indemnity against liability for costs, shall be entitled to use the composer's name as a party to such proceedings and may make any reasonable settlement in the interest of composer and publisher, and the damages, if any, recovered shall be firstly applied in payment of costs, and if there is any surplus shall be divided in the proportion of one-third to the composer and two-thirds to the publishers.'

This Clause will also answer Question 2, which runs as follows:

'If not, will the composer undertake to sue when called upon by the licensee to do so. And if he will not give that undertaking, how is the licensee to protect himself against infringements, and pirates?'

In answer to Question 3, which runs as follows:

'If the composer does give the undertaking and afterwards assigns his royalties, will the liability on that undertaking bind the assignee of

the royalties? If not, how is the licensee to protect himself against infringements, and pirates?'

the personality of an agreement of this kind is personal to the publisher, but it is not personal to this composer in the same sense, for if the agreement deal with work which has already been done by the composer it would then become equally binding upon his personal representatives.

Question 4 is also answered by Clause 12, already quoted. For the sake of clearness, it may be as well to quote the question:

'Who is to bear the costs of any legal proceedings for the protection of a copyright, having regard to the fact that at any moment for various reasons a licence may come to an end?'

Question 5 is as follows:

'Would the conversion of the business of a firm of publishers into a limited company, or the amalgamation of two or more firms into one partnership or company, with a view to improving the financial position of all of them, be such an assignment as would involve the cancellation of all the licences held by all of them?'

The answer to this must depend upon the exact wording of any contract, but it seems to me quite clear that no composer would be fool enough to take his work away if a change in the partnership was likely to be of benefit to the parties concerned. To advise those publishers who read the *Musical Times* how to protect themselves legally on a point of this kind, is not the province of this letter; surely they are fully aware from their constant business practice how to protect themselves. It is easy to suggest a clause to cover such a remote contingency.

It is not my intention to answer Question 6, which runs as follows:

'If the object of the composers is merely to protect their royalties as against fraudulent or impecunious assignees, what will they do with the capital value of the publication, which will revert to them as an "unearned increment" whenever a licence for any reason comes to an end?'

The question is not practical, nor do we agree with the statement that the increment is unearned. The composer has a right to sell the profits that spring from the publication of his work, except those which, perhaps, for business reasons, he may choose to pay to others. There is no unearned increment.

The 7th question refers to a business in which there is only one member. This is a rare occurrence nowadays, and it seems hardly necessary to deal with it. It is a great mistake, in dealing with general issues, to answer a question dealing with a particular limitation.

It is a satisfaction to see that a paper like the *Musical Times* is dealing seriously with the matter of agreement, even though, perhaps, the contributor fails to grasp its full importance to composers.

Unfortunately, for many years, in fact for many generations, the composer has suffered from his ignorance of market values and copyright limitations, and want of combination, while the publisher has gained by his extensive knowledge of business values and by his being able to deal with each composer separately.

—I beg to remain, yours, &c.,

G. HERBERT THRING.

TO THE EDITOR OF 'THE MUSICAL TIMES.'

SIR,—The attention of the Council of the Society of British Composers has been called to an article in this month's issue of the *Musical Times*, entitled 'Royalty Agreements.'

As the article deals with controversial matters which are at present *sub judice*, the Council declines to discuss it.—Yours faithfully,

H. C. DE LAFONTAINE,
WILLIAM WALLACE,
Joint Honorary Secretaries.