

MINORITY MEMORANDUM

December 4, 1942

Remitter: Crawford, Maud Sparks (51255)


Title: "Kentucky Poems and Others"

Question: Can a work be rescued from the public domain by republication with the proper copyright notice?

The majority takes the view that under the circumstances of the present case that can be done.

The applicant admits that she has sold and given away copies of her book not bearing the statutory notice, and further that her friend in another locality has also placed on sale and sold copies of the work bearing the inadequate notice. It must be admitted that the placing on sale, the selling, and giving away of copies constitute publication or else Section 62 of the Act must be totally ignored. The applicant has accepted this Office's suggestion that she recall the copies distributed and place the correct notice upon them, but she states " ... it will take me some time to do it ..." [Query: What is the status of such work under the copyright law during the elapsed time?] Publication with inadequate notice throws a work in the public domain. The minority, therefore, contends that the work is in the public domain and no act upon the part of the copyright claimant can now bring into being a copyright. The applicant admits that it may take her weeks to recall all of the copies she has sold or given away, not indicating at all how long it may take her friend to recall the copies she has sold.

The Office can only find an excuse for adopting the views of the majority by attempting to so loosely interpret the provisions of Section 20 of the copyright law as to place itself in an embarrassing position when such action is matched with the strict interpretation that has been given the law in past years when material has been received in this Office with an inadequate notice ~~and~~ the statement that it has been published. The minority has not arrived at his conclusion with a thought of establishing consistency in Office practice, but it is because ~~he~~ truly believes without the least doubt that publication of this work has taken place and that in no way the provisions of Section 20 under the circumstances can be invoked to remedy this publication of the work with inadequate notice. He, therefore, recommends rejection and refund.



L. C. Smith

Admitted, there is a doubt, but the Office has already solved it in applicant's favor. Hold, as requested and enter, if and when conditions are complied with.

R. C. De Wolf, Dec. 7, 1942.