



1943

Copyright of Statute Compilations

Robert M. Spragens
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Intellectual Property Law Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Spragens, Robert M. (1943) "Copyright of Statute Compilations," *Kentucky Law Journal*: Vol. 32 : Iss. 1 , Article 4.
Available at: <https://uknowledge.uky.edu/klj/vol32/iss1/4>

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

STUDENT NOTES

COPYRIGHT OF STATUTE COMPILATIONS

Since most publications of statutes are copyrighted, a question is raised as to the effect of such a copyright. This situation would appear to be analogous to the copyright of a publication of court decisions, since the substantive part of both publications is the result of the work of state officers in their official capacity, and as a matter of public policy both must be readily available to the citizens of the state. For a substantiation of this analogy, we must look to the cases.

Numerous cases have been decided determining the effect of a copyright of court reports. *Banks v. Manchester*¹ pointed out that the opinions of the court were not copyrightable by the reporter, the reason being that these opinions were written by judges of the state in their official capacity and thereby became public property accessible to anyone. However, in *Callaghan v. Myers*² the Supreme Court held that a reporter of the opinions of courts could obtain a copyright of his work as an author, but it was again stated that this copyright did not give the reporter an exclusive right in the opinions themselves. Copyright protection covered only the parts of the publication of which the reporter was clearly the author. The principles of these cases have been followed in many cases dealing with copyright of court reports, and the law in that field is relatively well settled. On the other hand, very few cases have been found dealing with the effect of a copyright of statutes.

The first case involving an alleged infringement of the copyright of a publication of statutes was *Davidson v. Wheelock*.³ In this case the court declared that statutes were public records which could be compiled and published by anyone. If a copyright of the statutes were permitted, the person obtaining the copyright might suppress any publication of them. This would be contrary to the public interest as everyone is presumed to know the laws, and must, therefore, have a method of determining what those laws are. However, it was recognized here that a compiler might have some copyrightable interest in his compilation of the statutes, but this was only *dictum* as the court held that there was no infringement. *Howell v. Miller*⁴ was the next case dealing with a copyright of a statute compilation. This case was in direct accord with *Davidson v. Wheelock*,⁵

¹ 128 U. S. 244, 9 Sup. Ct. 36 (1888).

² 128 U. S. 617, 9 Sup. Ct. 177 (1888)

³ 27 Fed. 61 (1866)

⁴ 91 Fed. 129 (1898)

⁵ 27 Fed. 61 (1866) cited *supra* note 3.

holding that there could be no copyright of the statutes themselves, and recognizing the *dictum* that the compiler might have a copyrightable interest in his publication.

In *G. T. Bisel Co. v. Welsh*⁶ protection was extended to a copyright of a statute compilation for the first time, with the result that the *dictum* of the *Wheelock* case became law. The court held that any portions of the publication which were the fruits of the compiler's labor would be protected by the copyright. It was again repeated that the compiler had no interest susceptible of copyright in the statutes themselves. The principles of this case were recognized and applied again in *W. H. Anderson Co. v. Baldwin Law Publishing Co.*⁷ where a copyright of a statute compilation was protected.

Conceding then that a compiler of statutes has an interest which may be copyrighted, a question naturally presented is, what specific portions of the compilation can be protected by a copyright?

Examples of copyrightable interests may be found in the cases already cited. For instance, the arrangement or combination may be so original as to be protected,⁸ and this would seem to include an original numbering system. However, a use of the same numbering system by a subsequent compiler would not constitute an infringement if such system were used parenthetically to show the derivation of the particular statutes⁹ or if the system had been made official by the legislature.¹⁰ Copying of the annotations,¹¹ or headnotes and cross-references¹² constitutes an infringement of the compiler's copyright. Likewise the index of the compiler would come under the protection of the copyright as would any other parts of the publication which could be said to be the result of the compiler's efforts.

Another interesting phase of these particular copyright cases is the substance and effect of the evidence used to prove copying. Two types of evidence are particularly conducive toward influencing a decision of infringement. First, several identical errors in the publications are almost conclusive of copying.¹³ Second, substantial similarities in the two publications are indicative of copying and have a cumulative effect, that is, the more instances of similarities which can be shown, the stronger is the presumption of copying.¹⁴ It must be pointed out that this evidence creates only a presumption of copying which the accused may rebut.

⁶ 131 Fed. 564 (1904).

⁷ 27 Fed. (2d) 82 (1928).

⁸ *Howell v. Miller*, 91 Fed. 129 (1898).

⁹ *Ibid.*

¹⁰ *W. H. Anderson Co. v. Baldwin Law Publishing Co.*, 27 Fed. (2d) 82 (1928).

¹¹ *Ibid.*

¹² *G. T. Bisel Co. v. Welsh*, 131 Fed. 564 (1904).

¹³ *Ibid.*

¹⁴ *W. H. Anderson Co. v. Baldwin Law Publishing Co.*, 27 Fed. (2d) 82 (1928).

In summary, the following general conclusions concerning the effect of a copyright of a statute compilation are apparent from the few cases decided on this question: although the statutes themselves are not copyrightable as a matter of public policy, the portions of the compilation which are deemed to be the fruits of the compiler's labor, such as annotations, headnotes, cross-references, arrangement, or index, will be protected by a copyright.

ROBERT M. SPRAGENS

BAR OF THE DEBT AS AFFECTING THE MORTGAGE

When the Statute of Limitations has run against a debt secured by a mortgage, a question arises as to whether the mortgagee may proceed on the mortgage for the amount of the debt. The answer apparently depends on two factors: (1) whether the running of the Statute of Limitations entirely extinguishes the debt itself or merely the personal liability of the mortgagor and (2) whether the situation affords the mortgagee two separate and distinct remedies, one on the mortgage against the land and the other against the mortgagor personally.

As to the effect of the Statute of Limitations, the great majority of courts hold that where the period provided by the statute for the bringing of the action has elapsed, the debt itself is not extinguished; the statute merely bars the remedy of the obligee to sue on the personal obligation.¹ The mortgagee, therefore, may proceed to recover the same by any other remedy he may have.

The great majority of the courts agree that the mortgage and the debt it secures are separate obligations. It is said that the mortgagee has two remedies, one *in personam* against the mortgagor and one *in rem* against the land.² The personal action against the mortgagor usually must be brought within a comparatively short period of time, depending upon the provisions of the statute. However, since the right to hold the mortgage as security and proceed against the land for the amount of the debt is a right *in rem*, the mortgagee has a longer period in which to bring his action to enforce this remedy because in most states the Statute of Limitations does not run against land for a period of fifteen or twenty years. In some states the period for recovery on mortgages is prescribed by statute.⁴

¹ 34 Am. Jur., Limitation of Actions, sec. 11.

² *Hardin v. Boyd*, 113 U.S. 756, 28 L. Ed. 1141 (1884), *Austin v. Edwards*, 201 Ala. 532, 78 So. 886 (1918); *Pratt v. Huggins*, 29 Barb. (N. Y.) 277 (1859). *Hulbert v. Clark*, 128 N.Y. 295, 28 N.E. 638, 14 L.R.A. 59 (1891).

³ *Belknap v. Gleason*, 11 Conn. 160, 27 Am. Dec. 721 (1835), *Maloney v. Home Loan & Trust Co.*, 97 Ind. App. 564, 186 N.E. 897 (1933).

⁴ *Austin v. Steele*, 68 Ark. 348, 58 S.W. 352 (1900), *London & S.F. Bank v. Bandmann*, 120 Cal. 220, 52 Pac. 583, 65 Am. St. Rep. 179 (1898).