Thus a broadcaster who plays and sends out an unauthorized musical composition and for profit makes this selection available to the public is an infringer. He is also a contributory infringer if he broadcasts the unauthorized performance by another of a copyrighted musical composition. *J. H. Remick & Co. v. General Electric Co.* (D. C. N. Y. 1925), 4 F. (2d) 160. The master set owner, it would seem, is in the same relative position.

The court in the instant case based its decision upon the further ground that the defendant did not intentionally perform the copyrighted selection. But lack of intention does not relieve him from liability. The result, and not the intention, determines the question of infringement. *Lawrence v. Dana* (1869), 4 Cliff. 1, Fed. Cas. No. 8136; *M. Witmark and Sons v. Calloway et al.* (D. C. Tenn. 1927), 22 F. (2d) 412.

On other grounds than those put forth by the court it might be held that the defendant is not liable. The doctrine might be set up that the contract between the copyright owner and the broadcaster is for the benefit of all who wish to receive and use the program, whether for personal enjoyment or for profit.

Looking at the decision from the point of view of its practicality, there is much to be said for it. A decision in favor of the copyright owner would affect not only hotels but also restaurants, music shops, and similar establishments which constantly make use of broadcasts. The result would be great inconvenience and a constant threat of unwarranted litigation.

When Congress framed the copyright act it did not foresee the advent of the radio with its new problems. The balancing of interests which is necessary in determining the scope of the protection to be afforded by a copyright is one which Congress should deal with in further legislation. Compare *Associated Press v. International News Service* (1918), 248 U. S. 215 at p. 248, per Brandeis J. dissenting. M. E. S., '31.

INSURANCE—DUTY OF INDEMNIFIER TO SETTLE WITHIN POLICY LIMIT.—In a suit against an indemnity company the assured sought to recover the amount spent above the amount of the indemnity to satisfy a claim which defendant company had allowed to go to judgment instead of settling for less than the amount of the indemnity bond, as it could have done. The Texas court in deciding in favor of the plaintiff, in *Stowers Furniture Co. v. American Indemnity Co.* (Tex. 1929), 15 S. W. (2d) 544, said that the insurance company owes a duty of reasonable diligence in settling a suit against the assured.

At first glance such a holding may seem very far-fetched since the assured is never precluded from intervening and settling for whatever he deems proper, and may then enforce his claim to the indemnity, even though the liability was not established by a judgment. *Mendota Electric Co. v. N. Y. Indemnity Co.* (1926), 169 Minn. 377, 211 N. W. 317; *Hoagland Wagon Co. v. London Guaranty Co.* (1919), 201 Mo. A. 490, 212 S. W. 393; Rieger v. London Guaranty Co. (1920), 202 Mo. A. 184, 215 S. W. 920. Under such a view the assured takes the entire responsibility in case of a

suit. This is an older view and was followed in *Kingan & Co. v. Maryland Casualty Co.* (1917), 65 Ind. App. 182, 115 N. E. 348, in which it was held, contrary to the holding in the more recent cases, that the insurer is not required to settle for a sum within the face of the policy, but that he has an election to defend, settle, or pay the face of the policy. Under this view the insuring company is not subjected to the full risk of the litigation by electing not to settle even though afterwards judgment is rendered in excess of the indemnity provided by the policy. This rule is followed by *McAleenan v. Massachusetts Bond and Casualty Co.* (1916), 173 App. Div. 100, 159 N. Y. S 401. In other instances the insurer was held liable only to the extent of the face of the policy. *Silverstein v. Standard Accident Insurance Co.* (1916), 175 App. Div. 639, 162 N. Y. S. 601; *Wynnewood Lumber Co. v. Travelers Insurance Co.* (N. C. 1917), 91 S. E. 946; *American Indemnity Co. v. Fellbaum* (1924), 114 Tex. 127, 263 S. W. 908. These cases seem to ignore the fundamental purpose of the assured in taking out this indemnity insurance. He takes it as a protection. He would expect at least the same reasonable care from the company in handling questions arising under his policy that he would use himself. It is reasonable to assume that the insurance contract contemplated a complete settlement of the claim if possible in order to save the insured harmless. A more recent and progressive view holds the company liable to the amount of the policy either in case of settlement by the assured or a judgment against him. *Reilly v. Linden* (1921), 151 Minn. 1, 186 N. W. 121. Still it does not go far enough. The company should attempt to make the settlement to the best advantage of all concerned. Reasonable prudence except in the most exceptional case would be a settlement within the amount of the indemnity policy, when it is possible. The insurer owes the insured the duty of settling before suit and is liable for failure to do so after finding that the claim can be settled. *Cavanaugh Bros. v. General Accident, Fire, and Life Assurance Corp.* (1919), 79 N. H. 186, 106 Atl. 604. The company should be bound by the real purpose of the contract to take no needless chances with the insured's funds. Clearly this is being done when the case is allowed to go to a judgment. *Douglas v. U. S. Fidelity and Guaranty Co.* (1924), 81 N. H. 371, 127 Atl. 708. The general trend of cases seems to be in the direction of the New Hampshire and Texas cases cited. It is merely another instance of the increasing practicality of the holdings of the courts. R. H. M., '30.

MARRIAGE—PARENTAL CONSENT—ANNULMENT.—In accordance with the repeatedly-expressed reluctance of American courts to declare void a marriage duly solemnized, though attended with irregularities or misrepresentations in evading statutory regulations, the Supreme Court of North Carolina has declared that a minor, above the age of legal consent, whose marriage was solemnized on the strength of a license procured by fraud and without the parent's consent, cannot maintain an action to annul the marriage. *Sawyer v. Slack* (1929), 196 N. C. 697, 146 S. E. 864.