The instant case is another example of the reluctance of the courts to extend protection outside the copyright law to architects' creations.[16] The plans of an architect being a suitable subject for copyright,[17] it would seem that the only sure protection which an architect can get for his creations will have to come from compliance with the copyright law itself or from legislation.[18] D. L.

COPYRIGHT—PROCEDURE FOR PERFECTING—TIME OF DEPOSIT OF COPIES—[United States].—Petitioner published an issue of its magazine with due notice during December, 1931, but did not deposit copies until fourteen months later. In the meantime, respondent reproduced some of the material. In an infringement suit for injunction and damages, the Supreme Court held for petitioner, rejecting respondent's contention that despite the unquestioned validity of the copyright, no right of action existed because of tardiness in complying with the statutory deposit provisions.[1]

Securing a copyright requires publication with notice as set out in the statute.[2] Two copies of the copyrighted work must be deposited promptly with the Register of Copyrights, and "no action shall be maintained for infringement of copyright in any work until the provisions of this act with respect to the deposit of copies * * * have been complied with."[3]

Although scattered *dicta* uttered by lower federal courts[4] had indicated a view contrary to the position taken in the prinicipal case, the question remained one of first impression. The majority opinion held that copyright vested following publication and that an action was maintainable immediately upon the deposit of copies, despite intervening delay. The bases for the decision were several: The wording of the act vests the copyright upon

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Fed. 54; Jeweler's Merc. Agency v. Jeweler's Pub. Co. (1898) 155 N. Y. 241, 49 N. E. 872, 63 Am. St. Rep. 666, 41 L. R. A. 846; Universal Film Mfg. Co. v. Copperman (D. C. S. D. N. Y. 1914); American Code Co. v. Bensinger (C. C. A. 2, 1922) 282 Fed. 829.

16. Larkin v. Pennsylvania R. R. (Sup. Ct. 1925) 125 Misc. Rep. 238, 210 N. Y. S. 374; Mackay v. Ben Franklin Realty & Holding Co. (1927) 228 Pa. 207, 135 Atl. 613, 50 A. L. R. 1164; Note (1927) 75 U. of Pa. L. R. 458.

17. Ladas, *International Protection of Literary and Artistic Property* (1938) 718.

18. Note (1934) 47 Harv. L. Rev. 1419.

1. Washingtonian Publishing Co. v. Pearson (1939) 59 S. Ct. 397.

2. (1909) 35 Stat. 1077, (1927) 17 U. S. C. A. sec. 9.

3. (1909) 35 Stat. 1078, as amended by (1914) 38 Stat. 311, (1927) 17 U. S. C. A. sec. 12.

4. See Maddux v. Grey (D. C. S. D. Cal. 1930) 43 F. (2d) 441; Davenport Quigley Expedition v. Century Productions, Inc. (D. C. S. D. N. Y. 1937) 19 F. Supp. 30, aff'd (C. C. A. 2, 1938) 93 F. (2d) 489, cert. denied Century Productions, Inc. v. Patterson (1938) 303 U. S. 655; Freedman v. Milnag Leasing Corporation (D. C. S. D. N. Y. 1937) 20 F. Supp. 802. That such a view is the proper one is indicated in 13 C. J., Copyrights and Literary Property (1917) 1064, sec. 175; Admur *Copyright Law and Practice* (1936) 518.

publication with notice and does not make the deposit of copies a condition precedent; nor is prompt deposit a prerequisite to suit. A suit may not be maintained "until" the deposit; but, the court makes it clear, lack of promptness shall not cause "forfeiture of the right theretofore directly granted." Had "unless" been used rather than "until" the result would have been different. Support for the decision was found in other sections of the act. The penalty for tardy deposit to be imposed at the instance of the register was believed to be a sufficient sanction exclusive of others.[5] Immateriality of the deposit provision was said to be demonstrated by the sections providing for destruction and removal of deposited copies in the discretion of the register[6] and for renewal of the copyright even though the deposited copies had been destroyed.[7]

The problem presented is essentially one of ascertainment of legislative intent in enacting the statute. The phraseology of the statute is not clear. Resort to prior statutes would seem to indicate that deposit of copies within a designated period always had been a condition precedent to the acquisition of a copyright.[8] This phase of the law was altered because its rigidity worked hardship.[9] However, the fact that no intention was entertained to abolish the requirement of prompt deposits as a condition of maintaining suit is manifested by the continued maintenance of the files of copyrights already granted to enable public inspection[10] and to supply the Library of Congress.[11]

None of the provisions of the present copyright law relied upon as bases for the court's decision would seem to warrant departure from a statutory policy of many decades. The act speaks of deposit "promptly." Comparable requirements in prior statutes had made the actual vesting of copyright depend on deposit within periods ranging up to several months.[12] Noncompliance with the statute on which the copyright owner is entirely dependent for his rights should withdraw its protection from him. A determination as to whether the deposit was prompt certainly should have been made. Inasmuch as "promptly" has usually been held to mean "within a reasonable time,"[13] it might well have been concluded that fourteen months was too long a period.

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5. (1909) 35 Stat. 1078, (1927) 17 U. S. C. A. sec. 13.

6. (1909) 35 Stat. 1087, (1927) 17 U. S. C. A. sec. 59; (1909) 35 Stat. 1087, (1927) U. S. C. A. sec. 60.

7. (1909) 35 Stat. 1080, 17 U. S. C. A. sec. 23; (1909) 35 Stat. 1080, 1088, (1927) 17 U. S. C. A. sec. 24.

8. In order to complete the copyright, deposit had to be made as follows: Act of May 31, 1790, within six months; Act of Feb. 3, 1831, within three months; Act of July 8, 1870, within ten days; Act of Mar. 3, 1891, on or before publication. Admur, *Copyright Law and Practice* (1936) 519.

9. (1909) H. R. Rep. No. 2222, 60th Cong., 2d Sess.

10. *Copyright Office Bulletin No. 15* (1926) sec. 24.

11. (1909) 35 Stat. 1087, (1927) 17 U. S. C. A. sec. 59.

12. Admur, *Copyright Law and Practice* (1936) 519.

13. Metropolitan Land Co. v. Manning (1903) 98 Mo. App. 248, 71 S. W. 696; McClesky and Whitman v. Howell Cotton Co. (1906) 147 Ala. 573, 42 So. 67; Western Union Telegraph Co. v. Barbour (1921) 206 Ala. 129, 89 So. 299, 17 A. L. R. 103; Equitable Building & Loan Ass'n v. Brady (1930) 171 Ga. 576, 156 S. E. 222.

The effect of the instant holding in practice deserves consideration. If the register is to be assured of getting copies, it must apparently be by affirmative action on his part under Section 13. Lack of incentive to submit copies of works until required by the register or until suit is contemplated may be expected to result in inaction by many copyright owners. The dilemma that results is either a serious increase in the register's burden or a detrimental decrease in the notice value of the files. Moreover, a fiscal problem is involved, for the small fees that must accompany deposits contribute materially to meeting the expenses of the copyright office.

The decision seems open to serious question both upon orthodox principles of statutory construction and because of its probable practical consequences. C. J. D.

FEDERAL PROCEDURE—MOTION TO SECURE COSTS—EFFECT OF NEW FEDERAL RULES—[Federal].—In a case in the federal courts, defendant filed a motion for securing costs. Plaintiff resisted the motion on the ground that the newly-adopted Rules make no provision for costs and hence such motion is not available under the present procedure. Rule 12(h) provides: "A party waives all defenses and objections which he does not present either by motion as hereinbefore[1] provided, or if he has made no motion, in his answer or reply * * * ." *Held,* objection overruled on the ground that the long-established practice of the district courts in respect to motion for costs cannot be deemed to have been nullified by indirection in the manner suggested.[2]

The power of the federal courts to require security for costs before the adoption of the new Rules depended upon the existence of a provision therefor by the state law or a rule of court; without such authority no such power existed.[3] The effect of the adoption of the new Rules on the Conformity Act,[4] the Equity Rules,[5] and the rules of court of each district in force at the time of the adoption must be established before rulings as to the problems involved in the instant case can become consistent under the new procedure. There seems to be a division of opinion as to whether the Conformity Act and the Equity Rules have been superseded.[6] Little has

1. Rule 12(b) provisions for motions directed to (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted.

2. Wheeler v. Lientz Manufacturing Co. (D. C. W. D. Mo. 1939) 25 F. Supp. 939. Accord: Alderman v. Whelan Drug Co., Inc. (D. C. D. C. 1939) 6 U. S. L. Week 869, where third party defendant was held entitled to security for costs.

3. 5 Longsdorf, *Cyclopedia of Federal Procedure* (1929) 175, sec. 1558; Sermons v. Kansas City Southern Ry. (1926) 11 F. (2d) 671, where it is said: "In absence of a federal statute or a rule of court upon the subject, the matter is governed by the state law. * * * it appearing therefore that there is no rule of court or statute, either state or federal authorizing the amounts of the motion in this case, the same should be denied."

4. (1872) 17 Stat. 197, (1928) 28 U. S. C. A. sec. 724.

5. (1842) 4 Stat. 499, (1928) 28 U. S. C. A. sec. 723 et seq.

6. That the Conformity Act has been superseded entirely, see April, 1937, Report of the Advisory Committee on Rules of Civil Procedure Appointed