discretion for that of the administrative body.[15] In Illinois a section of the Old Age Assistance Act permitting an unsuccessful applicant to petition the circuit court for a trial *de novo* has been held an unconstitutional delegation of power in view of the broad discretion intended to be granted to the administrative agency.[16]

Since the instant decisions were handed down, the Missouri statute has been amended to provide that benefits shall not be payable to any person who has " * * * income, or resources, whether such income or resources is received from some other person or persons, gifts or otherwise, sufficient to meet his needs for a reasonable subsistance compatible with decency and health."[17] Further, the appeal to the circuit court shall not involve a trial *de novo;* instead, on an applicant's appeal, the proceedings before the commission shall be certified, and upon this record the "circuit court shall determine whether or not a fair hearing has been granted the individual. If the court shall decide for any reason that a fair hearing and determination of the applicant's eligibility and rights under this act was not granted the individual by the State Commission, or that its decision was arbitrary and unreasonable, the court shall, in such event, remand the proceedings for redetermination of the issues by the State Commission."[18]

As old age assistance grants are available not as a matter of right[19] but to cope with the existing emergency,[20] it is submitted that the better view is that relatives able to do so should aid the indigent aged, and to this end the legislature should have expressly provided that, where old age assistance is granted, it shall appear that the applicant has no responsible relative or other person able to furnish support.

P. H. A.

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ARCHITECTS—PROTECTION OF PLANS AS INTELLECTUAL PROPERTY—LOSS OF RIGHT BY PUBLICATION—[Missouri].—Plaintiff, an architect, was employed by defendants to prepare plans for modernization of a residence. The remodeled residence was open to the public for inspection, and the plan itself was printed in a professional periodical. Later defendants constructed two more residences from the same plans without plaintiff's consent. In a suit for damages for the alleged unauthorized appropriation and use of plaintiff's plans, *held,* that plaintiff's common law copyright was extinguished by publication.[1]

By common law authors are protected in the exclusive use of their in-

15. See Borreson v. Dep't of Public Welfare (1938) 368 Ill. 425, 432, 14 N. E. (2d) 485, 488.
16. Ibid.
17. (1939) Sen. Bill No. 32, 60th Gen. Ass.
18. (1939) Sen. Bill No. 31, 60th Gen. Ass.
19. See Robinson, J., dissenting, in Conant v. State (Wash. 1938) 84 P. (2d) 378, 382.
20. State ex rel. Shomaker v. Super. Ct. (1938) 193 Wash. 465, 475, 76 P. (2d) 306, 310.

1. Kurfiss v. Cowherd (Mo. 1938) 121 S. W. (2d) 282.

tellectual or literary productions before publication.[2] The same rule applies to architects,[3] artists,[4] and composers.[5] General publication extinguishes the producer's common law copyright.[6] Restricted publication, however, may not amount to a dedication to the public.[7] What constitutes publication varies with the circumstances.[8] Filing of a book[9] or an architect's plans[10] at a public office, or the construction of a building or other edifice[11] in accordance with the plans has been considered a publication which defeats the common law right. On the other hand, the presentation of a play[12] or of a radio broadcast,[13] or the exhibition of pictures[14] to the public has been held not to constitute a dedication to the public. Publication is usually said to occur when the article has been put within reach of the general public so that all may have access to it.[15]

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2. (1909) 35 Stat. 1076, (1927) 17 U. S. C. A. sec. 2; Palmer v. DeWitt (1872) 47 N. Y. 532; Ferris v. Frohman (1912) 223 U. S. 424, 43 L. R. A. (N. S.) 639; Note (1922) 35 Harv. L. Rev. 600.

3. Gendell v. Orr (Pa. 1879) 13 Phila. 191; Wright v. Eisle (1903) 86 App. Div. 356, 83 N. Y. S. 887; Note (1927) 75 U. of Pa. L. Rev. 458.

4. Parton v. Prang (C. C. D. Mass. 1872) Fed. Cas. No. 10,784; Werckmeister v. American Lithographic Co. (C. C. A. 2, 1904) 134 Fed. 321, 68 L. R. A. 591; American Tobacco Co. v. Werckmeister (1907) 207 U. S. 284.

5. Kortlander v. Bradford (Sup. Ct. 1921) 116 Misc. 664, 190 N. Y. S. 311.

6. Donaldson v. Beckett (H. L. 1774) 4 Burr. 2408, 98 Eng. Rep. 257; Wheaton v. Peters (U. S. 1834) 8 Pet. 591; In re Mark Twain (C. C. N. D. Ill. 1883) 14 Fed. 728, 11 Biss. 459; State v. State Journal Co. (1905) 77 Neb. 752, 110 N. W. 763, 9 L. R. A. (N. S.) 174; Note (1934) 19 ST. LOUIS LAW REVIEW 323.

7. New Jersey State Dental Society v. Dentacura Co. (N. J. 1898) 57 N. J. Eq. 593; American Tobacco Co. v. Werckmeister (1907) 207 U. S. 284; International News Service v. Associated Press (1912) 248 U. S. 215.

8. Werckmeister v. American Lithographic Co. (C. C. A. 2, 1904) 134 Fed. 321, 68 L. R. A. 591; Ferris v. Frohman (1912) 223 U. S. 424, 43 L. R. A. (N. S.) 639; Universal Film Mfg. Co. v. Copperman (D. C. S. D. N. Y. 1914) 212 Fed. 301.

9. Callaghan v. Meyers (1888) 128 U. S. 617.

10. Wright v. Eisle (1903) 86 App. Div. 356, 83 N. Y. S. 887; but see O'Neill v. General Film Co. (1916) 171 App. Div. 354, 157 N. Y. S. 1028 (filing of copy of play).

11. Gendell v. Orr (Pa. 1879) 13 Phila. 191; Wright v. Eisle (1903) 86 App. Div. 356, 83 N. Y. S. 887; Note (1927) 75 U. of Pa. L. Rev. 458; contra, Eng. Copyright Act (1911) 1 & 2 Geo. V c. 46, sec. 1 (3); Copinger, *Copyright* (6th ed. 1927) 214.

12. Palmer v. DeWitt (1872) 47 N. Y. 532; Ferris v. Frohman (1912) 223 U. S. 424, 43 L. R. A. (N. S.) 639; Brown v. Ferris (Mun. Ct. 1924) 122 Misc. 418, 204 N. Y. S. 190; contra, Underhill v. Schenck (Sup. Ct. 1922) 114 Misc. 520, 193 N. Y. S. 745.

13. Waring v. WDAS Broadcasting Station, Inc. (Pa. 1937) 194 Atl. 631; Pitts. Athletic Co. v. KQV Broadcasting Co. (D. C. W. D. Pa. 1938) 24 F. Supp. 490; Uproar v. National Broadcasting Co. (D. C. D. Mass. 1934) 8 F. Supp. 358; Comment (1938) 23 WASHINGTON U. LAW QUARTERLY 283.

14. Werckmeister v. American Lithographic Co. (C. C. A. 2, 1904) 134 Fed. 321, 68 L. R. A. 591; American Tobacco Co. v. Werckmeister (1907) 207 U. S. 284.

15. Pierce and Bushnell Mfg. Co. v. Werckmeister (C. C. A. 1, 1896) 72

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.

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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.