The Legal Rights of a Performing Artist

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person and in the direction of another who is wounded by the shot, an intention to kill the latter is established, although no actual malice or ill feeling toward him is shown, and a conviction may be had of an assault upon the injured person with intent to kill and murder him; as the malice requisite to murder is presumed, where the proof is that the act was committed deliberately and was likely to be attended by serious consequences. 18

Most of the cases on this subject do not treat the question expressly as a matter of pleading, but where the question has been so treated, the court has held that the intent to kill the person injured must be proved as alleged in the indictment.14

The prevailing view, then, is that in cases of assault requiring a specific intent it is no defense that the victim is not the person whom the assailant desired in fact to injure. The only exceptions are in cases of accident where the statute of the jurisdiction expressly requires an intent to kill the very person assaulted, and, in a few states, where the statute does not require, but the indictment alleges such intent.

HENRY S. MACHMER.

THE LEGAL RIGHTS OF A PERFORMING ARTIST 1a

A French writer has declared recently that "when the dramatic author writes a play, when the composer finishes the score of an opera or a symphony, when the cinema writer completes a scenario, and when the words or notes have been placed upon paper, actually printed, and the work corrected and issued, the aim of the author has not yet been fulfilled if the play, the opera, the symphony or the scenario is not performed." . . . "It is the actor, the singer, the dancer, the performer, who, as veritable animators of the author's thoughts, create through their sensibility and their intelligence the expressive power without which the public would not be moved."11

What are the legal rights of these "performing artists," the artists, actors, or performers who interpret the poet's thoughts, bring to life the dramatist's conceptions, animate for us the scenarist's vision, or express the sentiments noted on the score of the composer? Has a "performing artist" a legal right, under any

13People v. Cohen, 137 N. E. 511 (Ill.)
14State v. Shanley, 104 N. W. 522 (S.D.)

1aFor a complete discussion of this topic see Nathan Bass, Interpretative Rights of Performing Artists, page 57 of this issue.
1R. Homberg, Le Droit d'Interpretation des Acteurs et des Artistes excutantants. Translated by Maurice J. Speiser.
circumstances, that his performance shall not be recorded without his consent; that
his performance shall not be broadcast without his consent; that, if he broad-
casts, his broadcast shall not be recorded without his consent; that if he records
his performance, his recordings shall not be broadcast without his consent; that
his recordings shall not be used upon the sound tract of a film without his consent?

An American writer has recently stated that it is usually conceded that the
performing artist is without remedy against the illicit reproduction of his works
and argued that rights could and should be given him by making use of the familiar
common law concepts of literary property, unfair competition, the right of pri-
vacy and defamation.2

The same writer later had an opportunity to present his views to the Su-
preme Court of Pennsylvania.8 That court, asserting that the problems involved
in the case had never been presented to an English or American court and that
they challenged the vaunted genius of the law to adapt itself to new social and
industrial conditions and to the progress of science and invention, decided that
"performers—in this case an orchestra—have an enforceable right4 in their ar-
tistic interpretation of the work of a composer," and afforded certain protection
to this right by making use of the concepts of "a common law property right,"5
unfair competition6 and the right of privacy.7 The anxiety of the court to rec-
ognize and protect the rights of a performing artist was so great that it brushed
aside in a cavalier fashion certain objections which would otherwise have pre-
vented their recognition and protection in the particular case.8

W. H. Hitchler.

CONSTITUTIONALITY OF PENNSYLVANIA'S PRISON ESCAPE ACT

The constitutionality of Pennsylvania's escape statute, which has operated
without contest for more than 75 years, was recently upheld by the Supreme
Court of the United States in the case of Pennsylvania, ex. rel. Sullivan v. Ashe,'
82 L. Ed. 58 (1937).

The statute challenged in this case was that portion of the Act of 1860,
P. L. 382, Section 3 (18 PS 251) which provides that:

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2Maurice J. Speiser in an Addendum to his translation of Homberg's book.
4The court did not attempt to answer all of the questions previously stated in this note. It
enjoined the unauthorized broadcast of a recording of the artists' performance.
5The opinion of the majority.
6The opinion of the majority.
7The concurring opinion of Justice Maxey.
8E. g., a stockholder was permitted to enforce the rights of a corporation altho the court said
"It is the corporation, the orchestra organization, which alone is entitled to assert and enforce the
right of property in its renditions."