

"2. In the event of the above-mentioned Act of 1842 being in force, what course should be adopted to rectify the existing apparent anomalies consequent on the Canadian Act of 1868 (31 Vict. c. 54), and to protect the interests of British authors and publishers?"

"3. How is the exclusive legislative authority given by section 91 of the Dominion Act (30 Vict. c. 3) to be construed generally in reference to Imperial Acts?"

"4. If the above Canadian Act be valid and override the Imperial Act, what protection have British authors in respect of reprinting and importation into the United Kingdom of works printed and published in Canada under its provisions, either with or without their consent?"

"5. Whether books first published in the United Kingdom are entitled to the benefits of the Canadian Copyright Act, 1868 (31 Vict. c. 54), if duly entered, reprinted, and republished in Canada?"

Sir Roundell Palmer, Q.C., and Mr. Herschell, Q.C., gave the following reply:

"We are of opinion that the Imperial Copyright Act, 5 & 6 Vict. c. 45, is still in force in its integrity throughout the British Dominions, in so far as it prohibits the printing in any part of such Dominions a book in which there is subsisting copyright under that Act, without the consent of the proprietor. It is abundantly clear that the provision in the Act of the Imperial Legislature (30 Vict. c. 3) by which the Dominion of Canada was constituted, declaring that the exclusive legislative authority of the Dominion Parliament extends (amongst other things) to copyrights, has reference only to the exclusive jurisdiction in Canada of the Dominion Legislature as distinguished from the Legislatures of the Provinces of which it is composed. And the recent Copyright Act of the Canadian Legislature (30 Vict. c. 34) was in substance no more than a re-enactment for the whole Dominion of provisions which had previously been in force in one, at least, of the Provinces by the enactments of its legislature. It gave a copyright throughout Canada to works published in any part of that Dominion; but in our opinion it was not competent to, and did not, affect the protection against piracy afforded by the Imperial Act throughout the whole British Dominions in respect of works published in the United Kingdom.

"The provision in the 5 & 6 Vict., which prohibits the importation into any part of the British Dominions of pirated copies of British copyright works, is not now in force in its integrity. The Imperial Act of the 10 & 11 Vict. enables Her Majesty to suspend this prohibition in the case of any colony which should pass an Act providing reasonable protection to the authors of such works. The Canadian Legislature, under this provision, passed an Act (30 Vict. c. 56) imposing a duty for the benefit of the authors of such imported works, and the prohibition against importation has accordingly been suspended, and does not now apply to Canada; but with this exception the Copyright Act, 5 & 6 Vict., is still in force throughout that Colony.

(signed) "Roundell Palmer.  
"Farrer Herschell."

"Lincoln's Inn, 7 November 1871."

As that opinion did not appear to cover the fifth question completely, counsel's attention was again drawn to it, and in reply they asked what would be the effect of their opinion on authors' rights and interests. This was answered by the following letter from Mr. Daldy:

"*Re CANADIAN COPYRIGHT LAW.*"

"York-street, Covent Garden, London,  
"23 November 1871.

"Dear Sir,

"IN reply to your request for a statement 'showing clearly the advantages or disadvantages, as the case may be, from the fifth question of the case on this subject submitted to Sir Roundell Palmer and Mr. Herschell being answered in the affirmative or negative,' I beg to submit that if it be affirmed that an author can acquire a copyright in Canada, under the Canadian copyright law for a book previously published in England, and protected by the Imperial copyright law in 1842 (5 & 6 Vict. c. 45), by republishing the said book in Canada, and complying with the formalities of entry, &c., required by the Canadian Act, English authors would, by availing themselves of such a course, be able to prevent United States reprints from coming into Canada (such an introduction being then in contravention of the Canadian Copyright Act), and actually turn the scale by sending such reprints into the United States market to compete with American reprints.

"I am aware that the author would run the risk of such books being imported into England to compete with the English editions, because the Canadian edition is produced within the British Dominions and with the proprietor's consent, but this is a risk which in many cases he would be prepared to run.

"If the fifth question be answered in the negative, English authors can only venture in a few instances to bring out a Colonial edition of a book.

"I may add, that to my personal knowledge there is a great desire on the part of the Canadians to produce Colonial editions of English books, and the tendency of their legislation and policy is to protect and stimulate colonial labour.

"Sharon Turner, Esq."

"I am, &c.  
(signed) "F. R. Daldy."  
And