

de la cause. Le demandeur objecta à son audition. La Cour admit son témoignage, et comme il ne fut pas contredit, l'action fut, en conséquence, déboutée.

Action déboutée avec dépens.

Autorités: C. C. 1231, 1232; *Melançon v. Beaupré*, 6 R. L. p. 509; *Dames Ursulines v. Egan*, 6 Q. L. R., p. 36; *Waldron & White*, M. L. R., 3 Q. B. 375; 22 Vict., ch. 57, sect. 51.

Sicotte & Chauvin, avocats du demandeur.

C. S. Burroughs, avocat du défendeur.

(J. J. B.)

CHANCERY DIVISION, DEC. 21, 1888.

LONDON, Dec. 21, 1888.

POLLARD v. PHOTOGRAPHIC COMPANY, 60 L. T. Rep. (N. S.) 418.

Copyright—Photograph—Implied contract not to sell copies—Injunction.

The action was brought by a husband and wife against A., trading as the Photographic Company. The wife had been photographed at the shop of the defendant, and bought and paid for a number of copies, in the ordinary way without any special contract or agreement. The defendant afterward exhibited the lady's photograph in his window, with scrolls of leaves drawn above and below it, and the inscription, "A Merry Xmas and a Happy New Year." There was a conflict of evidence whether this was intended for sale as a Christmas card, or only as an advertisement to invite orders for photographs similarly executed. One copy was sold to the plaintiff's agent sent to purchase it, but the defendant swore that he had refused to sell except to a friend of the plaintiff.

Held, that though the property in the negative of a photograph belongs to the photographer, the bargain between the photographer and the customer implies an agreement that prints taken from the negative are appropriated to the use of the customer only, and in the absence of the permission of the customer, express or implied, the photographer is not justified in striking off copies for his own use, either for sale, exhibition by way of advertisement or otherwise.

An injunction was granted to restrain the defendant from selling or exhibiting copies.

The defendant in this action carried on business in Rochester as a photographer under the name of the Photographic Company. In August, 1888, Mrs. Pollard called at the defendant's place of business, and had her photograph taken in several positions. Other photographs were taken by the defendant about the same time of other members of her family, and for the whole she paid the defendant £7 10s. No special stipulations were made by Mrs. Pollard or by the defendant about the copyright in the photograph.

In November in the same year the defendant exhibited in his window a copy of Mrs. Pollard's photograph, got up as a Christmas card, by the addition above and below the photograph of scrolls of leaves with the superscription in letters apparently composed of leaves of the words, "A Merry Xmas and a Happy New Year."

The plaintiffs, Mrs. Pollard and her husband, upon learning that this photograph was exhibited in the defendant's window, placed the matter in the hands of their solicitor. His clerk went to the defendant's place of business and asked for a photograph of Mrs. Pollard. The defendant offered him a plain copy and asked 2s. for it. The clerk then asked for one like the copy in the window. There was some conflict of evidence as to the conversation which then took place, the defendant stating that he said the copy in the window was not placed there for sale, but only as a specimen, with the view of obtaining orders for photographs taken in a similar manner, and that he asked the clerk three times whether he had Mrs. Pollard's authority to purchase the photograph, and only sold it on the clerk's assuring him that he had.

The clerk stated that the defendant merely asked him if he was a friend of Mrs. Pollard's and then sold him the photograph from the window. He stated also that he asked the defendant whether he had authority to sell Mrs. Pollard's photograph, and the defendant answered, yes, to her personal friends. This was not denied. Neither Mrs. Pollard nor her husband had given any authority whatever for the sale or exhibition of her photograph.

It appeared that after selling the photo-