

[Eng. Rep.]

ROUTLEDGE ET AL. V. LOW ET AL.

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ed. Messrs. Routledge appealed, and the respondents having, at the suggestion of the Lords Justices, served notice of motion for a decree, the appeal motion and the cause were heard together in Nov. 1865. The Lords Justices made a decree in favour of the respondents: hence the present appeal.

The case is reported in the court below 10 L. T. Rep. N. S. 838, and 33 L. J. 717, Ch.

Sir Roundell Palmer and Shapter, Q. C. (*Schomberg* with them) for appellants.—The Copyright Act (5 & 6 Vict. c. 45), does not affect Canada, which has a legislature of its own, there is no express mention of Canada in the Act, and general words will not suffice to include it. We had already professed to give up legislating for Canada, by the 3 & 4 Vict. c. 35, and prior to the Copyright Act the Canadians had passed a copyright Act of their own, the terms of which the author in the present case had not complied with. Under the Canadian Act, she is not entitled to copyright, but if the decision of the Lords Justices be upheld she will obtain it under 5 & 6 Vict. c. 45 in direct contravention of the Canadian Act. It is a well-known principle of law that where there is a general and special statute, and the provisions of the one are not consistent with the provisions of the other, that the special statute ought to prevail, therefore in this case the Canadian Act must be held to govern the respondents claim: (*Fitzgerald v. Champneys*, 2 Jo. & H. 31, 55; 80 L. J. N. S. 777, Ch.). The remarks of Lord Cranworth in *Brook v. Brook*, 9 H. of L. Cas. 193, 222, in reference to the limitation of the operation of the 5 & 6 Will. IV. c. 54, may be applied with advantage to the present Act. A foreigner residing in Canada cannot be held to be a British subject within the meaning of the Copyright Act; the only claim to the rights of a British subject that the respondent has, is derived from the temporary residence in a British colony. Such local presence can only confer local and temporary rights, not the full rights of a British subject, unless by express enactment of the British Legislature. We have a national and also an international code affecting this subject, and this of itself is a proof that the statute was meant to benefit only *bonâ fide* subjects of the Crown. This Act cannot be supposed to be incorporated in the law of Canada; its provisions are entirely local. Penalties are to be recovered in the courts of the United Kingdom; copies of new works are to be delivered within a month at the British Museum, and in fact its provisions generally keep in view the state of things in the United Kingdom. This case, then, is governed by the decision in *The Attorney General v. Stewart*, 2 Mer. 143. *Jefferys v. Boosey* decided that the author must be either a British subject or an alien residing in the United Kingdom. The language of the Statute of Anne (8 Anne, c. 19) is not enlarged by the present statute. *Oilendorf v. Black*, 4 DeG. & S. 209; 20 L. J. 162, Ch., the decision turned entirely on a *bonâ fide* residence in England.

*Mellish, Q. C. and Speed* (with them *Hardy*) for respondents.—The present Act expressly repeals the Act of Anne. The object of the present statute, which is clearly shown by its preamble, is to extend copyright in order to afford greater encouragement to literature. The question here

is, who is an author? There are no words of limitation in the present Act with regard to it; it refers then to everyone who is an author, no matter what his nationality. Is an alien friend who comes into any part of the British dominion entitled to the benefit of this statute? The other side say that the respondent could only become entitled to the rights conferred by the Canadian law, but Canadian laws are of two sorts, one class being those enacted by the Imperial Legislature. Why then should an alien be restricted to the advantages of those alone which are enacted by the colonial Legislature? This Act applies to all persons residing within its scope, and it is clear from the Act itself that it extended to Canada. It was laid down by Lord Cranworth in *Jefferys v. Boosey*, that a residence of a single day was sufficient, and that under the Copyright Acts there was no distinction between temporary and permanent residence. But the present Act goes still further, and under it there can be no doubt that not only is a foreigner resident in England or within the British dominions entitled to copyright, but a foreigner resident abroad is also equally entitled to it, so long as he first publishes in England, which is the gist of the whole Act, and complies with the provisions of the 24th section. The opinion to the contrary expressed in *Jefferys v. Boosey* had nothing to do with the *ratio decidendi*, which went entirely on the fact that the publication was not made by the author at all, but by a person to whom he had assigned; but that case was decided under the statute of Anne, and is no longer law. Under the present statute author is not confined to British subjects, but even if it were, Miss Cummings at the time of publication was temporarily a subject of the British Crown. It is admitted that an alien resident in England is an author within the Act. There can be no distinction in the position in law of an alien resident in England and an alien resident in Canada. She was entitled to all the rights of a British subject except those from which aliens are specially excluded: *Calvin's case*, 7 Rep. 17b; 7 & 8 Vict. c. 66, s. 4.

They referred also to *D'Almaine v. Boosey*, 1 You. & C. 288; 4 L. J. N. S., Exch. Eq. 21; *Bentley v. Foster*, 10 Sim. 329; *Cocks v. Purday*, 5 C. B. 860, 17 L. J., N. S., 273, C. P.; *Boosey v. Davidson*, 4 Ex. 145, 18 L. J., N. S., 174, Q. B.; *Boosey v. Purday*, 4 Ex. 145; 18 L. J., N. S., 378, Ex.

Sir R. Palmer in reply.

THE LORD CHANCELLOR.—In this case a decree was made in the Court of Chancery by Vice-Chancellor Kindersley, and affirmed by the Lords Justices, protecting in the usual way the copyright is a work called "Haunted Hearts," and Messrs. Routledge, against whom this decree was made, complain of it and appeal from it to your lordships. The book or work called "Haunted Hearts" was composed by the respondent, Maria Susanna Cummings. Miss Cummings is a domiciled citizen of the United States of America; but before she published the work she went by arrangement to Montreal, in Lower Canada, for a few days, and while sojourning there the book was published in London on the 23rd May 1864. The book was published by the respondents, Messrs. Sampson, Low and Co., and the copyright of the work, if copyright existed, was