

AN IMPORTANT COPYRIGHT JUDGMENT.

BLACK ET AL. v. IMPERIAL BOOK COMPANY, LIMITED.

IN A PREVIOUS ISSUE of BOOKSELLER AND STATIONER, reference was had to the judgment delivered by Mr. Justice Street in favor of the defendants in the case of Black v. Imperial Book Company, Limited. Since then the judgment was withdrawn, and, after further argument, judgment has now (January 26) been delivered, sustaining the action and holding the plaintiffs entitled to judgment, restraining any further infringement of the copyright of the plaintiffs in the ninth edition of the Encyclopædia Britannica.

JUDGMENT

The present action was begun on September 18, 1901, and it appears that the firm of Hales & Sparrow who had been importing into Canada an American reprint of the plaintiffs' Encyclopædia had a little more than a year before the issue of the writ in the present action formed the Imperial Book Company, Limited, who are defendants in this action, along with James Hales, and that upon the formation of that company, it took over their business, and since it did so they have not, nor has the defendant, James Hales, imported the book in question. He has pleaded the 26th section of the Copyright Act, which requires actions for breaches of it to be brought within one year, and I think there is, therefore, nothing proved against him for which he can be held liable. He is the president of the defendant company, and anything he has done within the year has been done in that, and not in his individual capacity. The Imperial Book Company, Limited, have, however, continued to import large numbers of copies of the reprint since September 1, 1900.

A certificate purporting to be signed by the registering officer appointed by the Stationers' Company, pursuant to the 11th section of the Copyright Act of 1842 is produced, and given in evidence setting forth a copy of an entry in the books of registry of copyrights and assignments kept at the hall of the Stationers' Company, pursuant to the said section, which is as follows:

"Time of making the entry, April 5, 1875.

"Title of book, 'The Encyclopædia Britannica, a Dictionary of Arts, Sciences, and General Literature, Ninth Edition'

"Name of publisher and place of publication, Adam and Charles Black, Edinburgh.

"Name and place of abode of the proprietor of the copyright, Adam and Charles Black, Edinburgh.

"Date of first publication, January 30, 1875."

This certificate is given by the plaintiffs in evidence as prima facie proof, under the 11th section of the Act, of their proprietorship of the copyright.

The learned judge then deals with defendants' objection that the plaintiffs must give further evidence besides the production of the certificate to prove that they are proprietors of the copyright, and, after reviewing the authorities, he holds that the production of a certified copy as above mentioned is all that is necessary to make out a prima facie proprietorship in the copyright in question.

In the present case, the plaintiffs, Adam and Charles Black, assert in their statement of claim that they are proprietors of the copyright in the Encyclopædia Britannica; the defendants deny it, and the plaintiffs produce a copy of the entry in the book at Stationers' Hall as evidence of the right they claim. There is no evidence on either side on this point except this copy, and I think that is sufficient to establish the plaintiffs' right. Their title to the copyright being therefore established, the first objection on the part of the defendants to their right to maintain this action is that the effect of an agreement entered into between Messrs. Adam and

Charles Black and their co-plaintiffs, the Clarke Company, Limited, dated February 21, 1899, was to transfer the copyright to that company; that Messrs. A. and C. Black cannot maintain the action because they have assigned the copyright to the Clarke Company, and that the Clarke Company cannot maintain the action because they have not registered the assignment at Stationers' Hall.

I have examined the agreement in question and I am of opinion that it is not to be treated as an assignment, but merely as a license. In this agreement, Messrs. A. and C. Black are called the publishers, and the Clarke Company are called the company, by the agreement the publishers agree that until December 31, 1912, the company shall have the exclusive right to print and sell the ninth edition of the Encyclopædia Britannica, and for the purpose of enabling them to print it, the publishers agree to deliver to the company the existing plates used in its publication; and not to publish or announce the publication of a tenth edition of the work until after December 31, 1912. The company on its part agrees not to alter the text of the work, and that the style of paper printing and binding shall remain unaltered, that they will pay £40,000 to the publishers for the rights acquired under the agreement, that they will not sell any copy of the work under £15, either in Great Britain or America, and that they will as soon as possible after December 31, 1912, deliver to the publishers any unsold copies of the work, and all the plates used in printing it, then in their possession. The company further agrees that they will not knowingly issue any advertisement of and concerning the work of a nature likely to do injury to the publishers, either in their business, or as the owners of the copyright of the work. Authority is also given to the company to institute in the names of the publishers any proceedings they may deem proper in respect of any breach of copyright of the work.

The duration of the copyright was 42 years from January 30, 1875. The date of first publication, that is to say, until January 30, 1917. The rights given to the company under the agreement will, therefore, expire nearly four years before the expiration of the copyright and the publishers have provided in the agreement with much care for the protection and preservation of their interests in the work by reason of any alterations by the company in its substance or form or selling value.

They have expressly reserved the copyright to themselves and this reservation is entirely consistent, it appears to me, with the full enjoyment by the company of the rights given them. The agreement, therefore, must in my opinion be construed as a license merely and not as an assignment.

It is further objected that the plaintiffs are not entitled to the relief they ask because the edition of the Encyclopædia Britannica sold by the defendants was printed in the United States and imported into Canada, and the plaintiffs, it is alleged, did not give notice to the Commissioners of Customs of the existence of their copyright and of proper date of its expiration, as required by Section 152 of the Imperial Customs Act, 39 and 40 Vict. Cap. 36

• • • • •

The learned judge then deals with the question of whether Section 152 of the Imperial Customs Consolidation Act of 1876 is in force in Canada. He finds that it never was in force, the regulations of the Customs of the Province being committed to the Provincial Legislature on April 5, 1848, pursuant to Royal Proclamation under the authority of the Provincial Act, 10 and 11 Vict. (1847) Cap. 31, Canada having then assumed entire control of its own Customs before the Imperial Act of 1876 was passed.