

—a phase of the “passing-off” doctrine. In order to establish that allegation the plaintiff must shew (1) that his book had become known to the public and sought for under the title adopted by him; and (2) that the defendant company was so acting as to pass its book off as that of the plaintiff by using a similar title. See the cases collected in Scrutton’s Law of Copyright, 4th ed., pp. 56 to 59. Each case must be determined upon its own facts; and upon the facts of this case the plaintiff must fail.

When the defendant company’s book appeared, the plaintiff’s book had been on the market so short a time (about three months) that its public reputation had not been established; and it was questionable whether there was adequate evidence of passing-off. *Rose v. McLean Publishing Co.* (1896-7), 27 O.R. 325, 24 A.R. 240, distinguished.

Action dismissed with costs.

BRITTON, J.

DECEMBER 2ND, 1915.

ARMSTRONG v. McINTYRE.

Executors and Administrators—Action by Distributee to Recover Share of Estate from Executors of Deceased Administrator—“Trustee”—Limitations Act, R.S.O. 1914 ch. 75, secs. 47, 48—Breach of Trust—Administration Bond—Remedy by Action against Bondsmen — Commencement of Period for Statutory Bar—Assets in Hands of Executors.

Action against the executors of Alexander McIntyre, deceased, to recover a one-sixth share of the estate of James McIntyre, deceased: Alexander having been the administrator of the estate of James, who died intestate, and the plaintiff being the sister of both James and Alexander and entitled as one of the next of kin of James.

The action was tried without a jury at Woodstock.

Peter McDonald, for the plaintiff.

S. G. McKay, K.C., for the defendants.

BRITTON, J., said that the defendants, as executors of Alexander, received, as the assets of his estate, about \$15,217.52. The plaintiff alleged that part of the estate of James was in-