

MASTEN, J.

NOVEMBER 30TH, 1915.

*McINDOO v. MUSSON BOOK CO.

*Copyright—"Literary Composition"—Title or Name of Book—
Infringement by Use of Similar Name — Copyright Act,
R.S.C. 1906 ch. 70, sec. 4—"Passing-off"—Reputation —
Evidence.*

Motion by the plaintiff for judgment on the pleadings and affidavits filed upon a motion for an interim injunction and by consent made evidence upon this motion, by leave of the Court.

The motion was heard in the Weekly Court at Toronto.
E. C. Ironside, for the plaintiff.
George Wilkie, for the defendant company.

MASTEN, J., said that the plaintiff was the publisher of a book with the title of "The New Canadian Bird Book," of which he held the copyright; and the defendant company was the publisher of another book on the same subject—"The Canadian Bird Book." The plaintiff's book was first placed on the Canadian market at or about the date of the copyright, and the defendant company's book was issued and sold to the public in Canada in the spring of 1915—two or three months later than the plaintiff's book.

The plaintiff's claim was based, first, on copyright; the certificate of copyright was produced, and appeared to be in the usual form. The right which the registration conferred was that set out in sec. 4 of the Copyright Act, R.S.C. 1906 ch. 70. The subject-matter to which that right relates and in which it inheres is a *literary composition*. Here there was no complaint that the literary composition forming the body of the work had been infringed. The complaint related solely to the title or name of the book.

There cannot in general be any copyright in the title or name of a book: *Dick v. Yates* (1881), 18 Ch.D. 76, per James, L.J., at p. 93.

No one could suggest that the title "The New Canadian Bird Book" amounted, in itself, to a literary, scientific, or artistic work or composition.

The plaintiff also alleged that the defendant company was selling its book under the name or title of the plaintiff's work