

Eng. Rep.]

ROUTLEDGE ET AL. V. LOW ET AL.

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complied with. It is unnecessary to decide what would be the extent and effect of a copyright in those colonies and possessions of the Crown which have local laws upon the subject. But even if the statute of 5 & 6 Vict. applies at all to the case, I do not see how such a copyright can extend beyond the local limits of the law which creates it. My noble and learned friend upon the woolsack has expressed an opinion that the statute of 5 & 6 Vict. has extended the privilege of copyright to an alien publisher who is resident wholly abroad. With the most sincere respect for this opinion, I cannot help entertaining a doubt whether it is well founded. If any stress is to be laid upon the preamble of the statute, it does not appear to me to differ very widely from that in the statute of Anne. One of the objects proposed by the statute of Anne is to encourage "learned men to compose and write useful books." The object of the 5 & 6 Vict. is expressed to be "to afford greater encouragement to the production of literary works of lasting benefit to the world." If, therefore, the statute of Anne did not confer the privilege of copyright upon an alien publisher residing abroad (which after the case of *Jefferys v. Boosey*, it must be taken not to have done, I cannot find anything in the 5 & 6 Vict., which appears to me to warrant the extension of its benefits to such a publisher. But it is unnecessary to consider this question more fully with a view to the determination of the present case. It is sufficient to say that copyright being extended to every part of the British dominions, the residence of Miss Cummings, the authoress of the work in question, in Canada, conferred upon her the same title to copyright upon the first publication of her work in England as a similar residence in the United Kingdom would have done; and, therefore, that in my opinion the decree appealed from ought to be affirmed and the appeal dismissed with costs.

LORD WESTBURY.—The case of *Jefferys v. Boosey* is a decision which is attached to and depends on the particular statute of which it was the exponent; and as that statute has been repealed and is now replaced by another Act, with different enactments, expressed in different language, the case of *Jefferys v. Boosey* is not a binding authority in the exposition of this later statute. In the arguments on the construction of the existing Act it has been admitted (and I think rightly) that the benefit of the copyright which the Act creates extends to such works only as are published within the United Kingdom. This results from various provisions and conditions contained in the Act, which could not possibly be complied with if the first publication were to take place in distant parts of the British empire. But although for the creation of copyright it is necessary that the work be first published within the United Kingdom, yet, by the express words of the statute, the copyright, when created, extends to every part of the British dominions. This is the benefit which, by the words of the Act, is offered to authors, who shall first publish their works within the United Kingdom. The question then arises who are included in the term "authors." The word is used in the statute without limitation or restriction. It must, therefore, include every person who shall be an author, unless from the rest of the statute

sufficient grounds can be found for giving the term a limited signification. It is proposed to construe the Act as if it had declared in terms that the protection it affords shall extend to such authors only who are natural-born subjects, or of foreigners who may be within the allegiance of the Queen on the day of publication. But there is no such enactment in express terms, and no part of the Act has been pointed out as requiring that such a construction should be adopted. The Act appears to have been dictated by a wise and liberal spirit, and in the same spirit it should be interpreted, adhering of course to the settled rules of legal construction. The preamble is, in my opinion, quite inconsistent with the conclusion that the protection given by the statute was intended to be confined to the works of British authors. On the contrary, it seems to contain an invitation to men of learning in every country to make the United Kingdom the place of first publication of their works; and an extended term of copyright throughout the whole of the British dominions is the reward of their so doing. So interpreted and applied, the Act is auxiliary to the advancement of learning in this country. The real condition of obtaining its advantages is the first publication by the author of his works in the United Kingdom. Nothing renders necessary his bodily presence here at the time, and I find it impossible to discover any reason why it should be required, or what it can add to the merit of the first publication. It was asked in *Jefferys v. Boosey*, why should the Act (meaning the Statute of Anne) be supposed to have been passed for the benefit of foreign authors? But if the like question be repeated with reference to the present Act, the answer is in the language of the preamble that the Act is intended "to afford greater encouragement to the production of literary works of lasting benefit to the world"—a purpose which has no limitation of person or place. But the Act secures a special benefit to British subjects by promoting the advancement of learning in the country, which the Act contemplates as the result of encouraging all authors to resort to the United Kingdom for first publication of their works. The benefit of the foreign author is incidental only to the benefit of the British public. Certainly the obligation lies on those who would give the term "author" a restricted signification, to find in the statute the reason for so doing. If the intrinsic merits of the reasoning on which *Jefferys v. Boosey* was decided, be considered (and which we are at liberty to do, for in this case it is not a binding authority), I must frankly admit that it by no means commands my assent. I abstain from criticising the arguments in detail, for the process could hardly be consistent with the great respect due to the judicial opinions delivered by your Lordships. The sum of the whole reasoning is the conclusion that a British statute must be considered as legislation for British subjects only; unless there are special grounds for inferring that the statute was intended to have a wider operation. But by the common law of England, the alien friend (*ami*) though remaining abroad, may acquire and hold in England all kinds of pure personal property, and when a statute is passed which creates or gives peculiar protection to a particular kind of