

Eng. Rep.]

ROUTLEDGE ET AL. V. LOW ET AL.

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was right. I find it difficult to concur with him in the opinion that the present statute extends its protection to foreigners without saying that the case of *Jefferys v. Boosey* is not good law, a conclusion at which I should be very unwilling to come as to any case decided in this House, more especially as to one so elaborately considered as that of *Jefferys v. Boosey*, that case, as my noble friend has pointed out, was decided not on the construction of the Act of the 5 & 6 Vict. c. 45, but on the old statute of Queen Anne; but I own I do not, as at present advised, see any difference between the two statutes, so far as relates to the subject of foreign authors. I have felt it my duty to make these remarks, in order that I may not be taken to have accepted my noble and learned friend's exposition of the present statute as to foreign authors. If any question as to their rights should come before this House for decision, I wish to keep my judgment open on the point. In the present case, as I have already stated, I concur with my noble and learned friend in thinking that the present appeal should be dismissed with costs.

LORD CHELMSFORD.—The case of *Jefferys v. Boosey* finally decided that the statute of 8 Anne gives the copyright in a work only to British subjects or to foreign authors who at the time of the first publication are in this country. The direct subject of decision in that case was that a foreign musical composer resident abroad, having assigned his right in a musical composition of which he was the author to another foreigner who brought it to this country, and before publication assigned it, according to the forms required by law, to an Englishman, no assignable copyright in this musical composition existed in England. There can be no doubt from what was said by the learned judges who assisted, and by the noble Lords who advised the House in *Jefferys v. Boosey*, that if the foreign musical composer had himself brought his composition here, even though he came to this country solely with a view to publication, he would have entitled himself to copyright. Copyright under the statute of Anne was confined to Great Britain. Therefore, under this statute, in order to qualify himself to claim a copyright for any work which he had composed but not published abroad, a foreigner must at the time of its first publication have been resident within some part of the area over which the copyright extended and to which it was limited. But it was said that before the case of *Jefferys v. Boosey*, the copyright under the statute of Anne had been extended by the 41 Geo. 3, to "all the British dominions in Europe," and by the 54 Geo. 3, "to all the parts of the British dominions," and therefore the decision in that case that the foreign author of a work must have been resident in Great Britain to entitle him to copyright, necessarily excluded the sufficiency of a residence in any other part of the Queen's dominions. But the Acts of 41 Geo. 3, and 54 Geo. 3, gave no actual extension to the area of copyright, which was limited by the 8th of Anne. Practically, no doubt, when persons are prohibited from publishing a work in a particular place, and an action is given to the author of the work against them for doing so, he has a monopoly of the right of publication in that place. Yet strictly speaking his copyright under the statute is not thereby

enlarged; but for its better protection a remedy is given for an infringement beyond the limits to which it extends. It is obvious that for the purpose of copyright a provision of this description cannot give any effect to a residence in any part of the Queen's dominions out of Great Britain which it did not possess before. It having been settled that the term "author" in the statute of Anne is only applicable to a foreigner when he is resident in Great Britain, the question to be determined in this case is whether the statute of 5 & 6 Vict. c. 45 has not given that term a more extensive application. By the 29th section it is enacted "that this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions." This section of the Act requires for its full effect that the area over which copyrights prevail should be limited only by the extent of the British dominions. But then it will follow that the term "author" must have a similar extension. For in the case of *Jefferys v. Boosey* it was not doubted that the term author, though intended to express a British subject, would apply to a foreigner taking up his residence within the limits to which copyright extended under the 8th Anne. And those limits being now enlarged by the 5 & 6 Vict., the residence which confers the rights of a British subject as to copyright upon a foreigner may be in any part of the Queen's dominions. It was admitted in argument that a resident native of Canada would be entitled to the benefit of an English copyright? What reason is there for denying to a foreigner resident in Canada the privileges in this respect of a native Canadian? There is a little difficulty in determining where the publication which confers the extensive privilege of copyright under the Act must take place. The 6th section requires a copy of every book to be deposited in the British Museum within one month after it shall be first published within the bills of mortality, or within three months if published in any other part of the United Kingdom, or within twelve months if published in any other of the British dominions. This section seems to refer to publications to which the privilege of copyright attaches, and consequently to contemplate the acquisition of this privilege by the first publication of a work out of the United Kingdom. But there are provisions in the Act which impose conditions upon a publisher entitled to copyright wholly inapplicable to publications in some distant part of the British dominions. And a non-compliance with these conditions exposing the publisher to penalties which are to be recovered either in a summary way on conviction before two justices of the peace for the county or place where he resides, or by action in any court of the United Kingdom, it seems to me to be clear, notwithstanding the language of the 6th section, that the only publication which entitles a publisher to copyright is that which takes place within the United Kingdom, although when obtained it exists throughout the whole of the British dominions. Our attention was called to a local law of Canada with regard to copyright; but it was not contended that it would prevent a native of Canada from acquiring an English copyright which would extend to Canada, as well as to all other parts of the British dominions, although the requisitions of the Canadian law had not been