

Eng. Rep.]

LOW v. ROUTLEDGE.

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An alien, coming into a British colony, becomes temporarily a subject of the Crown; he thus acquires rights both within and beyond the colony, and the latter cannot be affected by the laws of the colony into which he comes.  
[L. J., Nov. 10, 24, 1865.]

This was a suit by which an injunction was sought to restrain the defendants from publishing or selling any copies of a book called "Haunted Hearts," in which the plaintiffs claimed the copyright.

A bill having the same object was filed by the plaintiffs on the 17th of June, 1864, a demurrer to which was, on the 18th of July, 1864, allowed by Vice-Chancellor Kindersley, on the ground that in the entry of the proprietorship of the book in question, in the register at Stationer's-hall, the name of the plaintiff's firm was different from the name given in the bill; and that in the same entry the date of publication of the book was untrue stated. On this occasion his Honour expressed a strong opinion in favour of the plaintiffs, on the main question in that, as well as in the present case, viz., whether an alien resident in Canada, for the purpose of acquiring copyright, can acquire copyright in a work published by him in England. This decision is reported 12 W. R. 1069, where the facts of the case will be found.

On the 2nd of March, 1865, Vice-Chancellor Kindersley, on the motion of the plaintiffs, granted an interlocutory injunction in the terms asked by the bill. From this order the defendants appealed to the Lords Justices, but their Lordships desired that the appeal motion might stand over until the hearing of the cause, which they permitted to be brought on in the first instance before themselves.

The cause, therefore, now came on before their Lordships on motion for decree, and on appeal motion.

*Bailey, Q. C., and Hardy, for the plaintiffs.*—The case is governed by *Jeffreys v. Boosey, infra*. Unless it is held that actual domicile is required to give an alien power of acquiring copyright in this country, any period of residence in the British dominions, however short, and with whatever intention, will be sufficient to satisfy the requirements of the Copyright Acts. An alien coming to this country owes temporary allegiance to its Sovereign, and this is a sufficient ground for the right; the circumstance that an author comes into the British dominions solely with a view of acquiring copyright makes no difference in the nature of his temporary allegiance or its consequences; he must obey the laws of this country while here, and he must consequently have the benefit of those laws.

The Acts of the Canadian Legislature cannot affect a right in this country, though they might operate to exclude the work from Canadian copyright. The authorities show that the courts here have protected the foreign copyright of books published here by foreigners resident abroad; and if the defendant's argument is to prevail, a foreigner publishing a work abroad would be in a better position than if he came here and published it. The International Copyright Acts regard only two classes of works, viz., those published abroad and those published in this country; they take no cognizance of the author or his residence.

*Shayler, Q. C., and Schomberg, for the defendants.*—The authoress has clearly no copyright in Canada, under the Canadian Copyright Act, 4 & 5 Vict. c. 61 (Canada). The 5 & 6 Vict. c. 25, does not apply to Canada, because at the time of passing that act that colony had an independent legislature. The 3 & 4 Vict. c. 35, which confers a legislature upon Canada, provides that it shall enact laws not being repugnant to an act of Parliament made or to be made; but these words, "to be made," can only be taken to extend to the acts of the Imperial Parliament in existence from time to time at the date of the Canadian enactment. The spirit of prophecy is not to be attributed to the Canadian legislature. The English Copyright Act could not repeal by a side wind the Canadian Copyright Act passed the year before. The general words, "all colonies," in the interpretation clause of the English Copyright Act do not include a colony to which the term did not, at the passing of the Act, strictly apply, by reason of its having an independent legislature. The authoress of this book is therefore in the same position as a foreigner publishing in this country; the rights of an alien, by the common law, are merely to hold personal property, and to protection; but he can claim no permanent or statutory right, such as copyright. The authoress in this case claims not merely the temporary protection of the law, but all the privileges of a Canadian born.

*Bailey, Q. C., in reply.*—If a Canadian born were to publish a book in England while residing in Canada, he would unquestionably have copyright here; our case is precisely similar. Again, we can surely be in no worse position than a foreigner coming over to England for the purpose of publication. Though the authoress might have no copyright in Canada, she is as much under the allegiance of the Crown there as if she were in England, and is therefore entitled to all the rights of a British subject.

The following authorities and statutes were referred to:—*Delondre v. Shaw*, 2 Sim. 237; *D'Almaine v. Boosey*, 1 Y. & C. Ex. 288; *Bentley v. Foster*, 10 Sim. 329; *Cocks v. Purday*, 5 C. B. 860; *Ollendorff v. Black*, 4 De G. & Sm. 209; *Buxton v. James*, 5 De G. & Sm. 80; *Boosey v. Davidson*, 13 Q. B. 257; *Chappel v. Purday*, 14 M. & W. 303; *Boosey v. Purday*, 4 Ex. 145; *Boosey v. Jeffreys*, 6 Ex. 580; *Jeffreys v. Boosey*, 4 Ho. Lds. Cas. 815; *Calvin's case*, 7 Rep. 1; *Donegani v. Donegani*, 3 Knapp. 63; *Adam's case*, 1 Moo. P. C. 460; *Boucicault v. Delafeld*, 1 H. & M. 597, 12 W. R. 101; *Brook v. Brook*, 6 W. R. 110, 51 L. J. 3 Sm. & G. 481; *Hope v. Hope*, 5 W. R. 287, 8 D. M. G. 743. 8 Anne, c. 19; 3 & 4 Vict. c. 61 (Canada); 5 & 6 Vict. c. 45 (Copyright Act); 1 & 2 Vict. c. 59; 7 & 8 Vict. c. 12; 15 & 16 Vict. c. 12 (International Copyright Act); 28 & 29 Vict. c. 63. Phillips's Law of Copyright, Appendix; 1 Blackstone's Comm. 269; Thomas's Universal Jurisprudence, 340.

Nov. 24.—TURNER, L. J.—The sole question we have to determine is whether an alien friend coming into one of the British colonies (in this case into Canada), and residing there during and at the time of the publication in this country of a work composed by the alien, and first published in this country, is entitled to copyright in this