

Eng. Rep.]

ROUTLEDGE ET AL. V. LOW ET AL.

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Kingdom, wheresoever that author may be a resident or of whatever state he may be the subject. The intention of the Act is to obtain a benefit, for the people of this country by the publication to them of works of learning, of utility, of amusement. The benefit is obtained in the opinion of the Legislature by offering a certain amount of protection to the author, thereby inducing him to publish his work. This is, or may be, a benefit to the author, but it is a benefit given, not for the sake of the author of the work, but for the sake of those to whom the work is communicated. The aim of the Legislature is to increase the common stock of the literature of the country, and if that stock can be increased by the publication for the first time here of a new and valuable work composed by an alien who never has been in the country, I see nothing in the wording of the Act which prevents, nothing in the policy of the Act which should prevent, and everything in the professed object of the Act, and in its wide and general provisions, which should entitle such a person to the protection of the Act in return and compensation for the addition he has made to the literature of the country. I am glad to be able to entertain no doubt that a construction of the Act, so consistent with a wise and liberal policy, is the proper construction to be placed upon it. My lords, as opposed to this conclusion we were much pressed with the case of *Jefferys v. Boosey*, decided by this House (8 H. of L. Cas.). That case was decided not upon the old Copyright Act of Queen Anne; on the construction of that Act six of the learned judges who advised your lordships were of opinion that a foreigner living at Milan, and composing a literary work there, could convey a title of copyright by assignment, under which his assignee, publishing here, was entitled to protection. Four of the learned judges were of different opinion, and your lordships unanimously held that the foreigner in that case could not give a title of copyright, and this must be taken to be the construction and effect of the statute of Anne. But it is impossible not to see that the *ratio decidendi* in that case proceeded mainly, if not exclusively, on the wording of the preamble of the statute of Anne, and on a consideration of the general character and scope of the Legislature of Great Britain at that period. The present statute has repealed that Act and professes to aim at affording greater encouragement to the production of literary works of lasting benefit to the world. And accepting the decision of this House as to the construction of the statute of Anne, it is, I think, impossible not to see that the present statute would be incompatible with a policy so narrow as that expressed in the statute of Anne. If you concur in this construction of the statute now in force, the respondent will clearly be entitled to our judgment, and I propose to move that the decree of the Court of Chancery should be affirmed, and the appeal dismissed with costs.

LORD CRANWORTH.—I concur with my noble and learned friend in thinking that this appeal should be dismissed with costs. But in so concurring I must guard myself against being taken as assenting to the suggestion of my noble and learned friend, that the Act now regulating copyright (5 & 6 Vict. c. 45) must be taken as extending its privileges to all authors, aliens as

well as natural born subjects, who publish their works for the first time in this country. It is not necessary to come to such a conclusion in order to support the decree appealed from. It is remarkable that the modern statute, though it repeals all the former statutes, nowhere defines or declares what is to be understood by the word "copyright." It assumes copyright to be a well known right, and legislates in respect to it accordingly. I suppose, that copyright, except so far as it is extended expressly or impliedly by the language of the Act, must be taken to be confined to what it was at the passing of the Act, that is, to works first published in the United Kingdom. But I think it is a reasonable inference, from the provisions of the Act, that its benefits are conferred on all persons resident in any part of Her Majesty's dominions, whether aliens or natural born subjects, who while a resident publish their works in the United Kingdom. This was the case of Miss Cummings, and it is not necessary to say whether it extends further; though there seem to me to be reasons almost irresistible for thinking that it does not. She was a foreigner resident at Montreal, and while so resident, she published her work in London, which was its first publication, and that was, I think, sufficient to entitle her to the protection of the statute. The decision of your Lordships' house in *Jefferys v. Boosey*, according to the opinions of all the noble Lords who advised the House on that occasion, rested on the ground that the statute of Anne then alone in question must be taken to have had reference exclusively to the subjects of this country, including in that description foreigners resident within it, and not to have contemplated the case of aliens living abroad beyond the authority of the British Legislature. The British Parliament in the time of Queen Anne must be taken *prima facie* to have legislated only for Great Britain, just as the present Parliament must be taken to legislate only for the United Kingdom. But though the Parliament of the United Kingdom must *prima facie* be taken to legislate only for the United Kingdom, and not for the colonial dominions of the Crown, it is certainly within the power of Parliament to make law for every part of Her Majesty's dominions, and this is done in express terms by the 29th section of the Act now in question. Its provisions appear to me to show clearly that the privileges of authorship which the Act was intended to confer or regulate in respect to works first published in the United Kingdom, were meant to extend to all subjects of Her Majesty in whatever part of her dominions they might be resident, including under the term subjects, foreigners residing there, and so owing to her a temporary allegiance. That Her Majesty's colonial subjects are by the statute deprived of rights they would otherwise have enjoyed is plain, for the 15th section prohibits them from printing or publishing in the colony whatever may be their own colonial laws, any work in which there is copyright in the United Kingdom. It is reasonable to infer that the persons thus restrained were intended to have the same privileges as to works they might publish in the United Kingdom, as authors actually resident therein. And, therefore, I have no hesitation in concurring with my noble and learned friend in thinking that the decree