Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Henry Graves and Company, Limited, v. *Gorrie, from the Court of Appeal for Ontario; delivered the 28th July* 1903.

Present at the Hearing:

LORD MACNAGHTEN.
LORD SHAND.
LORD ROBERTSON.
LORD LINDLEY.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

The Appellants and Plaintiffs in this case are the registered owners of the copyright of a picture called "What we have we'll hold." They acquired this copyright under Statute 25 & 26 Vict., c. 68, commonly called the Fine Arts Copyright Act, 1862. They have not complied with the Canadian Copyright Act, and have acquired no copyright in Canada apart from the copyright to which the statutes of the United Kingdom entitle them. The Defendant is a printer and publisher in Toronto, and he has printed, published, and sold in Canada copies of the Plaintiffs' picture without obtaining any license from them. The Plaintiffs complained of this as an infringement of their copyright, and they instituted legal proceedings in Canada against the Defendant for an injunction and damages. The case was heard in the High Court of Ontario, and the Plaintiffs' application for an

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injunction was dismissed with costs. An appeal to the Divisional Court was unsuccessful. A further appeal to the Court of Appeal met with no better fate. The Courts in Canada decided that the Plaintiffs had no copyright in Canada. The present Appeal has been brought in order that this decision may be reconsidered and finally reviewed.

The question depends entirely on the true construction and effect of the Act of 1862 before referred to. Other statutes were called in aid by the Appellants' Counsel and will be noticed presently, but they do not extend the rights conferred by the Act of 1862.

The Act of 1862 begins by reciting (as their Lordships believe, quite accurately) that the authors of paintings, drawings, and photographs had, as the law then stood, no copyright in such works, and that it was expedient to amend the law in that respect. Then follows Section 1, which confers copyright in such works on their authors, being British subjects or resident within the dominions of the Crown. Copyrights in such works and assignments of such copyrights have to be registered in Stationers' Hall; and no one is entitled to the benefit of the Act until registration (Section 4); penalties are imposed on persons who infringe such copyright (*See* Sections 6, 7, and 8); facilities are given for obtaining injunctions (Section 9); importations into the United Kingdom are prohibited (Section 10); the remedy by action for damages is preserved (Section 11); and the then International Copyright Act (7 & 8 Vict., c. 12) is incorporated.

The Act of 1862 confers on British subjects and persons resident in British dominions copyright in pictures, drawings, and photographs. Such copyright extends to the whole of the United Kingdom. But there is not a word in the Act

to indicate any intention on the part of the Legislature to extend the limits within which the copyright is to be enjoyed to any part of the British dominions outside the United Kingdom. There are clauses, especially Section 4, relating to registration, and Section 10, prohibiting importation, which negative any such intention. In the absence of language clearly showing an intention to confer copyright in such dominions, their Lordships are of opinion that the Plaintiffs' contention cannot be supported.

This view of the Act is by no means new. It was adopted in *Tuck and Sons* v. *Priester* (L. R. 19 Q.B.D. 629), in which the effect of non-registration and of the penal clauses had to be considered. The Appellants' Counsel, however, called in aid some other statutes, and notably the Canada Copyright Act, 1875, 38 & 39 Vict. c. 53, sec. 3; and the International Copyright Acts.

The Canada Copyright Act, 1875, does not, by Section 3, make the Canadian Act set out in the schedule an Imperial Act applicable to Canada. The Section simply removes a difficulty which had arisen in Canada by reason of Section 91 of the British North America Act and some Orders in Council. Copyright is placed by that Act under the Dominion Legislature; and, having regard to some Orders in Council, it was doubtful by whom the Act in the schedule should be assented to. The effect of the Act was considered by the Court of Appeal for Ontario in *Smiles* v. *Belford* (1 Ont. App. Rep. 436), and it is plain from that case, and indeed from the Act itself, that it in no way assists the Plaintiffs.

The International Copyright Acts, and especially the Act of 1886 (49 & 50 Vict. c. 33), were relied upon with the view of showing that, unless the Act of 1862 were held to confer copyright not only in the United Kingdom, but

also in the British dominions, unforeseen anomalies would arise, and those Acts would not have the effects intended under the Berne Convention. It is unfortunately true that the International Copyright Acts and the Berne Convention give rise to many serious difficulties when they have to be applied to particular cases. But their Lordships are unable to discover any language in those Acts which, without more, extends the area of the copyright conferred by the Act of 1862 on British subjects and persons resident in British dominions to any country beyond the limits of the United Kingdom.

The short result is that those who want copyright in Canada for paintings, drawings, and photographs must obtain such copyright by complying with the laws of that country. There is no difficulty or expense worth mentioning in doing this.

Their Lordships will therefore humbly advise His Majesty to dismiss this Appeal, and the Appellants must pay the costs.