Privy Council Appeal No. 52 of 1913.

The Canada Law Book Company, Limited - *Appellants,*

v.

Butterworth and Company and others - - *Respondents.*

FROM

THE COURT OF APPEAL FOR MANITOBA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JANUARY 1914.

Present at the Hearing.

LORD DUNEDIN.

LORD ATKINSON.

LORD SHAW.

[*Delivered by* LORD ATKINSON.]

This is an Appeal from a Judgment dated the 25th of April 1913 of the Court of Appeal for the Province of Manitoba, whereby a Judgment of the Court of King's Bench dated the 27th March 1913 delivered by Mr. Justice Metcalfe was overruled.

By this latter Judgment an injunction was granted restraining the Defendants, the Respondents in the Appeal, from selling or offering for sale, or permitting the sale of, or soliciting orders for, or distributing within the Dominion of Canada and the United States of America, to persons other than the Plaintiffs or their nominees, for a period of five years from the 14th of November 1912, a certain publication or work known as the "Laws of England," by

[1] u J 293. 90.—1/1914. E. & S.

the Earl of Halsbury; and, as the Respondents admitted at the trial that they had sold the said work in Canada within this period, and that if they were bound by contract with the Plaintiffs not to do so, the latter had thereby suffered some damage it was referred to George Patterson, Esq., K.C., to ascertain the amount of these damages.

Butterworth & Co. is a name under which one Stanley Shaw Bond, who is the owner of the copyright of the said work, carries on the trade or business of a publisher of books, the headquarters of the business being in London. And Butterworth & Co. (Canada), Limited, is the name of a company incorporated in England to carry on the business of publishers of books in the Dominion of Canada and elsewhere, the headquarters of the Company being in the City of Winnipeg in the Province of Manitoba. The said Stanley Shaw Bond holds 999 of the 1,000 shares issued by this Company. The Appellant Company carries on the trade or business of a dealer and seller of books in Canada and elsewhere, one R. R. Cromarty being its president.

It is not disputed that by a contract in writing contained in certain written communications which passed between Butterworth & Co., otherwise Stanley Shaw Bond, and the Appellant Company, the latter were appointed the sole agents of the former for the sale of this work in Canada and the United States of America, on certain terms for a period of five years from the publication of the first volume of the work. This volume was published on the 14th of November 1907, and the stipulated period of five years would, therefore, terminate on the 14th of November 1912. The sole question in controversy is, whether that agency was to

continue, if certain conditions were fulfilled, for an additional period of five years from the termination of the first period. So that the matter for decision is the construction of this written contract.

In the year 1907 the Plaintiff Company had in its employment a gentleman named Robinson, since dead. After some letters had passed between the president of the Appellant Company, R. R. Cromarty, and Stanley Shaw Bond, touching the publication of the "Laws of "England," and the sale of the work by the Appellant Company in Canada and the United States of America, this gentleman, Robinson, acting on behalf of the Appellant Company, had an interview with S. S. Bond in reference to these matters, at which the latter gave Robinson a memorandum setting forth the terms upon which he was willing to appoint the Company his agents, exclusive of all others, for the sale of the contemplated publication in Canada and the United States. It is Exhibit No. 5. It runs thus:—

"1. Order to be accepted by the Company.

"2. Sets not to be returned to England.

"3. We to do our best to prevent sale to Canada.

"4. Sole agency to Canada and U.S.A. for five years "from publication of volume I. or for one year after "publication of the last volume of the set, whichever "shall be the longest period.

"5. Sole agency after the above mentioned period shall "be obtained by their taking fifty sets for the first year "and forty sets for the next year, and so by a sliding "scale to ten sets for the fifth year.

"6. Four hundred sets at 7*s.* 6*d.* in quires to be taken "within two years, ordinary account.

"7. We to hand over the orders from above territory "received before this date, and to receive a bonus of "3*s.* 0*d.* per volume for the same also to refer future "orders and enquiries while this agreement lasts to the "Canada Law Book Company.

"8. B. & Co. to take back up to 100 sets at same "price as charged at completion of the expiry of the sole "agency."

The Appellant Company wrote to Stanley Shaw Bond a letter bearing date the 21st of May 1907. The important portion of this runs as follows :—

"EXHIBIT 7.

"C. May 21, 1907.

"S. Bond, Esq.,
"C/o Messrs. Butterworth & Co.,
"12, Bell Yard, Temple Bar,
"London, England.

"DEAR MR. BOND :—

"Referring further to Halsbury's Laws of England, "Mr. Robinson has just handed me the proposition you "made to him. Let me say in reference to the statement "that we were paying Green 7*s.* 6*d.* per volume. This "is a mistake, we are paying 7*s.* only. As to the "guarantee of fourteen volumes, the additional volumes of "course will be free. We were to take 300 sets inside "of five years from September last.

"It seems to me your proposition is a pretty stiff "one.

* * * * *

"If you wish we will meet you half way and pay 7*s.* 6*d.* "per volume. We to agree to take 400 sets within two "years for the sole agency for Canada and the United "States for five years from the date of publication. We "will waive the right to return any copies, all of which "will be purchased outright. You will hand over to us "any orders you have in Canada and the United States "without any cost to us. We will agree to supply them at "the special price. I think you will agree, if you will look "on it, it is unreasonable for us to pay any extra 3*s.* per "volume. . . . . .

"The above offer is a most reasonable one and a fair "one considering we have only seven million people in the "county. . . . . .

"On receipt of this letter you might wire me acceptance "or refusal. We, of course, have the right to purchase "additional sets at the price."

There is nothing in the omitted portions of the letter to affect, or in any way qualify the meaning of these paragraphs. It will be observed (1) that the expression of the desire to meet the Respondents half way only refers to the price of 7*s.* 6*d.* per volume; (2) that the

second of the two alternatives offered in paragraph 4 of the memorandum, namely, an agency for one year after the publication of the last volume of the set is rejected, and the first alternative, an agency for five years, accepted, and as the only publication mentioned in this latter alternative is the publication of the first volume, it is, in their Lordships' view, clear that the words "from the date of publication" used in this letter must refer to the date of publication of the first volume.

Again, the terms set forth in this letter do not purport to be modifications merely of the terms of the memorandum, but a full statement of the terms upon which the Agreement is to be based. The subjects dealt with in all the paragraphs of the memorandum other than paragraph 5 are in effect dealt with in the letter, and of this latter no mention whatever is made. It is difficult to suggest why this should be so if the writer intended that it should be adopted.

In compliance with the request contained in this letter, the Respondents sent, on the 9th of June 1907, to Mr. Cromarty a telegram in the following terms:—

"Halsbury's Laws agree your modified terms "writing."

And on the 14th of June 1907 wrote to the Appellants a letter, the material portions of it run as follows:—

"THE LAWS OF ENGLAND.

"By the Earl of Halsbury and a Distinguished body of "Lawyers.

"We are in receipt of your letter of May 21st with "reference to the above. Although we think that you "should not have had any difficulty in falling in with our "proposal, yet we will agree to accept your modification of "our terms. The terms between us are now as set out "overleaf.

"We cabled as requested as follows:—

"Cromarty, Toronto, Halsbury's Laws agree your "modified terms, writing." . . . . . .

"BUTTERWORTH & Co.

"Arrangements with the Canada Law Book Company, "Ltd., for 'Halsbury's Laws of England.'

"1. This arrangement to be between the Company, if we "decide to make one for this undertaking.

"2. Sets not to be returned to England.

"3. Butterworth & Co. to do their best to prevent sale "to Canada.

"4. Canada Law Book Company to take four hundred "(400) sets within two years in return for the sole agency "to Canada and the U.S.A. for five years from date of "publication of Volume I. During the said sole agency "they to have the right of purchasing additional sets at the "same price.

"5. Butterworth & Co. to hand over any orders from "above territory that they have received."

Much reliance was placed by the Appellants on the words "your modification of our "terms" used in their letter, and they contended that they must be taken to mean that all the terms of the original memorandum, especially those contained in paragraph 5, not altered by the letter of the 21st of May, were to form some of the terms agreed to. The sentence immediately succeeding this one points irresistibly, their Lordships think, to a different conclusion. It runs thus:—The terms between us are now as set out overleaf. That is a restatement of the full terms on these points. On the construction of these documents their Lordships are clearly of opinion, that the continuance of the agency for a further period of five years after the termination of the first period, did not form a term of the contract entered into between the parties. And the amendments made in the pleadings would certainly go to show that the Appellants themselves

were of that opinion and that the contention now put forward was something of an after thought.

Their Lordships are therefore of opinion that the Judgment appealed from was right, and that accordingly the Appeal should be dismissed, and they will humbly advise His Majesty accordingly. The Appellants must pay the costs of the Appeal.

In the Privy Council.

THE CANADA LAW BOOK COMPANY, LIMITED

v.

BUTTERWORTH AND COMPANY AND OTHERS.

DELIVERED BY LORD ATKINSON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.