

1901 HUBERT CHARLES CADIEUX } APPELLANTS ;
 *May 21, 22. *et al.* (DEFENDANTS)..... }

AND

LOUIS J. O. BEAUCHEMIN *et al.* } RESPONDENTS.
 (PLAINTIFFS)..... }

ON APPEAL FROM THE COURT OF QUEEN'S BENCH,
 PROVINCE OF QUEBEC, APPEAL SIDE.

Copyright—Infringement—Evidence—Textual copy.

In an action for infringement of copyright in a dictionary the unrebuted evidence shewed that the publication complained of treated of almost all its subjects in the exact words used in the dictionary first published and repeated a great number of errors that occurred in the plaintiff's work.

Held, affirming the judgment appealed from, that the evidence made out a *prima facie* case of piracy against the defendants which justified the conclusion that they had infringed the copyright.

APPEAL from the judgment of the Court of Queen's Bench, appeal side (1), reversing the judgment of the Superior Court, District of Montreal, maintaining the plaintiff's action with costs.

The facts established by the evidence sufficiently appear from the head-note and judgments reported. The judgment appealed from reversed the trial court judgment (H. T. Taschereau J.) which dismissed the action with costs, ordered the defendants immediately to cease the publication and sale of the work complained of, to render an account of the total edition printed and published and of sales made, and directed that the

*PRESENT :— Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick and Girouard JJ.

record should be returned to the court of first instance for taking accounts and adjudication as to damages and the other conclusions of plaintiffs' *demande*, the defendants being also ordered to pay the costs of the appeal.

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*Fitzpatrick K.C.* (Solicitor General for Canada) and *Aimé Geoffrion* for the appellants.

*Mignault K.C.* for the respondents was not called upon.

THE CHIEF JUSTICE (Oral).—We do not consider it necessary to call upon counsel for the respondents in this case.

I have read all the evidence and listened carefully to the very able arguments by counsel for the appellants, but I must say that I entirely agree with every word said by the Chief Justice, Sir Alexandre Lacoste in the court below, and have not been in any way convinced that the judgment of the Court of Queen's Bench was wrong. I think also with my brother Gwynne, as he shortly remarked, that the repetition of the great number of errors in the work of the appellants could not possibly have been accidental or have happened otherwise than by making a textual copy of the respondents' supplement. It appears as if the book published by the appellants had not been made with the pen, but with scissors and paste pot. I have read the notes of Mr. Justice Taschereau and Mr. Justice White in this case. I think the former goes too far in his judgment in the Superior Court in finding excuses for the defendants. Mr. Martin, who prepared the manuscript of the work complained of ought to have been called. No doubt the manuscript was destroyed or lost in the process of printing and the printers cannot be expected to have any recollection

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as to how it was made, whether written by hand or simply with printed sheets pasted in. Mr. Martin was possibly the only person who could have given the information on this point which the defendants ought to have been prepared to give. It was clearly upon the defendants to shew what he did and how it was done in order to rebut the *prima facie* case against them made out by the plaintiffs' evidence of piracy. I would add that the case was most ably argued by Mr. Geoffrion on behalf of the appellants.

The appeal should be dismissed with costs.

TASCHEREAU, G'WYNNE and SEDGEWICK JJ. concurred in the judgment dismissing the appeal with costs.

GIROUARD J. (Oral.)—I concur in the judgment dismissing the appeal for the reasons just stated by His Lordship the Chief Justice but I wish to add that I consider it was not possible that the supplement complained of could have been compiled as admitted, in eight or nine months, unless by borrowing largely from the publication of the respondents.

*Appeal dismissed with costs.*

Solicitors for the appellants: *Geoffrion, Geoffrion, Roy & Cusson.*

Solicitor for the respondent: *P. B. Mignault.*