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| <p>1904 *Nov. 22, 23.</p> <p>1905 *Jan. 31.</p> | <p>THE IMPERIAL BOOK COMPANY } (DEFENDANTS)</p> <p>AND</p> <p>ADAM AND CHARLES BLACK } AND THE CLARK COMPANY, } LIMITED (PLAINTIFFS)</p> | <p>APPELLANTS;</p> <p>RESPONDENTS.</p> |
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ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Copyright—Foreign reprints—Notice to English Commissioner of Customs—
Entry at Stationers' Hall—Imperial Acts in force in Canada.*

The judgment appealed from (8 Ont. L. R. 9) was affirmed, the court, however, declining to decide whether or not the doctrine laid down in *Smiles v. Belford* (1 Ont. App. R. 436) was rightly decided.

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APPEAL from the judgment of the Court of Appeal for Ontario (1) affirming, with variations, the judgment of Street J. at the trial.

The circumstances under which the action was taken and the questions at issue on this appeal are fully stated in the reports of the judgments in the courts below, above referred to.

Raney and Hales for the appellants.

Barwick K.C. and *J. Moss* for the respondents.

SEDGEWICK J.—We are unanimously of opinion that the conclusion at which the majority of the Court of Appeal arrived is the correct one, and that the appeal should be dismissed with costs. In so deciding, however, we wish to state that we express no opinion one way or the other upon the question as to whether

*PRESENT :—Sedgewick, Girouard, Davies, Nesbitt and Killam JJ.

(1) 8 Ont. L. R. 9.

(2) 5 Ont. L. R. 184.

Smiles v. Belford (1) was rightly decided. It is still open for discussion as to whether the Parliament of Canada, having been given exclusive jurisdiction to legislate upon the subject of copyright, may not, by virtue of that jurisdiction, be able to override Imperial legislation antecedent to the British North America Act, 1867. The Court of Appeal were, of course, right in referring to that case and in following it as one of its own previous decisions, but we are not so bound, and we wish to leave the question open so far as this court is concerned.

We may also say that we entirely agree with the Chief Justice and Osler and Maclellan JJ., that the Customs Laws Consolidation Act is not in force in Canada, having regard to sec. 151 of that Act.

The appeal is dismissed with costs.

GIROUARD and DAVIES JJ. concurred with Sedgewick J.

NESBITT J.—I would dismiss the appeal with costs for the reasons given by the majority of the Court of Appeal for Ontario.

I express no opinion as to whether the doctrine laid down in *Smiles v. Belford* (1), is sound. I reserve the right to consider this when occasion arises.

KILLAM J. concurred with Sedgewick J.

Appeal dismissed with costs.

Solicitors for the appellants: *Mills, Raney, Anderson & Hales.*

Solicitors for the respondents: *Barwick, Aylesworth, Wright & Moss.*