

1925  
 \*May 28, 29.  
 \*June 18.

NATIONAL BREWERIES, LIMITED }  
 (DEFENDANT) ..... } APPELLANT;

AND

A. PARADIS (PLAINTIFF) ..... RESPONDENT.

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

*Copyright—Infringement—Damages—Penalties—“With intent to evade the law”—Copyright Act, (1906) c. 70, s. 39; (D) 1921, c. 24.*

The respondent sued to recover penalties under s. 39 of the *Copyright Act* (R.S.C. 1906, c. 70) for alleged infringements by the appellant of his copyright in a highway map of the province of Quebec. Under that section, four cases are penalized: (a) the copying of the entire map, and (b) the copying of a part thereof, in either case in its integrity (*sans aucune altération*), or, at least without change in the main design; (c) the copying of the entire map, and (d) the copying of a part of the map, again in either case, with an alteration in the main design.

*Held* that a plaintiff seeking to enforce this section in any of these four cases cannot succeed if the court is satisfied that in committing the act or the acts charged as an infringement of copyright the defendant did not act “with intent to evade the law.”

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec, reversing the judgment of the trial judge, maintaining the respondent's action and condemning the appellant to pay \$19,893.60, half to the Crown and half to the respondent, with costs.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgment now reported.

*L. A. Cannon K.C.* and *Buchanan* for the appellant.

*Lafleur K.C.* and *Larue K.C.* for the respondent.

The judgment of the court was delivered by

ANGLIN C.J.C.—The plaintiff sues to recover penalties under s. 39 of the *Copyright Act* (R.S.C. 1906, c. 70) for alleged infringements by the defendant of his copyright in a highway map of the province of Quebec. The action was dismissed in the Superior Court (*Gibson J.*) (1), but was maintained in the Court of King's Bench and judgment was entered for \$19,893, to be paid one-half to His Majesty

\*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

and one-half to the plaintiff; Lafontaine C.J.Q. and Green-shields J. dissenting.

The copyright was obtained in 1922 and the alleged infringements occurred prior to the 19th of January, 1923. Accordingly the Revised Statute of 1906 applies, the Copyright Act, 1921 (c. 24), having come into force by proclamation only on the first of January, 1924.

The copyrighted map is published in booklet form and consists of 26 distinct charts or sheets, each of them drawn on a scale of 4 miles to an inch and shewing in detail the highways and connecting roads in one of the 26 districts (covering approximately 1,500 square miles apiece), into which the plaintiff divided the settled portion of the province which his maps cover. With these 26 sheets is a Tableau d'Assemblage, or index map, drawn on a scale of 40 miles to an inch. This index map shews the outline of the counties, without naming them, and the main highways in the province. It is said to be a map prepared by one of the public departments. Superimposed are black lines indicating the 26 districts in rectangular blocks, 1 inch by  $1\frac{5}{16}$  of an inch each, and numbered 1 to 26 in heavy black type, corresponding to the numbers borne by the 26 district maps. There are also shewn on the map, in heavy and light black lines respectively, the improved and unimproved principal highways.

This index map seems to serve a double purpose. It indicates the general outlines and main directions of the principal highways and also enables the tourist or traveller readily to find the district or sectional map which he may require for immediate use. It is only of this index map that infringement is alleged, consisting in its use, with some variations, additions and omissions, as the background for an advertising calendar for the year 1923 issued by the defendant company.

The plaintiff's map was published, under an arrangement with him, by the provincial department of roads. Five thousand impressions were printed of which he received 3,500 for his own use and the department 1,500 for free distribution. The Minister of Roads appears to have sent one of these latter copies to Mr. Dawes, the president of the defendant company.

1925  
NATIONAL  
BREWERIES  
LTD.  
v.  
PARADIS.  
Anglin  
C.J.C.

1925

NATIONAL  
BREWERIES  
LTD.v.  
PARADIS.  
Anglin

C.J.C.

From the judgment of Mr. Justice Gibsone, who tried the action, I take the following passages, which are fully warranted by the evidence.

As it happened the defendants were at this very time considering their advertising plans for 1923, they had tentatively decided to bring out a calendar with a map of the province, with a picture of one of their beer bottles printed on the map and a legend to the effect that this beer had the backing of the province.

When Dawes saw the index map in the booklet which Perron had given him, it struck him that, as it covered the settled and industrial parts of the province, and nothing more, it would be suitable for the calendar they had in mind, and he handed it to the lithographers as the type of map which defendants desired as the back ground for their advertising matter.

The lithographers thereupon took the index map, made the additions and omissions which I will detail in a moment, added the picture of the beer bottle and the advertising matter, and reproduced the result to become the heading of a monthly page of a calendar. Some 16,578 calendars were distributed, each with 12 such monthly sheets, so that 198,936 reproductions of the map were printed and distributed.

I use the word "reproduced" to describe the operation executed by the lithographers. The lithographers were not called to testify how exactly the reproduction was effected; witnesses for the plaintiff incline to the opinion that it was by photographic process and I am satisfied that that is the right view.

Now the noticeable additions and omissions made to it before reproducing were these: The county names and a few others were printed in; the index squares and the index numbers were left out, as also was the title "Index map to sections, 40 miles to one inch"; the legend indicating how improved and unimproved roads were shewn was retained but in slightly different form.

There is also this difference between the original and the reproduction; that the reproduction is larger, noticeably larger, but not, so far as can be seen, in any definite or intended proportion. A consequence of this circumstance is that the scale of the original 40 miles to one inch is not applicable to the reproduction and that in fact the reproduction is not a plan to scale.

When plaintiff became aware of the publication and distribution of those calendars he took suit claiming \$10,000 damages of which \$3,000 for violation of his right of copyright and \$7,000 for loss of profits; the action was tried by me and my judgment was in effect the following:—

(a) That reproduction of plaintiff's work constituted a violation of his right and entitled him, as for vindication of his right, to condemnation of the defendant to a certain sum in money; (b) that the violation entitled plaintiff also to a judgment for the loss and damages caused to him by such violation; (c) that the facts shewed the violation to have been technical rather than real, the publication to have been made in good faith and without intention to violate plaintiff's rights, in ignorance that plaintiff had any rights (though this ignorance was inexcusable in law under the circumstances shewn), also that the calendar did not in any way compete with the plaintiff's booklet, that it was not utilizable as a road guide, its distribution did not interfere in any way with the plaintiff's sales and did not in fact cause him any damage whatsoever. I felt obliged however to grant to plaintiff vindication of his violated right

and on that ground I maintained the action for \$100. The damage action ended there, the defendant paid the condemnation, and straightway plaintiff instituted the present penal action.

As the second action is submitted on the same evidence as served in the first, I need not say that my findings of fact will be those I arrived at in the first action. My only duty then is to say whether on those findings of fact the penalty enacted by s. 39 has been incurred.

Mr. Dawes deposed that he was unaware that the plaintiff's map was copyrighted and had no idea that he was invading any of his rights. The learned judge found that any infringement there may have been was unintentional; that the road lines on the map—the distinctive feature of it reproduced by the defendant—were immaterial to the use to which it put the map; that the map without these road lines, in which the plaintiff had no property rights, would have served the defendant's purpose equally well; and that the publication of the defendant's calendar in no way competed with or affected the sale of the plaintiff's map. He concluded that on the defendant's part there had not been "any attempt to evade the law."

We do not understand these findings to be impugned in the judgments of the learned judges of the Court of King's Bench—with the possible exception of that of Mr. Justice Rivard. They appear to be supported by the evidence, and, having due regard to the circumstance that the learned judge saw and heard Mr. Dawes give his evidence, we assume them to be correct. Is the plaintiff, in view of the facts so found, entitled to recover?

Several objections were suggested to the constitution of this action: notably that the plaintiff sues to recover the entire penalty for himself and that he claims only the minimum penalty of ten cents for each copy of the map published by the defendant, thus probably precluding the court from awarding a greater penalty, up to one dollar per copy, to which it might consider the defendant liable, and in the recovery of which the Crown would have a one-half interest. Whatever view should be taken of these objections, were it necessary to consider them, we accede to the suggestion of counsel for the defendant, that the appeal should, if possible, be disposed of on the merits, or demerits, of the plaintiff's claim.

Section 39 of the *Copyright Act* (R.S.C. 1906 c. 70) reads in part as follows:

1925  
NATIONAL  
BREWRIES  
LTD.  
v.  
PARADIS.  
Anglin  
C.J.C.

1925

NATIONAL  
BREWERIES

LTD.

v.

PARADIS.

Anglin  
C.J.C.

39. Every person who, without the consent of the proprietor of the copyright first obtained,—(a) after the registering of any \* \* \* map according to the provisions of this Act, and within the term or terms limited by this Act, \* \* \* copies, or causes to be \* \* \* copied, \* \* \* any such \* \* \* map \* \* \* or any part thereof, either as a whole or by varying, adding to or diminishing the main design (*dessin ou motif principal*) with intent to evade the law.

(b) \* \* \*

(c) \* \* \*

shall forfeit the plate or plates on which such map \* \* \* has been copied, and also every sheet thereof, so copied or printed as aforesaid, to the proprietor of the copyright thereof; and shall also forfeit, for every sheet of such \* \* \* map found in his possession, printed or published or exposed for sale, contrary to this Act, such sum not exceeding one dollar and not less than ten cents, as the court determines, which forfeiture shall be enforceable or recoverable in any court of competent jurisdiction.

2. A moiety of such sum shall belong to His Majesty for the public uses of Canada, and the other moiety shall belong to the lawful owner of such copyright.

It will be observed that four cases are penalized:

(a) the copying of the entire map, and

(b) the copying of a part thereof; in either case in its integrity (*sans aucune altération*), or, at least, without change in the main design; and

(c) the copying of the entire map, and

(d) the copying of a part of the map; again in either case, with an alteration in the main design.

There was considerable discussion at bar as to whether the applicability of the words "with intent to evade the law" should be extended to all four cases or should be restricted to the two last mentioned. While there is not a little to be said for the latter view as a matter of grammatical construction, it is difficult to conceive of Parliament having meant to penalize a reproduction as a whole for some innocent purpose and quite without any "*mens rea*" either of an entire map or of a part thereof. Having regard to the penal nature of the enactment, we incline to the view that the better construction is that which requires that a plaintiff seeking to enforce this section shall in every case be required to satisfy the court that in committing the act or acts charged as an infringement of copyright the defendant acted "with intent to evade the law." Being satisfied that the finding of absence of that intent made by the learned trial judge should be upheld, it follows that the plaintiff has not made out a case which entitles him to judgment for the penalties claimed.

For these reasons, with respect, we allow this appeal with costs here and in the Court of King's Bench and restore the judgment of the learned trial judge.

1925  
NATIONAL  
BREWERIES  
LTD.  
v.  
PARADIS.

*Appeal allowed with costs.*

Solicitors for the appellant: *Taschereau, Roy, Cannon,  
& Taschereau.*

Anglin  
C.J.C.

Solicitors for the respondent: *Francoeur, Vien & Larue.*

---