



Favourite Cases: *Cummins v Bond*

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Call: 2005

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Wendy Mathers is a versatile advocate with a broad Chancery practice, she has particular expertise in pensions, private client and property work. Wendy is recommended as a leading junior in both Chambers UK Bar and The Legal 500 UK Bar.

Reported at [1927] 1 Ch 167

Chancery law is wrongly seen by countless law students as boring, too often relating to dry and dusty settlements made by those long dead. However, in *Cummins v Bond* the spirit of Cleophas¹, who had been dead for nearly 2000 years, took a much more active role.

In the late 19th century when interest in séances and spiritualism was at its highest automatic writing was a common technique deployed by mediums to convey messages from the spectral plain. The plaintiff in the case was Miss Geraldine Dorothy Cummins, an Irish medium, playwright and novelist. She had a spiritual guide named "Astor" and was active as a medium from the 1920s until the 1960s.

Mr Justice Eve was called upon to decide who held the copyright in a document produced by Miss Cummins by the following method: Miss Cummins would cover her eyes with her left hand, take a pencil in her right, pass into a trance and then write over 2000 words in an hour and a half in archaic 16th/17th century English, communicated by the spirit Cleophas.

The Chancery-eyed reader may have noted that this spirit, whose native language was presumably Aramaic, was able to converse in archaic English, a point not lost on the learned Eve J who noted that Cleophas was "sufficiently considerate not to [communicate] in language so antiquated as not to be understood by the excavators and others engaged in the interesting operations, but in order not to appear of too modern an epoch he selects a medium capable of translating his messages into language appropriate to a period

¹ Also known as Cleopas, one of St Paul's followers and a follower of Christ who is mentioned twice in the New Testament, notably when he met Jesus on the road to Emmaus and, initially not recognising him, told him of the crucifixion and subsequent disappearance from the tomb. Luke's gospel goes on to record that when Cleophas and his companion recognised Jesus at table during his breaking of bread he vanished from their sight. (LUKE 24:13-35)

some sixteen or seventeen centuries after his death.”

The defendant, Mr Frederick Bligh Bond came to hear of Ms Cummins’ talent and being interested in her work would attend the séances, collect Ms Cummins’ manuscript, transcribe, format and punctuate it and return it to Ms Cummins. On occasion he would annotate it adding historical notes. The case report records that “From time to time during the séances the defendant placed his fingers upon the back of the plaintiff’s hand when she was writing, but it made no difference to the mode of writing, except that it became rather slower.”

Mr Bond published some of the material in the Christian Spiritualist paper prompting Miss Cummins to seek declaratory relief that the writings were an original literary work in respect of which she held copyright.

Mr Bond ran the rather bold defence that there was no copyright in automatic writing because it was “wholly communicated in substance and form by a psychic agent” he further claimed that he was necessary for the production of the work and that the writings were personally addressed to him because the spirit was providing information on the ancient Abbey of Glastonbury.

In his beautifully crafted five-page judgment *Eve J is at pains to be respectful to the beliefs held by the participants in what, on any reckoning, was an extraordinary case.*

Eve J also had to grapple with a submission from Mr Bond that he had psychically transmitted from his brain to Miss Cummins’ brain various of the details which she ultimately transcribed. He did so deftly.

Eve J’s delicate finding that Miss Cummins was the agent competent to translate the information supplied to her was sufficient to found the copyright in her. But the best line has to be the consideration of joint authorship which deserves to be reproduced verbatim:

“From this it would almost seem as though the individual who has been dead and buried for some 1900 odd years and the plaintiff ought to be regarded as the joint authors and owners of the copyright, but inasmuch as I do not feel myself competent to make any declaration in his favour, and recognizing as I do that I have no jurisdiction extending to the sphere in which he moves, I think I ought to confine myself when inquiring who is the author to individuals who were alive when the work first came into existence and to conditions which the legislature in 1911 may reasonably be presumed to have contemplated.”

Responding to Mr Bligh’s submission that the spirit was the sole author and the copyright holder he declined to order that the copyright rested “with someone already domiciled on the other side of the inevitable river. That is a matter I must leave for solution by others more competent to decide it than I am. I can only look upon the matter as a terrestrial one, of the earth...”

It is an utterly charming case and I commend it to anyone with a spare five minutes (the entire report is only 10 pages). It may not help you solve the intractable problem sat on your desk, but it will remind you that there are more things in heaven and earth, which is important for all of us to remember in these extraordinary times.

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