

MEMO ON COPYRIGHT BILL.

The object of introducing the Bill is to give effect in Canada to the International Copyright Treaty established by the Berne Convention.

The only essential change required in the Canadian law, to effect this object, is to leave out a clause in Section 5, which provides that the condition for obtaining Copyright in Canada by any ~~author~~ author residing outside of the Dominion, entitled to obtain it, should be, reprinting and publication in Canada.

The present Canadian Act is in itself international in character, in that it allows Canadian copyright to citizens or subjects of any country having an international copyright treaty with the United Kingdom.

The existing Customs provision, by which reprints of copyrighted works may be entered in Canada subject to a duty of 12 <sup>(twelve and one half)</sup> 1/2 per cent, which is collected in order to be paid to the author, is not affected by the present Bill. On the contrary, a distinct stipulation has been made, the validity of which has been distinctly reserved by the Imperial Act, that all Colonial legislation not inconsistent with the International Treaty should be continued.

The countries which are parties to the Berne Convention are, the British Empire, Germany, Belgium, Spain, France, Italy, Switzerland, and Tunis; and there seems reason to believe that the United States, during the present session of Congress, will pass a Copyright law. There is at present a very active movement on foot by a joint association of all the leading authors and publishers of the United States

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to press such action on Congress. This Association has recognized by its resolutions, that the system of literary piracy which has hitherto prevailed, is not only inconsistent with morality, but with the interests of both publishers and authors.

A most important concession which is now obtained by Canadian authors and publishers by the recent Imperial Act is—that Canadian copyright runs throughout the whole of the British Empire. Previous to the passing of this Act Canadian copyright was confined within the limits of the Dominion, while on the other hand, there was the apparent anomaly that Imperial copyright, that is, of a work copyrighted in the United Kingdom, was valid throughout the Empire.

By the act of joining the Berne Convention, Canadian copyright also runs throughout all the countries parties to it, as above recited. This privilege would be of the highest importance both to the Canadian author and publisher in the event of the production of a work for which there should be an Imperial and an international demand.

It may be noticed that requests have been made, in and out of the Canadian Parliament, that Canadian publishers should have the right to reprint copyrighted works, the same as in the United States. This, of course, would be not only inconsistent with the Berne Convention to which Canada is, in point of fact, by the act of its Government, committed, but it would not be sanctioned by the Imperial Government so long as Canada remains a portion of the British Empire.

In the papers transmitted by the Colonial Secret-



tary in August 1886, by a circular despatch to the Governor General, there is a correspondence setting forth the nature of the new arrangements for information in the Colonies, in which the following passage occurs in a letter of Mr. Bryce, of the Foreign Office; - 'Whether this (that is, the right of piratical republication) would be the wish of any Colony, we do not know. It seems rather opposed to the tendency which has happily grown stronger of late years for every part of the English speaking race to draw closer to every other part. But, in any case, such a change in the law could not now be made. Both Parliament and public opinion would refuse to extinguish the existing copyrights of British authors.'

To this, it may be added that the present would seem to be ~~the~~ an inopportune time to ask for the creation of a right of literary piracy in Canada, when the neighboring States, which have so long practised it, are about to give it up, on the grounds of its immorality and its positively injurious effect on the interests of both authors and publishers.

It may be pointed out that the Bill introduced specially provides for the completion of any existing contracts, and this is specially sanctioned by the provisions of the Imperial Act.

Department of Agriculture,

May 1st. 1888.

*J. A.*

M E M O.

The present Copy Right bill gives <sup>simple</sup> logical effect to the undertaking by the Government of Canada to become a party to the Berne Convention, and the present draft is the result of careful consideration by Dr. Tache, Dr. Wilson and myself.

It is, however, to be considered as a question of important policy whether or not the printing clauses in the present Canadian Act might not be retained without any serious breach of good faith on our part in relation to the Berne Convention.

It is to be considered that the adhesion of Canada to the preliminary request to enter into the Convention was coupled with a specific declaration that such adhesion was granted subject to the <sup>reservation</sup> ~~declaration~~ of all existing rights as established by statute and ratified by the Imperial Government, one of the most important of which was ~~that~~ <sup>with the</sup> condition of Copy Right in Canada should be the printing of books in Canada.

If it is thought that this right can be reserved, consistently with good faith, it is undoubtedly an important Canadian interest and in accordance with the National Policy that it should be; and I think it may be held that the declaration respecting reserved rights during the negotiations by the Canadian Government, <sup>might</sup> ~~will~~ be held to cover this.

The statement in a newspaper telegraphic report of a public meeting in Toronto to the effect that the Copy Right bill, as introduced, prevents the importation of ~~books~~



American reprints, is incorrect, that being a provision of the  
Customs Act and not affected by the bill.

The primary and chief apparent gain by the bill  
act of entering the Berne Convention has relation to rights  
of authors. By that Act they gain protection throughout the  
British Empire and all the countries which are parties to  
the Berne Convention and this right may prove to be of very  
great importance. It is also indirectly a publisher's in-  
terest worth consideration.

If the printing clauses in the present Canadian  
Act are thought to be consistent, in view of the reservations  
made with the Berne Convention, all the necessary enactments  
are at present <sup>contained in the Canadian Law</sup> made and a declaration by statute of adhesion  
to the Convention might to be sufficient.

DD  
May 16, 1888

Rove