217/1892

To His Excellency

The Governor General in Council.

The undersigned, having had under consideration a despatch from Lord Knutsford to Your Excellency's predecessor dated 30th June 1892, in reply to a despatch of His Excellency Lord Stanley of Preston of the 19th October, 1891, in which His Excellency transmitted an Address to Her Majesty from the Senate and Commons of Canada, praying for Imperial Legislation which should explicitly confer upon the Parliament of Canada the power to legislate on all matters relating to copyright in Canada, without regard to Statutes in force when the Parliament of Canada was established, etc , etc., has the honour to submit the following observations upon the report which accompanied the despatch of Lord Knutsford, and which had been made by departmental representatives of the Colonial Office, Foreign Office, Board of Trade and Parliamentary Counsel's Office to the Right Honourable Sir Michael Hicks-Beach on the subject of Canadian copyright.

It is, no doubt, true, as stated in the third paragraph of the report of the Committee, that from the point of view of British authors and publishers, the Imperial Statute of 1842 was satisfactory to those authors and publishers; because it gave the British author and publisher a monopoly, by copyright extending over the Sovereign's Dominions for 42 years from the first publication, or seven years from the author's death. It may be regarded, indeed, as a continuance, for their benefit, of the system which was based on the idea that the colonies were to be preserved only for the benefit of the producers in the British Islands, and that the inhabitants of those colonies had no rights of self-government or otherwise which were inconsistent with the interests of British producers.

The colonial publisher and the colonial reader, however, had every reason to be dissatisfied with the enactment of 1842, and it is not to be wondered at that their representatives made very emphatic protests. Those protests are enumerated and referred to in the letter of the undersigned to Lord Knutsford, dated 14th July, 1890, which forms an appendix to this report.

The protests and the agitation for redress continued until 1846, when Mr. Gladstone gave warning to the publishing trade in England that they must be induced "to modify any "exclusive view which might still prevail in regard to this "important subject;" and shortly afterwards a report was made from the Colonial Office to the Board of Trade, intimating the decision of the Secretary of State for the Colonies, Earl Grey, that "after the repeated remonstrances which had been received "from the North American colonies on the subject of the "circulation there of literary works of the United Kingdom, "he proposed to leave to colonial legislatures the duty and "responsibility of enacting laws which they should deem

"proper for securing the rights of authors and the interests of "the public."

Earl Grey requested that the Board of Trade should be moved to take "such measures as might be expedient for submitting "to Parliament, at the ensuing session, a bill authorizing the "Queen to extend the Royal Sanction to any colonial law or "ordinance which might be passed respecting copyright, "notwithstanding the repugnancy of any such law or ordinance "to the copyright law of the United Kingdom."

The circular of Earl Grey to the governors of the North American colonies, which followed, dated November, 1846, announced that this was settled as the policy of Her Majesty's Government, and the governors were informed that a measure to carry out that suggestion would be introduced at the ensuing session. The full text of this circular will be found in the appendix, and it is remarkable that the assurance thus given, of the policy of Her Majesty's Government towards the North American colonies, remains unfulfilled to this day, in consequence, it must be assumed, of the influence which two classes—the authors and the publishers in the United Kingdom—were and have been able to exercise with regard to the legislation which had been promised, in relation to a matter so important to Her Majesty's colonies.

In paragraph 6, of the report, the Committee thus refer to the pledge given by Her Majesty's Government to the colonies:

"It was however, eventually determined not to legislate in "accordance with the terms of Lord Grey's despatch, but "instead, to pass the Imperial Act which bears the short title "of the 'Colonial Copyright Act of 1847' but is commonly "known as 'The Foreign Reprints Act.'"

It might be supposed, from this mode of stating the case, that the "determination not to legislate in accordance with "the terms of Lord Grey's despatch" was a determination arrived at as the result of an understanding with the colonies, that this measure should be accepted as a substitute for the concession which Lord Grey had promised. This, however, does not appear to have been the case. It was a measure of temporary and partial relief and it can hardly be supposed that a determination was arrived at by Her Majesty's Government, to abandon or repudiate the pledge which had been so formally given, or even to substitute for what had been promised a measure which, while it might satisfy present wants, fell vastly short of what had been promised. The "Foreign Reprints Act" was, no doubt, adopted merely as a measure of temporary relief and until the wider measure could be obtained.

Paragraph 6, of the Committee's Report, states that the Act "was satisfactory from the point of view of the Canadian reader, "because it enabled him to obtain cheap reprints of British "copyright books." It is true that the "Foreign Reprints Act" was, as stated above, a measure of relief to the Canadian reader, for the reason given in the paragraph quoted. The legislatures of the colonies were willing to wait a reasonable

time for the fulfilment of Earl Grey's promise, and in the meantime to accept the temporary expedient by which the monopoly which excluded British literature from the borders of the colonies was relaxed in favour of an impost for the benefit of those who had a (statutory) right to that monopoly. In short the Imperial Parliament, finding the monopoly so great a grievance, obliged the holders of it to compound for money compensation which the colonist would pay without much expression of discontent, even if it involved the denial to his country, for a time, of the rights of self-government which should have been considered at least as important as the (statutory) rights of copyright holders, and which had been promised in the plainest terms.

It was quite obvious, however, that the colonies would not long rest satisfied with such a system. The growth and development of their publishing interest would have soon put an end to acquiescence in the scheme, even if the legislatures had been willing to continue to be denied their proper powers and to be tax-gatherers for a privileged class outside the country.

In March, 1870, the British copyright owners, not being satisfied with the proceeds of the taxation on foreign reprints, and desiring their monopoly restored to its full vigour, demanded the repeal of the Foreign Reprints Act.

The Copyright Commission of 1876 followed, and in their report of 1879 it was stated that copyright holders had only received, as the result of their taxing scheme, from nineteen colonies which had taken advantage of the Act, £1,155 13s. 2½d.; but it is to be observed that of this sum £1,084 13s. 3½d. was received from Canada, leaving about £71 as the contribution from the other eighteen colonies. Probably the same proportion has been continued since. Great pains have been taken to collect the tax for the benefit of copyright holders, notwithstanding the belief has been growing, from year to year, that the present state of the law is odious and unjust. The copyright holders of the United Kingdom have made suggestions from time to time for improvements of the method of collecting this tax, in order that the proceeds may be augmented, and the Government of the Dominion has always made the collections vigilantly and in good faith. They are willing even to adopt improved methods of collection, but they can only offer to do so as part of an improved scheme of copyright, such as that embodied in the Canadian Act of 1889 and by way of an amendment to some such enactment as that, to come into force concurrently with such Act.

While, as has been stated, the "Foreign Reprints Act" gave a measure of relief to the Canadian reading public, it had the effect of creating a monopoly for the publishers of the United States and of preventing the publishing business of Canada from attaining dimensions such as might reasonably have been expected in a country where the whole population is a reading population, and where the practice has always been, with few exceptions, compared with European countries, for the people to buy the books which they read. In spite of

this disadvantage the publishing interest has grown very considerably. It has been represented in some former discussions on this question as being small and unimportant. All that seems necessary to be said upon that subject, for the present, is that it is small in comparison with what it should be, and in comparison with what it would be under a proper adjustment of the copyright laws.

It is noted in paragraph 14 of the Committee's report that the Senate of Canada adopted an Address to Her Majesty in 1868, urging the change which Lord Grey had promised, that the answer thereto, on the 22nd of July, 1868, was merely that the question was too important, and involved too many questions of imperial policy for legislation at that session of Parliament, and it was then intimated that negotiations with the United States on the subject of copyright required some delay in dealing with the colonies with regard to that interest.

The part which negotiations with the United States have played in this discussion with Canada, will be referred to hereafter, but it is apparent that for more than twenty years these negotiations have been made use of as a reason for postponing the requests, admitted to have been reasonable, which were presented by the Dominion of Canada, and that when an arrangement was eventually made with the United States, the publishers of that country received the benefit of the British copyright monopoly of the colonies, with rights reserved in their favour which were refused to Canada, and the conclusion of that arrangement with the United States is now suggested by the Committee, whose report is under review, as a new reason why the demands of Canada should not prevail, because it would interfere with the United States copyright holders who have been presented with the monopoly of Canada for the sale of their publications.

Pursuing the narrative, however, it is important to note that the assurances which have been received by Canada, from time to time, express sympathy with the colonial interests; and that after more than twenty years of inquiry, consideration, discussion, sympathy and promises, it was stated by the Lords of Trade, with reference to that Address of the Senate, that the subject was "a matter that called for inquiry" and that "an endeavour should be made to place the general law "on copyright, especially that part of it which concerned the "whole continent of America, on a more satisfactory footing."

It may be observed here that by the arrangement with the United States "the general law of copyright, in so far as it concerned the *** continent of America," was indeed put on a footing more satisfactory as regards the British author and publisher and the United States publisher, but that that part of the continent of North America which bears allegiance to Her Majesty has received no consideration in the improvement of the law.

The Duke of Buckingham and Chandos on the 31st July, 1868, sending his formal reply to the despatch accompanying the address of the Senate, made the admission, which was

not very remarkable, at that stage of the discussion, that "the "law of copyright generally might be a very fit subject for "future consideration."

The Canadian Government were of the same opinion, and on 9th April, 1869, they transmitted another representation on the subject, but the Board of Trade considered that the Canadian proposal should not be adopted immediately, because nothing could be done for Canada unless the United States were a party to the arrangement, and that "whatever protec- "tion should be given to authors on one side the St. Lawrence "must, in order to be effectual, be extended to the other." The equivalent proposition would seem also to be implied, viz., that whatever protection might be given to publishers on one side the St. Lawrence must be extended to the other. Her Majesty's Government, however, have not yet carried out those propositions because they have agreed to an arrangement by which the British author or publisher, in order to get the benefit of copyright protection in the United States, is obliged to print his book from type set in the United States, and it yet withholds from Canada the concession of allowing a Canadian publisher to reprint at all, even from plates imported from Great Britain, and on payment of a tax levied in favour of the copyright holder on every copy of the publication.

Canada was assured, however, by Earl Granville's despatch of the 20th October, 1869, that at the ensuing session of Parliament copyright would be permitted on publication in the colonies, a concession of very slight and doubtful importance. When, under the Berne Convention, a concession in that direction was given, the colonial author or publisher, received his slight privilege only in common with the authors and publishers of all the other countries included in that convention.

Attention is again called to the report of the Minister of Finance of Canada in 1870, followed by the request of Lord Kimberley on the 29th of July, 1870, that the views of the Canadian Government might be again forwarded in order that Her Majesty's Government might give them consideration before the ensuing session—and to the report from the Ministers of Finance and of Agriculture, dated 30th November, 1870, in which those views were once more set forth. Consideration seems not to have been given to the information thus asked for and obtained, and on the 14th of May, 1872, the views of the Canadian Government were again set forth in a report of the same Ministers which was adopted and transmitted on the 14th of the same month.

After thirty years of reiterated complaints the Canadian Government felt called upon to declare the existing system "wholly indefensible," and to state that the Canadian publishers were being "treated with the greatest injustice." The report of the Ministers stated that it had "long been the custom "of owners of British copyright to sell to American publishers "advance sheets of their works, and when Canadian pub- "lishers" had "offered to acquire copyright in Canada by

" purchase, they had been told that the arrangements made " between the British and American publishers were such as " to prevent negotiations with Canadians."

In the same year a Copyright Act was passed by the Canadian Parliament and forwarded for Her Majesty's assent. It was based on the same principles as the Canadian Copyright Act of 1889. The assent was withheld.

The undersigned does not propose, in the course of these observations, to detail at length the various negotiations which have taken place. They will be found more fully stated in the appendix hereto. Attention is called to them in this place chiefly because many, which seem to the undersigned to be of importance, are not mentioned in the report of the Committee, and because it seems important to notice that from the commencement of the agitation in 1842 down to the present year, the representations from the North American colonies have met with the same response from Her Majesty's Government, namely, an admission that grievances existed as stated, promise of redress—followed by expressions of determination to consider the subject and a declaration that the measure proposed by the Parliament of Canada to lessen the grievances was beyond the powers of that Parliament and must be authorized by an Act of the Imperial Parliament in order to be effectual.

The despatch of Lord Carnaervon, dated 15th June, 1874, is an illustration of the progress which the agitation had made since Her Majesty's Government, in 1846, with a full knowledge of the whole subject, had promised to confer full legislative powers at the ensuing session. His Lordship stated then, (twenty-eight years after Lord Grey's circular despatch), that he was aware " that the subject of colonial copyright had long been " under consideration," that he was ready " to coöperate " and that he had " a confident hope " that Her Majesty's Government might, " without difficulty be able to agree on the pro- " visions of a measure which, while preserving the rights of " owners of copyright works " in the United Kingdom " under " the Imperial Act, would give effect to the views of the " Canadian Government and Parliament."

One of the most important points in the narrative is that mentioned in paragraph 21 of the Committee's report, namely, the appointment of a Royal Commission on Copyright in 1876, and also the report of that Commission in 1879. It appears necessary to point out that the report of that Commission recommends the adoption of the principle on which is based the Canadian Copyright Act of 1889, namely, the establishment of a licensing system for republications of copyright works in the colonies and the collection of a tax in favour of the copyright holder as a compensation.

In pursuing the course of discussion followed by the Committee, whose report is under review, it seems proper to make some reference to that branch of the subject which refers to copyright arrangement with other countries; and first to notice the position of Your Excellency's Gorvernment on the subject of the Berne Copyright Convention.

At the outset, however, it may be well to state the ground upon which the Canadian Government base their request for the withdrawal of Canada from that convention. When assent was given, on the part of the Canadian Government, to be included in that convention, one of the considerations which prevailed was the confidence in the assurances given by Her Majesty's Government with regard to the amelioration of the law of copyright as it affected Canada, notwithstanding the great delay which had occurred. But the principal consideration was the fact that Canada could withdraw from the Convention on a year's notice to that effect being given to the countries included in the convention.

The Canadian Government afterwards formally requested Her Majesty's Government to give notice of the withdrawal of Canada. That request not having been complied with, an Address of both Houses of Parliament to Her Majesty was unanimously passed in the session of 1891, requesting that the notice be given. Recently Your Excellency's Government has forwarded a renewed request that the notice be given without further delay. The undersigned respectfully submits that the reasons which induce persistence in this determination to withdraw from the convention are in the judgment of the Parliament and Government of Canada.

Parliament has complete cognizance of Canadian interests in such matters and has unanimously endorsed the request of Your Excellency's advisers that notice should be given.

The statement was made by the undersigned, in a previous report, that the condition of the publishing interest in Canada was made worse by the Berne Convention. That statement is adhered to. The monopoly which was, in former years, complained of in regard to British copyright holders is now to be complained of, not only as regards British copyright holders, but as to the same class in all countries included in the Berne Copyright Union. Canada is made a close market for their benefit, and the single compensation given by the convention for a market of five millions of reading people is the possible benefit to the Canadian author, whose interests seem not to have been thus cared for on account of a very high estimate of their value, because the Committee whose report is under review describe the Canadian author as "belonging rather to the future than to the present." Without accepting this estimate as quite accurate it may at least be said that the Canadian Parliament may be trusted to care for the interests of Canadian authors. The Berne Convention had in view considerations of society which are widely different from those prevailing in Canada. In Europe the reading population in the various countries is comparatively dense;—in Canada a population considerably less than that of London is dispersed over an area nearly as large as that of Europe. In the cities of Europe, especially in Great Britain, the reading public is largely supplied from the libraries, while, in Canada, as a general rule, he who reads must buy. In European countries the reading class forms but a fraction of the whole population, while in Canada it comprises nearly the whole population.

If reasons against the continuance of Canada in the convention were called for, many would suggest themselves, but the undersigned does not understand that Your Excellency's Government is called upon to give those reasons or to present an argument to justify the determination of Canada to withdraw from the Convention.

No enactment in Canada to give effect to the Berne Convention has ever been passed, although some enactment would be necessary in order to make the system operative and effectual here.

As regards what is called the "arrangement" made between Her Majesty's Government and the United States, some observations seem specially called for, in view of the position taken by the Committee whose report is being considered. In March, 1891, Congress passed the present copyright law. That law gives copyright in the United States to any author, whether a citizen of the United States or a subject of a foreign state, on condition that two printed copies of the book, printed from type set within the limits of the United States, be deposited, (in accordance with regulations prescribed), on or before the publication of the book. It is necessary, however, in the case of the subject of a foreign state, to show that his State permits citizens of the United States to have the benefit of copyright on the same terms as her own citizens. That requirement, of course, is easy of fulfilment in the case of Great Britain, for the Copyright Act of 1842 permitted foreigners to obtain copyright, running not only in the United Kingdom but throughout Her Majesty's dominions, on mere publication in Great Britain, without any condition as to the type being set within the Queen's dominions.

It seems, from the Committee's report, to be considered that Lord Salisbury, on the 15th June, 1891, made an agreement with the United States which is an obstacle in the way of the Canadian request for improved copyright legislation being granted. If such could be supposed to be the case the contention of Canada in this respect would present a far more serious ground of complaint than has been yet stated. The contention would be that, after promises of redress had for many years remained unfulfilled and at last fulfilment postponed on the explanation that such redress would be considered in negotiations for an international arrangement with the United States, Canada would now have to be informed that her request cannot be entertained or considered any longer, because the international arrangement with the United States precludes any consideration of her interests.

The undersigned submits, however, that such is not a correct statement of the facts, or a reasonable conclusion from them. Mr. Lincoln, the United States Minister at London, appears to have asked information from Lord Salisbury as to the state of the copyright law in the United Kingdom. The reply of Lord Salisbury was, that an alien, by first publication in any part of Her Majesty's dominions, could obtain the benefit of British copyright and that contemporaneous publication in a foreigr

country did not prevent the author from obtaining copyright in Great Britain, that residence in Her Majesty's dominions was not a necessary condition, and that the law of copyright in force in all British possessions permits citizens of the United States of America to have the benefit of copyright on the same basis as British subjects.

It is submitted that in making this statement Lord Salisbury was merely stating what he believed to be the condition of the law of copyright at that time. He was not making any treaty nor any arrangement with regard to copyright, although, probably, for convenience of expression the term, "arrangement with the "United States" has been used in the report of Committee, and also in course of these observations. The Committee in their report seem to treat Lord Salisbury's answer (as to the condition of the existing law), as an agreement and almost as equivalent to an undertaking that the law should never be changed. Otherwise it is difficult to understand such expressions as are contained in paragraph 51: "The Act of 1889" (meaning the Canadian Act), "if confirmed by Her Majesty's "Government, after the assurance given to the Government "of the United States in 1891, would give rise to misconcep-"tion and misunderstanding." "Of course if Canada were "to withdraw from the operation of the Act of 1886, and still "more if she were allowed to withdraw from the Act of 1842, "there would be not merely a formal, but a substantial incon-"sistency between her legislation and Lord Salisbury's decla-"ration."

It is not suggested that Lord Salisbury's declaration was that the law should not be changed, but that seems to be implied. If such is indeed to be inferred from Lord Salisbury's reply to Mr. Lincoln it would be well to inquire how long his declaration was intended to continue in force or is to be construed as being in force? Is it possible that the Convention of Berne, which was to endure until a year after denunciation, in so far as Canada was concerned, was intended by Lord Salisbury to be made perpetual in its application to Canada, by his making a statement of the law of the United Kingdom to Mr. Lincoln?

It seems perfectly obvious, notwithstanding the contrary view suggested by the report of the Committee, that Lord Salisbury merely informed Mr. Lincoln that on the 16th of June, 1891, the first condition above set forth, in the United States Copyright law, was complied with by the state of British law at the time. Lord Salisbury's object was to show Mr. Lincoln that Great Britain permitted citizens of the United States the benefits of copyright on substantially the same basis as to her own citizens. The Canadian Government and Parliament ask for no other condition of affairs; and Lord Salisbury's statement to Mr. Lincoln will still be good, and the reasonable requirements of the United States Government will still be satisfied if the Canadian Act of 1889 be ratified, because American holders of copyright in Great Britain will still be on the same footing as British copyright holders.

Before the so-called "arrangement with the United States" was made, in a letter which the undersigned had the honour to write to Lord Knutsford, on the 14th of July, 1890, it was suggested, as is quoted in paragraph 43 of the Committee's report:

"(1.) That the present policy of making Canada a market "for American reprints, and closing the Canadian press for "the benefit of the American press, in regard to British copy- "right works, has a direct tendency to induce the United "States to refuse any international arrangement."

"(2.) That inasmuch as the existing Canadian copyright law "affords protection to the copyright holder in every country "which may make a treaty with Great Britain, it cannot be "suggested, as it once was, that self-government in Canada "on this subject would in the least impede negotiations with "the United States for an international arrangement."

This prediction has been abundantly fulfilled since the passage of the United States Copyright Act. The United States publishers now insist, in making their arrangements with British authors and publishers, on a condition that Canada be included in the territory disposed of. Furthermore, the American purchasers of British rights refuse to Canadian publishers any arrangement for the publication of reprints in Canada. In this way the copyright holder outside of Canada not only enjoys, in Canada, a monopoly which the Copyright Act of 1842 gave him, but can and does sell to foreigners that monopoly in Canada, and the foreign purchaser thus acquires the right, under the Statute of 1842 and the Berne Convention Act of 1886, to lock the Canadian presses in order that his own may be kept in operation to supply Canadian readers.

It should be observed that by the Canadian Copyright Act of 1889, Canada asks less than the United States has obtained. The Congress of the United States has demanded that, before a British subject can obtain copyright in the United States, his book shall be printed from type set within the limits of the United States. Great Britain not only accedes to this demand, but permits a citizen of the United States to obtain copyright of his work in England, on production of his work there, printed on the type set in the United States and thus the United States publisher at the same time secures copyright in both countries for a book produced from American type. The Canadian Act would permit type to be set in England and the plates imported, and on printing therefrom, copyright would be granted in Canada, if the printing were done within one month of the original publication elsewhere; but, failing such publication, the British copyright holder would be secure in his ten per cent royalty if the book should be republished (under license) in Canada.

In view of this state of affairs it is not accurate to say, as seems to be suggested in paragraph 54, section 4, of the report under review, that "The present demand for legislation on "the lines of the Canadian Act of 1889, appears to come, not "from the Canadian reader or author, but from the Canadian

"publisher and printer, who feel severely the competition "of rivals in the United States, and wish to protect them- "selves by excluding their rivals' wares."

What the Canadian publishers principally complain of, under the present state of affairs, is that they are not allowed to compete with publishers of the United States, inasmuch as the British copyright holders dispose of their rights to American publishers, on condition that the latter shall have a monopoly of the Canadian market.

Another statement contained in the same paragraph of the report (section 6), indicates a want of information as to the facts, viz., the statement "That the effect of the recent "American Act would not be to increase the inducement to "American publishers to reprint British books. Before the "Act, they could reprint any such books freely; since the Act "they must make arrangements with such authors as take "advantage of the provisions of United States legislation." The fact is that English books are eagerly sought for by United States publishers. They can afford to pay high prices, in view of the fact that the market of Canada is included in their purchases. The English authors are induced, also, to seek purchasers in the United States, in order to obtain copyright there and to get their books printed from United States type, which is a condition imposed there, although not imposed in Britain on the United States author when he seeks copyright protection throughout the British Empire.

It is this enormous disadvantage, and not the competition of publishers in the United States, that Canada complains of, and it cannot correctly be alleged that the Canadian publishers "are undersold by competitors who have the advantage of "larger capital and a larger market."

The Committee have devoted a considerable portion of their report to a statement of the objections to the confirmation of the Canadian Act of 1889. The undersigned forbears, at the present time, from entering into a discussion of the legal views on which the necessity for an Imperial Statute to confirm the Canadian Act, depend. They have been fully set out in a report which he made in August, 1889. To the arguments therein stated he still adheres, but when it was made apparent, in the reply which was received to that report, that the Colonial Office had adopted a different opinion and held that an Imperial Statute was necessary, the attention of the Canadian Government and Parliament were immediately applied to the task of showing Her Majesty's Government that, for every reason which could be drawn from the assurances of the past, such an enactment should be speedily given. It was this branch of the subject that the undersigned had the honour to present, in his letter of the 14th July, 1890, written at Lord Knutsford's suggestion, and it is to this branch of the case that the present observations are intended principally to be applied.

It is proposed, therefore, to consider the various objections which are stated by the Committee in their report.

The first objection is this : "It would involve abandonment "of the policy of international and imperial copyright which "Her Majesty's Government adopted and to which Canada "assented only six years ago."

It is denied that the provisions of the Canadian Act would involve the abandonment of that policy, even in so far as Canada is concerned, because the copyright holder would still be compensated, by the royalty instead of the customs duty. As regards the assent of Canada of six years ago to the Berne Convention, Canada's right to withdraw from the Convention on a year's notice, was placed on the face of the treaty and she would not have consented to enter without that condition. The right has never been questioned and a request that Her Majesty's Government should give notice of Canada's withdrawal has been most distinctly and emphatically made. With a knowledge of these facts the Committee's report in paragraph 50, uses these words : "If Canada presses for with-"drawal from the Berne Convention her request cannot well "be refused."

The undersigned ventures to express the hope that no doubt will be entertained on this point. By an Order in Council, Canada, years ago, asked for the notice to be given. By an Address of both Houses of Parliament she repeated that request in the most formal manner to Her Majesty. By a despatch of recent date Your Excellency's Government urged that the notice be given without any further delay ; and, in case there should be any uncertainty on the subject, it is now asserted that "Canada presses for withdrawal from the Berne Con-"vention."

The next objection stated is that "It would be at least "open to the charge of being inconsistent with the declaration "as to the law of the United Kingdom and the British posses-"sions which was made to the United States by Lord Salis-"bury, on the faith of which the United States admitted "British authors to the benefit of their copyright law." This seems so fallacious as to call for no further comment than has been made upon it in an earlier portion of this report. It is impossible, in the view of the undersigned, that Lord Salisbury's statement of the law should be construed as a promise for all time, or for any time. But if, by this statement, it is intended to be inferred that the United States will hold, at such high value the market of Canada which they are now able to control, as to refuse copyright to British authors if that market be not continued to them, the demand for redress on the part of Canada will be more emphatic than ever, because the inquiry will arise whether it is proposed to place an important commercial interest of Canada at the disposal of a privileged class in Great Britain to be bartered for privileges to that class in a foreign country. It will be necessary to consider at once how long the market of Canada is to be thus controlled, and whether it is to be finally settled that Canada is to be placed at a disadvantage as compared with other countries in her neighbourhood because her people have

retained connection with the Empire, which they have so long done from very different motives than those of self-interest.

The next objection is that the confirmation of the Canadian Act "would be inconsistent with the policy of making copy-"right independent of the place of printing"—a policy—"which Her Majesty's Government have for many years been "urging the United States to adopt."

It is well known that the United States have never shown a disposition to adopt any such policy. It is difficult to suppose that any well-informed person entertains any expectation that they will do so. Her Majesty's Government evidently had no such view when, by Lord Salisbury's "arrangement" with Mr. Lincoln, they conceded to United States citizens copyright privileges throughout the British Empire, without that policy being adopted on the part of the United States, but when, on the contrary, the United States emphatically refused to adopt it. After that arrangement, it is difficult to understand what reason could be suggested to Congress for abrogating a condition (printing in that country) which protects the labour of the United States, to the manifest disadvantage of British labour of the same kind, and yet results in no denial to United States citizens of the privileges which British subjects have. Surely it would not now be urged that Canada should any longer have the granting of her request postponed for the imaginary reason that some better arrangement may be made with the United States, of which there is not the slightest probability, and which would be of very doubtful value, even if obtained, as far as Canada is concerned.

A further objection alleged against the Canadian Act of 1889 is that "it would impair the right in Canada, of British "authors," (meaning, of course, British copyright holders), "by whom the Canadian market is principally supplied."

This is a statement of the most doubtful accuracy. The Canadian Act would secure to British copyright holders revenues which would be a hundredfold that now received from Canada; by reason of the collection of the stamp duties, on Canadian reprints, being substituted for customs collections on foreign reprints. If the British author would sell his copyright in Canada; (which he rarely does now, because the purchaser in the United States demands of him that Canada shall be thrown into the bargain), he would find the product of his copyright greatly enhanced under the Act of 1889. It is doubtful, at the present time, whether the United States purchaser pays anything additional to the British author in consideration of the market of Canada, but, certainly, if the market of Canada were purchased by those understanding the trade of this country, the price which the author would receive for the Canadian market would be greater than it now is. If the holder of copyright did not sell the Canadian market he would receive the price from the United States purchaser plus the additional revenue collected under the license in Canada.

One widely read author is known to have sold his right to a great publishing house in the United States. He refused

to sell, at that time, the Canadian market to a Canadian purchaser. That condition was exacted of him by the publishing house in the United States which became his purchaser. Subsequently an arrangement was made with the author by a Canadian publisher, by which the latter secured the Canadian market by paying a larger sum for the Canadian right than the United States publishing house had paid for the same privilege in the United States and Canada together.

In any event, Her Majesty's Government should be asked to consider whether the rights of British copyright holders, created under the Statute of 1842, are to continue to be set up as a bar to the rights of the Canadian Parliament and Canadian people, after so repeated a recognition of the fact that the creation of these privileges had become a grievance in Canada, and so long after promises and assurances had been given that that grievance would be redressed. If so it is exceedingly difficult to understand many of the expressions which have been continually made use of in Imperial despatches for the last fifty years.

The report of the Committee goes on to state an opinion that "It is doubtful whether the Canadian reader has, under existing circumstances, any ground of complaint at all." That opinion the undersigned cannot concur in. Even when foreign reprints were abundantly produced, that is to say before the passage of the American copyright law, the Canadian reader was obliged to pay a tax for the benefit of the copyright holder which was collected by the customs officers in Canada. That tax was not very burdensome, because the reprints were published at a very low price and the duty was an *ad valorem* impost on the wholesale importation. The Canadian reader is not now in so good a position, because of the generosity of Her Majesty's Government towards the United States citizens which has given the citizens of that country a monopoly of the Canadian market, not only for reprints of the British works which they continually acquire the copyright of, and which the Canadian publisher cannot acquire, but for all United States publications as well. The result of this is that new books have doubled in price in Canada, within the last three or four years, and there is a prospect of further advance.

The report of the Committee goes on to say that "It is the "British author and publisher who have a right to complain of "the Foreign Reprints Act." On behalf of Canada it is denied that the British author and publisher have reason to complain because they are not permitted, besides locking the Canadian press, to banish British literature from Canada by seizing it in the customs houses, unless it shall come in the form of a British edition which could not be sold in Canada, save in very small numbers. The British author would have no right to complain of the Canadian Act of 1889, for, as has been shown, his position would be materially improved thereby.

The Committee go on to state that the reality of the grievances of the British author and publisher "was admitted by the Copyright Commission of 1876." The reality of those grievan-

ces is not admitted in Canada, but if such grievances ever really existed they are less now, because the effect of the legislation of the United States is to curtail very largely the publication of foreign reprints, and they would be less still under the Canadian Act of 1889, because the trade in foreign reprints would be almost, if not quite, abolished.

It is difficult to understand why this suggestion is made, with regard to the Foreign Reprints Act, unless it were intended as a suggestion in favour of greater restrictions as to copyright than those existing at present, by the repeal of the Foreign Reprints Act. If that were the object of the suggestion, it hardly calls for any remark, in view of the past history of this subject, and in view of the fact that the collection of customs duties in favour of British copyright holders is a matter of increasing inconvenience in Canada and must eventually be abandoned, for reasons which it is not now necessary to state at large.

Another suggestion in the report under review is that "Deprivation of Canadian copyright might be seriously detri- "mental to the interests of Australian authors, say, for "instance, of a Melbourne novelist whose works are likely to "obtain extensive circulation in Canada." The case is not a very probable one. In the words of the Committee, applied to Canadian authors, it may be "treated as belonging rather to the future than to the present." It seems sufficient to say, for the present, that Australians are and, doubtless, always will be, placed on the same footing as other British subjects in all Canadian legislation, but that if it should become, at any time, a question what rights should be enjoyed in Canada by any class of Australians it surely cannot be contended that that question should be decided by the Parliament of the United Kingdom or by the Parliament of Australia, rather than by the Parliament of Canada.

The report under review devotes a paragraph to the interests of the Canadian author, of whom it is said that under the Canadian Act of 1889, he would be deprived of copyright in every country outside of Canada. This would be by no means the case unless imperial legislation were adopted to withdraw from Canadians not only the rights, within the Empire, conceded to all British subjects, but the rights conceded to the people of most foreign countries, under the Berne Convention, which seems a suggestion quite unworthy of a place in this controversy.

The Canadian Parliament has not overlooked the interests of its authors or of any other class. When it speaks, as it has done on the subject, it speaks after full consideration of all the interests involved, and which it is well able to weigh.

The report under review proceeds to discuss at some length the question whether indeed the Canadian publishers have any grievance, and whether such grievance has been enhanced by the Berne Convention. If the Committee had obtained information upon this subject in Canada, where alone the facts are to be found, they could hardly have arrived at the conclu-

sion which they state. The Canadian publisher has never had an opportunity of competing with his rivals in the United States, except in rare cases, as where a Canadian has bought copyright from United States publishers to whom the markets of Canada had been sold by the British copyright holder, and sometimes directly from a British copyright holder.

The effects of the Berne Convention have already been discussed, but the Committee could have found abundant evidence in Canada that the grievance of the Canadian publisher has been greatly augmented by every change in the copyright law of the United Kingdom, in recent years. His condition has been made distinctly worse by the Berne Convention and the grievance has been greatly enhanced by the concessions made by Her Majesty's Government to the United States, under the "arrangement" for which this Government was for many years asked to wait as a measure which would give the relief desired.

The report suggests, as has already been remarked, that "the real grievance of the Canadian publishers is that they are "undersold by competitors who have the advantage of larger "capital and a larger market and in whose favour protective "legislation is enforced, against their weaker rivals." In considering this view of the case, too much stress ought not to be laid on the weakness of the Canadian publisher. The fact is that he has not been allowed to compete with his United States rival.

In exceptional cases, where a Canadian publisher has secured a right to his own market, it has been found that books have been produced in Canada at lower rates than in the United States. Numerous instances can be cited of books which were printed in the United States and reprinted in Canada to prove that these books have been sold in Canada at a price eighty per cent below the price of the United States editions. The real grievance of the Canadian publisher, the Canadian type-setter and every other Canadian workman engaged in the production of books, as already stated, is that he is not allowed to compete with his United States rivals, by reason of his being a British subject and, therefore, bound by the copyright legislation of the United Kingdom. It is true, as stated by the Committee, that the United States competitor has a larger market, because the United States publisher of books controls the market of the United States plus the market of Canada; while the Canadian producer has not even the market of Canada, except in the rare cases before referred to, and then he can supply only Canada, being debarred from the United States markets because his book is not printed in the United States.

It is also true that the Canadian publisher is handicapped by the protective legislation of the United States, in favour of the publishing interest of that country, and especially by the obligation on the applicant for copyright to print from type set in the United States, while the citizens of the country imposing that condition are allowed all the advantages of

British subjects, and Canadians are denied the right to impose any such conditions as to Canada.

The report under review again makes this statement with regard to the Canadian publishing interest, evidently from erroneous information : " What the Canadian publisher and " printer want is to keep out books, cheap or otherwise, not " printed or published at their own establishments " As a matter of fact, what the Canadian publisher and printer desire to do is to supply the cheap books which the Canadian reader desires. Under the Canadian Act of 1889, a publisher could have no monopoly in republishing copyright books, because the Government would have the right to grant any number of licenses to reprint. Furthermore, the British publisher would still have the opportunity to send his books from Great Britain to Canada.

It must, therefore be repeated that it is desired that the Canadian publisher, be permitted to sell in his own market; a market which, under present conditions, is reserved for the benefit of persons outside of Canada.

The Committee has suggested that " The simplest and most " effectual mode of lessening the price of Canadian books would " be to remove or reduce the Canadian import duty of fifteen " per cent on books."

The undersigned cannot agree with this view. The experience of the past has proved that the simplest and most effectual mode of lowering the price of Canadian books would be to have the Canadian press unlocked and the Canadian publisher and printer permitted to produce books.

The removal of the Canadian import duty would undoubtedly be an additional boon to the publishers and printers of the United States, but the undersigned ventures to think that the interests of that class have been, already, sufficiently cared for and do not require additional advantages from the Government of Canada.

The argument in favour of reducing the Canadian import duty in order to cheapen books is somewhat in contrast with another statement in the report under review, viz., the declaration that the royalty to copyright holders proposed by the Act of 1889 should be greatly increased and that more stringent methods of taxation should be adopted in order to secure the collection of the tax.

In paragraph 56, the Committee suggest that " the amount " of royalty might perhaps be fixed at fifteen per cent, so as to " correspond with the amount of the existing import duty on " books and that the royalty might be levied by means of a " stamp on each copy, so that if unstamped books were offered " for sale they should be liable to seizure."

It seems to be implied from this that the import duty and the tax in favour of the copyright holder should be equal and it would then follow that a reduction of the import duty, as advised by the Committee, would at any time be accompanied by a reduction of the copyright holder's royalty.

The intimation, contained in paragraph 57 of the Committee's report, that such Canadian legislation as is required should be confined to books, is not acquiesced in by the undersigned. It is true, as stated, in the report of the Committee, that copyright in musical, dramatic and artistic works raises a very difficult question, but the right of the Canadian Parliament to receive the power of self-government with respect to those matters is surely as plain as it is in relation to books. The demand to have that right conceded is surely not too difficult to be understood by statesmen of a country which has granted that right, freely, in relation to all other commodities.

The Committee in their report under review, have stated various objections to the details of the Canadian Act of 1889. These objections, in the view of the undersigned, are not maintainable. They say: "That twelve months might be "allowed as a reasonable time" (to the copyright holder) "for "cheap reproduction, and during that time the imperial "copyright should remain unimpaired." In reply to this it must be said that in less than twelve months the Canadian market would be flooded with American reprints and the sale of the book would be over. The report then says that "the royalty might perhaps be fifteen per cent, so as to cor-"respond with the amount of the existing import duty on "books." In the view of the undersigned, the Canadian proposition of ten per cent royalty on each copy would yield much larger returns than the one proposed, which would be fifteen per cent *ad valorem* on the quantity imported, at wholesale rates. Such is obviously the meaning of the proposition of the Committee as is seen by reference to the import duty which is an *ad valorem* duty on the wholesale rates.

The ten per cent royalty proposed by the Canadian Parliament would be imposed on the retail price of each book and would take the place of the twelve and a half per cent now collected by customs on wholesale rates, *ad valorem*, for the benefit of the copyright holder. An example may be taken to illustrate. A book issued last year cost, when imported from the United States, $22 for one hundred copies. The duty at twelve and a half per cent was $2.75. The retail price of the book being fifty cents, the royalty therefrom at ten per cent (as it would be if the book were republished in Canada), would be $5. Thus securing a gain to the copyright holder of nearly one hundred per cent.

The undersigned, however, does not deem this a proper place to discuss the details of the Canadian Act; as he does not deem it the proper place to discuss the legal rights of the Canadian Parliament to pass that Act. What the Canadian Parliament and Government desire is that the right of the Parliament of Canada to legislate on this subject shall be relieved of all doubt; and there would still be left to Her Majesty's Government the same constitutional right which it has with regard to all legislation in Canada, and which, it is submitted, is sufficient to secure every reasonable requirement for the security of Imperial interests.

The undersigned stated, in his letter to Lord Knutsford in 1890, that a most respectful consideration would be given to any suggestions for the improvement of the Canadian Act of 1889 which His Lordship might think proper to make, after hearing all that might be advanced on both sides. It would seem only reasonable, at the present time, however, that after all that has taken place some step in advance should be taken towards removing Canadian grievances beyond the mere routine of inquiries, reports and suggestions. It was hoped that that stage had been reached when the report of the Royal Commission of 1876 was made, especially in view of the fact that the Report of that Commission was so favourable to Canadian claims.

Respectfully submitted,

(Sgd.) JNO. S. D. THOMPSON,

Minister of Justice.