

1872

An Act to amend the Act respecting copyrights.

WHEREAS it is expedient to make provision for securing and protecting in Canada the rights of authors in works wherein the copyright is subsisting in Great Britain; and whereas under Imperial Acts anterior in date to the British North America, 5 Act, 1867, copyrights granted in the United Kingdom were declared to extend to Her Majesty's colonial Possessions and the importation into the British Dominions for sale, of foreign reprints of copyright works was absolutely prohibited, but provision was made that in case the Legislature of any British Possession should be 10 disposed to make due provision for securing or protecting the rights of British authors in such Possession, and should pass an Act for that purpose, it should be lawful for Her Majesty if she should approve of the nature of such provision to issue if She should think fit an Order in Council removing the prohibition to import 15 foreign reprints of copyright works in such Possession so long as such provision for securing or protecting British authors should remain in force therein; and whereas Her Majesty has seen fit, with reference to the Dominion of Canada, to act upon the authority so conferred upon Her; and foreign reprints of British 20 copyright works are now permitted to be imported into Canada upon the payment of a duty collected on behalf of the owners of such copyrights of twelve and one-half *per centum ad valorem*; but nevertheless reprints in Canada of such British copyright works have not heretofore been permitted; and whereas by the 25 British North America Act, 1867, express power is given to the Parliament of Canada to legislate upon the subject of copyright; and whereas provision for securing and protecting authors of British copyright works can be much more effectually made by authorizing the reprinting and publication of such works in Canada 30 on the terms in this Act contained; and whereas it is but just that Her Majesty's subjects in Canada should be allowed, on such conditions as will sufficiently protect and secure the authors of such copyright works, the advantages accorded to aliens and foreigners in respect of the reprinting of British copyright works; Therefore 35 Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Works of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not subsisting in Canada, may be reprinted, published and sold in 40 Canada, but only on the conditions and under the restrictions hereinafter contained.

2. No person shall reprint or publish any such copyright work without the license of the Governor General for that purpose.

G—1

Provided always that the period of one month in this clause mentioned may be extended by the Minister of Agriculture on proof that the publisher has made satisfactory progress with the printing of the works.

3. The Governor General in Council may make regulations for the licensing of persons to engage in the work of reprinting and publishing in Canada British copyright works; but before obtaining such license every such person shall enter into bonds with sufficient sureties to the satisfaction of the Minister of Inland Revenue, for the payment to Her Majesty of all duties of excise, which, under this or any other Act of the Parliament of Canada, may be payable in respect of such reprints.

4. Any copyright work re-printed in Canada and intended to be published under this Act, shall before publication be registered in the office of the Minister of Agriculture, who shall for the purpose of this class of registrations, cause to be kept in his office, a book to be called the "Register of reprints of British Copyrights;" and the sum of one dollar shall be payable to Her Majesty in respect of every such registration by the person desiring the same.

There shall be imposed, levied and collected for the account and benefit of the owners of the British copyright therein on all reprints in Canada of works wherein or whereof the copyright is subsisting in Great Britain an *ad valorem* duty of excise of not exceeding twelve and one-half per centum on the wholesale value of such works, under and in accordance with such rules and in such manner and at such times as regards publication as may be laid down by regulations to be made by the Governor General in Council.

The duty of excise so to be imposed, levied and collected shall be paid to the party or distributed among the parties beneficially interested in the British copyright under regulations in that behalf to be made by the Governor General in Council and approved of by one of Her Majesty's principal Secretaries of State.

From and after the passing of this Act the importation into Canada of foreign reprints of works of which the copyright is subsisting in Great Britain, and which have been registered here under section four for re-publication in Canada shall be and is hereby prohibited.

5. The word "work" in this Act shall include every volume, part or division of a volume, pamphlet, sheet of letter press, sheet of music, map, chart or plan separately published.

6. This Act shall come into force only from and after the date of any Proclamation by the Governor General to that end.

G-2

On the foregoing provisions becoming law, all works published in the United Kingdom shall as regards the importation thereof in Canada, be deemed to be British copyright works, whether they be or not mentioned in any list furnished to the Collectors of Customs at the places of importation unless the importer makes a solemn declaration that they are not so.

the words "Great Britain" & "the
United Kingdom" in the two places
marked.

Yours very truly

J G A Creighton
law clerk of
the Senate

John Leslie Byre
Department of Justice.

P.S. For the amendments see
Journals of the Senate
Vol V. 1872. p. 214.



9 Oct. 1882.

Dear Sir,

Canadian Copyright Bill 1872

Referring to your note of yesterday,
I return the copy of the bill. If finally
passed in the form shown by the
amendments which I have marked
in pencil.

The portion in black type shows the
form in which the Bill passed the
Senate originally. The portion in red
type and the amendments in pencil
were added by the Commons, and
were agreed to by the Senate, simply

Changing

Personelle.

Oct. 21st. 1888.

My dear Mr. Lowe,-


De peine et de misère, I have prepared a memorandum for Mr. Carling, which I enclose, herewith, and pray you to give to the Minister.

It should be borne in mind that Copyright laws are not made to protect the printer, but the author who is sole proprietor of the thing he has produced.

Please allow Jackson to take a copy to add to his records.

It would be well that Mr. Carling's colleagues should read my memorandum before meeting the delegates.

(signed) J. C. Taché.

 Library and Archives Canada/Bibliothèque et Archives Canada

This copy must be used for the purposes of research or private study only / Cette copie doit être utilisée uniquement à des fins de recherche ou d'études privées.
Reference number/no de référence : RG 6 A3 Vol. 2 Copyright Corr. 1882, 1888-92

ment should, in terms expressed, apply

Copyrights, in the same sense and to the same purpose as the enactments concerning the importation into British possess-

MEMORANDUM

on the project of affording protection to the Printers' Industry by amending our Copyright laws.

The proposed Bill, only to speak of its main feature contained in its 4th. section, is similar to the 15th. section of the Bill of 1875, which section was altered by the Senate in substituting the 15th. section of our present Act. At the time, the proposed Bill had been accepted by the Copyright Association of England, composed of authors or their ayants droit. What was then of comparatively easy acceptance, as a part of a whole measure, might now meet with great difficulties, specially in view of colonial authors being now made participants in advantages which were before, as a matter of fact, denied to them.

Although the printing industry of the country might be presently in need of protective measures, as other industries are, nevertheless, as bearing on the rights of authors it can only, in justice, be approached as a matter of compromise, as it was in 1875. In this way, and with the necessary preliminaries, an attempt might be made to revive the 15th. section of the Bill of 1875, simply as an amendment to our present law. But, to be acceptable and not to conflict with the articles of the Berne Union, such amendment should, in terms expressed, apply exclusively to British Copyrights, in the same sense and to the same purpose as the enactments concerning the importation into British possess-

ions of foreign reprints do apply; the best reason for such legislation resting on the fact of the practical impossibility for the generality of readers to purchase the costly English editions, which, in the United Kingdom, are supplied to the general public through the medium of circulating libraries.

Such a compromise, if agreed upon beforehand, would not seem to be inconsistent with the existence of the Copyright Union, inasmuch as by the articles of the Berne Convention the rights of authors are regulated by the laws of the country of origin of such rights, leaving each separate nation, member of the Union, to enact its own Copyright Laws.

The natural right of an author to the exclusive exploitation of the thing produced by his brain and toil is now universally recognized; its recognition is now a part of the written code of international law; most of the civilized countries are presently members of the Berne Union, and it is certain that any attempt at legislation derogatory to these principles and adverse to the agreement entered into, would meet with disallowance on the part of Her Majesty's Government.

(signed) J. C. TACHÉ.

To the Hon. the Minister of Agriculture.

O T T A W A, 21st. January 1889.

(Copy)

M O N T R E A L, Sept. 23rd. 1889.

Dear Mr. Lowe, -

Your letter of the 20th. reached me too late on Saturday for a reply; for it is impossible to give a brief answer concerning a subject so complicated and involving issues of so much importance. It is a pity the question was ^{ever} raised. The Act of 1875 was the best compromise possible, and the question was sleeping. The public was satisfied and nobody was being hurt when the English people sent out that Bill last year, which they nearly succeeded in carrying under the disingenuous plea that it was the legitimate outcome of the Berne Convention. Now the fact really is that the Canadian Act of 1875, as I have the opportunity of knowing (for I, with Messrs Adam and Rose, was at Ottawa assisting) contained, in anticipation, the principles of the Berne Convention; more than that, it contained the only principle upon which an international treaty with the United States was ever possible; and, if the Clarendon Treaty of 1870 had contained such a principle, it would have been ratified by the U. S. Senate. The next time the matter came up the English were willing to concede that, but the Americans wanted more, and so it goes on ad infinitum. In the meantime, Canada must have literature, and while these two excessively grasping nations are disputing, the Canadians are getting their literature where it is best and cheapest. They buy in England ^{printed} editions of American authors, and in the United States, ^{printed} editions of English authors, while all the time, under the same Act of 1875, a publishing business is steadily developing in Canada, as the records of your Department will show; and the business is growing just in proportion to the wants of the country, without infringing any legal or moral rights. I have always held the opinion, and in 1881, when the Government engaged me as an expert to go with Sir Leonard Tilley to Washington, my advice was that the position of Canada could not be bettered by anything either the U. S. or England intended to do; and that, so far as the Canadian Government was concerned, it ought simply to delay doing anything at all until the two great parties had come to an agreement, when it would be time enough to alter our laws.

You say our position is anomalous. True, but who made it so? Not we. It is not our fault that our country is conterminous with the United States. We can no more keep out their literature than we can the south wind. You may ruin the book stores; you may exasperate the people; but you will not keep out the books. (vide p.p. 15 & 16 of my lecture on this head.) It is not our fault that the English system of publishing is antiquated and utterly unsuited to the mother land of 150 millions of English speakers scattered over the world. It is not our fault that the English publisher of new books looks only to Mudie's Library. (a para-

Notes This is an error. He suppresses the Bill of 1887 from England.

Copyright - correspondence

sitie institution which grew up on the ruins of the book-selling trade) and asks himself how many copies Mudie will take to lend out over England. It is not our fault that the United States publishers will pirate English books. If we were States of the Union, we could pirate too, but we are not. Is that a misfortune or a privilege? If it is a misfortune the question falls. If it is a privilege, we must complain of some petty disadvantages.

But you may say it is anomalous that we should import these reprints! A blessed anomaly for this country by which the remotest settler can purchase the books he needs! An anomaly by which we may see Mr. Ruskin's works for fifteen dollars, instead of selling out a farm to raise seven hundred and fifty dollars to buy the English edition. Property of all kinds, in the nature of monopoly, carries with it corresponding obligations in the forum of morals. Copyright is no exception; therefore it was that in the very first Copyright Act ^{ever} passed there was a clause to fix and limit the prices of books if they were too high and unreasonable (Statute of Queen Anne, sec. 4 A. D. 1710) This corresponding obligation the English publishers have neglected. Nowhere in the world are the facilities for publishing so great; nowhere can books be made cheaper, nowhere are new books so dear. Therefore, this trouble has come upon them. They have lost that standing in the forum of the conscience to which they might otherwise appeal, and are reduced to the forum of written law alone.

Again you may say-but why then should our publishers not be allowed to reprint English books if we may import them? No doubt it is anomalous, that when we may take a man's gloves, we cannot also take his boots; and, in fact, strip him clear. It does seem hard. But then, reflect! that we have not the justification of necessity. It is one thing to avail ourselves of a wrong done by another man, when necessity compels, and another to deliberately enact ~~that~~ that we will, ourselves, do that wrong. We do not steal the gloves to commence with; but, being cold, and not being able to get others, we use them. Still it is anomalous; and the anomaly is caused by the fact that we are British subjects.

Now we must enter upon the domain of higher politics. The Act which waits the Governor-General's proclamation raises a profound political question upon a very insignificant issue. It is nothing more nor less than a Declaration of Independence. No wonder Mr. Edgar chuckles. He has got your Government just where he wanted to have them, and the National Policy has worked out just where Goldwin Smith said it would. You have challenged the "Imperium" of the Crown and Parliament in nullifying an Imperial Act specially extending to this country. I always thought the Governor-General would reserve it; and now it has the full assent of the Crown and is a complete Act; and, if the Ministry advise it, the Governor-General must sign the Proclamation or appeal to the country and raise a clear

Copyright - Correspondence 1882, 1888-92

the Canadian Government
either the N. 2. or English
the position of Canada con
to with all possible atten
and in 1887, when the cover
and 1887 or most likely
prohibition to the usage of
Debitment with whom? and
is especially relevant to
the time, under the same ve
United States, but the edit
English blunder editions
their literature where it
existing nations are quab
Canada that make interest
more, and so it is
English were willing to
the N. 2. Senate. The ne
continued and a blunder
was ever brought up, in
upon which an international
Convention, more than in
continued, in which but
the (for I, with Messrs
the Canadian vet of 188
come of the Belue Coma
under the question of
Bill 1887 Act, which
morally was being half
and the question was
was raised. The vet of
the same of so many
plied suggest concerning
on English vet & leby
Lyon

Dear Mr. Rome,

forward to the Governor General

2

sitie institution which grew up on the ruins of the
selling trade) and asks himself how many copies he
take to lend out over England. It is not our fault
United States publishers will pirate English books
were States of the Union, we could pirate too, but
Is that a misfortune or a privilege? If it is a
the question falls. If it is a privilege, we must
of some petty disadvantages.

But you may say it is anomalous that
import these reprints! A blessed anomaly for the
by which the remotest settler can purchase the
needs! An anomaly by which we may see Mr. Ruskin
for fifteen dollars, instead of selling out a far
seven hundred and fifty dollars to buy the English
Property of all kinds, in the nature of monopoly
with it corresponding obligations in the forum
Copyright is no exception; therefore it was that
first Copyright Act ^{ever} passed there was a clause
the prices of books if they were too high
(Statute of Queen Anne, sec. 4 A. D. 1710)
onding obligation the English publishers
ed. Nowhere in the world are the facilities
publishing so great; nowhere can books be made
where are new books so dear. Therefore, this trouble
come upon them. They have lost that standing in
of the conscience to which they might otherwise
are reduced to the forum of written law alone.

Again you may say-but why then should
lishers not be allowed to reprint English books
import them? No doubt it is anomalous, that we
take a man's gloves, we cannot also take his

An anomaly without which we should long ago have been
intellectually starved. An anomaly which saves us from
Mudie/.

Library and Archives Canada/Bibliothèque et Archives Canada
This copy must be used for the purposes of research or private study only / Cette copie doit être utilisée uniquement à des fins
de recherche ou d'études privées.
Reference number/no de référence: RG 6 A3 Vol. 2 Copyright Corr. 1882, 1884-92

3

issue-the Crown and Parliament of Canada vs. the Crown and Parliament of the Empire. Suppose again the Act goes quietly into force and someone reprints an English Copyright under it. Action is taken by the Copyright Association and, in time, the case is appealed to the Privy Council-beyond peradventure the Colonial Act would go down. What Judge could hesitate with the two statutes before him? No matter what despatches or instructions you might plead; they are merely administrative acts-acts of clerks-the "Imperium" of the Empire is in the Crown and Parliament of Great Britain, Canada included. You are raising that issue. They cannot concede it in England and retain any self-respect. You cannot ask it and remain in the Empire. Is the Ministry prepared to accept the alternative? Are you going to assert independence on this issue and will the country support you in it?

It is not at all probable that this question will go silently, by default as it were. If it were a matter of crushing a few importing booksellers, I suppose the Ministry would not hesitate, but the public of Canada would wail for its curtailed literature, and the Ministry would at once incur the active hostility of every man in England who holds a pen. Even the United States, great and powerful as they are, wince to this day under the criticism of the English literary class. The intelligent classes in the Atlantic ^{States} are still striving honestly for international copyright; but the masses of the West and of foreigners refuse it. Every newspaper, every writer, in England would fall foul of us, and behind them all are the powerful classes engaged in the making of books with the Copyright Association to lead them.

Bear in mind that the English must fight on this question. This-the one very last thing left them. It is not that they care so much for this market; for they recognize the fact that our proximity to the United States is a physical fact not to be got over. They are looking at Australia, New Zealand and the other Colonies. Whatever principle you lay down here will be claimed there. They know that this Bill of yours means shutting them up to their own little islands. This is not a question like sugar or cotton; for you buy and pay for your raw material and then manufacture it; but in literature you think you have a right to steal the raw material which the authors who live in England grow, and you fancy you do something clever when you set up the type and print the book another man has created. If you could go to Jamaica and take your raw sugar at any price you chose or at no price, the manufacture of sugar would not be thought a very meritorious business. So the question, as you see, is full of anomalies. The Act of 1875 is the only thing possible. If the Ministry are wise they will procrastinate, and correspond, and forget; after the manner of the Governments of great free states. The Circumlocution Department is the only one which can get them out of the present

4

corner.

I wrote, at the request of the Toronto Telegram, six short editorials which have been much reprinted, but which I would not sign, though they were known to be mine. As you know, I have written a great deal for the press and I know enough about it to give anything I write its proper colour, for the columns of the organ where it is to appear. These editorials, in the main, contain my own views; but, in the preparation of the Bill I had no hand, nor did I appear at Ottawa to support it; for, as I had made up my mind to retire from the book business, I would not meddle with the plans of those who remained in it. The Toronto Bill was the proper answer to the English bill which was so nearly passed, and a counter attack was the best way of avoiding so imminent a danger. But I never dreamed the Governor-General would assent to it.

The more I think about the matter the firmer is my conviction that the Act of 1875 is the best thing for the Canadian publisher; better than the proposed Act. Because if the free reprinting were granted, the publishers would cut each other's throats in wild competition. Every good book would be seized on by three or four publishers and this in such a small market as ours, would quickly lead to an abandonment of the whole business; whereas it is now growing up steadily and normally and solidly. At the end of my lecture I have printed a plan for collecting royalties; if such a plan be adopted; but I have nowhere advocated the adoption of it. I make these personal explanations, not as being part of my argument, but simply to explain my own position. I would also remark that I have persistently urged the appointment of a Commission, or a Committee, to consider this much confused matter and report upon it; for I am sure the Ministry do not understand it.

It is not my fault that this letter is so long. To write short answers to such questions as you ask is impossible. It is only by severe restraint that I have made it as short as it is. I send you a copy of the lecture I have referred to. I am very sorry that I have not been able to compliment the present Government upon its literary policy; for it happens that all my friends are of their political persuasion, and I have friends in the Ministry itself whom I would not publicly criticize, but one's friends are sometimes very "anomalous" also, and then it is a duty to say so when one is asked for a candid private opinion.

Yours truly,

(sgd) S. E. Dawson.

John Lowe Esq.

Ottawa.

(Cont)

Lord Knutsford to the Governor Gen

Aldine House,
Belvedere, Kent.
July 2. 1889.

Ottawa, 3

Dear Sir,

I have been abroad and
only now received your last letter.
Rest assured I am only using your
letter privately for the Copyright Association
and ~~the~~ ^{now} I am watching
the question

Yrs, truly,

J. R. Daldy.

The Hon^{ble}
John Lawe

your letter
I'll be glad
well to sa
question is in
resent Minis
Commons; but
Dominion Leg
the principal
Council deci

points in yo
e it not tha
and I may ex
is personal
sultation wi

ve at a basi

Library and Archives Canada/Bibliothèque et Archives Canada

Copy must be used for the purposes of research or private study only / Cette copie doit être utilisée uniquement à des fins

recherche ou d'études privées.

ence number/no de référence :

RG 6 A3 Vol. 2 Copyright Corr. 1882, 1888-92

Importation of Yankee reprints, on the payment of a du
and a half per cent, levied on the wholesale price and
cult to collect, why should you not sanction the reprints
Canada on an excise duty which could be collected, and
be sure to give the author ten per cent on the
I am sure is more than

Copy:

Ottawa, 3rd June, 1889.

Dear Sir:-

I received this day your letter of the 20th ultimo for which I am obliged, and I shall be glad to receive your promised letter. I think it is, however, well to say to you that we are quite aware ~~that~~ that the Act in question is in conflict with an Imperial Act. Sir John Thompson, our present Minister of Justice did, in fact, state this in our House of Commons; but he said he believed it to be within the powers of Dominion Legislation, under the British North America Act, and that the principle on which he proceeded had been sanctioned by Privy Council decisions.

There are two other points in your letter on which I would say to you a few words, were it not that I thought it better to wait for your promised letter, and I may explain that my correspondence with you on this subject is personal and purely informal, being a continuation of our consultation with you in 1875.

I am anxious to arrive at a basis of agreement, similar to that which we had in 1875, if possible. It is, therefore, that I am very desirous that you should understand the kind of difficulties, and I may say, anomalies which presented themselves to this Department, in dealing with the Copyright question in Canada. There is one special point I may ask you to consider, namely, that if you sanction under special understanding and agreement the importation of Yankee reprints, on the payment of a duty of twelve and a half per cent, levied on the wholesale price and very difficult to collect, why should you not sanction the reprinting in Canada on an excise duty which could be collected, and which would be sure to give the author ten per cent on the retail price, which I am sure is more than it is possible for him to obtain under the present arrangement?

Believe me, &c.
Yours truly

R. N. Daldy, Esq.

&c. &c.

Signed J. Lowe

Referring to my despatch No 4

to amend the
of Canada), I m

bly agree with

the Statute B

ffect, and I sho

as to whether

er they would p

I should submit
allowance.

re former course

wishes; and I m

made to the

Validity Act, 186

n have no val

to an Act of t

to the Dominio

have or.

3d) Knutsford

B.

D. A. Ottawa, 24 Sept. 1889

My dear Sir John:-

I send to you
herewith a type written
copy of Mr Dawson's letter
to me, of which I spoke to
you. He expressed the
desire, in a private letter,
that this communication
should not in any way
be made a matter of public
discussion; but, at the same
time, as he has written it

To

Canada

to me. he desires that it
should be communicated
to you, Sir John Macdonald
& Mr. Carling. I have, there-
fore, in obedience to Mr. Dawson's
desire sent copies to these
ministers as well as to you.

The letter, you will
see by its terms arises from
personal intercourse bet-
ween me & Mr. Dawson.

Believe me &
Yours truly

Hon Sir John Thompson,

Minister of Justice,

&c

&c

Ottawa

Library and Archives Canada

This copy must be used for the purposes of research or private study only / Cette copie doit être utilisée uniquement à des fins de recherche ou d'études privées.
Reference number/no de référence: RG 6 A3 Vol. 2 Copyright Corr. 1882, 1884.

Confidential

Referring to my despatch No 4
even date respecting the Act to amend the
(Canada), I should
ly agree with
the Statute
fect, and I should
as to whether
they would p
I should submit
allowance.

GOVERNMENT HOUSE,
OTTAWA.

Private

April 9/90.

My dear Sir John.

I will write to Lord Minto
about the Chief Justice.

I have sent you a copy of
Lord M's confidential despatch. It is
today - re Copyright. I suppose
however, that from its having been
under separate cover from the
principal despatch of the date
on the same subject, it was not
brought for Council. W.H. Minto

the former course
ishes; and I made
made to the 2
Validity Act, 1860
have no valid
to an Act of the
to the Dominion
have or.

S^d) Knutsford

Confide


to my despatch

but it means "will you walk down
stairs, or will you be kicked down?"

Yours very truly

Stanley of Preston

Lord Stanley of Preston G.C.B.

 Library and Archives Canada/Bibliothèque et Archives Canada

This copy must be used for the purposes of research or private study only / Cette copie doit être utilisée uniquement à des fins
de recherche ou d'études privées.
Reference number/no de référence: RG 6 A3 Vol. 2 Copyright Corr. 1882, 1888-92

(Copy)

Lord Knutsford to the Governor General

Downing Street

25th March, 1890

Canada

My Lord,

Confidential

Referring to my despatch No. 45 of even date respecting the Act to amend the Copyright Act (cap. 62, Revised Statutes of Canada), I think that your Ministers will probably agree with me that it is inconvenient to retain on the Statute Book a law which has not taken effect, and I should be glad if you will consult them as to whether they propose to repeal it, or whether they would prefer that under the circumstances, I should submit it to Her Majesty for formal disallowance.

I anticipate that the former course will be more consonant with their wishes; and I may also observe that if reference is made to the 2nd Section of the Colonial Laws Validity Act, 1865, it will be seen that the act can have no validity in so far as it is repugnant to an Act of the Imperial Parliament extending to the Dominion of Canada.

I have &c.

(S^d) Knutsford

Governor General

The Right Honourable

Lord Stanley of Preston G.C.B.

&c.

&c.

&c.



O T T A W A, 25th. June, 1890.

My dear Sir John :-

De suite of my conversation with you yesterday, and in addition to the two books you desired, which I sent you, I think it well to give you the following Memo of occurrences, etc, in relation to Copyright matters, which have come to light through the newspapers and the special publications of the United States Copyright Association, and which I have thought your occupations might perhaps not have permitted you to follow as closely as I have done, since Mr. Daldy's visit last year.

It is well to notice the facts relating to Copyright in the United States, from their close intimacy with us, as well directly as from their influence in England.

The United States Copyright Association, which comprises, it may be said, the whole of the leading authors, public writers, and leading publishers of the United States, caused to be introduced at the last session of Congress, a copyright bill, in its main principles exactly similar to our Acts of 1875 and 1889, in that it proposed to allow authors of other countries, copyright in the United States, on condition of printing in the United States.

The friends of this measure hold that the concession of copyright itself is the main consideration, and insist that the fact of printing is only a minor incident.

The English press, generally, and specially the Copyright publications, manifested very much opposition to the printing clauses of the United States bill, as being inimical to English printing interests.

The United States Copyright Association, as appears by their special publications, and also by statements in the New York newspapers, were confident that their bill would become a law during the last session of Congress. It was, however, a very short time ago, thrown out by a very small majority.

While this bill was before Congress, Mr. Blaine offered in his programme to the "Pan American" convention, or delegates, who recently met at Washington, copyright as one of the inducements to come into the union or league which he desired. Nothing, however, seems to have come of this. I cannot say whether the proposal had ^{any} influence in leading to the rejection of the Copyright bill referred to.

I understood from Mr. Daldy, in my conversation with him, that one of the great objections which he had to an Imperial sanction of the last Canadian Act, was the precedent which it would introduce; and this seems to be quite natural, as the Canadian book trade with England, particularly in view of the American importations of reprints, which has already English sanction, under the authority of law, is of very little magnitude.

I judge from the American copyright writings that it is quite understood by persons interested in the copyright question in the United States, that the bill proposed by the Association, if passed into law, would be sufficient

sufficient to bring the United States into the Berne Convention. My own opinion has from the first been the same with respect to our own law, as I think I explained to you when the first tentative bill^{which} was introduced^{was} should be framed on those lines; that is on the first principle affirmed in the first Departmental telegram, on the strength of which we consented to enter into the discussion of articles, at Berne, for a Copyright Convention, namely, - that we should be allowed to preserve intact the rights which had^{then} been conceded by the Imperial Government, in so far as they were not inconsistent with the terms of the Convention.

I may further say to you on that point, that Mr. S. E. Dawson, who has for years given special study to this question, has also from the first been very strongly of a similar opinion, holding that the concession of copyright is the main consideration, and that the condition of printing is nothing more than a municipal provision.

In the copy of Memorandum for Sir John Macdonald which you were so good as to communicate to me, you made the point that, while a treaty copyright holder would be subject under the articles of the Berne agreement to the same restrictions as a native author, and, consequently, that he would have no copyright in Canada unless he also printed in Canada, as a Canadian must do, that you doubted if that could be held to be a sound contention (as held by Mr. Dalry and myself), for the reason that you were afraid it would be decided that, inasmuch as the country entering the convention was not Canada but Great Britain, for her self and her possessions, it might be claimed on the part of the foreign authors that they acquired the

the rights which native authors of Great Britain have, and not merely those which authors^d in Canada have.

On this very important point, I endeavoured to point out to you in a memorandum that, as well by all the definitions^d of the voluminous correspondence which preceded the Convention, as by Article 19 of the Convention itself, it was agreed that a country with colonies was permitted to enter in the aggregate or individually by the separate parts. And, further, it is defined by the final procès verbal of signature of the Convention itself, that the accession of the colonies and dependencies of the British Empire, should be individual and by name, in accordance with the individual assents requested; and that there should be individual denunciation.

In accordance with these provisions, Great Britain asked of her colonies and dependencies for individual assents. I think, therefore, that there cannot be any doubt that we in Canada are fully entitled to the full extent of the porté of the provisions in Article 2 of the Convention, a fact which would fully admit Canada under our Acts of 1875 and 1889, as well as the United States under their Bill if it had passed into an Act, as parties to the Convention.

I have ventured thus persistently to press this view on your attention, for the reason of the statements in your memorandum to Sir John Macdonald above referred to, and also because of similar statements in your report to the Governor General, contained in a return to Parliament last session.

This point of contention may not appear to be of very much importance, looked at as a printer's question, at present, but it is an author's question; and I think, as a French writer says, that, as "Les hommes ne manquent jamais aux circonstances", so Canadian authors, with the chance of a world's protected market open to them, will arise, I feel more particularly convinced of the correctness of this contention from the fact that Mr. Daldy told me (this statement being really extracted from him) that Article 2 of the Convention was framed particularly to meet such kind of difficulty in protected countries. I think it will follow that all those whom you may touch in England, who ~~may~~ may desire to have our Act of 1889 repealed, will be slow to admit the bearings of this interpretation of the yet very plain words of Article 2.

I may also point out that it is Mr. Dawson's opinion, which he has ~~now~~ frequently expressed to me, speaking from a point of considerable experience, that the trade has done very well under the concessions of the Act of 1875, the public also having been satisfied by cheap books, under the provisions of the Order-in-Council of 1868, based on an Imperial Act. The only thing is that in view of these two measures the outcry against your Act of 1889, as a question of logic, seems absurd, so much so as to leave the impression that the real difficulty is, not consistency, but something else which the English seem to expect of us.

I hope you may not think that any of the remarks in this somewhat long letter out of place, but if so please

Hodges Honorary Secretary of the Copyright

impute them to my zeal and saturation, so to speak, with
this subject.

Believe me &c.

Yours truly,

John Lowe.

The Hon. Sir John S. D. Thompson,

&c. &c. &c.

Ottawa.

and in which his Lordship concluded by expressing every desire to assist as far as possible in any well considered measure which would substantially preserve the rights of Copyright holders under the Imperial Act and would at the same time meet the wishes of the Canadian people.

December 15th 1890

In the month of July 1890, the undersigned

TO HIS EXCELLENCY

had the honor personally to press upon the attention of Lord Knutsford the arguments in

The Governor General in Council.

favor of the position assumed in the report of

The undersigned has the honor to call Your Excellency's attention to a Report which he

made to Your Excellency on the 3rd August 1889,

on the subject of an Act passed by the Parliament of Canada in the session of that year entitled "An Act to amend the Copyright Act".

The Act referred to has not yet been brought into operation as it awaits the signification of the pleasure of Her Majesty's Government that a proclamation should be issued by Your Excellency to bring it into force.

In the same connection, the undersigned begs to call your attention to the despatch from Lord Knutsford to Your Excellency dated 25th March, 1890, in which his Lordship is pleased to signify a desire that the matter should be further considered by your Ministers.

A letter to his Lordship from Mr. W. Oliver

Hodges Honorary Secretary of the Copyright

which were then pressed upon his consideration

were expressed in writing in a letter from the

undersigned to his Lordship dated 1st July

1890, and the views set forth in that letter

were approved by Your Excellency in Council on

the 7th August last.

from Lord Knutsford to Your Excellency dated

25th March, 1890, in which his Lordship is

pleased to signify a desire that the matter

should be further considered by your Ministers.

A letter to his Lordship from Mr. W. Oliver

Hodges Honorary Secretary of the Copyright

and in which his Lordship concluded by expressing every desire to assist as far as possible in any well considered measure which would substantially preserve the rights of Copyright holders under the Imperial Act and would at the same time meet the wishes of the Canadian people.

In the month of July 1890, the undersigned had the honor personally to press upon the attention of Lord Knutsford the arguments in favor of the position assumed in the report of the undersigned of the 3rd August 1889, both as to the powers of the Parliament of Canada and as to the reasons which such an Act as the Copyright Act of 1889, should be adopted and be allowed to go into operation.

By permission of his Lordship the views which were then pressed upon his consideration were expressed in writing in a letter from the undersigned to his Lordship dated 14th July 1890, and the views set forth in that letter were approved by Your Excellency in Council on the 7th August last.

The undersigned has had referred to him, in this connection, a despatch from Her Majesty's principal Secretary of State for the Colonies dated 8th November last, transmitting a letter to his Lordship from Mr. W. Oliver Hodges Honorary Secretary of the Copyright

lish in Canada under its provisions.
Committee of the Society of Authors, in answer
to a letter from Sir Robert Herbert of the 17th
September 1890. Mr. Hodges informs Lord Knutsford that a
meeting of the General Committee of the incor-
porated Society of Authors, including the sub-
Committee on Copyright, had been held to con-
sider the questions raised by the undersigned
in his letter to Lord Knutsford of the 14th Ju-
ly 1890, and he states that he was directed by
that Committee to inform his Lordship that, un-
while they could express no opinion on the
question of the general policy which Her Majes-
ty's Government might think fit to adopt to-
wards Canada with regard to the question of
Copyright, they hoped that if Her Majesty's
Government should think fit to undertake leg-
islation in order to give effect to the princi-
ples of the Canadian Copyright Act, such leg-
islation would embody due precautions for mak-
ing the collection of royalty charges really
efficient. They submitted that the clauses re-
lating to the collection of such charges, con-
tained in the Canadian Copyright Act of 1889,
were not sufficient for the proper collection
thereof, and that it appeared to the Committee
doubtful whether that Act did not propose to
abolish Copyright altogether, unless the per-
son entitled thereto should reprint or repub-

lish in Canada under its provisions.

The undersigned has now the honor to recommend that an earnest request be made to Her Majesty's Principal Secretary of State for the Colonies that such legislation be brought before the Parliament of the United Kingdom at its present session as may set at rest the questions which have arisen as to copyright in Canada. In making this request Your Excellency's Government do not recede from the position which was taken in the report of the undersigned, dated 3rd August 1889, which report was duly approved by Your Excellency in Council, but inasmuch as doubts have been raised as to the power of the Parliament of Canada to pass that Act, it is most desirable and necessary that such doubts should be removed by Imperial legislation. The most satisfactory form, to Canada, in which such legislation should be presented would be by an Act declaring the full authority of Canada to legislate with regard to Copyright in this country, notwithstanding Imperial legislation heretofore passed in relation to that subject. Such an Act would only be following the lines of the British North America Act and would only be ~~xxx~~ in accordance with the promises made by Her Majesty's Ministers from time to time, as set forth in

the letter of the undersigned to Lord Knuts-
ford of the 14th July.

It would, in the opinion of the undersigned, in view of the doubts which have been expressed, be most desirable that the Canadian Copyright Act of 1839 should also be ratified and confirmed by Imperial legislation.

As regards the objections to the Copyright Act of 1839, stated by Mr. Hodges, the undersigned concurs that great care should be taken to make the collection of royalty charges really efficient. The opinion indicated in the letter of Mr. Hodges, that the clauses relating to such collection which are contained in the Act referred to are not sufficient, does not probably make due allowance for the fact that regulations are to be made on that subject by Your Excellency in Council, so soon as the Act shall come into force, under the powers conferred by the fourth section. In the approved report of the undersigned dated the 3rd day of August 1839, it was stated that "The Government of Canada would be prepared to submit to Her Majesty's Government the Regulations, which might be adopted under the Act for securing the collection of the royalty and the payment thereof to the proper parties." The undersigned is unable to agree with Mr. Hodges that the effect of the Act of 1839 may be to "abolish Copyright altogether."

unless the persons entitled thereto reprint or republishes in Canada". The Act merely deals with the subject of the reprinting of copyrighted works under license and will not be found, on careful perusal, the undersigned believes, to affect the rights of the holders of Copyright in any other particular. Besides this, section six, preserves the rights of those who may have a copyright, when the Act shall come into force, from being affected even to this extent.

On the points mentioned in the letters of Mr. Hodges, there can be no disagreement between Your Excellency's Government and the Society which that gentleman represents as to the recognition of the rights of the holders of Copyright and as to the necessity for making the Act effective.

The undersigned recommends that a Copy of this Report, if approved, be transmitted to Her Majesty's Principal Secretary of State for the Colonies.

Respectfully submitted.

Minister of Justice.

is of short duration, because, during that period, the
 felt by the proprietors of Copyright in Great Britain
 importation of foreign reprints of the work, as well
 One of these was the limit of time, (one month), allow-
 as the republication in Canada by other than the Copy-
 right holder in Great Britain is prevented, pending
 Canada, after publication in Great Britain. Your Lord-
 ship had been assured that in a great majority of cases
 avail himself of the Canadian Copyright law or not.
 it would be impracticable, within the period of one

month, to make the necessary arrangements for re-publi-
 cation in Canada, and expressed the hope that upon fur-
 ther consideration it might be recognized that the time
 proposed was insufficient. Upon this point, as well

Your Lordship's dispatch refers His Excellency's
 as to other details of the Act, it is unnecessary to
 trouble your Lordship with any argument at the present
 moment. The questions to be settled first, and to
 which I understand your Lordship to wish that I shall
 address myself, relate to the principle of the Act and
 to the power of the Government of Canada to pass it.

Any details which are felt to be unfair or inadequate,
 in view of all the interests involved, will, I am sure,
 be reconsidered by the Parliament of Canada. At the
 same time, I may observe that it is contended on the
 part of those who are interested in the publishing-bus-
 iness in Canada that the time referred to is not unrea-
 sonably short, and that the holder of Copyright in the
 United Kingdom can easily make arrangements for simul-
 taneous production in the two countries, so as to have
 re-publication made in Canada within the time specified
 in the Act. The time for republication must necessarily

and

be of short duration, because, during that period, the importation of foreign reprints of the work, as well as the republication in Canada by other than the Copyright holder in Great Britain is prevented, pending the exercise of the option by him as to whether he will avail himself of the Canadian Copyright Law or not.

On this, and on all other matters of detail, any suggestions which your Lordship may think proper to make will, I am sure, receive the earnest and respectful attention of the Canadian Government.

Your Lordship's despatch refers His Excellency's Government for some particulars of the objections which had been pressed on you to a letter dated 'Aldine House. Belvedere. Kent. Feb. 20th. 1890' supposed to have been addressed to me, signed by Mr. F. R. Daldy, Hon. Secretary of the Copyright Association, but I have been unable to gather much information from that letter as ^{to} the objections which are entertained in England with regard to the Canadian Act of 1889. Mr. Daldy, and the Association which he represents, are hostile to any measure by which the right of any Colony to self-government on this subject may be asserted or conceded, and his letter suggests an entire abandonment of the legislation of 1889, and the adoption of further measures to carry out more strictly the existing Law, which is so unsatisfactory in Canada. I may mention here, in case the fact should be of any importance, that I know Mr. Daldy's letter only by the copy

and

appended to your Lordship's despatch. If Mr. Daldy has ever sent such a letter, it has never reached me.

Coming now to a statement, more in detail than could be made at our interview, of the views which prevail in Canada on this subject, I am charged by the Canadian Government to express to your Lordship, in the strongest terms which can be used with respect to the dissatisfaction of the Canadian Government and Parliament with the present state of the Law of Copyright as applicable to Canada, and to request most earnestly from Her Majesty's Government, that they will apply a remedy, either by giving approval to a Proclamation to bring the Canadian Act of 1889 into force, or by promoting Legislation in the Parliament of Great Britain to remove any doubt which may exist as to the power of the Parliament of Canada to deal with this question fully and effectually.

Your Lordship is aware that the Statute of 1842, (5 and 6 Victoria, c. 45,) is the Imperial Statute by which Copyright in Great Britain is extended to all the Colonies and Dependencies of the Empire.

Any principles of Common Law by which authors and publishers might have claimed Copyright were superseded by that Act, and Copyright was given to any person who should publish a literary work in the United Kingdom, if he should be subject of Her Majesty, or a resident of any part of Her Majesty's dominions.

and

I need not remind your Lordship that the operation of that Act was immediately attended with great hardship and inconvenience in the North American Colonies. The Legislature of the Province of Canada, in the year 1843, passed a series of resolutions expressing strong remonstrance, and nearly all the other Legislatures in North America followed.

The Legislature of Nova Scotia, in 1845, memorialised Her Majesty for a modification of the Act. The Act stated that the high price of English books, and the monopoly of London publishers, which were felt to be serious grievances in the United Kingdom, but mitigated there by the periodical sales by some of the publishers and by the wide establishment of circulating libraries, clubs and reading societies, were intensified in the Colony, where the importation of English editions of new books was confined to a few copies for the use of libraries and wealthy individuals; that the readers of the Colony were usually supplied by American reprints of English books, and that any law of Copyright to prevent the importation of such reprints could not be enforced and would be ineffectual even to extend sale of English copies beyond the previously existing demand.

The Legislature of Nova Scotia at that time pressed upon Her Majesty's Government, not only a consideration of the general advantages of literature upon the mind

without producing any corresponding benefit to the authors.

and

of the people, but the evil tendency of the literature of a foreign, and often hostile country, like the United States, in forming the political opinions and the tastes of the people in the Provinces. my exclusive view

On the 27th. November, 1845, Lord Stanley, Her Majesty's Principal Secretary for the Colonies, replied to this Memorial from Nova Scotia, intimating that the attention of Her Majesty's Government was being directed to the state of the Copyright Law, in order to discover if there were any particulars in which the Law might be so amended, as to afford any relief to the Colonies, "without promising that Parliament would be

'recommended to alter its determination to afford protection to the authors and publishers of Great Britain of their right of property in their own productions.' "the interests of the public. My lords feel confident

On the 13th. March 1846, the Legislature of Nova Scotia again adopted a Report, which was transmitted to the Rt. Honble. the Secretary of State for the Colonies, while they entertain a sanguine hope that the important object with the least possible inconvenience That Report stated that attention had been given

by the Committee to the despatch of Lord Stanley will suggest, for Lord Grey's consideration, whether it dated the 27th. Nov. 1845, and that they were convinced "that the practical effects of the Copyright Act were to deprive the people of the Colonies of literature, whose means rendered them unable to purchase costly books issued from English publishing houses, to diminish the Revenue and to encourage smuggling, without producing any corresponding benefit to the author.

and

These remonstrances drew from the Rt. Honble Mr. Gladstone, the Secretary of State for the Colonies a representation to the Publishing trade in England that "they must be induced to modify any exclusive view which might still prevail with regard to this important subject."

The reply of the Colonial Office to the Board of Trade dated 30th. October 1846. At length, on the 19th. October 1846, Sir Stafford. H. Northcote, by direction of the Lords of the Privy Council for Trade, reviewing the contentions, which had been thus pressed upon the Home Government by the Legislatures of the Colonies, made the following recommendation to the Colonial Office.

"Under these circumstances, my Lords see no course so likely to be successful as that of inviting the Colonial Legislatures themselves to undertake the task of framing such regulations as they may deem proper for securing at once the rights of authors and the interests of the public. My Lords feel confident that they may rely upon the Colonies being animated by a sense of justice which will lead them to co-operate with this country in endeavouring to protect the author from the fraudulent appropriation of the fruits of labours upon which he is often entirely dependent, while they entertain a sanguine hope that methods may thus be discovered of accomplishing this important object with the least possible inconvenience to the community."

Lords of Committee of Privy Council for Trade to take such measures as they may see fit. "I am accordingly directed to request that you will suggest, for Lord Grey's consideration, whether it might not be desirable to obtain from Parliament an Act authorising the Queen in Council to confirm, and finally enact, any Colonial law or ordinance respecting copyright, notwithstanding any repugnancy of any such law or ordinance to the copyright law of this country, it being provided by the proposed Act of Parliament that no such Colonial law or ordinance should be of any force or effect until so confirmed and finally enacted by the Queen in Council, but that, from the confirmation and final enactment thereof, the copyright law of this country should cease to be of any force or effect within the Colony in which any such Colonial law or ordinance had been made, in so far

Thereupon the following Circular Despatch was sent by

and

Earl Grey to all the Governors of the North American Colonies
'as it might be repugnant to, or inconsistent with, the
operation of any such Colonial law or ordinance.'

I am etc.

(signed)

Stafford H. Northcote.

The following is the reply of the Colonial Office to the Board of Trade dated 30th. October, 1846 : which
'have been received from the Governor of each of the
British Colonial Office to Board of Trade, and of the
'effect in those Colonies of the Imperial Copyright
Law, have decided Downing-street, 30. October, 1846.
'in the ensuing Session, which, if sanctioned by the
'Sir, will, they hope, tend to remove the dis-
'satisfaction which has been expressed on this subject,
'and place the matter I have laid before Earl Grey your
'letter of the 19th. inst, respecting the operation of
'the Imperial law of copyright in the British North
'American Colonies. As to protect the authors of this
'country from the fraudulent appropriation of the
'His Lordship directs me to acquaint you, for the
'information of the Lords of Committee of Privy Coun-
'cil for Trade, that he concurs in the views expressed
'in your letter on this subject, and that it is in his
'opinion, preferable, after the repeated remonstrances
'which have been received from the North American Col-
'onies on the subject of the circulation there of the
'literary works of this Kingdom, to leave to the Col-
'onial legislatures the duty and responsibility, of
'enacting the laws which they shall deem proper for
'securing the rights of authors and the interests of
'the public. The proposed Act of Parliament that no
'such law or ordinance shall be of any force or effect
'and Lord Grey therefore directs me to request that
'you would move the Lords of Committee of Privy Coun-
'cil for Trade to take such measures as may be expedi-
'ent for submitting to the consideration of Parlia-
'ment in the ensuing Session a Bill authorising the
'Queen in Council to confirm, and finally enact any
'Colonial law or ordinance which may be passed respect-
'ing copyright, notwithstanding the repugnancy of any
'such law or ordinance to the copyright law of this
'country, and containing also the provisions mention-
'ed in your letter in respect to the period at which
such Colonial law should come into operation.

I am etc.

(signed)

R. Hawes.

with the duty of maintaining the same.

Thereupon the following Circular Despatch was sent by

Earl Grey to all the Governors of the North American
provinces contained in that Despatch of Earl Grey to
Colonies :

Earl Grey to the Governors of the N. American Col.
Circular.

Downing St. Nov. 1846.

Sir, the reasons which induced it to be made,

At the date of that Her Majesty's Government having had
'under their consideration the representations which
'have been received from the Governors of some of the
British North American Provinces, complaining of the
'effect in those Colonies of the Imperial Copyright
law, have decided on proposing measures to Parliament
'in the ensuing Session, which, if sanctioned by the
'Legislature, will, they hope, tend to remove the dis-
'satisfaction which has been expressed on this subject,
'and place the literature of this country within the
'reach of the Colonies on easier terms than it is at
'present. With this view, relying upon the disposi-
'tion of the Colonies to protect the authors of this
'country from the fraudulent appropriation of the
'fruits of labours upon which they are often entirely
'dependent, Her Majesty's Government propose to leave
'to the Local Legislatures the duty and responsibility
'of passing such enactment as they may deem proper for
'securing both the rights of authors and the interests
'of the public. Her Majesty's Government will accor-
'dingly submit to Parliament a Bill authorising the
'Queen in Council to confirm and finally enact any
'Colonial law or ordinance respecting copyright, not-
withstanding any repugnancy of any such law or ordi-
nance to the Copyright law of this country; it being
'provided by the proposed Act of Parliament that no
'such law or ordinance shall be of any force or effect
'until so confirmed and finally enacted by the Queen
'in Council, but that from the confirmation and final
'enactment thereof, the Copyright Law of this country
'shall cease to be of any force or effect within the
'Colony in which any such Colonial law or ordinance has
been made, in so far as it may be repugnant to, or
inconsistent with, the operation of any such Colonial
'law or ordinance.

I have etc.

(signed) Grey.

After a lapse of more than forty years, I am charged

with the duty of reminding your Lordship that the

system of circulating libraries and periodical sales,

which gives to the British reader the benefit of the

promise contained in that Despatch of Earl Grey has never been fulfilled, and respectfully to ask its fulfilment at the hands of your Government. The lapse of time which has intervened has strengthened tenfold every one of the reasons which induced it to be made. At the date of that Despatch Responsible Government had hardly been established in the North American Colonies, now these Colonies have had forty years experience of self-government and have a United Parliament, under a most liberal constitution, a Parliament possessing great powers and responsibilities, among which is expressly mentioned the subject of Copyright.

The experience which has been gained of Colonial legislation has, I hope, not lessened the confidence of Her Majesty's Government in the disposition of that Parliament to deal justly with the interests which have been entrusted to its care, and to carry out the views of Her Majesty's Government in matters of Imperial policy as far as possible.

Again, the inconveniences which were pressed on the consideration of Her Majesty's Government forty seven years ago by the Colonial Legislatures have increased, notwithstanding the partial measure of relief which was accorded three years after Earl Grey's despatch, and which permitted the importation of foreign reprints of British Copyright works. The price of British publications still exceeds six or seven-fold that for which reprints are purchased in America. The system of circulating libraries and periodical sales, which gives to the British reader the benefit of British

and

literature, has found no place in the Colonies, while in Canada the means of reprinting British publications is now, though it was not then, entirely adequate to the wants of the reading public, if it be permitted to carry on operations, with a reasonable regard for the interests of British Copyright holders.

In part fulfilment of the promise of Her Majesty's Government, made known through Earl Grey in the Despatch above quoted, the Imperial Statute of 1847 was passed, authorising Her Majesty, by Order in Council to suspend that portion of the Act of 1842 which prohibited the importation of foreign reprints of British Copyright works, as to any Colony in which the proper Legislative Authority should be disposed to make due provision for securing and protecting the rights of British authors in such Possession.

In the years 1846-50 Her Majesty in Council made Orders in Council suspending the prohibition contained in the Act of 1842 against the importation of such foreign reprints, the Legislatures of the North American Colonies having, in the meantime, provided for the collection of an impost on such foreign reprints, in favour of the author or Copyright holder. This partial measure, although not a fulfilment of the promise of Earl Grey, met the principal grievance felt at that time in the North American Colonies, namely, the grievance of being deprived of British literature,

little has been done to check this state of affairs by which could practically only be supplied to the Colonies by American reprints, the publishing business of the Colonies being then in its infancy.

For a time, the complaints of the Colonies against the Act of 1842 ceased, in consequence of this remedial measure, but for the last twenty years and upwards the operation of the Act of 1842 even with the remedial provisions of 1847, has been seriously felt and has formed the subject of almost constant complaint. In the quarter of a century which followed the Act of 1842 new conditions of Trade and Commerce developed. The people of the North American Provinces had not only become used to self-government, by the liberal policy of Her Majesty's Government in giving them free legislative constitutions, but they had become more independent of American industries. The necessity for encouraging native industries, instead of relying on those of the United States had also become very apparent.

The following are instances of the serious inconvenience experienced by the operation of the Imperial Copyright Laws in North America:

The reading public of what is now the Dominion of Canada has been principally supplied with British literature by American reprints. The high prices of British editions has made this unavoidable. In spite of the pointed and repeated warnings to British publishers given by the Colonial Office for forty years, very

and

little has been done to change this state of things by
 get the type of a single page.
 providing cheap editions of British works. Even to
 in many other well known instances American authors
 this day, the English editions cost from four to ten-
 in the United States, have availed themselves of the
 fold the price of American reprints. The result is
 restriction which fetters the publication trade in Can-
 that the business of publishing British literature for
 ads, under the Imperial Copyright Act, in a manner
 the Canadian reading public is done almost exclusively
 which is most injurious to British subjects in Canada,
 in the United States. The American publisher, unre-
 and presents in a straitened view the arbitrary and op-
 strained by any international Copyright Law or Treaty,
 prescriptive operation of these Acts. They do so in the
 is free to reprint any British work and to supply it,
 following manner: The Imperial Copyright Act of 1889,
 not only to the reading public of the United States,
 as interpreted by legal decisions, enables any person
 but to the reading public of Canada, while the Canadian
 who resides, even temporarily, in British dominions,
 publisher is not free to reprint any such work on any
 to obtain Copyright if he publishes his work in the
 terms, unless he can obtain the permission of the hold-
 United Kingdom, and such Copyright has force through-
 er of the Copyright in Great Britain. In some noted
 the Empire. "Publishing" and been held out to some
 instances, this has actually led to the transfer of
 printing, necessarily, and residence lay at the least
 printing establishments from Canada to the United States
 temporary character. The American authors about 18

In other cases, English publishing houses have set
 up branches in New York, or other American cities, with
 the view of re-printing for the United States and Can-
 da, the Copyright works which they have issued in
 London.

It has been their interest to establish such
 branch houses in the United States, because they have
 obtained thereby the American market, whereas in Can-
 da, even with the permission of the holder of the Copy-
 right, they would only have the Canadian public for
 purchasers; and, without that permission, could not

set the type of a single page.

In many other well known instances American authors in the United States, have availed themselves of the restrictions which fetter the publishing trade in Canada, under the Imperial Copyright Acts, in a manner which is most unjust to British subjects in Canada, and presents in a striking view the arbitrary and oppressive operation of those Acts. They do so in the following manner: The Imperial Copyright Act of 1842, as interpreted by legal decisions, enables any person who resides, even temporarily, in British dominions, to obtain Copyright if he publishes his work in the United Kingdom, and such Copyright has force throughout the Empire. "Publishing" had been held not to mean printing, necessarily, and residence may be of the most temporary character. The American authors above referred to, for the purpose of preventing their works being reprinted in the British dominions, cross the St. Lawrence, reside for a few days within the Canadian Territory, send to London a few copies of their works ready to be issued there, and thereupon obtain Copyright throughout the Empire. They then return to their own country, where their works have been printed and copyrighted, and send into Canada those works, in the shape of foreign reprints of British Copyrights, and on these, the Canadian Government collects the impost in favour of the American publisher, who thus enjoys

2

and

Copyright in his own country which is not open to any British subject, and enjoys, in the British dominions, a right of reprinting which no colonist can obtain

While this state of the law is being constantly made use of by American authors, the United States decline to enter into any international arrangement with Great Britain, and have no interest in making any, because their people can thus use the British Empire for their market without restriction, while offering no advantages in their own market in return. On the contrary, they refuse Copyright to any one who is not a citizen of the United States, or who is not able to show residence, in the sense of domicile.

An American publisher, if he desire to make any arrangement with the British Copyright holder for the right to reprint the work of the latter, can easily outbid the Canadian publisher, not only on account of the greater facilities he possesses for the production of the book, and not only on account of the more extended market which he has in the United States, but because he will have the Canadian market of five millions of readers at his command, inasmuch as the Imperial Copyright Acts forbid the reprinting of Copyrighted works, but permit the importation of the American reprints. In many modern instances, the British Copyright holder has preferred to sell his right to an American publisher rather than to a Canadian, and

And

has bound himself by the terms of sale to prosecute any Canadian who may reprint his work for sale in Canada, which is the operation which the American sets himself about at once. The instances in which Canadian publishers have been able to make arrangements with Copyright holders in Great Britain have been comparatively few. It is unnecessary to seek for the reason of this. It is not because Canadian publishers are unwilling to make fair terms with the British Copyright holder, but because American publishers have greater facilities, and because British authors prefer to deal with publishers in the United States. It is useless to say that it may be made to their interest to deal with Canadian publishers, or to issue Colonial editions. Pressure, for forty years, by the people of British North America, and remonstrances from the Colonial Office, have been unavailing to change their practice in regard to a policy, so entirely prudent, as that of providing for the wants of the reading public of British North America. Having stated these facts, illustrative of the inconvenience imposed on Canada by the Imperial Copyright Acts, your Lordship, I hope, will appreciate the urgent desire of the Canadian Government, that a remedy should be applied as soon as possible. If the principal supply, for the reading public of Canada, must, by virtue of Imperial Legislation, come from the United States, it follows that the business of publishing

and

for Canada is far more restricted than it ought to be, considering the wants of the people of that country, and the means they have of supplying themselves, and it follows that encouragement is continually being given, in an increasing degree, to all those who are engaged in any of the employments which form part of book-making, to seek a home for themselves and their families in the United States, in preference to Canada. Overweighted as we continually are, by reason of the vast competition of the United States in every branch of trade, industry and commerce, your Lordship will not wonder at our being disposed to complain when, in regard to so important a matter as the furnishing of literature for our people, we are hindered by a monopoly, nominally in favour of the London publishers, but really and practically in favour of the publishers in the United States, and when we are held in that position by virtue of an Imperial Statute passed nearly half a century ago, when the wants and capabilities of the people of British North America were greatly different from what they are now, when the population of British North America was only a fraction of what it is now, and when the powers of its people, as regards self-government, had hardly begun to exist, while they are now fully developed.

I proceed now to show that the request which I am urging upon your Lordship, by direction of the Canadian Government, was pressed on Her Majesty's Government

and

immediately after the Dominion of Canada was established, has been pressed at many times since and has always been met in a manner which justifies the hope that compliance with our request will not now be longer delayed;

On the 15th. May 1868 the Senate of Canada passed an humble Address to His Excellency the Governor-General, as follows: It is paid to the Canadian Government

by such publication. The Senate. 15th. May. 1868. minor.

X X X X X

1st. To call the attention of Her Majesty's Government to the provisions of the Imperial Act 10 and 11 Vict. c. 95, by which power is given to Her Majesty to approve of any Act passed by the Legislature of any British Possession, admitting into such Possession foreign reprints of British copyright works, provided that reasonable protection to the authors is, in Her Majesty's opinion, thereby secured to them.

2nd. To impress upon Her Majesty's Government the justice and expediency of extending the privileges granted by the above cited Act, so that whenever reasonable provision and protection shall, in Her Majesty's opinion, be secured to the authors, Colonial reprints of British copyright works shall be placed on the same footing as foreign reprints in Canada, by which means British authors will be more effectually protected in their rights, and a material benefit will be conferred on the printing industry of this Dominion.

Ordered, That such Members of the Privy Council as are Members of this House do wait on His Excellency the Governor General with the said Address.

Attest.

Governor General (signed), that he was in communication with the Board of Trade, with Clerk, Senate.

F. Taylor.

and would advise Sir Taylor.

In June 1868 Mr. Rose, then Canadian Minister of Finance, being in London, was referred to by the Colonial Office for information on the subject of this Address, and in a Memorandum dated the 30th. of that month, he stated, briefly, the inconveniences which were felt in

and

Canada, and he declared the desire of Canada to be, in accordance with the Address of the Senate, that the Canadian publisher be permitted to reprint English Copyrights on taking out a licence, and paying an excise duty, effectual checks being interposed, so that the duty on the number of the copies actually issued from the Press should be paid to the Canadian Government by such publishers for the benefit of the author.

A letter from the Colonial Office to the Board of Trade stated that consideration ought to be given to the course which should be taken with regard to the recommendation of the Senate of Canada, that Colonial reprints of Copyrighted works be placed on the same footing as foreign reprints in the Dominion, and that the Duke of Buckingham and Chandos, then Her Majesty's Principal Secretary of State for the Colonies, would be glad to be informed whether the Memorandum submitted was sufficient to enable their Lordships of the Board of Trade to form an opinion on this question.

On the 21st. July 1868, His Grace informed the Governor General of Canada, that he was in communication with the Board of Trade, with regard to the recommendation of the Senate, and would apprise His Excellency of the result, so soon as he was placed in possession of their Lordships' views.

The reply of the Board of Trade, dated 22nd. July 1868, was that the question raised was far too important

And

again moved in the matter, and involved too many considerations of imperial policy, to render it possible to comply with the desire expressed by the Address of the Senate that legislation should be obtained during the then present Session of Parliament.

It was further stated to be most desirable that the Canadian question should be considered in connection with any negotiations with the United States with regard to Copyright. The letter contained the following paragraph, which stated in substance the disposal of the question at that time.

"My Lords, however, fully admit that the anomalous position of Canadian publishers with respect to their rivals in the United States of America, is a matter which calls for careful inquiry; but they feel that such an enquiry cannot be satisfactorily undertaken without at the same time taking into consideration various other questions connected with the imperial laws of copyright, and the policy of international Copyright Treaties, and they are, therefore, of opinion that the subject should be treated as a whole, and that an endeavour should be made to place the general law of copyright, especially that part of it which concerns the whole continent of North America, on a more satisfactory footing."

The Duke of Buckingham and Chandos on the 31st of July 1868 sent the Governor General of Canada the following formal reply:

"Your Lordship will perceive that any immediate legislation on the matter was impossible, but that the anomalous position of the question in North America is not denied, and that it is admitted that the law of copyright generally may be a very fit subject for future consideration."

On the 9th. April 1869, the Government of Canada

and

again moved in the matter, transmitting to the Colonial Office a Memorandum by the Minister of Finance, in reply to the communication from the Board of Trade above referred to, and on the 27th. of July 1869, the Board of Trade made an extended reply, to which I beg to refer your Lordship, as showing that the request which had been made from Canada in 1868, and which is still being pressed, was not controverted on its merits but was deferred, in the hope that presently some international arrangement might be made with the United States, and under the impression that it would be unwise to deal with the Canadian question while the probability of such an arrangement was in view. The following passage from that communication bears this out, and sets forth a summary of the conclusions, at which the Lords of Trade had arrived :

"Under these circumstances the balance of argument is, in the opinion of the Lords of Trade against any immediate adoption of the Canadian proposal. The truth is that it is impossible to make any complete or satisfactory arrangement with Canada unless the United States are also parties to it. Whatever protection is to be given to authors on one side the St. Lawrence must, in order to be effectual, be extended to the other; and it is consequently impossible to consider this question, without also considering the prospects of an arrangement between Great Britain and the United States. There are symptoms of the possibility of such an arrangement. In 1853-54, an international copyright convention was signed between the two Governments, but was allowed to drop. In the last Session of the United States Congress a Bill was introduced providing for international copyright in the United States. It required republication and reprinting in the United States as a condition of copyright there, and was in this respect objectionable. But the correspondence showed that there was a considerable interest in the question,

communication from the Board of Trade above mentioned.

And

and it was evident that the Americans were feeling the want of an international arrangement on the subject."

Accordingly on the 20th. October 1869, Earl Granville informed the Governor General of Canada that the matter was one of some difficulty, and that Her Majesty's Government felt it necessary to obtain further information before deciding on the proposal of the Canadian Government, but that, in the meantime, action might be taken as to a portion of the Imperial Law which was not affected by the difficulties surrounding the present question, namely, that while, by the present law, publication in the United Kingdom gave Copyright throughout the Empire, publication in a Colony could not give rights outside the limits of the Colony; and he stated that Her Majesty's Government were prepared to take steps, during the next Session, to amend the law in that particular.

On the 20th. of December 1869, the Governor General of Canada transmitted a number of documents, one of which was an Address which he had received from the Typographical Union of Montreal, setting out in strong terms the prejudicial effects of the Imperial Copyright Acts in Canada. His Excellency had promised, in reply, that he would not fail to draw the attention of the Privy Council to the point thus raised.

His Excellency also transmitted at the same time, a Report from the Minister of Finance on the first communication from the Board of Trade above mentioned.

and

The Minister remonstrated against the Canadian request being delayed for the action of the United States. He said: "In reference to the second objection urged against the desired change in the law, the undersigned is ready to admit that Canada ought not to ask for and should not expect to receive any privilege which could reasonably be held to prejudice, or postpone the satisfactory adjustment of the great question of international copyright between England and the United States. But he is unable to see how the change in the law asked for could have any such effect, especially if it were provided that the privilege accorded to Canadian publishers should be provisional and temporary, to determine on the conclusion of any international Treaty of copyright between the two countries." "Under such limitations, would not the granting of the privilege asked for on behalf of Canadian publishers operate rather to bring about the conclusion of an International Copyright Treaty, than to postpone or prevent it? If Canadian publishers were placed on the same footing as their American rivals, the latter would be to a very great extent, deprived of the pecuniary benefits resulting to them, in the absence of any International Copyright Treaty from their piracy of the works of English authors." The public sentiment throughout the country is, that the On the general question which I have already discussed, the Minister made use of the following expressions, which I cite for the purpose of showing that they are not now advanced for the first time to Her Majesty's Government, and that these are not newly

discovered grievances :

"At present the Canadian public are mainly dependent on the supply, even of foreign literature for which a copyright may be obtained in England, on the reprints from the United States.

It may be argued in answer to these objections that the Canadian publisher may make arrangements with the author for permission to publish; but as the law now stands there is no motive or inducement either for the author to concede, or the publisher to obtain, this sanction; the author has already made, or can make his arrangements with the foreign publisher, who knows that circumstances will give him a large circulation in the Canadian markets, and that even the slight proportion

of duty collected will be paid by the Canadian reader, because re-publication is there forbidden.

At present the foreign publisher, having a larger market of his own, and knowing the advantages of access to the Canadian market, can hold out greater inducements to the author than the Colonial publisher, and can afford to indemnify the author for agreeing to forego taking out any copyright and to abstain from printing in Canada."

The Minister concluded his Report, which had the approval of his Excellency in Council, as follows: -

"Having considered the arguments advanced against the modification of the copyright law asked for in the Address of the Senate, the undersigned would recommend that the attention of the Imperial authorities be once more invited to the subject, and that they be earnestly requested to accede to the application of the Senate, upon the understanding, if thought proper, that the change in the law, if made, should be temporary, to be determined upon the conclusion of any International Copyright Treaty between England and the United States."

In conclusion, the undersigned may be permitted to note the fact, that during the last few months, the present subject has been very largely discussed in the leading journals of Canada as well as at public meetings. The public sentiment throughout the country is, that the privilege asked for is fair and reasonable in itself, and that the granting of it would not only promote the interests of English authors, but give an impetus to the publishing and printing trade, and other cognate branches of Canadian industry, and would be calculated to increase the circulation in Canada of the best British works, and to foster the literary tastes, and develop the literary talents of the Canadian people."

At this stage, the British publishing interest intervened, and pressed upon the Lords of Trade, who in their turn pressed upon the Colonial Office, the propriety of compelling the Colonies to accept the modification of the Imperial Copyright Laws which had just been offered to them without any demand for concession in return, and which was obviously required by the commonest principles of justice, (namely, the concession

and

to publication in the Colony should be equivalent of publication in Great Britain,) on condition, only, that the Colonies should give up their right, accorded under the Act of 1847, to import foreign reprints, when imported from foreign countries, should be altered. When so little was being conceded, in answer to the repeated requests of Canada for the right to supply our people with reprints, it would have been doubtful, whether the Canadian Government would have expressed its acquiescence in a measure so comparatively unimportant, as at present, protected in his copyright, but that when that concession became coupled with a condition which would have made the Imperial Copyright Acts absolutely unbearable and unenforceable, easily as other duties of a similar kind. The only one reply was possible, and that reply was the one which was transmitted from Canada on the 1st. of July 1870, stating that while there could be no objection to the proposed Bill, making publication in the Colony equivalent to publication in the United Kingdom, taking into consideration the suggested repeal of the Imperial Copyright Act of 1847, it was highly expedient that Legislation should take place at that time, unless it provides for local publication and that while the Lord Kimberley requested the Governor-General of Canada, on the 29th. July 1870, to forward to him a full statement of the views of the Canadian Government on the question, in order that it might be considered before the next Session.

Accordingly, on the 30th. of November 1870, a joint Report of the Ministers of Finance and Agriculture was adopted by His Excellency in Council, the substance of

and

which is contained in what here follows :

"What the undersigned would venture to suggest is, that the duty on the reprints of books first published either in Great Britain or its Dependencies, when imported from foreign countries, should be materially increased; and that it should be levied in all cases for the benefit of the author or owner of the copyright, should such exist; and that to prevent evasion of the law, a declaration should be required from importers that any works which they may claim to import free of such duty, have never been published either in Great Britain or in British Dependencies; that foreign reprints of works published in Canada should be wholly prohibited; that any author publishing in Canada, should be, as at present, protected in his copyright, but that unless British copyright works should be published concurrently in Canada, licensed Canadian publishers should be allowed to publish, paying, for the benefit of the author or owner of the English copyright, an Excise duty, which could be collected by means of stamps as easily as other duties of a similar kind. The undersigned have no doubt that such a scheme as that which they have suggested could be carried into practical effect with great advantage to the English authors, who, as a rule, would sell their copyrights for Canada to Canadian publishers. It is true that British publishers would not gain that Colonial circulation which they have long tried to obtain without success; but it is vain for them to expect that the expensive editions published in England can meet a sale in any part of the American continent.

The undersigned, therefore, recommend, that your Excellency should acquaint Her Majesty's Principal Secretary of State for the Colonies, that there is no probability of the Dominion Parliament consenting to any measure for enforcing British copyright in Canada, unless it provides for local publication; and that while the Canadian Government will be ready to introduce a measure that will be of great advantage to British authors, they must, in reference to foreign reprints, have regard to the interests of Canadian as well as of British publishers."

In 1872 the Government of Canada were still without a definite reply to the request which had been made by the Address of the Senate in 1868, and which had been reserved, as above stated, by Her Majesty's Government, until further information could be gathered, and until the result of negotiations with the United States might

And

be known.

On the 14th. of May, of that year, the following Report of a Committee of the Privy Council of Canada was approved by the Governor General and transmitted :

" On a Memorandum, dated 10th. of May 1872, from the Honourable, the Ministers of Finance and Agriculture, reporting that much anxiety has been manifested by Houses of the Canadian Parliament on the unsatisfactory state of the Imperial Copyright Act that, as no reply has yet been received to the approved Report of the Committee of the Privy Council, dated 1st. of December 1870, they think it desirable that the attention of Her Majesty's Government should again be called to the subject.

That they have reason to believe that a good deal of discussion has taken place in England among the parties interested in copyright, and that the result of that discussion has been a considerable accession to the ranks of those who are in favour of the proposition submitted by them in the Report already referred to.

That it is apparent that the class which alone has a just claim to protection, viz., authors, have at length been convinced that their interests are not promoted by the maintenance of the present system.

That it is no doubt true, that the principal owners of copyright are the London publishers, but it is, they state, equally true that those publishers have never paid to the authors one single pound more for their copyrights in view of circulation in Canada.

That it cannot be denied that the Canadian demand for concurrent publication in Canada should alone entitle the author to the benefit of copyright. That under the present system, which is wholly indefensible, and which is objected to, as well by the English publishers as by the Canadian publishers, the latter are treated with the greatest injustice.

That it has long been the custom for the owners of English copyright to sell to American publishers advance sheets of their works, and when Canadian publishers have offered to acquire copyright in Canada by purchase, they have been told that the arrangements made between English and American publishers were such as to prevent negotiations with Canadians.

That Canada has passed a law by which British authors can secure copyright in Canada, and has further expressed a readiness, where authors do not choose to take out copyright, to secure adequate compensation to them by means of an excise tax on all English copyright works for the benefit of the authors.

They, the Ministers, recommend that a further appeal

And

be made to Her Majesty's Government to legislate upon this subject without further delay.

The Committee concur in the foregoing Report, and submit the same for your Excellency's approval."

In the Session of the Canadian Parliament of 1872 a Copyright Bill was passed, in substance and principle like the Act of 1889. This was reserved by the Governor General for the signification of Her Majesty's pleasure.

In May 1874, the pleasure of Her Majesty not having been communicated, and in view of the fact, that the two years, within which the Royal Assent might be given to it, would expire on the 14th. of June 1874, Addresses to His Excellency, the Governor-General were presented by the Senate and by the House of Commons, respectively, asking him to convey to Her Majesty's Principal Secretary of State for the Colonies the respectful expression of the necessity felt by the Senate and House of Commons that the Bill passed in the Session of 1872 should not be allowed to lapse, by the expiry of the two years' limitation, specified in the 57th. section of the British North America Act of 1867, and begging to assure His Excellency that important interests in the Dominion were prejudiced by the absence of legislation such as that Bill contemplated.

The answer was communicated on the 15th. of June 1874 by Lord Carnarvon, stating that the Imperial Act

and

Her Majesty to assent to the reserved Bill, but perhaps of 1842 was still in force throughout the British Dominions, in so far as to prohibit the printing of a reprint of any work which might be copyrighted in Canada, and for which Copyright subsisted under that Act, and that he had been advised that it was not competent for the Parliament of Canada to pass such a measure as the Act of 1872, inasmuch as its provisions would be in conflict with Imperial Legislation, and that he had

no alternative but to advise Her Majesty that Her Majesty's assent could not properly be given to the Bill. It seems that it is unnecessary that I should state this Act, but it may be proper to state that

Lord Carnarvon closed his despatch with the following paragraph, which, I respectfully submit, is a most liberal and fair in its provisions. It is an author at any time, having printed in Canada, to obtain Copyright there. It is a renewal of the promises often made in connection with this subject.

"I am aware, that the subject of Colonial copyright has long been under consideration, and that attempts were made by Her Majesty's late Government, in connection with yourself and your ministers, to arrive at a settlement of this difficult and most important question. I will only now express my readiness to co-operate, and my confident hope that we may without difficulty be able to agree in the provisions of a measure which, while preserving the rights of the owners of copyright works in this country under the Imperial Act, will give effect to the views of the Canadian Government and Parliament."

illegals of Copyright in Canada to any British subject,

and to the subjects of any country which has a Treaty

Pending the fulfilment of the promises thus renewed by Lord Carnarvon, the Parliament of Canada, in 1875, passed a Bill, on the subject of Copyright in Canada, which was carefully drawn, to avoid, as far as possible, conflict with Imperial Legislation. In order to remove any doubts as to the validity of this Bill, an Imperial Statute was passed to authorize its being assented to. This latter is known in Great Britain as the "Canadian Copyright Act of 1875." It authorized

And

Her Majesty to assent to the reserved Bill, but forbade the importation in to the United Kingdom of Colonial, reprints of any work which might be copyrighted in Canada, and for which Copyright subsisted in the United Kingdom. It placed, practically, the production of such works in Canada on the same footing as foreign reprints. The Canadian Act of 1875 then received the Royal Assent.

It is unnecessary that I should refer in detail to this Act, but it may be proper to state, that it seems most liberal and fair in its provisions. It permits an author at any time, having printed his book in Canada, to obtain Copyright there. It permits the original author's edition to be imported at all times, so that superior and revised editions may always be procured.

It established interim Copyright, so as to protect a work while passing through the press. It provided for Temporary Copyright, to cover the case of works published in serial form, and it extended all the privileges of Copyright in Canada to any British subject, and to the subjects of any country which has a Treaty on this subject with Great Britain, and thus removed one of the objections which had been taken in earlier times to the effect which Canadian Copyright legislation might have on negotiations with the United States, if such legislation should permit the reprinting of works copyrighted in the United States.

and

It was felt that, pending the question of the Dominion being free to legislate on the subject of Copyright generally, it was important to have a Canadian Copyright System, inasmuch as, since the Imperial Act of 1842, works published in the United Kingdom had Copyright in all the Colonies, while, for a work published in any one of the Colonies, it was impossible to obtain Copyright in the United Kingdom. Our Act, till the cheaper English editions have been published, consequently, gave Local Copyright, protecting the work by purchasing them at the high publishing price, printed in Canada, and prevented the importation of books of carriage and other charges incidental to the re-publications of any such work, after it should have

obtained the local Copyright, as the Imperial Act pre-vent the importation of works which had obtained an- tations were made in favour of admitting into those British Copyright. United States reprints of English works. In 1846 the Colonial Office and the Board of Trade admitted the justice and force of the considera- tion. I now beg to refer your Lordship to the proceedings of the Copyright Commission of 1876, of which your Lordship was a very prominent member, and in which tion in the colonies of works entitled to copyright. Canada was represented by the late Sir John Rose. In

the portion of the Report of that Commission which deals with the branch of the subject falling under the right books made in foreign states, and at the same head of "Colonial Copyright" some most important statements and recommendations are made.

First, at section 184, it is admitted that 'It is highly desirable, that the literature of this country should be placed within easy reach of the Colonies, and that, with this view, the Imperial Act should be modified, so as to meet the requirements of Colonial readers.' Introduced into the colonies, and notably American reprints into the Dominion of Canada, but in sections 186, 187 and 188, the following passages have been made to the authors and owners. It appears ages occur, which I now beg to cite, as confirmation

and

of the narrative which I have given in the early part of this letter, of the effects which immediately followed the Imperial Act of 1842, and as shewing that the Canadian Government is now but reiterating an oft repeated statement, the truth of which has long been established and admitted.

" 186. These means are not available, and indeed are impracticable, owing to the great distances and scattered population, in many of the Colonies, and until the cheaper English editions have been published, the colonial reader can only obtain English copyright books by purchasing them at the high publishing prices, increased as those prices necessarily are by the expense of carriage and other charges incidental to the importation of the books from the United Kingdom.

187. Complaints of the operation of the Copyright Act of 1842 were heard soon after it was passed, and from the North American provinces urgent representations were made in favour of admitting into those provinces the cheap United States reprints of English works. In 1846 the Colonial Office and the Board of Trade admitted the justice and force of the considerations which had been pressed upon the Home Government, "as tending to show the injurious effects produced upon our more distant colonists by the operation of the imperial law of copyright." and in 1847, an Act was passed "To amend the law relating to the protection in the colonies of works entitled to copyright in the United Kingdom."

188. The principle of this Act, commonly known as the "Foreign Reprints Act", is to enable the colonies to take advantage of reprints of English copyright books made in foreign states, and at the same time to protect the interests of British authors."

The result of the "Foreign Reprints Act" is thus stated in sections 193 and 194 :

" 193. So far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada, but no returns, or returns of an absurdly small amount have been made to the authors and owners. It appears

and

from official reports that during the 10 years ending in 1876, the amount received from the whole of the 19 colonies which have taken advantage of the Act was only £1,155. 13s. 2½d. of which £1,084. 13s. 3½d. was received from Canada; and that of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings.

194. These very unsatisfactory results of the "Foreign Reprints Act," and the knowledge that the works of British authors, in which there was copyright, not only in the United Kingdom, but also in the colonies were openly reprinted in the United States, and imported into Canada without payment of duty, led to complaints from British authors and publishers; and strong efforts were made to obtain the repeal of the Act.

no doubt correct...but too short a time had elapsed,

The request which I have been pressing in this letter, and the grievances which the Canadian Copyright Act of 1889 was intended to remove, are thus

summarized in section 195 and the two following:

Section. 195. A counter-complaint was advanced by the Canadians. They contended that although they might still import and sell American reprints on paying the duty, they were not allowed to republish British works, and to have the advantage of the trade, the sole benefit of which was, in effect, secured for the Americans in defence of themselves against the charge of negligence in collecting the duty, they alleged that owing to the vast extent of frontier and other causes, and also from the neglect of English owners of copyright to give timely notice of copyright works to the local authorities, they had been unable to prevent the introduction of American reprints into the Dominion.

196. The Canadians proposed that they should be allowed to re-publish the books themselves under licenses from the Governor-General, and that the publishers so licensed should pay an excise duty of 12 per cent. for the benefit of the authors. It was alleged that by these means the Canadians would be able to undersell the Americans, and so effectually to check smuggling; and further that the British author would be secured his remuneration, as the money would be certain to be collected in the form of an excise duty, though it could not be collected by means of the

and

of the customs. Objections, however, were made to the proposal, and it was not carried out."

"197. These considerations led to the suggestion that re-publication should be allowed in Canada under the author's sanction, and copyright granted to the authors in the Dominion; and upon this a question arose whether Canadian editions which would be probably much cheaper than the English, should be allowed to be imported into the United Kingdom and the other colonies."

 "The Report then proceeded to state the substance of the Canadian Act of 1875, and intimated, what was no doubt correct, that too short a time had elapsed, since its sanction, to ascertain its full effect."

In sections 206, 207 and 208 the following liberal recommendations were made in favour of the Colonies.

"206. We recommend that the difficulty of securing a supply of English literature at cheap prices for colonial readers be met in two ways: 1st. by the introduction of a licensing system in the colonies; and 2nd. By continuing, though with alterations, the provisions of the Foreign Reprint Act."

"207. In proposing the introduction of a licensing system, it is not intended to interfere with the power now possessed by the Colonial Legislatures of dealing with the subject of copyright work, so far as their own colonies are concerned. We recommend that, in case, the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case, no adequate provision be made by re-publication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a license may, upon application, be granted to re-publish the work in the colony, subject to a royalty in favour of the copyright owner, of not less than a specified sum per cent, on the retail price, as may be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law."

"208. We do not feel that we can be more definite in our recommendation than this, not indeed do we

think that the details of such a law could be settled by the Imperial Legislature. We should prefer to leave the settlement of such details to special legislation in each colony. "

I am unable to find that these recommendations were dissented from by any member of the Commission, even by the gentleman who represented the Copyright Association of Great Britain, and whose letter^{is} annexed to your Lordship's despatch of the 25th. March last.

The Report seems to have been concluded on the 25th. May 1878, but the recommendations which I have quoted, like so many others, in favour of the Colonies on the subject of Copyright, have, unfortunately, not been carried into execution.

Your Lordship cannot then be surprised that after Earl Grey's promise of more than forty years ago, and after more than twenty two years of agitation on the part of Canada, by Addresses from both branches of our Parliament, by Memoranda from our Ministers of Finance and Agriculture, by Minutes of Council, and by Statutes passed unanimously in both Houses, introduced by three successive Governments, representing opposite political opinion, and with encouragements held out at every stage of the agitation to expect a reasonable and favourable consideration of our representations by Her Majesty's Government; the Canadian Parliament believed in 1889, that the Act then passed, to give effect to what had so often been asked for, to what had never been refused, and to what had been recommended

and

by the highest authorities in Great Britain, after most mature deliberation, should receive a favourable consideration at the hands of Her Majesty's Government when the Government of Canada asked for the assent of Her Majesty's Government to the issue of a Proclamation to bring it into force.

I respectfully refrain from discussing here the legal difficulties by which your Lordship has been impressed, as to the power of the Parliament of Canada to pass such an Act, because, I understand, that I have your Lordship's permission, to discuss that subject separately, and because it in no way relates to the principle under discussion on this occasion.

Hitherto it has always been either assumed on the part of Canada and Great Britain, or distinctly asserted on the part of Great Britain, that Canada had not the power to pass such an Act, but hope has always been held out that Canada should obtain the power, and I therefore submit, that if your Lordship should continue to be of the opinion that the power does not exist, you will promote legislation to set that question finally at rest, by conferring the power; and that, if you should be of the opinion that the power may exist, you will advise Her Majesty to consent to the issue of a Proclamation to bring the Act of 1889 into force, under the assurances which have been offered, that a most respectful consideration will be given to any suggestion for the improvement of the

And

measure which your Lordship may think proper to make, after hearing all that may be advanced on both sides.

In the despatch of the 25th. March, your Lordship suggested that the Government of Canada would doubtless fully consider whether it would not be well, and be desirable, to leave the law as it now stands, until it should be seen what action would be taken in the United States on the subject of Copyright. The action of the United States has since been announced, it is the action which has followed every attempt to establish a Copyright arrangement with the United States during the last twenty five years. The only measure which has ever been offered in the United States Congress, looking to international arrangement, or forming, in any way, the basis for international arrangement, has exacted, as an indispensable condition to American Copyright, (whether Treaty or Statutory), reprinting in the United States. Those who are most intimately acquainted with the state of public opinion in that country, are confident that that condition will never be dispensed with. We have seen that every measure looking to an international arrangement, even with that condition included, and even the measure which was pending when your Lordship's despatch was written, has been rejected by Congress.

It is not too much then, I hope, to ask that a final decision of the case of Canada should no longer be postponed to await the action of the United States.

and

Permit me to add, in this regard, a repetition of two points, which I have already hinted at, First- 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 Copyright works, has a direct tendency to induce the United States to refuse any international arrangement; Second - 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.

I have the honour

to be

My Lord

Your Lordship's obedient servant.

(signed)

Jno. S.D. Thompson.

Minister of Justice of Canada.

To the Right Honble.

Lord Knutsford

Her Majesty's Principal Secretary of State for the Colonies.

Downing-street.

and

of Canada - of 1879, in which you stated that several
Westminster Palace Hotel
objection was felt by the proprietors of Copyright
London. S.W.

In Great Britain. One of these was the effect of
July 14th. 1890
time, now sought, allowed for the British Author

or publisher to republish in Canada, after publi-
My Lord

tion in Great Britain. Your Lordship had been
in the Report which I had the honour
presented to a great majority of cases, it would
to make to His Excellency the Governor General of
by recommendation within the period of two years to
Canada in Council on the subject of Copyright in
since the necessary arrangements for re-publication
Canada, dated the 3rd. August. 1889, and which was
in Canada, and expressed the hope that your further
approved by His Excellency and transmitted to your
consideration it might be recognized that the time
Lordship, it was asked that His Excellency's Govern-
proposed was insufficient. Upon this point, an
ment might be allowed to discuss the questions
well as to other details of the Act, it is suggested
dealt with in that Report at further length, and in
ary to trouble your Lordship with any argument at
further detail, if necessary, as they involved
the present moment. The questions to be settled
grave questions of great consequence to Canada, not
first, and to which I understand your Lordship to
only with respect to Copyright, but in relation to
wish that I shall address myself, relate to the
the Powers of the Parliament of the Dominion
principle of the Act and to the power of the Crown

Having had the privilege to-day of carrying on
extent of Canada to pass it. Any details which
that discussion, to some extent with your Lordship,
are left to be made in the future, in view of all
I avail myself of the permission accorded me at our
the interests involved, will, I am sure, be made
interview to place in writing before you some of
submitted by the Parliament of Canada. At the same
the arguments which I am instructed by the Govern-
ment, I may observe that it is contended on the
ment of Canada to advance, in amplification of my
part of those who are interested in the publication
Report above mentioned.

It is in Canada that the time referred to is not
In your Lordship's despatch of the 25th. of
unusually short, and that the matter of Copyright
March 1890, in reply to the observations in that
right in the United Kingdom can easily be arranged
Report, you called the attention of the Government
to the simultaneous production in the law courts
of Canada to some provisions of the Copyright Act
which, as to have re-publication made in Canada

And

THE SOCIETY OF AUTHORS TO THE COLONIAL OFFICE.

4 Portugal Street,

Lincoln's Inn Fields

London W.C. November 3rd, 1890

not purport to abolish Copyright altogether, unless the person on My Lord, wrote reprints or republishes in Canada,

In answer to the letter from Sir Robert Herbert, of the 17th September, 1890, I have the honour to inform your Lordship that a meeting of the General Committee of the Incorporated Society of Authors including the sub-Committee on Copyright, has been told to consider the questions raised by Sir J. Thompson in his report to your Lordship of July 14th, 1890. I am directed by the Committee to inform Your Lordship as follows;--

(1) They can express no opinion on the question of the general policy which Her Majesty's Government may think fit to adopt towards Canada with regard to the question of copyright.

(2) They hope, however, that if Her Majesty's Government thinks fit to undertake legislation in order to give effect to the principles of the Canadian Copyright Act, such legislation will embody due precautions for making the collection of royalty charges really efficient.

Copy

(1)

(3) They submit that the clauses relating to the collection of royalty charges as drafted in the Canadian Copyright Act, 52 Vic. c.29, are not sufficient for the proper collection thereof, and

(4) It appears to the Committee to be doubtful whether the Canadian Copyright Act, 52 Vic. c.29, does not purport to abolish Copyright altogether, unless the person entitled thereto reprints or republishes in Canada, ~~within~~ within one month after printing or publishing elsewhere.

At best the language of the Act is ambiguous on this point.

I have &c.,

(sgd.) W. Oliver Hodges.

The Right Honorable

The Lord Knutsford



Inspector of Insurance;
HOWARD HUNTER, M.A.
BARRISTER-AT-LAW.

Copy

(1)



Office of the Inspector of Insurance, Ontario,

Toronto, Canada, 17 Nov. 1892

Confidential

Re Copyright-Legislation

J. Ross Robertson Esq.
'The Telegram' Toronto

My dear Sir: I have carefully read the documents you sent for perusal, and the following observations occur to me upon the whole question of Canadian Copyright-in connection with Sir John Thompson's Act of 1889.

1. The Parliament of Canada was constituted and empowered by the British North America Act which was passed by the Imperial Parliament in 1867. Section 91 of that Act gives "exclusive legislative authority" to the Parliament of Canada over twenty-nine enumerated subjects of legislation. Of these nos. 22 and 23 stand together in the Act as follows:-

" 22. Patents of invention and discovery.
23. Copyrights."

So far as anywhere appears in this Imperial Act, the legislative rights of Canada over these two closely analogous subjects are co-extensive, and are otherwise the same in all respects. No one nowadays alleges or suggests that an English Patent is per se of any force in Canada.

The holder of an English patent can acquire rights in Canada only by patenting in Canada under the laws of Canada. Patents
and

2

and Copyrights are interests so closely analogous in character as at times to become indistinguishable: so that to avoid a clash of laws and of rights the Parliament - which has jurisdiction over one must of necessity have equal jurisdiction over the other. For example, a map or plan in relief may be copyrighted under article 4 of the Berne Convention which expressly includes "plastic works relative to geography or topography." But A., the maker of a relief map or plan may under the law of Canada patent his process of which B.'s copyrighted map or plan may be only one particular application. And thus our Courts would have to try the conflict of A.'s rights - conferred by the law of Canada, with B.'s claims arising under a convention forced upon Canada, and (if the English view of this convention were admitted) paramount to Canadian law. Similarly, Article 4 of the Convention expressly includes "designs" generally. Now the Revised Statutes of Canada, Chapter 63, Sections 22 et seq. create and protect rights in "industrial designs" - a phrase which in arts and manufactures has a very extensive meaning. Here again our domestic legislation would inevitably conflict with and be overridden by the convention upon the representation of the United States or of any other foreign power held to be party to the Convention. The same would probably occur as to much more of our domestic legislation. And thus under color of the Berne Convention, the self-governing powers of Canada would be cut down to narrower jurisdiction than any of the Provinces of Canada had continuously enjoyed since 1847. The present pretension really involves an attempt to re-impose upon Canada in respect of copyright and the numerous interests swept into that term by the Berne Convention, such a monopoly or exclusive privilege as was characteristic of the old Colonial system.



system of England and France, but which has by England been long since abandoned in respect of all other commodities than books. Every economic authority admits that copyright is only a special form of monopoly depending for its justification in any particular country upon the special circumstances of that country. As in the case of Patents, each country must determine its own policy according to the social and economic conditions with which it has to deal.

Now the Berne Convention had in view conditions of society happily very different from those prevailing in Canada. England and the other European Countries that framed this convention for their own convenience took no account of any other continent than Europe. In those countries the population is dense: within London alone is packed a population exceeding that of the whole Dominion of Canada from ocean to ocean. In London, or Paris, or Berlin, he that would read may, and generally does, borrow from a book club or circulating library; in Canada owing to the great dispersion of the people, he that would read must buy. In European Countries, the reading classes form but a small fraction of the whole population; in the English speaking provinces of Canada the reading-class means the whole population. It is not the policy of any Canadian Legislature to reproduce here the social conditions of European Countries, with their dangerous antagonisms of classes and masses, of vast wealth and appalling destitution, of privileged intellect and brutish ignorance. It is the bounden duty of the Parliament of Canada to see that under color of any international convention our social and economic conditions are not ~~unlawfully~~ interfered with.

2. Even treated merely as a commercial bargain the Berne Convention is most unjust to Canada. By Article 2 of that treaty it is clearly



clearly intended that the duration of a copyright in any foreign country which is within the convention shall be the same as in the country of origin. The convention makes provision for no other term. Now (as in England prior to the act of 1842) in Canada the duration of copyright is 28 years (R. S. C. C. 62.5.4). But in Great-Britain copyright endures for the lifetime of the author and for seven years longer; or in any event for a minimum term of 42 years (5 & 6 Vict. c. 45 - Lord Mahon's Act). This was Macaulay's compromise ^{term of copyright} in opposition to Lord Mahon's extravagant proposals: ~~and~~ In his speech ^{of 1841} which convinced (and defeated) ~~Jalfoord's bill~~ the House of Commons, Macaulay laid it down that copyright is a mere bounty to authors - a tax imposed on the public for the encouragement of people to write books. * In this view the

* The principle of Copyright is this. It is a tax on readers for the purpose of giving a bounty to writers. The tax is an exceedingly bad one; it is a tax on one of the most innocent and most salutary of human pleasures; and never let us forget that a tax on innocent pleasures is a premium on vicious pleasures. I admit however the necessity of giving a bounty to genius and learning. In order to give such a bounty I willingly submit ourselves to this severe and burdensome tax.

Macaulay in the House of Commons on Jalfoord's Copyright Bill 5th February 1841.

any other of the European countries named to a term of 28 years, while an author copyrighting his work in one of those countries might tax Canada for the benefit of himself or his representatives for two, three, four or even five generations. Furthermore, if as is now con-

tended

clearly intended that the duration of a copyright in any foreign country which is within the convention shall be the same as in the country of origin. The convention makes provision for no other term. Now ^{in England prior to the act of 1842} ~~in Canada the duration of copyright is~~ 28 years (R. S. C. C. 62, S. 4). But in Great-Britain ^{since 1842} copyright endures for the lifetime of the author and for seven years longer; or in any event for a minimum term of 42 years (5 & 6 Vict. C. 45 - Lord Mahon's Act). ^{this was Macaulay's compromise in opposition to Lord Mahon's extravagant proposals: see in his speech of 1841} ~~Macaulay laid it down~~ that copyright is a mere bounty to authors - a tax imposed on the public for the encouragement of people to write books. * In this view the extension of Lord Mahon's Act - (1842) to Canada was most objectionable, if indeed not unconstitutional; for the right of England to tax her colonies had been then long abandoned.

3. In other European countries the inequality of the term of copyright with ours is still worse. In France a copyright lasts during the life of the author and for fifty years afterwards. In Italy it lasts for the author's life and for forty years afterwards; or for eighty years altogether, if the author lives more than forty years. In Spain the author has copyright as long as he lives and his heirs hold it for eighty years after his death.

4. The result of this inequality of the term of copyright is that a Canadian author would, under the convention, be limited in England or any other of the European countries named to a term of 28 years, while an author copyrighting his work in one of those countries might tax Canada for the benefit of himself or his representatives for two, three, four or even five generations. Furthermore, if as is now contended

189
5
Contended, Copyright in England carries copy-
right in Canada as an incident, a Canadian author
instead of Copyrighting in his own country would
be well advised to Copyright in England, for by
so doing he might double the duration of his
Copyright in Canada. It may be said that Can-
ada can amend its law so as to make its term
of Copyright as long as the longest European term;
but no such proposal would be entertained by
any Parliament of Canada. Such a prolongation
of a monopoly or private tax is against all modern
statesmanship and economics; and would be in the
highest degree prejudicial to intellectual, artistic
and industrial growth. The advocates of the Berne
Convention put forward a tender thoughtfulness
for the interests of Canada's authors and readers;
but the Parliament of Canada speaks for a more
generally and a more highly educated electorate
than the Parliament of Great Britain. With the
Parliament of Canada therefore such questions
had better be left.

5. For the decision of constitutional questions
arising between England and Canada the Judicial
Committee of the ^{Imperial} Privy Council is the Court of last re-
sort. Now the Privy Council has emphatically laid
it down in various cases that franchises created
by Imperial Acts, must, when attempted to be ex-
ercised in Canada, be exercised in subordination to
our Domestic law. *Parsons v. Queen Insurance
Company* 7 App. Ca. 96 and *The Bank of Toronto v.
Lamb* 15 App. Ca. 575 may be taken as types of
these decisions. The largest and most important
interests created by Imperial charters have been
held to be within the rule. Why should the
solitary interest of Copyright be without the rule?
To explain this anomaly it is suggested that
Copyright represents an interest of a higher kind
and more exalted character than any other com-
mercial interest. But does it? Will any one
pretend now to say that the invention in Canada
of the

(6)

of the telephone did not involve more refined re-
search and a higher intellectual process than the
compilation in England of a book merely describing
the patentee's invention and the mode of using it?
The invention itself is undeniably subject to the juris-
diction of Canada, but the circulation of the paste-
and-scissors description of the invention is a subject
of legislation too refined and exalted for the Parlia-
ment of Canada. Numerous other patents recently
registered with the Government of Canada might
be cited which not only in intrinsic importance but
as examples of the highest intellectual effort out-
weigh the great mass of writings annually admitted
in England to Copyright. Canadian Copyrights in
England would probably fare no better than Can-
adian inventions. When our Countryman Bell,
the inventor of the telephone, having patented it in
Canada took it to the patent office in England, he
was told that the English Government having pur-
chased the monopoly of the telegraph that must
be deemed to include a monopoly of the telephone
and of every other still undiscovered mode of
transmitting sound by electricity; and thus
one of the greatest inventions of this or of any
other age, reflecting lustre not alone upon Canada
but upon the British Empire, was refused a patent.
After such an example it seems superfluous for
the advocates of the Berne Convention to appeal
to Canada not to stand upon her technical
rights.

6. It is in effect suggested that without
Canada's assent to the Berne Convention, England
might bind Canada to enforce throughout the
Dominion the tax imposed upon Canadians by
the Berne Convention in favor of foreign copy-
right. Unless the history of the past 120 years
is a myth, England neither directly nor under
color of an international convention can bind
any of her self-governing colonies to pay a tax
to England herself much less to any other European
Country.

or to any particular citizen of either.

57

country). To create any tax, direct or indirect, binding upon the Dominion of Canada, an Act of the Parliament of Canada is clearly necessary. This was admitted on all hands in 1888, when a bill was introduced into the Dominion Parliament for the express purpose of assenting to the Berne Convention. Similarly in England, though in general Her Majesty can and does, without the sanction of Parliament, enter into treaties or conventions with foreign powers, yet where any tariff or impost is involved the treaty must have the sanction of Parliament. Accordingly it was held in England that the assent of Parliament to the Berne Convention must be had before that treaty could bind England; and the Imperial Act of 1886, 49 & 50 Vic. C. 33, was introduced and passed for that express purpose. The preamble of that Act expressly recites that "without the authority of Parliament ~~such~~ convention cannot be carried into effect in Her Majesty's Dominions and consequently Her Majesty cannot become a party thereto."

7. In Canada, the bill of assent never passed. When the bill of 1888 for this purpose was before Parliament, a copy having fallen into my hands, I saw clearly that there was some great misapprehension on the part of its Canadian promoters. I explained the consequences of such legislation to Mr. J. Ross Robertson of the Telegram, and to other Toronto journalists. Mr. Robertson instantly opened up the matter in the Telegram and made such effectual representations at Ottawa that the Ministry and the whole parliament were quite unanimous first in postponing, and finally in abandoning the entire measure.

8

8. In 1889 Sir John Thompson introduced and carried the Act 52 Vic. C. 29 which is now in force. Only so far as this act can be treated as an assent of Canada to the Berne Convention has Canada given any legal or binding assent

assent, and if this Act is for any reason invalid, then Canada has given no assent to the Convention. When any international convention affecting the Dominion is entered into by England it is the practice for the Government of Canada to promulgate the Convention by prefixing it to the next published volume of the Statutes of Canada. The Berne Convention has never, so far as I can find, been promulgated in this or in any other manner in the Dominion of Canada.

9. In the United States, in March 1891 the Simonds Copyright Act became law. It imposes all the conditions that Sir John Thompson's Act does but adds the very important restriction, that not only must the work be printed off in the United States, but that the type must be set there. So that while an English publisher can comply with the Canadian law by printing here from plates made in England, he must in order to comply with the United States law have the type all set up again in that country. It is pretended that by passing the Simonds Act the United States acceded to the Berne Convention, though that Act contravenes the foundation principles of the Convention which is enunciated in Article 2 as follows: "Authors of any countries of the Union or their lawful representatives shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives." In other words, under the Convention, the mechanical aspect of book-making is to count for nothing against the author of the book; whereas in the Simonds Act the mechanical production of the book in the United States constitutes the whole matter.

10. Not only does the United States claim to have acceded to the Berne Convention, the first principle of which it has set at naught, but in

1891
9
in such character as accessory, having been ad-
mitted to the privilege of copyright in England,
it claims to have thereby purchased a general
territorial right over the whole British Empire, in-
cluding the Dominion of Canada; and accordingly
it now calls upon the Home Government to coerce
Canada into throwing into the bargain the book-
market of the Dominion. Under this contention
a United States publisher may set up, print
and bind his book, in the United States and
then by virtue merely of having taken out copy-
right in England, obtain the exclusive control of
the Canadian market. This incident sufficiently
illustrates how our whole frame of self govern-
ment may be brought to the ground under
color of an international convention. As matters
are drifting the President of the United States
might claim to review and amend our domestic
legislation in any matter which he conceives
touches a bargain made by the United States
with England.

11. If the Diamonds Copyright-Act is a good
assent on the part of the United States to the
Berne Convention, Sir John Thompson's more liberal
Act of 1889 should be a sufficient assent on
the part of Canada to the same convention;
and Canada should give no other assent.

(Signed) Yours faithfully
J. Howard Hunter



Conf. Dubois

Department of Insurance, Ontario,

Parliament Buildings, Toronto, Canada, 22nd NOV 1892

Hon. Sir John Thompson B.C. M.P. &c &c
Minister of Justice
Parliament Building
Ottawa.

Dear Sir John: Having initiated here in 1888
the movement against the Berne Copyright
Convention, I have been requested by Mr. I.
Ross Robertson to read the recent docu-
ments in the case and give him some
notes thereon. I venture to send you a
copy of my notes as perhaps they
may be of some service in the gallant
fight you are making for Canadian
Copyright.

As you will see, I state the Board pronounced
that in refusing to sanction your Act
of 1889 England is in effect ^{through the Berne Convention} taxing Canada
for the benefit of certain privileged
Englishmen or aliens, and compelling
the officers of the self governing Colony
to impose and collect the tax. Under
no guise whatever can England consti-
tutionally lay an import upon Canada,
or use the machinery of the Canadian
Government for its collection. Historically

We know that Copyright is only a survival of a particular form of taxation which reached its most obnoxious form in the reigns of Elizabeth and James I. Under the name of Patents or monopolies this form of taxation was then resorted to for the benefit of the public exchequer, or of the Sovereign personally, or of particular privileged persons. Copyright still retains all the essential characteristics of the former patent or monopoly, and cannot possibly be divested of its character of tax. A Publisher in England, the United States, France, or Germany issues a book at \$5.00 which a Canadian publisher under your Act of 1889 could and would publish at \$1.25 to neither New Zealand, England, under color of the same Convention, compels Canada to prevent the manufacture of the book within her borders; and accordingly the Canadian buyer instead of buying a Canadian reprint or translation at \$1.25 is forced by England into paying \$5.00 thus obviously paying to the Englishman American, or alien ^{particular minority} other a tax amounting to a difference of prices of \$3.75 of England were to collect this tax for public purposes, - even for the General Good of the Empire, as for instance the maintenance of the Army or Navy, - every one would see the bearing of the question. It surely does not need matters that the tax is collected for the private gain of some privileged alien

under the plea of encouraging art or literature (3)
The English Defenders of Copyright have never
advised that Copyright is a tax — see citation
infra from Macaulay's Speech on Dalfour's
Copyright Bill (1841) — And, if it is a
tax levied by England upon Canada without
her consent, the Constitutional aspect of
the matter seems then greatly simpli-
fied.

Yours Very Respectfully

L. Mear Hunter

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



Library and Archives Canada / Bibliothèque nationale du Canada

This copy must be used for the purposes of research or private study only. Cette copie doit être utilisée uniquement à des fins de recherche ou d'études privées.
Bibliothèque nationale du Canada

RG.6 A3 Vol. 2 Copyright Case No. 889-92

"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 12s. 2½d.; but it is to be observed that of this sum £1,084 12s. 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 protection 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 26th 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 publishers 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 Carnarvon, 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 provisions 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 Government 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 foreign

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 misconception 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 inconsistency between her legislation and Lord Salisbury's declaration."

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 copyright 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 withdrawal 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 Convention."

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 possessions which was made to the United States by Lord Salisbury, 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 copy-right 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-

ees 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 detrimental 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-

aim 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 copy-right 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 correspond 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 1859, that a most respectful consideration would be given to any suggestions for the improvement of the Canadian Act of 1859 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.