

"Foreign reprints," say the Copyright Commission of 1876, "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 from official reports that during the 10 years ending 1876, the amount received from the whole of the 19 Colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2½*d.*, of which 1,084*l.* 13*s.* 3½*d.* was received from Canada, and that of those Colonies seven paid nothing whatever to the authors, whilst six, now and then, paid small sums amounting to a few shillings.*

Effect of
Act of 1847
on Canadian
publishers
Colonial
Laws
Validity
Act, 1865.
(28 & 29
Vict. c. 63.)

11. The Canadian publishers also had their grievance. They complained that the effect of the Act of 1847 was to throw the whole of the cheap re-printing business into the hands of United States publishers and printers.

12. In the meantime Imperial legislation took place which bears on the power of Canada to legislate for herself on the subject of copyright. In 1865 was passed the Colonial Laws Validity Act of that year, which declared by s. 2 that—

"Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative."

This enactment merely declared the previous law.

British
North
America
Act, 1867.
(30 & 31
Vict.)

13. In 1867 was passed the British North America Act of that year, which provided for the union of Canada, Nova Scotia, and New Brunswick, and the Government thereof. Section 91 of this Act specifies copyright among the subjects which are to be within the exclusive legislative authority of the Parliament of Canada as distinguished from the Legislatures of the several provinces.

Canadian
resolution of
1868.

14. To return to the complaints of the Canadian publishers. On the 15th of May 1868 the Senate of Canada passed a resolution urging "the justice and expediency of" extending the privileges granted by the Act of 1847, 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 the Dominion." This address was supported by the Finance Minister, the late Sir John Rose, in a memorandum addressed to the Secretary of State on the 1st of July 1868, in which he pointed out that the Canadian public was entirely dependent for its supply of reprints on the United States, to the serious injury of the British author, as not one-tenth part of the reprints entering Canada paid duty; that if Canadian publishers were allowed to reprint, they would supply not on their own market, but part of the United States market, to the great advantage of the author, as the royalty could be more easily and effectually collected than the import duty.

Canadian
proposals of
1869.

15. In 1869 the Canadian Government proposed that Canadian publishers should be allowed to reprint the books of English authors without their consent on paying them a royalty of 12½ per cent. on the published price.

It was alleged that by this 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 Customs. Objections, however, were made to the proposal and it was not carried out.†

Lord
Kimberley's
circular
letter of
1873.

16. On July 29, 1873, Lord Kimberley sent a circular Despatch to the Governors of the Colonies, together with a copy of a Despatch which he had addressed to the Governor-General of Canada on the question of copyright and the draft of a Bill to amend the Copyright Act of 1842, and asked for suggestions on the Bill. Clause 7 of this Bill contained provisions for republication of copyright books in a colony under a license. The clause is set out in full in Appendix A.

Canadian
comments on
circular
letter of
1873.

17. In January 1874, the late Mr. Mackenzie, then Premier of Canada, submitted, with the concurrence of the Canadian Privy Council, the following report on the draft Bill accompanying Lord Kimberley's circular letter:—

"1. As regards the extending to Colonial authors the privileges enjoyed by authors under the Imperial Copyright Act, there seems to be no difficulty in the way. The

* Report, par. 193.

† Report, par. 196.