COPYRIGHT IN CANADA.

Succinct History of Recent Copyright Legislation at Ottawa.

ACTUAL WORKING OF THE LAW.

Standing of British and American Copyrighted Works in the Dominion of Canada—What the Association Has Done to Benefit Canadian Publishing Interests Canada's Rights Under the B.N.A. Act.

In considering the question of copyright in Canada it will be well to note the following main points:

I. That copyrights secured in Great Britain, or in any British possession, are nominally copyrights in Canada also. Such works cannot be printed in Canada without an arrangement with the author, but American editions of the same may be imported.

2. That to secure actual copyright in Canada the work must be printed and published here, when American editions of such works cannot legally be imported. English editions or British copyright works may, however, be imported, even though the said works be printed and published in Canada.

A short resume of the copyright agitation of the last few years may next be given.

On May 3, 1888, in the House of Commons at Ottawa, a Bill was introduced to amend the Copyright Act of Canada, and read a first time. The Bill was given a second reading on the following day. This Bill was evidently received from London at the last moment, almost immediately before introduction, and introduced without the knowledge of some members of the Cabinet, as only a few days before an assurance had been given that no new copyright legislation was contemplated that session. Telegraphic reports of the introduction of the Bill were read with astonishment and dismay by members of the book and publishing trades throughout the Dominion. A hurriedly convened meeting was held in Toronto, at which prompt action was decided upon. The Government and many members of the House were deluged with telegrams, asking for delay before the third reading, being followed two days later by a deputation to Ottawa of those whose interests were more immediately affected, and with the gratifying result that the Prime Minister stated to the House that the copyright bill was included with others that would be withdrawn for the session.

The danger being thus averted for the moment, time was given for a further examination of the proposed amendment. The Canadian Copyright Association was formed, and vigorous steps taken to impress on the country and the government the irreparable injury that would be inflicted upon important Canadian interests should the proposed Bill be adopted and passed into law. It was shown that the Bill was introduced in order to include Canada within the list of countries accepting the Berne International Copyright Convention. The following were among the arguments advanced against accepting the Bill:

Under the Bill all reprints of British works from the United States would be excluded. The British publisher therefore could and undoubtedly would supply this market direct. This excluding of reprints from the United States would be the more keenly felt, as the Bill was retroactive, including every book upon which copyright had not been granted in Canada at the time of the passing of the Act. But the manufacturers of books and their employes would have suffered worst of all, in this way. At present the book must be made in Canada, in order to secure exclusive Canadian copyright and exclude the American editions. But under the proposed Act, no American editions could have been imported; therefore there would no longer be any necessity for reprinting the book in Canada, thus affecting all interested in book manufacturing.

A petition embodying these arguments was prepared, signed by nearly every book dealer and publisher in the Dominion, as well as by representatives of the printing, bookbinding, paper making and other trades connected with book making. The petition pointed out also certain defects in the present law. Under our present law United States authors (by publishing simultaneously in England and the United States), are enabled to secure copyright in Canada, without having to manufacture in Canada, although Canadians can not secure copyright in the United States on any terms. Again, under the operation of the present Act, the people of Canada are compelled to buy books by British authors manufactured in the United States, simply because the British publisher or author absolutely refuses to sell the right in Canada, or more often still throws in the Canadian market when closing the bargain with the publisher in New York for the American market.

We in Canada are thus placed in the humiliating position of having to stand by, with idle hands, and see our market supplied by a foreign publisher. Talk of patriotism! Ye gods, but does not the action of the British publisher in this respect smack too much of the dollar and cent variety!

The effect of these and other arguments was that the Government gave the matter earnest and careful consideration, and finally introduced a bill amending the present Copyright Act, on the lines suggested by the Canadian Copyright Association.

Briefly, this new Copyright Act enacts as follows:

1. Any person domiciled in Canada or in any British possession, or any citizen of a country having a copyright treaty with the United Kingdom in which Canada is included, may obtain copyright for any literary, musical or artistic work, for twenty-eight years.

2. The condition for obtaining copyright shall be that the said work, before or simultaneously with the first publication or production elsewhere, be registered at Ottawa by the author or legal representative; and further that the work shall be printed and published or produced in Canada within one month after publication elsewhere.

3. If the author entitled to copyright under this Act fails to take advantage of its provisions, the Commissioner of Copyrights will grant a license to produce the work to any applicant (no exclusive right is granted) who will agree to pay the author 10 per cent. of the retail price of each copy produced.

4. This royalty is to be collected by the Department of Inland Revenue, under regulations approved by the Governor in Council.

5. So soon as a license issues for a certain work, importation of that work will be prohibited; with the important exception (entirely in favor of the British publisher and author) that copies of the which have been lawfully printed and lished in the United Kingdom may s imported and sold in Canada, side b and in competition with the edition t printed under authority of license.

6. The Act is not retroactive. It to apply to existing copyrights, but o new works issued after the coming force of this Act.

This bill passed both House of Com and Senate, and was among the bil sented to by the Governor General o 2nd of May, 1889. As in 1872 a bi specting copyright had been reserved never received the approval of the Im Government, it was known that this b 1889 would not be assented to unl clause was attached stating that the was not to go into force except by clamation of the Governor-General. a clause was accordingly added, an Act as assented to is to be found i Statutes of Canada, volume for 1889 Vic. Cap. 29.) Nearly five years passed since this Act received the ass the Governor-General, but the proc tion giving it effect has not yet been is Why? Is it because the Imperial Go ment refuses its assent?

Now, assent can only be refused claiming that the Canadian Parliamen no right to pass a Copyright Act would override Imperial copyright le tion, as would be done by the adopti this Act. It is acknowledged that th point that is open to argument, bu evidence seems all in our favor.

Previous to 1878, the Governor-Gen instructions expressly required not to assent to various classe bills, such as those relating to div or that made paper money legal te etc. But the friction caused by this a soon became very great, and in 1878 t instructions were revised, Sir Mi Hicks Beach, the then colonial secr of state, writing that the clause in former royal instructions requiring ce classes of bills to be reserved was om "because Her Majesty's govern thought it undesirable that they sh contain anything which could be i preted as limiting or defining the l lative powers conferred in 1867 on Dominion parliament."

Good! And certainly nothing coul more explicit or show plainer that Imperial government of that day was pared to give Canada as full a sha making her own laws as possible.

What then are these legislative po conferred in 1867 on the Dominion p ment? Section 91 of the British N America Act is very plain on the poin "It shall be lawful for the Quee and with the advice and consent o Senate and House of Commons, to laws . .. . and for greater cert . . . . the exclusive legislative auth of the parliament of Canada exte all matters coming within the clas subjects hereinafter enumerated, th to say:—

(Here follows 29 clauses, among being)

3. Taxation.
14. Currency.
15. Banking.
22. Patents of Invention and Disco
23. Copyrights.
26. Marriage and Divorce.

It is thus seen that the Parliamen Canada has full authority to legisla copyright, according to the B.N.A. as well as for patents, marriage an vorce, etc. Yet when an act on copy is passed in 1889, the Imperial Go ment refuses assent to it, on the plea it conflicts with Imperial interests.