

sale in either country, and it is not strange that authors should complain bitterly of the literary piracy which is now said to have become a custom of the publishing trade. To the honor of English publishers we believe it to be correct to say that, in this respect, they are better than their brethren in the United States, but they are not entirely without reproach. To the credit of both Americans and Englishmen again be it said, that until quite recently the honest etiquette of an honorable trade was sufficient to prevent the necessity of considering means by which literary piracy should be checked. That necessity has arisen now, and the problem presents itself to a practical mind in two different aspects. In the first place, it is proper to inquire what the law upon the subject actually is at the present time; and in the second, it may not be improper to consider any amendments which would be likely to prove acceptable to both nations as a whole, and which are sanctioned by the principles of justice.

The English law upon the subject, which must be our chief concern, is, beyond question, in a very doubtful state; even Mr. Shortt, in his admirable work upon the law relating to works of literature and art, being unable to express a clear opinion as to its positive condition. In showing us this he does not, however, fail to indicate the fact that the difficulty has presented itself to judges upon several occasions, and that they have found it as difficult of solution as any legal writer. With a preliminary confession of obligation to the distinguished author, to whom reference has been made, it may be well to trace the history of some of the cases which have been decided with regard to this vexed question. In *Cocks v. Purday*, 5 C. B. 860, it was held that an alien residing abroad would acquire copyright in any work first published by him in this country as author, or as author's assignee, on the ground that copyright is purely personal property, and the same doctrine was afterward upheld in *Boosey v. Davidson*, 13 Q. B. 257, with regard to a musical composition by a foreigner. But in *Boosey v. Purday*, 4 Exch. 145, the Court of Exchequer refused to follow the above view, and expressed a precisely contrary opinion, Chief Baron Pollock saying (*inter alia*) that the Legislature must be considered *prima facie* to mean to legislate for its own subjects only. Finally, in the case of

*Boosey v. Jeffreys*, 4 H. of L. Cas. 843, all the judges were called upon to give their views upon a similar point. Four (Barons Alderson and Parke, Chief Baron Pollock, and Chief Justice Jervis) were of one opinion, that a foreigner must be a resident of England at the time of the publication of his work there if he wished to secure the copyright, and Lord Cranworth, Lord Brougham, and Lord St. Leonards agreed with them; on the other hand six judges (Justices Williams, Erle, Wightman, Maule, Coleridge and Crompton) were of the contrary opinion. The Law Lords rested their judgment upon the argument of Chief Baron Pollock, in *Boosey v. Purday*, which has already been quoted. The case was again questioned in *Routledge v. Low*, L. Rep. 3 H. of L. Cas. 100; 18 L. T. Rep. N. S. 874, where it was held that the real condition of obtaining the advantage of copyright was the first publication of a work in the United Kingdom; and the view taken by Lord Cairns and Lord Westbury in this case is supported by the terms of the naturalization act of 1870, sect. 2 of which cannot be construed so as not to include copyright. From the statement of English law which has been made, several inferences are obvious. Any author who chooses to resort to the United Kingdom, or to any part of the British dominions, at the time when he is publishing any work for the first time, acquires copyright of that work within the sphere of the English law, and, upon going through certain formalities of registration, and the like, is entitled to put the law into operation against any persons who infringe upon his rights. The great essential is that the first publication should be in the United Kingdom, and unless this condition be fulfilled an English author is in no better position than a foreigner. It is also obvious that this state of the law is not such as to commend itself to English authors, who would be better pleased if they were enabled to secure the copyright of their works in America and England at the same time. This, at present, it is not possible for them to do, nor will it become so unless, under the provisions of the International Copyright Act, a reciprocal arrangement is made with the United States by which we shall confer on American authors the same privileges as we confer upon our own, and they in their turn, shall protect the property of Eng-