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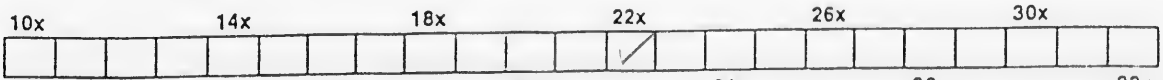

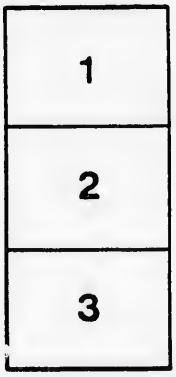

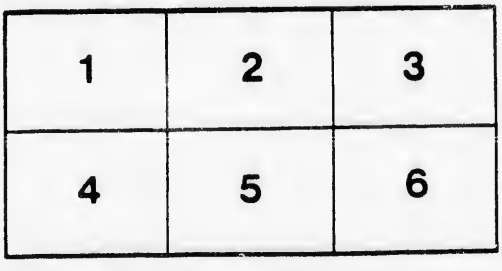

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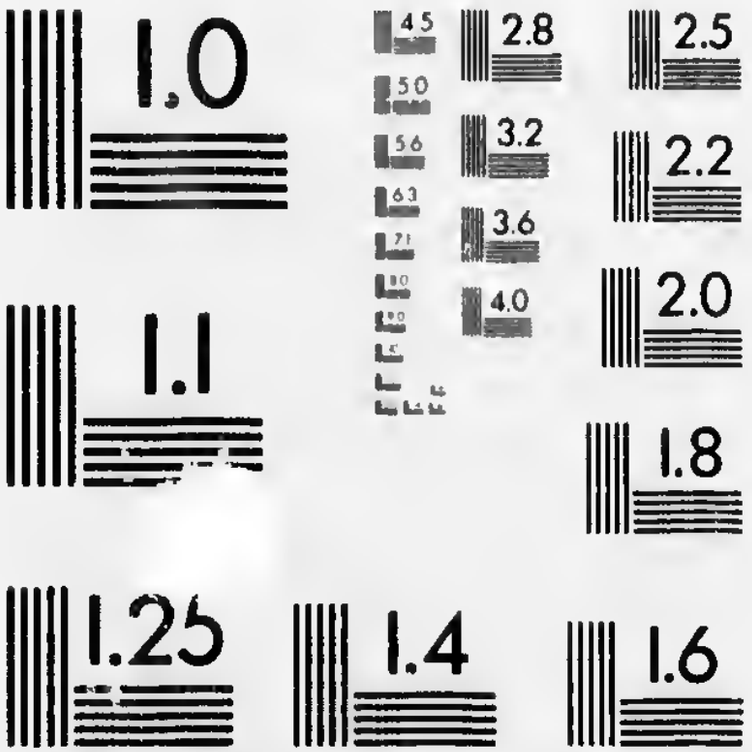

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THE QUESTION DISCUSSED PRACTICALLY AND CONSTITUTIONALLY.

A series of articles reprinted from THE TORONTO EVENING TELEGRAM, October, 1879.

TORONTO
J. ROSS ROBERTSON, S. W. CORNER KING AND BAY STREETS.
1879.

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INTRODUCTION.

THE subject of Copyright is one that is little understood. It rarely attracts the attention of the public at large. It can hardly be made interesting in the ordinary sense of the term under any circumstances. Yet it is believed that the concession to Canada of the right to exclusive jurisdiction throughout the Dominion as regards Copyright, would not only be an act of simple justice, but to Canada a measure of sound policy, one calculated largely to increase the supply of cheap and popular literature; and to assist and to encourage a most important branch of Canadian industry—the printing and publishing trade—without doing any injustice to the British author. The accompanying chapters are intended to present in a concise form the argument in favour of the right demanded, and in the hope that, by their perusal, members of the Canadian Parliament and conductors of the Canadian Press may be induced to contribute their powerful aid in securing the legislative changes necessary to the attainment of the desired object.

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CHAPTER I

WHAT IS COPYRIGHT.

The announcement that, as the result of the Imperial Copyright Commission, a new Copyright Law has been submitted to—although not yet passed by—the British Parliament, has, naturally enough, suggested an enquiry as to how Canada and Canadian publishers will be affected by the new statute. We shall discuss that question on a future occasion. Meantime, and in order to clear the way for dealing practically and intelligibly with any matters of interest such a discussion may raise, we propose, in a few articles, to explain the main features and principles hitherto distinguishing the Copyright Law of Great Britain as it affects Canada, to point out the unfair position in which the Canadian publisher is placed in relation to the publishers of the United States, and to show the grounds upon which Canada has, in our opinion, an undoubted right to ask from Great Britain the exclusive control of her own copyright legislation.

In the first place, what is copyright according to British law? In Great Britain, as in all civilized countries, a limited degree of protection to the authors or owners of literary productions, against piracy, is freely admitted to be consistent both with public policy and justice. On the other hand, the right of the Legislature to decide absolutely as to the extent or period of the protection accorded is equally unquestioned. The object of the Copyright Law is to encourage persons to devote themselves to the production of works of literature and art, but not to create a monopoly in behalf either of intellect or commerce, of authors or publishers. It was originally—and until a comparatively late period—assumed, that copyright was an inherent and perpetual right sustainable under the common law. The Copyright Act of Queen Anne's reign (8 Anne, c. 19), however, proceeded most unmistakably, as it seemed, upon the contrary principle, and to give copyright only a temporary and terminable character. The Act of Anne provided that authors (or their assigns) of works published before the year 1710 should be entitled to a copyright of twenty-one years "AND NO LONGER," and authors (or their assigns) of works published after that date to a copyright of fourteen years "AND NO LONGER" to commence from the day of first publication. Nevertheless, for nearly seventy years after the passing of the Act of Anne, the seemingly clear and express declaration that copyright should exist only in the terms of the statute, and for the periods therein named, was repeatedly challenged and even judicially overruled. But, in 1774, the House of Lords, on appeal, decided that, whether copyright in a published work did or did not exist in common law before the passing of the statute of Anne, that statute had abrogated any such right, and that no author had any property, personally or by his assigns, in his works, for a longer period than the statute prescribed. This decision has, ever since 1774, been recognized as a correct interpretation of the Act of Parliament, the principles of which have been embodied in all subsequent British copyright legislation. It is necessary, then, to bear in mind, as a very important element in the discussion upon which we are entering, that by the highest Imperial judicial authority it has been most distinctly laid dows :

(1) That an author has no right in his works other than those which the law expressly and by statute confers ; and,

(2) That whatever rights are granted or guaranteed by statute are subject to any limitation, or even to abrogation by law, in the interest of the public at large.

It is hard, indeed on examining the clauses of Queen Anne's Act, to conceive how the Courts could ever have come to a different conclusion ; for, among other arbitrary methods of dealing with an author's rights, that statute contained a provision "that "*any person who considered the price of a* "*book too high*, might bring the matter before "the Archbishop of Canterbury, the Lord "Chancellor or Lord Keeper, the Bishop of "London, the Chief Judge of the King's "Bench, the Chief Judge of the Common "Pleas, the Chief Baron of the Exchequer, "the Vice-Chancellors of the English Uni-"versities (Oxford and Cambridge), the "Lord President of the Sessions, the Lord "Justice General, or the Rector of the Col-"lege of Edinburgh, *one or more of whom* "might examine into the cause of complaint, "*and settle the price of the book as seemed*

"*just*, and make the bookseller or printer "pay all the costs of the person making the "complaint."

Could anything more conclusively demonstrate the spirit and intention of the framers of the Act of Anne, or more incontrovertibly prove that, thenceforth, the grand purpose of British copyright legislation was to consult—not the supposed rights of authors or their assigns, but the public welfare, and the public welfare alone?

Subsequent British legislation has affirmed and reaffirmed this principle. For instance, the Act of 1842 (5 and 6 Vict., cap. 45), which has been till now, with some subsequent amendments, the law of the United Kingdom, by its 5th section empowers the Privy Council to license the publication of any books which the proprietor of the copyright refuses to publish, after the death of the author. But perhaps the most direct and palpable proof of the absolute control exercised by the Imperial Legislature over copyright is to be found in the Imperial Act of 1847 (10 and 11 Vict., cap. 95). We shall have occasion to notice this Act again in connection with other branches of the subject, but do so in the present connection merely to point out that, in certain cases, it actually recognizes and gives a legal status to unauthorized foreign reprints of British copyright works, in return for a percentage fixed by local legislation, payable to the copyright owner. The Act provides:—"That in "case the Legislature or proper legislative "authorities in any British possession shall "be disposed to make due provision for se- "curing or protecting the rights of British "authors in such possession, and shall pass "an Act or make an Ordinance for that pur- "pose, and shall transmit the same in a "proper manner to the Secretary of State, "in order that it may be submitted to Her "Majesty, and in case Her Majesty shall be "of opinion that such Act or Ordinance is "sufficient for securing to British authors "reasonable protection within such posses- "sion, it shall be lawful for Her Majesty, if "she think fit so to do, to express Her royal "approval of such Act or Ordinance, and "thereupon to issue an Order in Council "declaring that so long as the provisions of "such Act or Ordinance continue in force "within such colony, the prohibitions con- "tained in the aforesaid Act (Imperial Copy- "right Act) hereinbefore recited, and any "prohibitions contained in the said Act or "in any other Acts against the importing, "selling, etc., of foreign reprints of books "first composed, written, or published in "the United Kingdom, and entitled to "copyright therein, shall be suspended so "far as regards such colony." Every American reprint, therefore, sold in Canada to-day by virtue of the foregoing enactment, is a witness to the spirit of British copyright legislation so far as the rights of authors are concerned.

We have been careful to bring out thus clearly and unmistakably the relations of authors or copyright holders to Imperial law, in order that those we are addressing may, once for all, dismiss from their minds the notion that we are assailing any vested interests in Great Britain or elsewhere. It is of the very essence of the case we propose to present that copyright is the creature of municipal regulations, and of such regulations alone its duration, extent and nature being interminable by circumstances of place, condition and public policy. The British author, or any author obtaining copyright under the Imperial statute, has no inherent or inalienable rights appertaining to him in Great Britain; *a fortiori*, he can have none in Canada. With the proof we have cited, the proposition that authors or their assigns have under Imperial law no rights but those which that law has conferred, and which that law may, within the scope of its jurisdiction, limit, enlarge, or take away altogether, must be regarded as unimpeachable.

CHAPTER II.

BRITISH COPYRIGHT LEGISLATION.

What copyright means, and on what principle copyright is conferred under British law, we have explained in a former article. We now propose to notice the extent and scope of past British legislation in relation to copyright. It may be convenient, in dealing with this question throughout, to regard our remarks as applicable in the present instance, simply to the copyrighting of published works, as, practically, they alone are involved in the pending controversy. The statute of 1710 (8 Anne, c. 19) has been already referred to as the basis of all subsequent Imperial copyright legislation. It provided that a copyright in works published before 1710 should endure for twenty years and no longer, and in works published subsequent to 1710 for fourteen years and no longer. This statute, and all the Acts in amendment thereof previous to 1814, were limited in their operation to the British Dominions *in Europe*. But, in an amending Act passed in 1814 (54 Geo. III., c. 156), the words "in Europe" were omitted. From that time, consequently, the Imperial Copyright Acts extended to the whole of the British dominions, and these are defined by the Act of 1842 (5 and 6 Vic., c. 45) to be and include "all parts of the United "Kingdom of Great Britain and Ire-

"land, the islands of Guernsey and Jer-
"sey, all parts of the East and West In-
"dies, and all the colonies, settlements and
"possessions of the Crown which are now,
"or may hereafter be, acquired." It will be seen, therefore, that the rights of British authors to copyright were originally limited to the United Kingdom and the comparatively few possessions of the Crown in Europe, and that they did not extend, as part of the inherent rights or privileges of British subjects, concurrently with discovery, conquest, or colonization, but were extended —as they had previously been conferred within narrow territorial limits—by Imperial statute. Thus we find that, prior to the year 1814, a publisher in Canada was free to reprint any British copyrighted work he pleased, while to-day he is subject, under Imperial Act, to heavy penalties if he reprints or publishes any such work without the consent of the author or his representative.

The Imperial Act of 1842 (5 and 6 Vic., c. 45) extended the period for which copyright should be granted to the lifetime of the author of every book published during the author's life, and to a further period of seven years, commencing at the time of his death; or to a term of forty-two years altogether from the first publication of the book, should that number of years not have elapsed at the end of seven years from the death of the author; or if the book be published after his death, to the term of forty-two years from the first publication thereof. The Act provides a remedy by action at law for any infringement of an author's rights. By the 15th section it is enacted, "That if any person shall, in "any part of the British dominions, * * "* * print or cause to be printed, "either for sale or exportation, any book in "which there shall be subsisting copyright, "without the consent in writing of the pro-"prietor thereof; or shall import for sale or "hire any such book so having been unlaw-"fully printed from parts beyond the sea, * "* * * * * he shall be liable to a special "action on the case, at the suit of such pro-"prietor, in any court of record in that part "of the British dominions in which the "offence shall be committed." Then by the 17th section it is further provided that no person except the proprietor of the copyright shall import into the British dominions, for sale or hire, any book first composed, etc., within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture, and a fine of ten pounds and double the value of the books so imported. Customs officers are authorized to seize all books so infringing upon the copyright laws.

The intentions of British copyright legislation, while sufficient protection has been thrown around the authors of copyrighted works, have been in another sense of the broadest and most liberal character. Lord Cairns, in the case of Routledge v. Low, thus described the object of copyright:—"The "intention of the Act is to obtain a benefit "for the people of this country by the pub-"lication to them of works of learning, of "utility and of amusement. This benefit is "obtained, in the opinion of the Legisla-"ture, by offering a certain amount of pro-"tection to the author, thereby inducing him "to publish his works here. This is or may "be a benefit to the authors, but it is a "benefit given, not for the sake of the au-"thor of the work, but for the sake of those "to whom the work is communicated. The "aim of the Legislature is to increase the "common stock of the literature of the "country; and if that stock can be increased "by the publication for the first time here of "a new and valuable work composed by an "alien who has never been in the country, I "see nothing in the wording of the Act which "should prevent, and everything in the pro-"fessed object of the Act, and in its wide "and general provisions, which should en-"title such a person to the protection of the "Act, in return and compensation for the "addition he has made to the literature of "the country."

By the judgment of the Lords in Routledge v. Low, in connection with which case Lord Cairns expressed the views just quoted, the question was decided in the affirmative whether an alien resident at the time of first publication (in the United Kingdom) in any part of the British dominions could secure the benefits of the Imperial Copyright Act. Miss Cummings, an American authoress temporarily domiciled at Montreal, secured the copyright in London of a work published there, and which became the subject of litigation between the two well-known publishing firms whose names appear above.

It was in the spirit of Lord Cairns' judgment that the Government of Great Britain secured the passing of the Acts known as the 1 and 2 Vict., c. 59; the 7 and 8 Vict., c. 12; and 15 Vict., c. 12, which provide that the authors of any foreign countries may (without domicile) obtain all the benefits of the Imperial Copyright Act, on condition that similar privileges are granted by the countries of which such foreign authors are subjects to the subjects of Great Britain. Not a few countries have, since the first of the above Acts was passed, taken advantage of this legislation to secure for their subjects the benefits of the British book market.

Among others have been, at various times, France, Prussia, Saxony, some dozen small German States, Belgium, Spain and Sardinia. While any infringements of the Imperial Copyright Act in Canada would be visited with heavy penalties, and a Canadian copyright has had no force in the United Kingdom, an author who happened to be a subject of the High and Mighty Prince rulingover Schwarzburg-Rudolstadt or Schwarzburg-Sonderhauson might have the free run of the Dominion of Canada as a part of Her Majesty's possessions. The Imperial Act of 1847, referred to in a former article as giving power to the Crown to suspend by Order-in-Council in favour of foreign reprints of British copyright works, the Act of 1842, was also passed with the best and most liberal intentions. American reprints were the only cheap editions of a large class of British works adapted to the Canadian market. The attempts to suppress them in regard for the rights of the British copyright owner were very partially successful. The publishing trade of Canada was as yet undeveloped. The people of Canada craved cheap literature, and it was the design of the Act of 1847 to provide a means by which that craving might be satisfied. But it is our design to show, that, on the very same principles that have led the British Parliament to pass International Copyright Acts and such measures as the Act of 1847, Imperial authority is bound to emancipate Canada from the thraldom of Imperial legislation, and to give the Dominion the opportunity of itself carrying out, in the spirit which has distinguished the Acts of British Parliaments and the decisions of British judges, the great work of supplying its people with the literature most adapted to their means, their tastes, and their necessities.

CHAPTER III.

COPYRIGHT LEGISLATION IN CANADA.

Having, in previous articles, outlined the general principles and scope of British copyright legislation, we now propose to review briefly the history of copyright legislation in Canada. The first Copyright Act of the Province of Canada was passed in 1841, immediately after the union. It is known as 4 and 5 Victoria, c. 61. It gave a local copyright to any author resident in the Province, but contained no express stipulation that the work copyrighted should be printed in Canada. As previously remarked, the publishing trade in Canada was at that time in its infancy, Imperial revenue officers still exercised certain functions in the Province—one of which was the occasional seizure of American reprints of British copyright works—and the idea that no market but the one in Paternoster Row could, or should, supply Canadians with sound and cheap literature, was dominant in Downing-street.

This is curiously brought out by a correspondence extending over a considerable period between the years 1841 and 1847. It is evident that the operation of the Imperial Copyright Act of 1842 was extremely distasteful to the people of Canada. On the 23rd June, 1846, Mr. Gladstone, then Colonial Secretary, wrote to the Governor-General as follows :—"With regard to your "remarks on the operation of the law of "copyright, I have to acquaint you that I "am at present in communication with "another department of Her Majesty's Gov-"ernment on this subject (the Board of "Trade), and that I shall be careful to "apprise you of the result. I cannot, how-"ever, lead you to anticipate that this cor-"respondence will enable Her Majesty's "Government to announce to you their in-"tention to propose any alteration in the "statute (the Act of 1842), and I must "take this opportunity of explaining to you "that the present stringent provisions of "the law did not proceed originally from any "proposal from Her Majesty's Government, "but were adopted by Parliament, on the "suggestion of an individual member of the "House of Commons, in deference to a strong "public sentiment and to the arguments by "which it was supported."

The last paragraph is easily interpreted. The powerful publishing interest was bent on securing a monopoly of the book trade of the whole empire; a ready agent was found in the person of some private member of the House; the piratical aggressiveness of American book firms supplied a final argument in favour of a defensive measure, and on a question few people outside the trade really understood, victory for monopoly was easy.

However, in 1847, as we have already seen, the Imperial Parliament, in deference to the urgent representations made from Canada, did pass an Act providing for the suspension, on terms prescribed, of the Imperial Copyright Act in favour of foreign reprints of British copyright works in any British possession whose Legislature should make due provision for the compensation of the British author. Accordingly the Canadian Parliament proceeded to pass a law enacting that the privilege of securing copyright in Canada should be granted to any British subject residing in the United Kingdom on condition that the work copyrighted should be printed and published in Canada. This Act, while it did not directly touch the question of foreign reprint importations, in

effect held out an inducement to the British author to secure a local copyright as the most simple means of excluding foreign reprints by the publication of cheap competitive Canadian editions, and giving the book trade of Canada a direct interest in the exclusion of the foreign article. These are some of the main features of the Canadian Copyright Law of 1875, but they met with no favour in the Downing-street of 1847.

In the despatch to the Governor-General is enclosed the report to the Colonial Office of the Board of Trade on the Canadi. Act just referred to. The report contains the following passages:—"Looking to the cir-"cumstances under which the Act (Impe-"rial Act, 1847) was passed, their lordships "are of opinion that the arrangement effect-"ed by it was in the nature of a compro-"mise between the claims of the colonists "on the one hand and the rights of British "authors on the other; the intention be-"ing that the colonists should be allowed "to supply themselves with the cheap "editions of British works which are re-"produced in the United States, on the "condition of making to the author some "compensation for the injury inflicted on "him by a gratuitous appropriation of his "property, and it was on this understand-"ing that the Act received the assent of "Parliament without encountering opposition "from the advocates of the rights of authors. "The Acts which have been passed by the "Legislatures of Nova Scotia and New Bruns-"wick are strictly in accordance with this un-"derstanding, but the Canadian Act now "under discussion is framed upon a totally "different principle. Its effect, were it fol-"lowed up by an Order-in-Council, would "simply be to take away from British "authors, unless they republish in the "colony, the protection which they now en-"joy, without making them any compensa-"tion for the injury. My Lords are there-"fore of opinion that to issue such an Order "might expose the Government to a charge "of breaking faith with the authors. They "are the more reluctant to recommend such "a step being taken because they do not "perceive the justice of the distinction be-"tween works printed and published in "England only and works reprinted and "published in Canada. *So far as they have "means of judging, they are of opinion that "an edition for the coloniat market could "be printed more cheaply here than in "Canada.* To protect works reprinted there, "and to leave others unprotected, would "therefore fail to secure the advantages "which are desired on all hands—namely, cheap publications of a legitimate character for the colonies, and the repression of "the illicit importations of pirated editions "*My Lords would gladly co-operate in any "measure that could be devised for supply-"ing the colonies with the cheapest works,* "and would see no objection to making the "author's copyright depend upon his trans-"mitting them, could a plan for compelling "him to do so be devised, but they do not "think the obligation to reprint in the colony "would have any tendency to effect this "object."

The paternal tone of "My Lords" grates strangely on Canadian ears to-day. But in connection with our present discussion, the contents of this report are valuable and important. The object of the Imperial Act of 1847 was to give cheap (foreign reprinted) literature to the "colonists," while providing for the compensation of the British authors. Well, no Canadian publisher has ever asked for more than the power to reprint cheap literature on condition that a fair compensation was secured to the British author. In the next place, what "My Lords" failed to perceive in regard to the reprinting and publishing in Canada, as distinguished from printing and publishing in the United Kingdom, has been perceived since and "crystallized into law." Then, too, a powerful argument from the Downing-street point of view apparently was, that Canadians could not produce books so cheaply as they could import them. It is no longer possible to hold that opinion, for Canadians are able, as every-day experience shows, to print editions of popular works more cheaply than any sold either in Great Britain or the United States. Then, finally, we have the assurance that "My Lords" would not only gladly co-operate with the "colonists" in any measure for supplying cheap literature, but even deal more or less arbitrarily with the authors could they see a practicable method of attaining the desired end. If the Imperial Government will only act now in the spirit of the admissions implied in their despatch of over thirty years ago, we shall soon see an end to existing difficulties.

Some delay followed the refusal of the Imperial Government to sanction the Canadian Act. Meantime, the impossibility of excluding American reprints, and the necessity of obtaining a cheaper literature than the British market supplied, became daily more and more obvious. Accordingly in 1850 an Act was passed by the Canadian Legislature (13 and 14 Vict., c. 6) providing for the collection of an authors' tax on foreign reprints of British copyright works coming into Canada, whenever the author or his representatives registered his copyright with the Canadian Customs authorities. The Act reads

as follows :—"It shall be lawful for the "Governor in Council to impose upon books "imported into Canada, and being copies "printed or reprinted in any other country "than the United Kingdom, of books first "composed or written, printed or published "in the United Kingdom, of which the copy-"right shall be still subsisting, and with re-"gard to which the notice to the Commis-"sioner of Customs required by any Act of "the Parliament of the United Kingdom in "that behalf shall have been given, an *ad* "*valorem* duty not exceeding twenty per "cent., and from time to time to establish "such regulations and conditions as may be "consistent with any Act of the Parliament "of the United Kingdom then in force, as he "may deem requisite and equitable with re-"gard to the admission of such books, and to "the distribution of such duty to or among "the parties beneficially interested in the "copyright, and such duty shall be collected "in like manner as duties of Customs, "and under the provisions of the Act "relating to such duties." The duty fixed by the Order-in-Council under the Act was 12½ per cent. *ad valorem*. The Act was approved by the Imperial Government, an Imperial Order-in-Council was issued accordingly, and from that time forward American reprints were virtually free of the Canadian market. In 1868 it was extended to the whole Dominion. We shallallude on another occasion to the effect of this legislation on the book trade of Canada; but what we have in this connection to point out is how completely it overrode the Imperial Copyright Law in the interest of a supply of popular and cheap literature, and how powerful an argument it affords for removing every barrier in the way of that grand desideratum.

CHAPTER IV.

CANADIAN AND UNITED STATES COPYRIGHT LEGISLATION CONTRASTED.

In the British North America Act of 1867, popularly known as the Confederation Act, "copyright" was expressly mentioned as one of the matters over which the Parliament of Canada was to have "exclusive legislative authority." But this term has been held to apply only to the relations of the Dominion to the several Provinces, and not to supersede or abrogate the Imperial Copyright Act of 1842. The copyright legislation of the new Parliament of Canada in 1868 was, virtually, but a continuation of the laws of the old Province. Meantime the book-publishing trade of Canada was assuming very extensive proportions, and so the production of Canadian printed works, in form and price calculated to supply the home demand and to compete with foreign reprints, increased, and the hardships of the situation became more severely felt. It was urged, reasonably enough, that Canadian publishers should not be placed at a disadvantage in regard to American competition; that if pirated reprints of British works were legally saleable in Canada on paying a small import duty, it was no more than just that Canadian reprints, on which Canadian publishers were willing to pay the same duty, should also be legally saleable. Accordingly, in 1872, the Honourable Senator Ryan, with the assent of the Government of that day, and with the unanimous approval of both Houses, carried a measure through the Dominion Parliament authorizing Canadian publishers to print and publish British copyrighted works on giving bonds securing to the authors or their assigns an *ad valorem* duty of 12½ per cent. The effect of this Act would have been to put the Canadian publisher on a precisely similar footing with his American rival.

But the Act was undoubtedly *ultra vires* in the absence of express sanction by Imperial legislation. The Act of 1847, under which Canada had been authorized to admit foreign reprints, applied to foreign reprints alone, not to Colonial reprints. The Act of 1872 was, therefore, very properly reserved for the signification of Her Majesty's pleasure. Nothing more was heard of it until the two years during which action might be taken by the Imperial Government to give it validity had nearly expired. However, in the session of 1874 an address to the Crown, moved by Hon. Senator Ryan in the Upper House and Mr. Dymond, M.P. for North York, in the Commons, was carried, praying His Excellency the Governor-General "to "be pleased to convey to Her Majesty's "Principal Secretary of State for the Colo-"nies the expression of the respectful "anxiety of this House that a Bill, intituled "'An Act to amend the Act respecting "Copyrights,' passed in the session of 1872, "and reserved on the 14th of June of that "year for the signification of Her Majesty's "pleasure thereon, should not be allowed "to expire by the expiry of the two years' "limitation specified in the 57th section of the "'British North America Act, 1867,'" and "further to assure His Excellency that im-"portant interests in this Dominion are "prejudiced by the absence of legislation "such as this Bill contemplates." The result was a correspondence between Lord Carnarvon, the Colonial Secretary, and the late Government of Canada, the views of the Imperial Government being expressed in a despatch from Lord Carnarvon to the

Governor-General, dated June 15, 1874, in which His Lordship argued—(1) That the Act of 1872 was *ultra vires*, and admitted to be so by the Privy Council of Canada; and (2) That even if the assent of the Crown were given, the Courts (the Act being *ultra vires*) would set it aside. At the same time Lord Carnarvon expressed a hope that a measure might be framed which, "while preserving "the rights of the owners of copyright works "in Great Britain under the Imperial Act, "will give effect to the views of the Cana- "dian Government and Parliament." The result was the passing and ratification, in 1875, by an Imperial Act, of the present Copyright Act of Canada.

The Act of 1875 (38 Vict., c. 88, Canada) extended the privilege of obtaining copyright in Canada to "any person domiciled in Ca- "nada, or in any part of the British do- "minions, or being a citizen of any country "having an international copyright treaty "with the United Kingdom." The only further conditions exacted are, that the work shall be registered at Ottawa and printed and published in Canada. By the 10th section of the Act the author is enabled to secure an interim copyright extending over one month, pending the publication of the work in Canada. This is to allow time for the reprinting and publishing in Canada of a work already published in Great Britain. The Act has no force against British editions of the work copyrighted, but excludes absolutely all foreign reprints of British copyright works, when such works are copyrighted in Canada. It thus interferes, so far as the works copyrighted in Canada are concerned, with the Act of 1847, already frequently referred to as allowing foreign reprints to come in on payment of an author's duty. As the Act of 1847 was an Imperial statute, an Imperial Act was necessary to give effect to the Canadian Act of 1875. This being passed, no further changes have taken place in the Canadian copyright law.

Let us see, then, what, as briefly summarized, is the Law of Copyright affecting Canada at the present time.

1. Any person domiciled in any part of the British dominions (including of course Canada), OR in any country having international copyright arrangements with the United Kingdom, may obtain copyright in Canada.

Every British author, and everybody entitled to copyright in the United Kingdom, or anybody, even if a citizen of a country not in copyright alliance, if only domiciled in Canada, can have all the protection, in the shape of copyright, Canadian law will afford. Following the example of the mother country, Canada attempts to perpetrate no injustice on a foreign author by taking what he has to give without giving him protection in return, if he will only accept her fair and liberal conditions, and, in the words of Lord Cairns, solely "aims at increasing the common "stock of the literature of the country." There can be no pretence, then, on the score of selfishness or greed, or a spirit of monopoly on our part for refusing to Canada the right to legislate independently and exclusively in matters of copyright.

But we note further—(1) That, by the operation of the Imperial Copyright Act of 1842, every person enjoying copyright under that Act can not only disregard the invitation to secure a local copyright, but can invoke the action of Canadian Courts to restrain or punish the publication of any save the British copyrighted edition of his work by any one in Canada.

(2) That, on the other hand, foreign reprints of the same British copyrighted work may be imported into and sold in Canada without let or hindrance—if the author does not take out a local copyright—on payment of a duty of 12½ per cent. *ad valorem* if he registers at the Customs, or, if he fails to register, then on payment only of the ordinary Customs duty.

As a matter of fact, this law has actually been set in motion against Canadian publishers for attempting to publish a Canadian edition of a British work, and that, too, by British authors who, for a consideration, had agreed to take out no copyright in Canada, in order to allow an American edition to be sold in Canada with impunity.

Nor does the Copyright Law of the United States afford to the authors either of Great Britain or Canada any compensatory advantages for the liberal treatment accorded both by the Dominion and Great Britain to American citizens. The principle of British and Canadian Copyright Law is to pay honestly for the privilege of acquiring the literary works of the authors of all nations; the principle of American policy is to pay for nothing in the shape of foreign literature it can steal. Great Britain and Canada give protection to foreign authors; the United States encourage literary piracy. A six weeks' domicile—or less, for that matter—in any part of the British dominions gives an American citizen the title to copyright over the whole British Empire, and wherever Great Britain has international copyright treaties or conventions. *Actual citizenship* or *permanent residence alone* entitles an author to copyright in the United States. Nor can the assignee of a work composed by a non-resident—even although the assignee be a citizen of the United States—obtain copyright for such a work. Efforts have been

made from time to time to induce the Government at Washington to consent to an international copyright treaty with Great Britain. The authors of the United States, as a class, are not opposed to such an arrangement. But the large publishing firms stand hard by monopoly, and their influence in the lobbies has been and is likely to be omnipotent; against them, forty millions of the greatest reading and book-purchasing people in the world are, apparently, powerless. To the United States, then, as a nation, neither Great Britain nor Canada—in the matter of copyright—owes the smallest consideration. Resolutely refusing fair play to the literature of Great Britain, their dishonest appropriations of that literature are used to crush out and destroy the publishing enterprise of Canada.

CHAPTER V.

THE NEW IMPERIAL COPYRIGHT ACT.

Having traced the history of Copyright legislation in the United Kingdom and Canada, and considered the principles by which it has presumably been guided, we have next to notice the new Imperial Copyright Act, which awaits the judgment of the British Parliament at a future session. The Act has been introduced under the auspices of Lord John Manners, Viscount Sandon, and the Attorney-General, and is, no doubt, the upshot of the labours of the late Royal Commission on Copyright. While the Act contains some liberal concessions, which we shall notice presently, we do not hesitate to say that, as regards Canada, it perpetuates an evil and unjust state of things. Like its predecessor—the Act of 1842—its provisions are made to extend over the whole British dominions. It pays some respect, it is true, to a Colonial copyright, but what in the name of common sense has the Imperial Parliament got to do with copyright in Canada at all? For the Act of 1842, it might be said that it was simply a relic of an old and nearly defunct system of legislative paternity on the part of Great Britain towards her colonies. But to revive the same obnoxious enactment at this time of day, and give it to the world in the form of an amended and consolidated copyright law, is a usurpation and an outrage.

The new Act, for instance, provides as follows, namely: — "That the author "of a book *first published in Her "Majesty's dominions* shall, *whether he is "or is not a British subject or domiciled or "resident in Her Majesty's dominions, be en- "titled to copyright in the book throughout Her "Majesty's dominions.*" No exception is made in favour of any colony having its own copyright laws. This clause, in fact, directly conflicts with the Copyright Law of Canada. The Canadian Act of 1875, in its 4th section, runs as follows:—

"*Any person domiciled* in Canada or in any "part of the British possessions, or being a "citizen of any country having an interna- "tional copyright treaty with the United "Kingdom, who is the author of any book, "&c., shall have the sole right, &c." Subsection 2 of the same section makes the printing and publishing of the work a condition of obtaining copyright.

Here, then, in Canada, for reasons perfectly intelligible, we make a distinction between the citizens of countries having international treaties with Great Britain and of those who have none. The meaning of the clause in the Canadian Act is evidently this:—Any British subject (who has not expatriated himself), or any citizen of any country having a copyright treaty in convention with Great Britain, may obtain copyright in Canada *without domicile*. But a citizen of a country not having any copyright relations with Canada *must be domiciled* here to secure copyright.

That is the law of Canada, expressly sanctioned by Imperial authority. But now comes an Imperial Act which says in effect that *anybody, whether domiciled in Canada or not*, may obtain copyright in Canada and every other of the British possessions.

Let it not be said that this is of no practical importance. Canada, as being especially affected by her relations to the United States, has to consider, and must be entitled to consider, for herself, what shall be her attitude towards that country. She may find it to her advantage to say to the American author, "Only print and publish in "Canada, and, domicile or no domicile, we "will give you or your assigns a copyright "for the Dominion for your Canadian edi- "tion exclusively." Or it may be in the interest of Canada to say, "As you give no "copyright to our authors, we will give "none to yours; as you choose to reprint "Canadian books without scruple, we will "reprint American books without scruple, "and afford their authors no protection." There is something to be said from the Canadian point of view in favour of either proposition, but the choice to be made is a question of Canadian public policy, and of Canadian public policy solely. But the new Imperial Act overrides our discretion and judgment, makes nothing of our special and local reasons for adopting one policy or the other, and arrogantly intrudes its own dictum as to who shall or shall not, in this Dominion, secure copyright. The Act makes some change in the period of

time for which copyright may be granted ; but with that, as it is a matter of detail only, and not of principle, so far as Canadian rights are concerned, we need now say nothing.

We now come to what may be termed the Colonial clauses of the Act. Here an attempt is made to conciliate Colonial interests. The Act provides in substance —

"Where a local law in any British "possession provides for registration (as in "Canada), such registration shall secure "copyright under this (Imperial) law. "Such Colonial registers shall be returned "to the Home Registrar, and he shall also "supply to the Colonial Government returns of copyrights registered in Canada "or other British possessions."

That is to say—as we understand it—that a Canadian author taking out a copyright under the Canadian law, thereby, *ipso facto*, secures copyright throughout the British dominions. So far so good. But then we come to the following proviso :—

"Where a book is first published in a "British possession, and not published in "the United Kingdom, in number and manner suitable for general circulation therein, "after one month from first publication "any person may apply to Her Majesty in "Council for a judicial license to publish "the same which may be granted upon "such conditions as seem just; and if any "book is not so published within six months "after first publication, any person may apply to Her Majesty in Council to be allowed to import foreign reprints of the "book."

That is to say, if a Canadian author does not incline to publish an edition of his work precisely suitable for the British market, then, some Imperial official being judge of the *suitability* of the original work for the said British market or otherwise, a license to publish on conditions, or to import foreign reprints, will be granted to any applicant. Then comes a clause which we assume to be intended as compensatory or giving reciprocal privileges for the foregoing one. It reads in effect as follows :—

"Where any British possession has made "effectual and reasonable provision for ends "similar to those of this Act, including the "collection of percentage on books *republished or imported* under license, Her Majesty "may direct, as regards that possession, in "the case of a book first published out of "that possession, and entitled to copyright "therein, that within a reasonable time and "under similar conditions as above, any person may apply to a Court to be designate l in "the possession for a similar license to publish, "the orders of such Court being subject to "Her Majesty in Council, (or the Governor "in Council). If the book is not published "in that possession within six months from "first publication, any person may apply to "such Court for a license to import."

Now, we first notice here that Canada has no power to legislate for the collection of a percentage on works republished in Canada. Her powers go no further, unless this Act confers them by implication, than to collect a percentage on foreign reprints *imported*. But that is probably a mere oversight. What we have, however, to complain of in this apparently liberal feature in the Act is, that what may be done *in Canada, by Canadian publishers and under the sanction of Canadian Courts*, is to be decided by a British Act of Parliament in the passing of which Canadians have no voice, instead of Canada being granted those rights to which, as a self-governing community, she is entitled, and possesses in connection with every other feature of domestic legislation. Another clause reads, in substance, as follows :—

"Where it appears to Her Majesty "in Council that, having regard to the position, size, or the circumstances of any "British possession, foreign reprints ought "to be admitted at once, Her Majesty in "Council may direct, under conditions "similar to above, that any person may import copies of foreign reprints of any "book."

We do not suppose that this clause would ever be put in force as regards Canada. It is rather, probably, intended to meet the case of certain other smaller colonies ; but that such a clause should, by any possibility, be made to affect a colony governed as Canada is, is another reason why Canada should claim to be emancipated from the thraldom of Imperial copyright legislation. Whether we will admit foreign reprints at all, or whether we will exclude them, is a purely domestic question Canada should be left to decide for herself. While thus referring to this measure as a bad precedent, and highly objectionable in several respects, we have no doubt it has been prepared with exceedingly good intentions, and a desire to act equitably towards the people of Britain's colonial possessions. But, as regards Canada, the attempt to legislate at all is radically wrong, except it be to give her what can only be withheld by injustice—namely, control of her own copyright laws. It is true that Canadian interests were supposed to be represented on the late Royal Commission, but we never heard that either the authors or publishers of the Dominion, or any one representing them, were asked to give evidence before the Commissioners.

Probably the Act of 1875 was looked upon as having settled all controversies satisfactorily, and it was supposed that any concessions in the new Act would be regarded as favours graciously and voluntarily accorded. But what we want is—not favours, but our rights.

CHAPTER VI.

A CONSTITUTIONAL QUESTION.

The question now to be answered is: Why should exclusive jurisdiction in the matter of copyright be withheld from a people entrusted with the duty and privilege of self-government? We have entire control over all that concerns our commerce or education. We can say—as affecting the public morals—what books shall or shall not be imported into Canada? We can impose what duty we please on imported literature. In the strictly analogous case of the patent laws, we may and do legislate for ourselves, independently and exclusively. Both patents and copyrights are properly subjects for purely domestic legislation; but while, by the Act of 1814, and subsequently by the Act of 1842, and when there was practically no local book trade in Canada, it pleased the Imperial Parliament to enact that the Copyright Act should extend over the whole of the British dominions, in 1852, when the Patent Act was passed (15 and 16 Vict., c. 83), the principles of colonial self-government were far better understood, the progress of inventive industry in British North America was considerable, and no one dreamed of interfering with it by Imperial legislation. The presumption, therefore, is that, had the Imperial Copyright Act been framed for the first time in 1852, it would, like the Patent Act, have been limited to the United Kingdom and possessions in Europe. But if so, where is the justice of refusing the change as regards copyright demanded by times and circumstances, and especially in re-enacting in effect, the same obnoxious law? The interference of the British Parliament with the rights of Canada to legislate in respect of copyright generally and absolutely, is at variance with the whole scope and tenor of the British North America Act, and of the self governing powers which she is entitled thereunder to enjoy.

It cannot be said, either, that the British author will be injured by such a concession as is demanded. He will probably be the gainer, because—(1) Canada offers him all he can ask in the shape of protection; (2) because it is his interest to have his work presented to the public in a form and at a price suited to the local market; and (3) because, by encouraging a book enterprise in Canada, a successful check is imposed on the publication and sale in British territory of reprints of the pirated works of British authors. The only authors who may be disposed to resist the change are a very few, who, being highly popular and influential, can command large bonuses for advance sheets from American publishers, and, perhaps, secure an extra sum on condition that they do not take out a Canadian copyright. With such bargains neither Imperial nor Colonial legislation should exhibit the least sympathy. They simply represent a league with selfishness, piracy and dishonesty.

Again, if the British author does not choose to protect his work by copyright in Canada, the machinery being simple and inexpensive (and, in his case, residence not being necessary), what possible right has he to any protection at all? We have seen he does not get copyright in England in his own right. He does not secure it as a British subject. He has no inherent right to it whatsoever. He has it under a statute alone, the very arbitrary character of which has been fully explained. He has it, too, *solely in the public interest*. Now, nothing is more certain than that the public interest will be different as respects literature in different countries. Yet here is an Act of Parliament that pretends to give a Copyright Law for countries, all, it is true, under one flag, but wide a the poles asunder in their social and local conditions. It is on the people of these widely separated regions a municipal law is forced, which—for all it cares for authors' personal rights—might be repealed to-morrow if the public interest demanded that step. The withholding of self-government, then, to Canada in the matter of copyright is perfectly monstrous.

The injustice is all the greater when it is seen that, not only British subjects but foreigners are guaranteed the free run of the Dominion by the Imperial Act, that foreign reprints and British works have been admitted into Canada for thirty years by Imperial legislation, and that they may be admitted if the new law passes by a simple Order in Council.

The evasions of the Imperial Copyright Law, at times attempted, have only served to illustrate more forcibly its anomalies and absurdities. A Canadian publisher has, ere now, transferred his types and plant to some point in American territory readily accessible from his place of business, printed the sheets of a British copyright work there, imported them as an American reprint, paying the author's tax, into Canada, and sold them at a good profit. In another case the

types were set up in Canada, stereotype plates cast and sent to Detroit, paying duty there, the book was printed in Detroit, and then, as in the other instance, imported into Canada as a reprint. In the latter case the Canadian publisher was but giving the British author and his confederate publisher in New York "a Roland for an Oliver." Their joint bargain was, that the author would, in return for a handsome additional payment, take out no copyright in Canada. But, by the *ruse* of the Canadian publisher, an edition was placed on the American market, where the book had no legal protection, and was at the same time selling, without paying one cent to the author, in Canada as a foreign reprint. Having got his compensation in New York, the author did not, of course, register the work for authors' duty in Canada. As a rule, however, Canadian publishers submit to the Imperial law with all its oppressiveness, and on very few occasions has the Copyright Act of Great Britain been violated by Canadians.

By the decisions of judges we have quoted, by the correspondence between the two Governments in 1846, and by the whole scope and tenor of British copyright legislation, the one desideratum of such laws is to give the people an ample supply of literature. It is notorious that, while, for costly works, Great Britain must for a long time to come retain the Canadian market, she cannot and does not supply a class of books the bulk of the people can afford to buy. That was the main reason why, in 1847, it was found necessary to admit the American reprints, at that time nearly the only cheap literature on this continent. It was the supposed inability of Canada to produce a cheap literature of her own that was the chief cause of what was, virtually, exclusive jurisdiction being denied her thirty years ago. Now, while importing her more costly books from England, Canada can produce cheap literature that will even compete with that of the States. Why then does she not have the powers she asks? The answer is, that, just as in the United States the great publishing firms have resisted from selfish motives, an International Copyright Law, so in Great Britain have the great publishing firms hitherto insisted on having a monopoly of book printing and book publishing in the whole British empire. And successive British Governments, false to their professed anti-trade monopoly principles, have allowed themselves to be influenced by Paternoster Row. For reasons already pointed out, and owing to her geographical position, Canada has more reason to complain of this state of things than other colonies. We shall see now whether a Canadian Government professing to uphold a thoroughly national policy will be true to Canada's interests in this regard. It should be one of the very first duties of Sir A. T. Galt, as Canadian Commissioner in London, to bring seriously before the Imperial Government the objections to the proposed new Copyright law, and to urge the opportunity a discussion of the subject affords as a reason for now setting this question at rest forever.

The propositions we should regard as a fair basis of settlement by Canadian legislation would be: –

(1.) That Canada should accord to all authors domiciled in the British possessions, or resident in any country granting to her (Canada) reciprocal privileges, the right to copyright in Canada, on condition of printing and publishing the work in the Dominion.

(2.) That no work should be entitled to copyright in Canada unless printed and published in Canada.

(3.) That no person failing to take out a copyright in Canada within a limited period —say one month from the date of publication elsewhere—should be entitled to copyright in Canada. But,

(4.) That, in consideration of reciprocal privileges being granted by any other country to Canadian authors, or their assigns, subjects of such country shall be entitled to a percentage to be paid (under bond) on any edition of their works republished in Canada.

We believe that if the principle embodied in the foregoing propositions were adopted no wrong would be done to the British author; that the book trade of Canada would receive an immense impetus; that Canadians would be supplied with all the cheap literature they required; and that, by the effect of Canadian competition on this continent, American publishers would be greatly influenced in favour of a more liberal Copyright Law than they are now prepared to submit to.