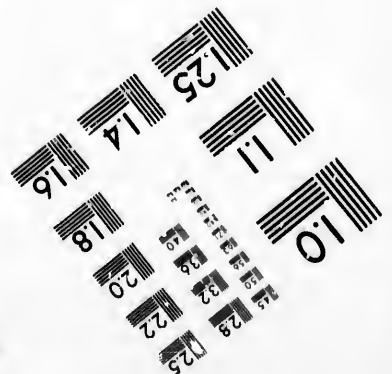
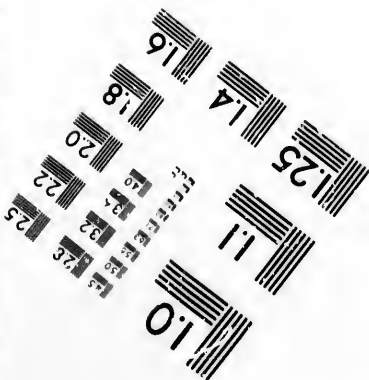
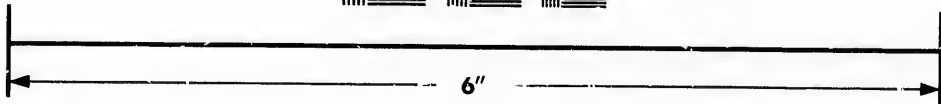
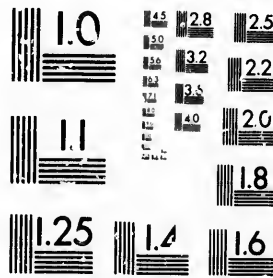


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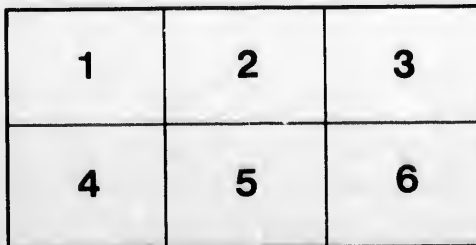
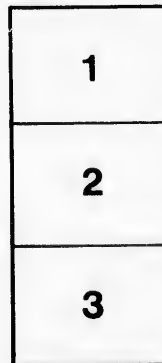
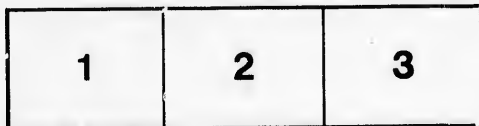
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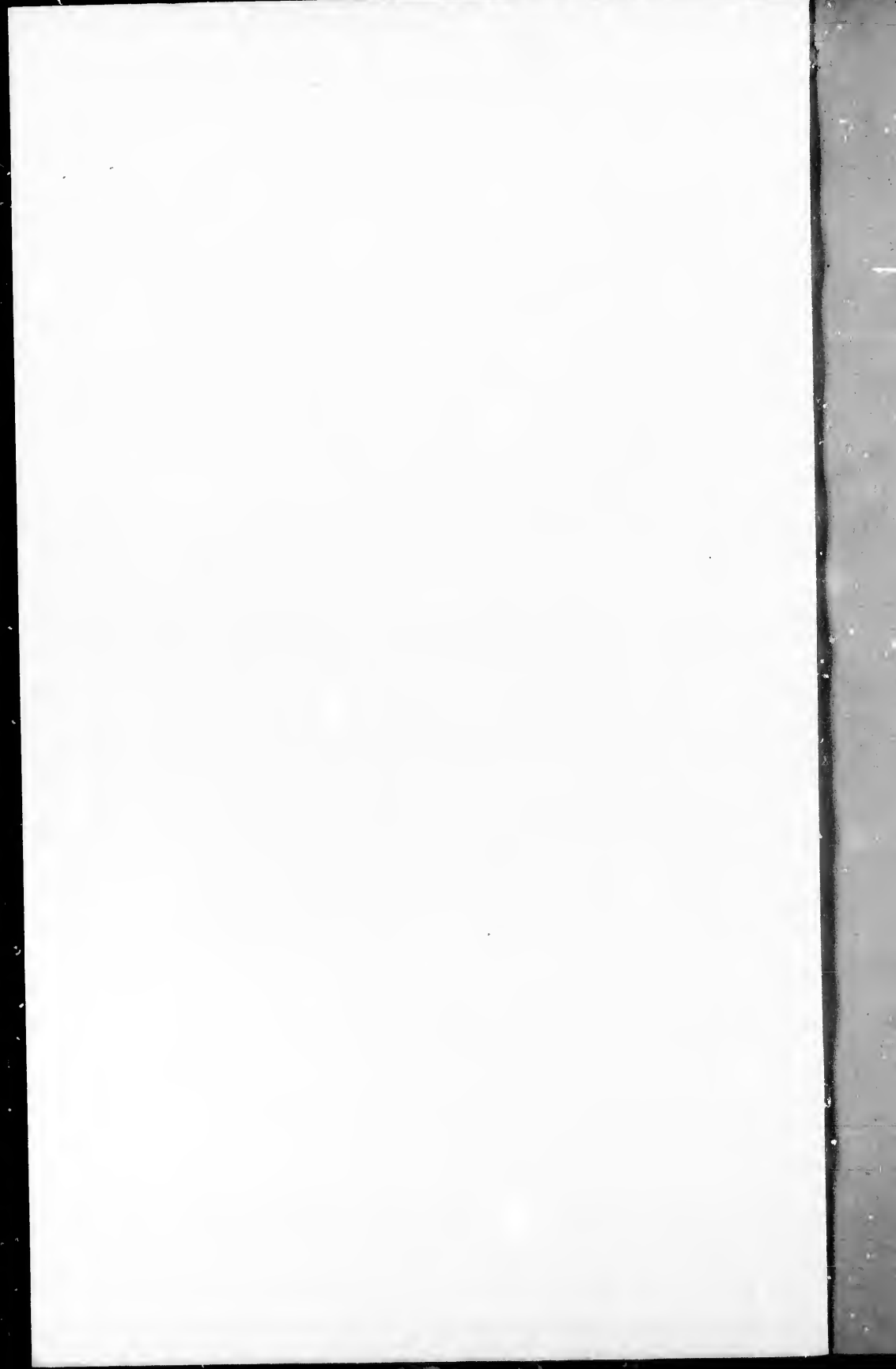
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LETTER FROM SIR JOHN THOMPSON TO LORD
KNUTSFORD.

WESTMINSTER PALACE HOTEL,
LONDON, S. W., July 14th, 1890.

MY LORD,—In the report which I had the honour to make to His Excellency the Governor General of Canada in Council on the subject of copyright in Canada, dated the 3rd August, 1889, and which was approved by His Excellency and transmitted to Your Lordship, it was asked that His Excellency's Government might be allowed to discuss the questions dealt with in that report at further length, and in further detail, if necessary, as they involved grave questions of great consequence to Canada, not only with respect to copyright, but in relation to the powers of the Parliament of the Dominion.

Having had the privilege to-day of carrying on that discussion, to some extent, with Your Lordship, I avail myself of the permission accorded me at our interview to place in writing before you some of the arguments which I am instructed by the Government of Canada to advance, in amplification of my report above mentioned.

In Your Lordship's despatch of the 25th of March, 1890, in reply to the observation in that report, you called the attention of the Government of Canada to some provisions of the Copyright Act of Canada of 1889, to which you stated that special objection was felt by the proprietors of copyright in Great Britain. One of these was the limit of time [one month], allowed for the British author or publisher to republish in Canada, after publication in Great Britain. Your Lordship had been assured that in a great majority of cases it would be impracticable, within the period of one month, to make the necessary arrangements for republication in Canada, and expressed the hope that upon further consideration it might be recognized that the time proposed was insufficient. Upon this point, as well 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 business in Canada, that the time referred to is not unreasonably short, and that the holder of copyright in the United Kingdom can easily make arrangements for simultaneous production in the two countries, so as to have republication made in Canada within the time specified in the Act. The time for republication must necessarily be of short duration, because during that



period the importation of foreign reprints of the work, 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.

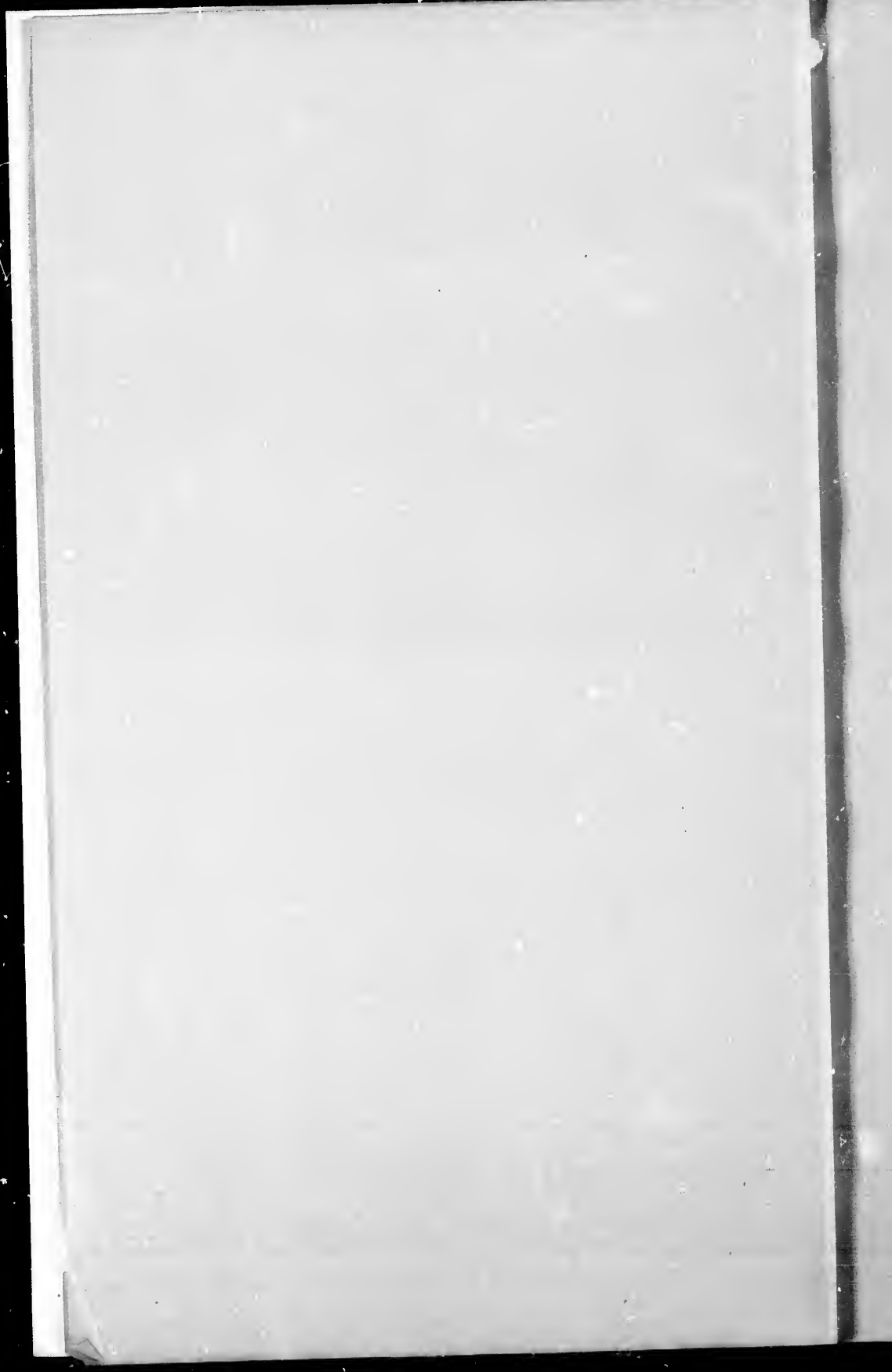
Your Lordship's despatch refers His Excellency's Government, for some particulars of the objections which had been pressed on you, to a letter dated "Aldine House, Belvedere, Kent, Feb. 20th, 1890," supposed to have been addressed to me, signed by Mr. F. R. Daldy, Hon. Secretary of the Copyright Association, 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 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, 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, chap. 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 a subject of Her Majesty, or a resident of any part of Her Majesty's dominions.

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 a strong remonstrance, and nearly all the other legislatures in North America followed.

The Legislature of Nova Scotia, in 1845, memorialized Her Majesty for a modification of the Act. They 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 the sale of English copies beyond the previously existing demand.

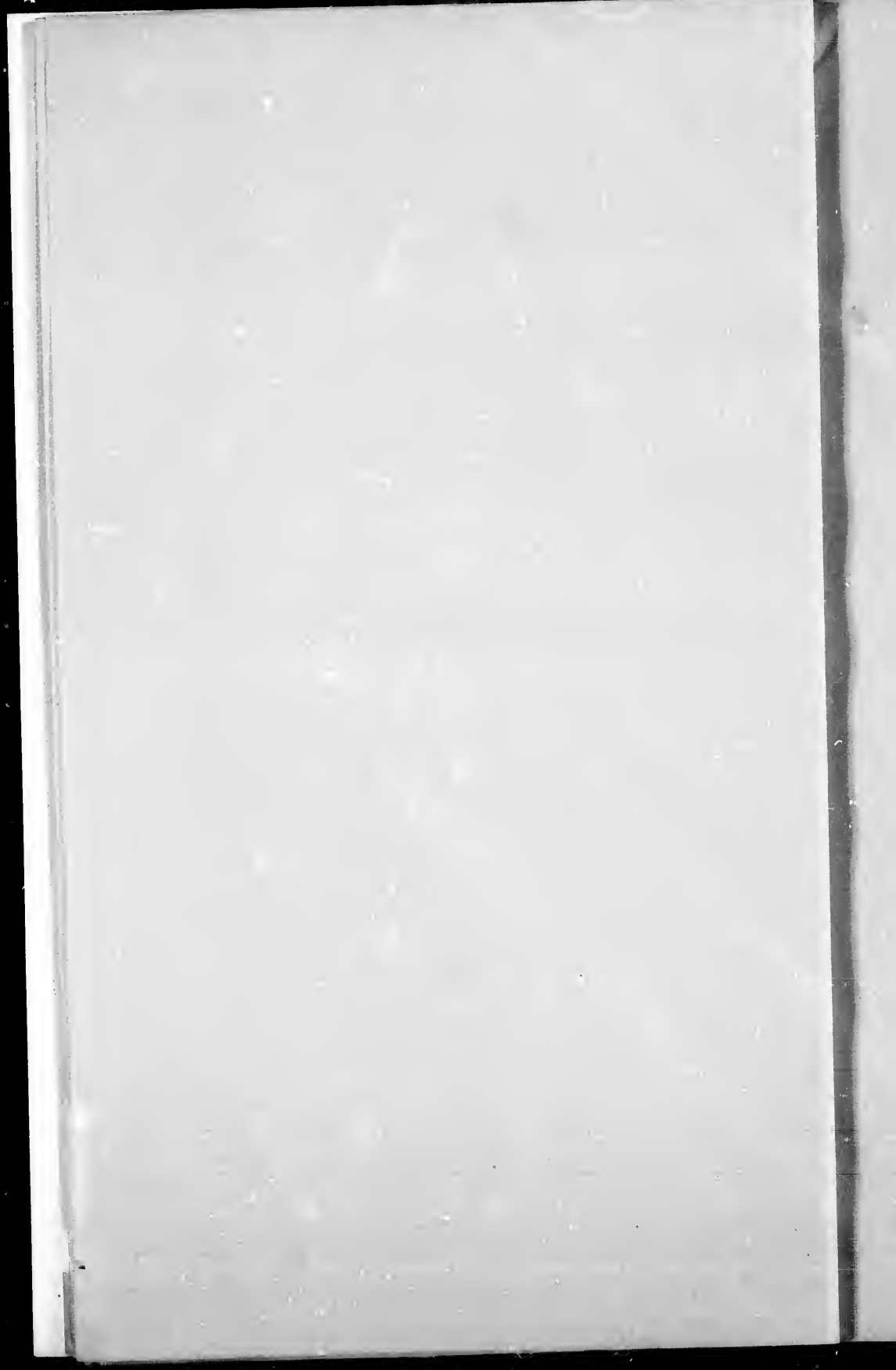
The Legislature of Nova Scotia at that time pressed upon Her Majesty's Government, not only a consideration of the general advantages of literature upon the minds of the people, but the evil tendency of the literature of a foreign, and often hostile, country, like the United States, in forming the political opinions and the tastes of the people in the provinces.

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."

On the 13th March, 1846, the Legislature of Nova Scotia again adopted a report which was transmitted to the Rt. Honourable Secretary of State for the Colonies.

That report stated that attention had been given by the Committee to the despatch of Lord Stanley, dated the 27th November, 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."

These remonstrances drew from the Rt. Honourable 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."



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.

“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 authorizing 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 as it might be repugnant to, or inconsistent with, the operation of any such colonial law or ordinance.

“I am, &c.,

[Signed] “STAFFORD H. NORTHCOTE.”

The following is the reply of the Colonial Office to the Board of Trade, dated 20th October, 1846.

“*Colonial Office to Board of Trade.*”

“DOWNING STREET, 30th October, 1846.

“SIR,—I have laid before Earl Grey your letter of the 19th instant respecting the operation of the Imperial law of copyright in the British North American colonies.

“His Lordship directs me to acquaint you for the information of the Lords of the Committee of the Privy Council 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 colonies on the subject of the circulation



there of the literary works of this kingdom, to leave to the colonial 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.

“Lord Grey, therefore, directs me to request that you would move the Lords of Committee of Privy Council for Trade to take such measures as may be expedient for submitting to the consideration of Parliament in the ensuing session a Bill authorizing the Queen in Council to confirm and finally enact any colonial law or ordinance which may be passed respecting copyright, notwithstanding the repugnancy of any such law or ordinance to the copyright law of this country, and containing also the provisions mentioned in your letter in respect to the period at which such colonial law should come into operation.

“ I am, &c.,

“ [Signed] B. HAWES.”

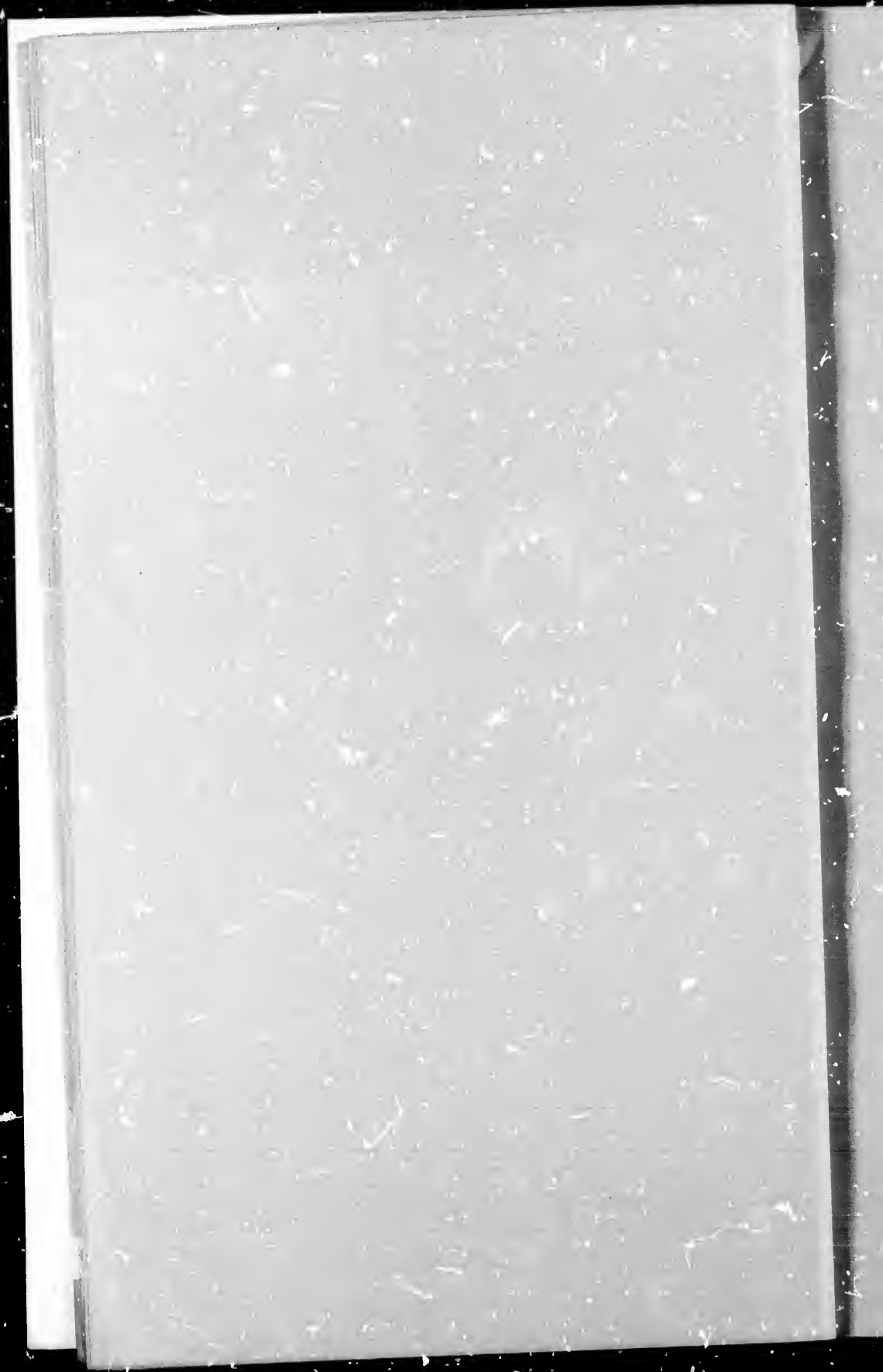
Thereupon, the following circular despatch was sent by Earl Grey to all the governors of the North American colonies :—

“ *Earl Grey to the Governors of the North American Colonies.*

(Circular.)

“ DOWNING STREET, November, 1846.

“ SIR,—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 dissatisfaction 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 disposition 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 accordingly submit to Parliament a bill authorizing 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 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 colo-



nia 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, &c.,

“ [Signed] GREY.”

After a lapse of more than forty years, I am charged with the duty of reminding Your Lordship that 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 those 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 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, authorizing 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 1848-50 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



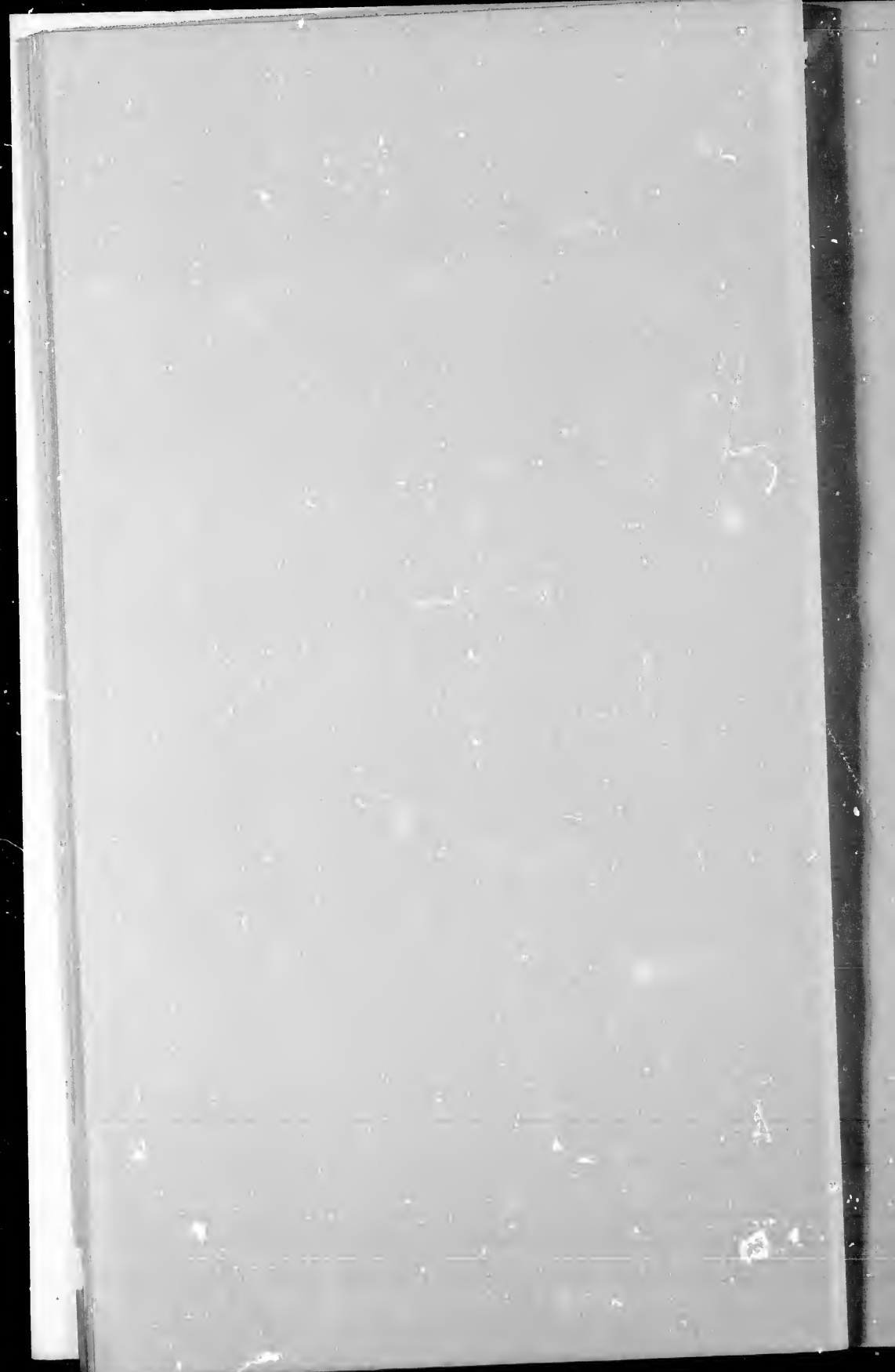
legislatures of the North American colonies having, in the meantime, provided for the collection of an impost on such foreign reprints, in favour of the author or copyright holder. This partial measure, although not a fulfilment of the promise of Earl Grey, met the principal grievance felt at that time in the North American colonies, namely, the grievance of being deprived of British literature, 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 little has been done to change this state of things by providing cheap editions of British works. Even to this day the English editions cost from four- to ten-fold the price of American reprints. The result is that the business of publishing British literature for the Canadian reading public is done almost exclusively in the United States. The American publisher, unrestrained by any International Copyright Law or Treaty, is free to reprint any British work and to supply it, not only to the reading public of the United States, but to the reading public of Canada, while the Canadian publisher is not free to reprint any such work on any terms, unless he can obtain the permission of the holder of the copyright in Great Britain. In some noted instances, this has actually led to the transfer of printing establishments from Canada to the United States.

In other cases, English publishing houses have set up branches in New York, or other American cities, with the view of reprinting for the United States and Canada 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 Canada, even with the permission of the holder



of the copyright, 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 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" has 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 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, 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 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 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 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. Over-weighted 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 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 :



"THE SENATE, 15th May, 1868.

"1st. To call the attention of Her Majesty's Government to the provisions of the Imperial Act 10 and 11 Vic., 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.

(Signed.) " F. TAYLOR,

" Clerk, Senate."

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 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 license, 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 Lordship's views.



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

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."

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 republication 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 may 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 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 the 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 of 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 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, but when that concession became coupled with a condition which would have made the Imperial Copyright Acts absolutely unbearable and unenforceable, only one reply was possible, and that reply was the one which was transmitted from Canada on the 1st 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 inexpedient that legislation should take place at that time.

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 November, 1870, a joint report of the Ministers of Finance and Agriculture was adopted by His Excellency in Council, the substance of 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 the 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 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 Honorable the Ministers of Finance and Agriculture, reporting that much anxiety had been manifested by Houses of the Canadian Parliament on the unsatisfactory state of the Imperial Copyright Act that, as no reply had 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 copyrights 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 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 the 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 of 1842 was still in force throughout the British dominions in so far as to prohibit the printing of a book on 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 assent could not properly be given to the bill.



Lord Carnarvon closed his despatch with the following paragraph, which, I respectfully submit, is a renewal of the promises often made in connection with this subject.

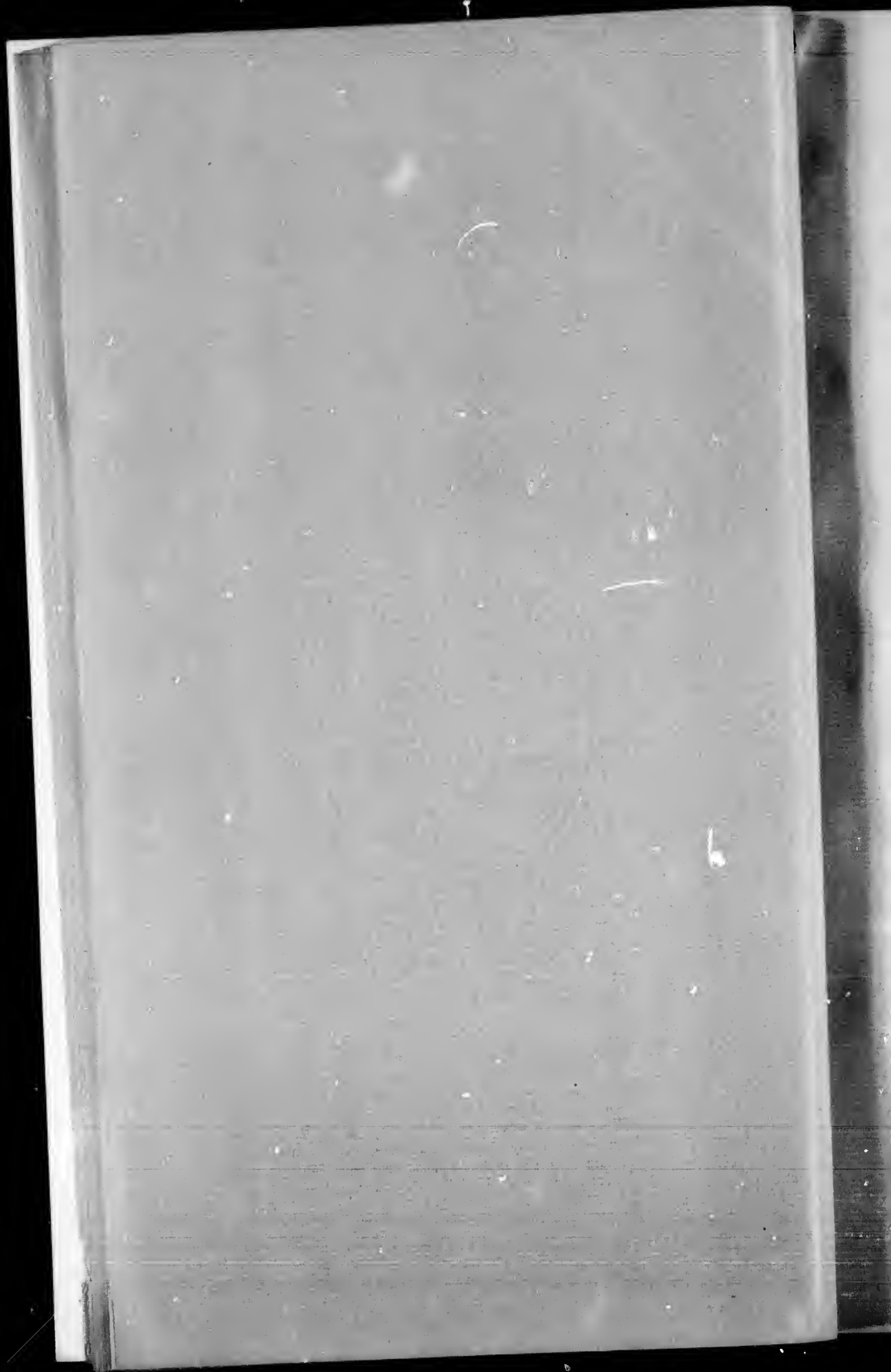
"I am aware that the subject of colonial copyright has long been under consideration, and that attempts were made by Her Majesty's late Government, in connection with yourself and your Ministers, to arrive at a settlement of this difficult and most important question. I will only now express my readiness 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."

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 Her Majesty to assent to the reserved bill, but forbade the importation into 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 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.

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, consequently, gave local copyright, protecting the work printed in



Canada, and prevented the importation of republications of any such work after it should have obtained the local copyright, as the Imperial Act prevented the importation of works which had obtained a British copyright.

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 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 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."

In sections 186, 187 and 188, the following passages occur, which I now beg to cite, as confirmation 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 showing that the Canadian Government is now but reiterating an oft-repeated statement, the truth of which has long been established and admitted.

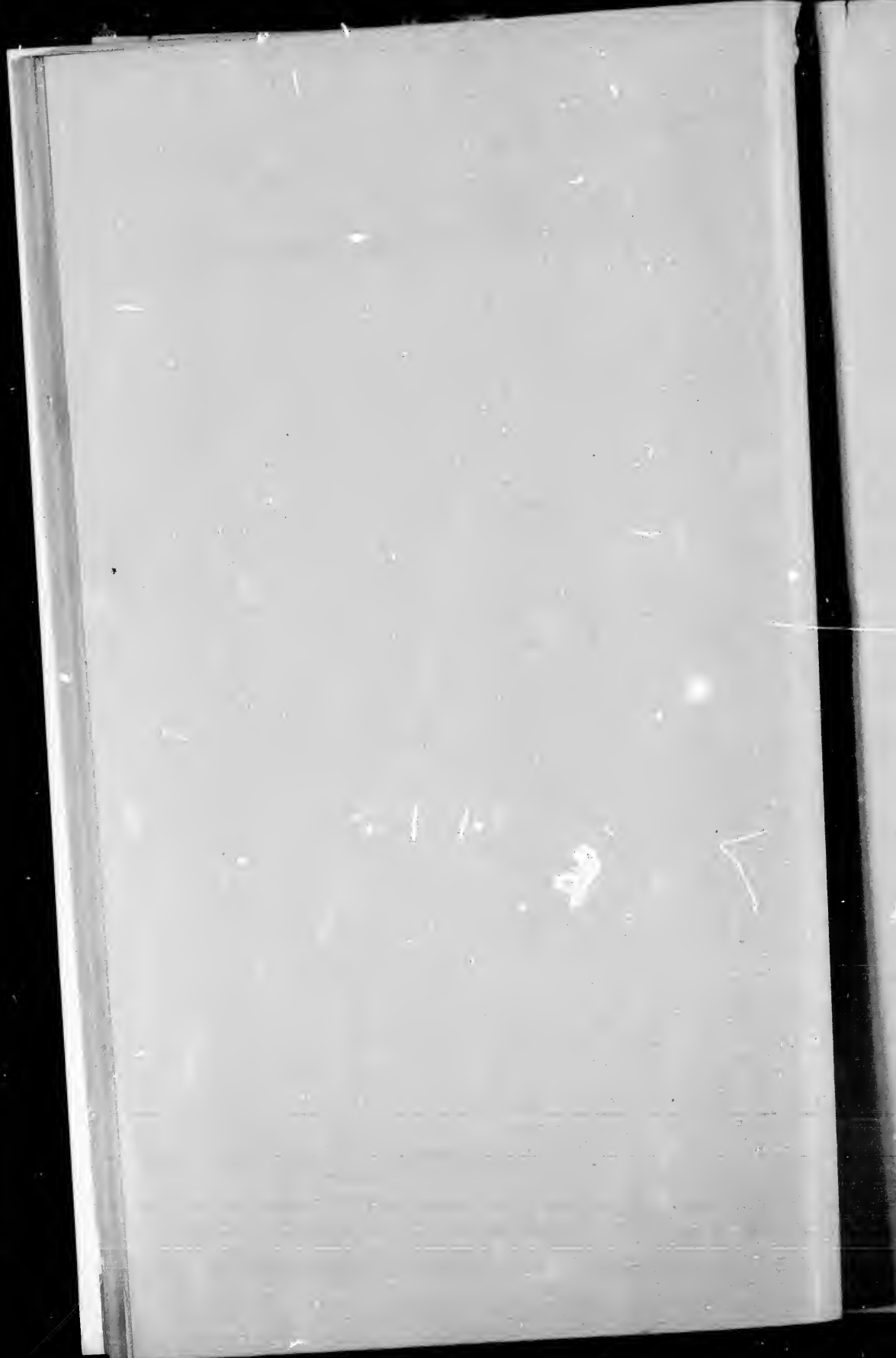
"186. These means are not available, and indeed are impracticable, owing to the great distances and scattered population, in many of the colonies, and until the cheaper English editions have been published the colonial reader can only obtain English copyright books by purchasing them at the high publishing 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 from official reports that during the ten years ending in 1878, the amount received from the whole of the nineteen 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.”

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.”

Sec. “196. The Canadians proposed that they should be allowed to republish 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 customs. Objections, however, were made to the proposal, and it was not carried.”

“197. These considerations led to the suggestion that republication 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 cor-



rect, 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 republication in the colony or otherwise, within 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 republish 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, nor 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 discredited 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 recommendation 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 encouragement 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 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 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.

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,

(Sd.) J^{NO}. S. D. THOMPSON,

Minister of Justice of Canada.

To The Right Hon. Lord KNUTSFORD,
Her Majesty's Principal Secretary of State
for the Colonies,
Downing Street.

