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CANADIAN COPYRIGHT

BY

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CANADIAN COPYRIGHT

AN article on "Twenty Years of International Copyright," by Brander Matthews, in the June number of the American "Review of Reviews," is very well worth reading from a Canadian point of view in that it tells the story of how the development of American literature was retarded prior to the passage of the International Copyright Act of 1891. The Canadian Government now proposes to enact a Copyright Bill avowedly to retaliate against the United States and, by making wholesale piracy possible, to force the Washington Government to become a signatory to the Berne Convention.

With their usual aversion from being partners to an agreement which would give to the other side at least as good a bargain as to themselves, the Americans always consistently refused to enter into a reciprocal arrangement with England regarding copyright. The result was that unless an American writer had private means or a profession bringing him an income, he could not afford to devote any of his time to literature owing to the fact that American re-printing houses were flooding the reading market with English books on which little or no royalty was paid.

The 19th century, so prolific of virile writers in England, no doubt would have produced in America also many a writer of equal possibilities. These "mute inglorious Miltons," however, were given no chance under the short-sighted policy of authorised piracy acquiesced in by the Government at Washington

As Mr. Brander Matthews clearly shows, America suffered in a way which can never be overcome. Having no literary school of her own she was forced into adopting that of the English, and the American reader, much as he detested his English cousin in those days, was compelled to

absorb his mental pabulum, often unwittingly, to be sure, from the minds of the Mother-land he had cast from him. It is seen only too plainly now what a terrible price America paid for allowing the naturally predatory instincts of her people to prevail.

"Copyright" is now, and has always been understood to mean something for the protection of the producer, that is, the author. Up to the time of Queen Anne there was no adequate protection for him and consequently the writers of the day were able to get but a pittance for their work since no publisher—or bookseller, as he was then called—could afford to produce a book which could be "appropriated" by any rival concern that pleased to take it. Much of the successive copyright legislation in England was towards the strengthening of the author's rights against the booksellers, and there seems to have been much animus against the latter, who perhaps needed regulating more or less in their dealings with their authors. To-day, however, owing to Authors' Associations and Literary Agents, and to competition among publishers, a writer is almost able to dictate terms to the publisher.

About the time of the passage of the International Copyright Act in 1891 the Labour Unions in the States began to acquire their present-day power and it was only natural, perhaps, that, having the power, the strongest of them all, the Typographical Union, should insist on forcing into the new Act the very reprehensible "Manufacturing Clause" which grants the protection of copyright only to works composed and printed in the States. This, of course, necessarily meant the use of American paper and American cloth for binding, both of which were highly protected by tariff. Once again England, therefore, won a literary victory, since anything, large or small, can obtain copyright in England by the simple act of publishing, and can be defended by registering at Stationer's Hall. While literature was restricted in the States to only that which it would pay to set up and print there, in England—to quote Lord Cairns—"The aim

of the legislature is to increase the common stock of literature of the country," which at that time allowed an alien writer the same protection in England as that accorded to a British subject. In the United States only an American citizen was entitled to such protection.

The new Buxton Copyright Bill will put a somewhat new face on copyright affairs in Great Britain, in that it proposes to grant protection only to those works of which the author is a British subject or a bona fide resident in some part of the British Empire. For the first time the English copyright law will be brought under statutory form, and it is no doubt an echo of the new Patent Act which requires that a patent to be protected in Great Britain must be manufactured there.

In Canada the new Copyright Act proposes to include a "manufacturing clause" in so far as printing is concerned, which the minister publicly avows is retaliatory upon the United States. If the States are to be punished—and who shall say they do not deserve it—probably the most appropriate weapon will be a rod of their own pickling. And whereas in time past America had on the surface everything to gain by pirating from England, now she has everything to lose by having her literary product pirated by Canada. For hardly an American periodical publication comes into Canada that has not one or more articles of more or less interest to Canadians; and can we be sure that all Canadian printers will be proof against the great temptation to "appropriate" an interesting article which costs them nothing but which cost the American publisher or editor some tens, hundreds, or perhaps thousands of dollars?

The world has learned a few lessons in honesty, or at least in "honesty being the best policy," in the last few years. It has learned that disposing of forest lands to political heelers, for instance, has resulted in denuding the country of pulp-wood, and Canada has seen the result in the United States and has established her conservation policy which provides for sowing as well as reaping. It should not therefore be a

matter of mere conjecture as to whether Canada shall stunt the growth of her own native literature by copying the fatal mistake made by the Americans when they yielded to the temptation to steal, and strangled their own literature to such an extent that, in what seems to have been the most prolific period of writing among English-speaking peoples, or rather during the period of literary awakening as exemplified by the Victorian writers, only a few American authors forced their way to the front. It is probable that had not they been possessed of so strong an individual American note, even they could never have risen through the stagnant water which the American people and their Government refused to see needed aerating to bring life to it. Had it not been for the fact that Lowell, Holmes, Longfellow, Cooper and Irving, for instance, had other means of subsistence their writings could never have seen light, and that they then did was largely due to the fact that England recognised in them a new school quite unlike its own and reprinted their work, certain English printers taking a leaf out of the Americans' book and pirating as they pleased.

This, while bringing these American writers to the attention of readers in England, did not mean that it brought any dollars into the pockets of the writers. On the contrary, we find that they received little or nothing from the English editions while thousands of copies were sold. Indeed it is said that of "Uncle Tom's Cabin" half a million copies were sold in England in the first few months of its appearance but that not a penny of royalty reached Mrs. Stowe.

A responsible publisher cannot afford to identify himself with any act of piracy and therefore he shares with the author the baneful effects of a national state of affairs which allows an unprincipled printer to produce in unlimited quantities books not only that are pirated, but which are so ruthlessly abridged and garbled, chiefly for economy's sake, that the reader can never tell whether he is reading what the author wrote or not, the book itself, moreover, as a rule,

being badly printed on poor paper and issued in a worse binding. Mr. Gladstone once said:

“Noble works ought not to be printed in mean and worthless forms, and cheapness ought to be limited by an instinctive sense of law and fitness. The binding of a book is the dress with which it walks out into the world. The paper, type and ink are the body in which the soul is domiciled; and these three—soul, body, and habiliment—are a trio which ought to be adjusted to one another by the laws of harmony and good sense.”

A good instance is Mr. Bryce's notable work, “The American Commonwealth.” It was not possible to copyright the first edition when it appeared and so when the sale seemed promising enough to bring out a pirated edition one promptly appeared. When the present authorised second edition was published containing much new material which could be protected by copyright, the printers of the pirated edition brought out a “new edition” also, impudently inserting “new chapters” but without any intimation that they were not from Mr. Bryce's pen. The average purchaser of this garbled work, therefore, has no means of telling that what he is reading is not “Bryce” at all except in a few chapters.

After all, the reading public can only perform a certain stint of reading, the limit being set by time and inclination. If, therefore, for economical reasons he limits his purchases to the cheapest, the reader will not only degrade his taste but put such a restraint on both author and publisher in his own country that we shall stand in as great danger of repressing our potential Canadian literature as the Americans did of strangling their own prior to 1891. As a matter of fact our danger as Canadians is infinitely greater since, from our close proximity to our neighbours and the smallness of our population as compared with that of the States, we are much more likely to be Americanised than the Americans were to be Anglicised by British writers 3000 miles away. That the community of readers' interests is much closer between Canada and the United States than between us and

England is attested by the fact that some millions of copies of American magazines come into Canada yearly as against a few hundred thousand copies from England. Our habits, customs, modes of living; our climate, our youth as a nation even, so closely approximate parallel conditions to the south of us that, putting aside the question of political absorption, our literature is in greater danger than was ever that of America. Much as we may wish to put aside the concrete idea of political absorption as the result of inter-trading, we must not lose sight of the power the press wields in its daily, weekly and monthly offering to Canadian readers of North American ideas wholly from the point of view of the United States. There is much to fear in having all this matter, simply because it can be "appropriated" at no cost, dished up by Canadian periodical publishers as original "Canadian" thought to unsuspecting readers. Thus unthinkingly shall we assist in our own undoing.

It is much to be regretted, of course, that the present size of our population will not make profitable for consumption wholly in Canada the cost of type-setting and printing here a book written by a Canadian, and so, unfortunately, many a good MS is now returned to its writer because the Canadian sales will not warrant a publisher undertaking its sole cost of production, an American publisher not finding it of sufficient interest to his public to warrant his undertaking any part of its initial cost by publishing it in the States. This proves the Canadian publishers' contention that the mere inclusion of a Manufacturing Clause will not of itself increase the amount of printing to be done in Canada. With our population growing by such leaps and bounds as at present, the time will come when we in Canada can absorb what we produce, and for that reason we should be content to bide our time and, meanwhile, preserve our Canadian national literature, even if at present it is only potential.

It is not so much the piracy of books which Canadian publishers and authors have to fear since the publisher knows as a rule whether a forthcoming novel, for instance, will

be in danger of being pirated and can always take the precaution of procuring a set of plates in advance and printing in Canada to publish simultaneously with the American edition. One thing he has to fear is the danger of part of a book being taken and published in cheap form for some specific purpose. For instance, Prof. Adami has written a "Text-book of Pathology" to the order of an American publishing house. Undoubtedly many chapters of special significance to students, and perhaps to practitioners, could be abstracted and put up in cheap form by a pirate without paying a cent of royalty. Again, many text-books have been handled by authorised agencies in Canada who by their labour and ability have been able to get for them an increasing sale in Canada. Before the time arrives when it would be profitable to obtain a copyright in Canada by printing there and, in addition, to pay a royalty to the author, a pirate can produce an edition at a profit since he has no royalty obligation to consider. This danger is increased by the clause in the proposed Bill which allows only fourteen days in which to copyright. Under the present existing Act one is allowed to print, and so obtain copyright, at will. It is to be hoped that the "at will" clause will be retained in the new Act since an authorised agent generally knows sooner than the pirate when a locally printed book would be profitable. Another danger is the menace to existing Canadian periodicals now paying for contributions by Canadians. If one or more magazines are to appear filled merely with matter "lifted" from the best American magazines and be published at a price so cheap that legitimate publications cannot compete at a profit, both legitimate publishers and authors suffer.

Undoubtedly Canadian printers and paper makers bring great pressure to bear on the Government towards confining protection to locally produced books, but they evidently do not appreciate the fact that a publisher, if for reasons of convenience alone, would much rather own his plates and have them handy when needed for a new edition, and

bind only such quantities as are needed from time to time. Printers and paper-makers, moreover, have a very erroneous idea as to the sales of various imported books. Some months ago a member for Toronto introduced a bill into the House to amend the Copyright Act so as to include a manufacturing clause. When the members were shown how it would never be profitable to print the comparatively small number of a book now being imported the bill was withdrawn.

The proposed Bill contains a clause designed to regulate the price of a popular book. While this is perhaps advisable as a protection to the public in return for the protection of the author there is not much danger of the Government's ever having to interfere in the interest of the public as the publisher himself puts out a cheaper edition of a work just as soon as he feels the stratum for the higher priced editions has been drained. A cheaper edition is only possible in that there was originally a higher-priced one.

If piracy is to obtain here the business of publishing is bound to languish in just the same way as it did in the States prior to 1891. In those days the works of Dickens, Thackeray and other writers were first published in England in monthly numbers or parts. On arriving in America these became the property of anyone and so the reputable publisher, among whom were found the Harpers, and Appletons, arranged with the English publishers to pay a fair royalty for the privilege of obtaining in advance copy for the last few numbers. This enabled the royalty-paying publisher to get at least the cream of the sale by printing and distributing for sale a complete book before the last part of the English edition could be imported and become public property. Even then it was possible for a number of pirated editions soon to appear, often in incomplete and garbled form, and be sold at a price which would undersell that of the royalty-paying publishers. Reputable publishers bound themselves not to interfere with each other's purchased rights but it would have been a feat as impossible as that of Mrs. Partington's to attempt to "corner" all the re-printing establish-

ments in New York alone. Indeed, so numerous did re-printing houses become that when Mr. Lovell formed the United States Book Co to embrace all those of importance, no less than thirteen sets of plates of "Robert Elsmere" were turned in as part assets of as many houses, copies of this book having latterly been sold at wholesale by competing houses as low as eight cents a copy, or much less than the cost of production. The temptation to commit piracy must have been great when the authorised publisher found it necessary to print a first edition of 100,000 copies of that particular title. The same publisher, Lovell, whose literary adviser was Mr. Kipling's brother-in-law, Wolcott Balestier, acquired the rights to the first publishing of Kipling's early writings, printing first editions of from twenty to twenty-five thousand copies. Many editions of these early Kipling books from pirate plates are still printed in the States and occasionally an attempt is made to slip them through into Canada, although they are now almost sure to be held up at the Customs and confiscated.

An old employee of Lovell's gives a most interesting account of how the messengers of the different pirating houses used to meet the steamers arriving at New York and obtain copies of some new English book which had been purchased for them by their London agents. The messengers raced to their respective offices and the books were at once torn apart and put into the hands of as many compositors as possible. The type was then hurried to the waiting presses, after a most perfunctory proofreading, and the edition rushed off—the first one to appear getting the cream of the sale.

Where arrangements were made in advance with royalty-paying houses for American editions of Rider Haggard, Correlli, Kipling, etc., the greatest care had to be exercised to prevent copies being stolen by dishonest employees and sold to a rival concern. If a single copy were missing or unaccounted for the whole staff was locked in to be searched until the missing copy was produced.

At that time fiction was carried by the Post Office at one cent per pound; a mail sack holding 125 books. The first edition, therefore, was distributed by post and so mailed that the copies intended for San Francisco sent, for instance, on Monday, for Utah on Tuesday, for Denver on Wednesday, for Chicago on Thursday, etc., etc., were all offered for sale on Friday which was publishing day in New York.

All this, of course, came to an end on the passage of the Act of July, 1891, when the American Government permitted the copyrighting of the works of aliens when produced in the States and if published simultaneously with the English editions, England granting the same privileges but requiring registration only.

This privilege of registration has been grossly abused and American periodicals have been enabled to penalise Canadian newspapers for reprinting extracts of articles from American magazines which have been merely registered at Stationers' Hall. This, of course, will no longer be possible after the passage of the proposed Buxton Copyright Act in Great Britain when protection will only be granted to bona fide residents in the Empire or to Britons living abroad.

While the foregoing is amusing to read as having happened elsewhere it can only be considered as a serious lesson to Canada and Canadians and it behooves all publishers and authors in the Dominion to give the matter their most careful thought and consideration and to bring their side of the question in all its seriousness to the attention of their local members of Parliament before the Bill comes to its final reading. It seems inconceivable that the Government which at the present moment is seeking friendly relations with the United States and reciprocity in natural products should, at the same time, be creating a condition which will bring down upon it the wrath of the whole American press, advertising to the world the fact that Canada is deliberately taking a retrograde step in civilization.

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